

Kenya (68)



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Human Rights Watch

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Human Rights Developments

Amid an ongoing political crisis, constitutional reform remained critical to Kenya's future and promised to grow in urgency with the approach of the 2002 national election. From January 2001, when the chairman of the government-appointed Kenya Constitutional Review Commission was sworn in, progress on substantive issues was bogged down in controversy about its composition and the administration of its finances, and dissipated the public hopes initially vested in it. The repeated efforts of the ruling Kenya African National Union (KANU) to control the commission, to exclude or reduce significantly the input of civil society groups, and to use police to prevent or violently disrupt civic education gatherings or political opposition meetings further dashed public expectations.

In June 2001, the commission promised a draft of a new constitution by June and then September 2002. Both dates were viewed as unrealistic. The political opposition and civil society groups expressed concerns that the process would be rushed through to completion without sufficient civic education or participation, or if it proved patently impossible to meet the deadline that President Daniel arap Moi would seize the opportunity to introduce "interim reforms" by decree. Overshadowing reform efforts was the question of whether or not President Moi would step down in 2002 in accordance with the existing constitution's two-term limit. When the ruling party and an opposition party merged in June, some saw the move as a stratagem by Moi to stay in power after the 2002 election.

There was one hopeful development in May, when President Moi agreed to include civil society representatives within the constitutional review commission. This concession ended the stalemate that had existed since 1999, when the Ufungamano group, a coalition of the political opposition and civil society, boycotted the parliamentary committee originally charged with the task of reviewing the constitution. As of August 2001, the expanded twenty-seven-member commission, which included members put forward by civil society groups, was gathering views from citizens on how they want to be involved in the review process.

In addition to the debate over constitutional review, there were important discussions over the grant of amnesty for economic and political crimes and over a motion in parliament to establish a Truth and Reconciliation Commission to explore human rights violations since 1966. But there was a lack of consensus in parliament on the need to confront past abuses: the motion was defeated.

Meanwhile, high-ranking government and ruling party officials continued unabated to sponsor or permit violence against opposition activists, with police cracking down on government critics in numerous incidents, and state-protected youth gangs attacking political opposition rallies. For example, police in February in Kisii town beat up James Orengo, a member of parliament (MP) and leader of *Muungano wa Mageuzi* (Peoples Movement for Change), a coalition of opposition and civil society organizations, along with two other MPs in Kisii town. President Moi accused Mageuzi leaders of plotting to overthrow the government, setting the stage for further police harassment. At a May opposition rally, police arrested two MPs on "treason" charges for allegedly threatening the president, who then ordered police to tape record all political speeches at rallies. The same month, there was a petrol bomb attack on opposition leader Mwai Kibaki during a rally in a predominantly KANU area. In July, democracy activists were beaten and arrested when police violently broke up a Nairobi prayer meeting and a political rally commemorating Kenya's struggle to restore multiparty democracy.

Sporadic clashes between members of ethnic groups allied to the ruling party and those perceived to support the opposition continued in the run-up to the 2002 election, adding to the toll of numerous deaths and hundreds of thousands displaced in "ethnic" violence. The government was slow to respond with anything more than restrictions on freedom of association and assembly, all targeted against the opposition. As of October, the report delivered to President Moi almost two years before by the presidential Commission on the Ethnic Clashes (known as "the Akiwumi Commission") had still not been published.

As rates of violent crime climbed, reports of police corruption, harassment, use of excessive force, and unlawful confinement were routine. The capital erupted in violence for two days in February when police attacked street hawkers, firing into crowds. In June, the government responded to a mounting public outcry with a plan to overhaul Kenya's police. Yet the next month, police extrajudicially executed seven suspects in cold blood and in public view after hauling them off a Nairobi bus. Kenya's notorious prisons promised some improvement under a new commissioner, who warned wardens not to use torture and instituted rights to medical care, visitors, and letter writing.

The picture was mixed on freedom of expression. While newspapers published unhindered, police routinely harassed journalists. After the beating of a female *Nation* TV reporter in January, the International Press Institute condemned Kenyan police attacks on journalists. While the number of independent broadcasters grew, the granting of government licenses and the allocation of frequencies were irregular. Some stations, especially those outside cities, waited long periods before they were able to air their programs. The state-run Kenya Broadcasting Corporation was the only media outlet allowed to broadcast nationwide, while most newly licensed FM stations had limited reach, mostly to Nairobi and its environs. In July, a group of public and private media owners was formed to draft a comprehensive broadcasting policy.

In a positive move, the government outlawed caning in schools and introduced a bill on children's rights in parliament. But the parliamentary debate was poorly attended and the bill was not passed. Student strikes over educational conditions hit 118 schools, closing down half of them. The Kenyan government took little or no action to address the plight of over a million children orphaned and otherwise affected by AIDS in

Kenya. Many of these children were living in poverty, and were at high risk of engaging in hazardous work or losing property that might be the key to their future protection. (See Children's Rights.)

Defending Human Rights

Although human rights groups operated openly, President Moi kept up a verbal offensive against nongovernmental organizations (NGOs), characterizing them as enemies of the state. In March, President Moi warned Kenyans to be wary of NGOs "pretending to fight for human rights," accusing "con men who have formed NGOs calling themselves human rights activists," of wanting to "destabilize the country" and to "cause confusion through foreign-funded seminars."

In October, seventy-one members of the nongovernmental group Release Political Prisoners (RPP) were detained for several days and charged with holding an illegal meeting. The group had been commemorating Mau Mau day to honor those who had fought for Kenya's independence from British colonial rule. The police stormed the compound, assaulted people, and used teargas to break up the peaceful gathering.

On the other hand, the government's traditionally ineffective Standing Committee on Human Rights, created by the president in 1996, showed new vigor in stepping up pressure for police reform. It condemned torture and recommended that police officers receive compulsory human rights training. The committee also blamed "trigger-happy" police for a pattern of shootings of unarmed civilians and subsequent cover-ups. Most importantly, in June the committee published its findings that prison wardens had murdered six death-row inmates who had died last year. As a result the chair of the Standing Committee was charged by the judge with contempt of court for being in breach of judicial rules that prevent comment on a pending case. A draft bill to strengthen the independence of the Standing Committee, pending since the previous year, had not been considered by parliament as of November 2001.

The Role of the International Community

Corruption remained the key sticking point with Kenya's international donors, who negotiated with the government over aid pegged to anti-corruption legislation. With donors focused on corruption and economic reform, human rights issues largely took a back seat. The major exception to this was in March, when nineteen diplomatic missions called on Kenya to respect political freedom during the constitutional review process. The statement drew an angry rebuke from President Moi, who warned donors to stay out of the process.

Donors' concerns about Kenya's plummeting economy deepened. Government mismanagement and endemic corruption remained, causing a further drop in the average Kenyan's standard of living. Echoing its first-ever negative growth rate of the year before, the country's United Nations human development ranking sank to 123 out of 162 countries.

Many of the loans pledged by the International Monetary Fund (IMF) (U.S. \$198 million), and the World Bank (U.S. \$150 million) remained suspended due to the lack of progress on anti-corruption efforts. In December 2000, the IMF suspended its funding until the moribund Kenya Anti-Corruption Authority (KACA) resumed work. The World Bank also suspended some development loans. In August, hopes dimmed for resumption of IMF funding when Parliament failed to pass a fresh anti-

corruption bill, despite personal lobbying by President Moi. The Constitutional Amendment Bill would have entrenched the new KACA in the constitution. Opponents of the bill charged that it was too weak and saw in Moi's advocacy of it a cynical attempt to please donors without engaging in genuine reform. In response, Moi immediately ordered the police to investigate corruption cases pending before the KACA. Without a special session of parliament called by the president, the bill could not be reintroduced and voted on again until March 2002.

Awaiting action were two other bills the IMF had also tied to renewed funding: a Code of Ethics bill for public servants and an Economic Crimes bill. In July, the IMF expressed satisfaction with the latter, which it helped draft, but flagged its dismay with its most controversial clause – a blanket amnesty for all economic crimes committed before December 1, 1997. President Moi and his cabinet approved the amnesty measure, which was sharply criticized.

After initially wooing donors for renewed funding, a backlash against the international pressure built among KANU politicians, increasing tension between the donor community and the government. In March, soon after a meeting with World Bank and IMF officials, the president fired the health minister and his assistant for mounting a stinging attack on the two institutions. That month, the World Bank issued a scathing report on ten African countries, including Kenya, which the report charged was not serious about reform. Transparency International, a Berlin-based watchdog group, ranked Kenya the fourth most corrupt country in the world according to the perceptions of international business.

Shortly after, anti-corruption efforts were dealt a blow with the firing of Richard Leakey in March, following twenty-one dramatic months as head of Kenya's civil service. President Moi had lured Leakey from the opposition camp and appointed him and his "Dream Team" to streamline the civil service, root out corruption, and revive the economy. Leakey's appointment was instrumental in obtaining the pledges of renewed assistance from the international financial institutions. In Leakey's short time in office, he was successful in reinvigorating the anti-corruption initiative and tightening the economy. Resentful of the clout he wielded, a group of parliamentarians pushed for Leakey's ouster.

European Union

European Union (E.U.) representatives also pegged disbursement of future funds to progress in fighting corruption, following a May meeting with President Moi. While commending Kenya on progress in constitutional review, they said the E.U. attached particular importance to effective preparation for the coming national election. They also expressed concern over violations of freedom of speech and assembly, treatment of suspects and prisoners, and an increase in extrajudicial executions. Denmark announced it would not increase aid until significant progress was made on governance and fighting corruption, and called for respect for human rights. And the United Kingdom, a traditionally staunch supporter of the Moi government, issued two warnings that it would halt funding if reforms continued to slip.

United States

President Moi held high level meetings with President George Bush and Secretary of State Colin Powell, and used the opportunity to appeal for United States intervention for renewed IMF and World Bank funding. In May, Powell visited Kenya and pledged U.S. \$8 million to fight AIDS and

urged economic reform efforts. Powell stressed that the U.S. would closely watch the 2002 elections, and underscored the importance of democratization. The State Department issued a formal statement in August urging passage of anti-corruption legislation. On June 27, President Bush and Vice President Dick Cheney met with Moi in Washington, and encouraged him to ensure continued progress on democratization and economic reform. However, in the aftermath of the September 11 attacks, anti-terrorism efforts came to the forefront of U.S. policy regarding Kenya. In October, Powell met with Kenyan foreign minister Christopher Obure on Kenya's cooperation in anti-terrorism efforts. In November, President Bush met again with President Moi; this time the discussion centered around anti-terrorism efforts and peace initiatives for Sudan and Somalia.

Other concerns included regional conflict and proliferation of small arms, which the State Department warned had reached crisis proportions. President Moi stepped up efforts to control arms flows by ordering his security and immigration departments to get involved. Unfortunately, the government's attempts resulted in renewed harassment and indiscriminate crackdowns against refugees in Kenya.

The U.S. responded to outrage over the previous year's shooting of Father John Kaiser by sending a Federal Bureau of Investigations (FBI) team to investigate. Kaiser, a U.S. citizen, was a Catholic parish priest in the Rift Valley and a human rights activist. He was an outspoken critic of government sponsored "ethnic" violence. The FBI's finding of suicide created an uproar among Kenya's clergy and human rights community, who were convinced he was murdered. U.S. Senator Paul Wellstone called for a new inquiry that took into account findings of the U.S. Embassy's own investigation. "Reports of ethnic cleansing, provocation of land clashes, rapes of young women, and harassment of priests and human rights workers are widespread," Wellstone said in June.

U.S. assistance to Kenya in FY 2001 was approximately U.S. \$66.7 million, including development assistance, child survival, and food aid, and some \$450,000 in International Military Education and Training (IMET) funding.

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