

KENYA

REPUBLIC OF KENYA

Head of state and government: Mwai Kibaki (replaced Daniel arap Moi in December)

Death penalty: retentionist

International Criminal Court: signed

Death sentences continued to be imposed but no one was executed. More than 100 people were reportedly killed by the police in circumstances suggesting they may have been extrajudicially executed. Torture remained widespread. Police used violence to disperse peaceful rallies and forcibly broke up demonstrations. Security officials and supporters of the ruling party committed human rights abuses with impunity.

Background

Presidential and parliamentary elections were held on 27 December. The pre-election period was marred by politically motivated violence and by intimidation and harassment of opponents by members and supporters of the ruling party, Kenya African National Union (KANU) and other candidates. Private militia and "youths for hire" were implicated in election-related violence. There were fewer human rights abuses in the context of the elections than had been feared.

In March KANU and the National Development Party (NDP) led by opposition leader Raila Odinga merged to form a new party called New KANU. Raila Odinga and other leading members of the NDP were subsequently made cabinet ministers. Constitutionally, President Moi could not stand for another term and in June he announced that Uhuru Kenyatta, a newcomer to the government and Local Government Minister, was his choice for President. In October Uhuru Kenyatta was officially named as KANU's presidential candidate at KANU's national conference.

This nomination caused splits within KANU. In August the Rainbow Alliance was formed by those calling for the nomination for presidential candidate to be decided by secret ballot rather than acclamation. The Rainbow Alliance decided not to participate in the KANU conference and on 14 October declared themselves the Liberal Democratic Party (LDP).

In April the mainstream opposition parties established the National Alliance for Change (NAC), including the Democratic Party (DP), Ford-Kenya and the National Party of Kenya. In July the NAC established a political party and announced candidates for the presidential elections. In October the Rainbow Alliance/LDP and NAC merged to form the National Rainbow Coalition (NARC). NARC put forward Mwai Kibaki of the DP as presidential candidate.

Mwai Kibaki was sworn in as Kenya's third President on 30 December. NARC secured 125 seats, KANU 64 and other parties 21.

The Constitution of Kenya Review Commission (CKRC) continued its work under its chairperson Professor Yash Pal

Ghai until October, when parliament was dissolved. Both KANU and the NAC presented blueprints for the composition of a new government to the CKRC, proposing a President, Vice-President and an elected prime minister. The CKRC compiled a national report to present to Parliament and drafted a new Constitution for debate at a National Constitutional Conference. The national report observed that many Kenyans had lost confidence in the country's judicial system, which led to two contempt of court cases being filed against the chairperson and the CKRC, one filed by two lawyers and the other by two judges.

Parliament passed a bill to establish an autonomous Kenya National Commission on Human Rights in June. It would replace the Standing Committee on Human Rights. By the end of the year the bill had not yet received presidential assent.

Death penalty

At least 126 people were sentenced to death in 2002 but no one was executed. Kenya refused to vote for a UN resolution calling for the abolition of the death penalty during the 58th session of the UN Commission on Human Rights. Kenya also refused to vote on another resolution condemning arbitrary execution and impunity. Kenya has still not signed the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolition of the death penalty.

Violations by security forces

Allegations of killings and ill-treatment by security forces remained widespread. In June the Standing Committee on Human Rights published a report on police brutality which stated that suspects were dying in police custody as a result of torture and lack of proper medical attention. The report stated that use of excessive force by the police had a direct bearing on the number of people who die in police cells. More than 100 people were reportedly killed by police in suspicious circumstances during the year.

☞ On 18 July police killed a University of Nairobi student, sparking a mass demonstration in the city. Riot police reportedly used live ammunition and fired tear gas in an attempt to disperse the students.

☞ In September 2000, six prisoners from King'ong'o prison, Nyeri, Central Province were killed by prison warders. The government was accused of covering up the deaths. On 14 May 2002, 11 prison warders were arrested in connection with the deaths. Their trial had not started by the end of the year.

Numerous meetings and demonstrations were broken up, sometimes violently, by the police, especially those of opposition parties, members of the Rainbow Alliance and human rights groups.

☞ Demonstrations by striking Kenyan teachers, protesting because the government had failed to pay in full a salary award negotiated in 1997, were forcibly broken up by the police using tear gas. The strike lasted for about six weeks from late September.

In May, police in Nairobi detained hundreds of refugees from Ethiopia, Somalia and other countries on suspicion of being illegal immigrants. They were held for several days or weeks in harsh conditions, with reports of sexual abuse of

women refugees. Many were released on payment of a bribe, which often seemed to be the purpose of the frequent round-ups of refugees.

Violence by the Mungiki group

Increasing incidents of violence were perpetrated by the Mungiki group, which claims to be based on traditional African values.

☞ On 4 March at least 23 people were killed and many others injured in an attack by a group of up to 300 members of Mungiki in the Kariobangi Estate in Nairobi. The attack was apparently in retaliation for an earlier confrontation between Mungiki members and a local vigilante group known as the *Taliban*. Following the massacre the Mungiki group was banned along with 17 other vigilante and militia groups, and more than 100 Mungiki members were arrested.

Despite the ban, the Mungiki group became increasingly active in the pre-election period. In August hundreds of Mungiki members, some armed with machetes and clubs, held a rally in central Nairobi expressing their support for KANU presidential candidate Uhuru Kenyatta. Police monitored the rally but did not intervene. The same month, the group threatened to use violence against anybody who insulted President Moi.

Ethnic violence

Ethnic conflict continued during the year. In central Kenya and Isiolo District thousands of people were displaced by inter-ethnic conflict, mostly between warring groups of the Turkana and Borana communities.

In October the High Court ordered the publication of the report of a judicial inquiry into ethnic clashes in Kenya between 1991 and 1998. The "Akiwumi Commission", set up by President Moi in 1998, investigated ethnic violence including the 1992 violence in the Rift Valley Province and the 1997 violence in the Coast Province. The Commission submitted its report, which concluded that the clashes amounted to ethnic cleansing, to the President in March 1999, but the government refused to make it public. The report called for a number of prominent Kenyans, including government ministers, opposition leaders and other officials, to be investigated for their role in the bloodshed. The government dismissed the report as "biased".

Freedom of expression

A law imposing new restrictions on the media, the Statutory Law (Miscellaneous Amendment) Bill, was passed in May. The new law demanded that media publishers lodge a prohibitively expensive bond, which threatened to force hundreds of publications to close. Vendors selling newspapers without such a bond could face a six-month jail sentence.

☞ Death threats were issued against two prominent pathologists, Dr Moses Njue and Dr Andrew Gachie, who were involved in the post-mortem examination of an alleged torture victim in April. The doctors were also threatened with deregistration unless they altered their post-mortem report. Dr Njue was removed from his post of Provincial Pathologist. In May new regulations were introduced requiring doctors

paid by the state to ask permission from their employers before undertaking private post-mortems, but they were soon lifted.

Violence against women

Despite the prohibition of violence against women in international human rights law and within Kenya's own Constitution and national legislation, it continued to be widespread and prevalent. The government consistently stated its intention to promote gender equality through legislation, but failed to implement provisions to promote and protect women's rights.

A bill that would increase protection for women from domestic violence, the Domestic Violence (Family Protection) Bill, introduced to Parliament in 2000, had still not become law by the end of the year. It passed its second reading in the National Assembly in July but was not sent for the required further examination by a parliamentary committee before being heard for a third time in the National Assembly. The bill would establish a protection fund for victims and enable courts to take action to protect women from abusive partners. However, the bill did not explicitly criminalize marital rape or challenge the assumption that consent to sexual intercourse is given by the act of marriage.

Children's rights

The Children's Act came into effect on 1 March, outlawing female genital mutilation (FGM), child prostitution and child labour. At least 43 children's courts were established as part of the implementation of the Act. However, the practice of FGM continued in various communities, particularly in western Kenya.

☞ In April, 17 girls in Eldoret fled their homes after their community refused to recognize an alternative rite. They went to court to seek protection from being subjected to FGM.

Compensation from the United Kingdom

The UK Ministry of Defence agreed in July to pay at least £4.5 million in compensation plus legal costs to 228 Masai and Samburu pastoralists bereaved or injured by unexploded ordnances left by the British army during exercises on their herding grounds. Other cases were expected to come forward.

AI country reports/visits

Report

- Kenya: Rape – the invisible crime (AI Index: AFR 32/001/2002)

Visits

AI delegates visited Kenya in February to conduct research, in March to launch AI's report on violence against women in Kenya, in July/August to conduct a workshop with non-governmental organizations, and in November and December to conduct research on politically motivated human rights violations during the pre-election and election periods.