

## Kenya

Respect for human rights in Kenya remained precarious in 2016, with authorities failing to adequately investigate a range of abuses across the country and undermining basic rights to free expression and association. Human rights activists and journalists working on a range of issues face increasing obstacles and harassment. Human rights organizations continue to implicate Kenyan police and military in disappearances and killings of individuals allegedly linked to Al-Shabab.

With elections scheduled for August 2017, questions remain over the credibility and competence of the judiciary to arbitrate electoral disputes fairly. The ability of Kenya police to respond effectively and lawfully should violence occur before, during, or after the 2017 elections remains a concern.

In a positive step, four police officers were charged with murder in late June 2016 of an International Justice Mission lawyer, his client and their cabdriver. The case illustrates the risks human rights defenders and others face when pushing for police accountability.

Industrial developments in neighboring Ethiopia have led to a drop in the water levels of lake Turkana. These, combined with climate change, have negatively impacted the livelihoods of about 300,000 indigenous people in Turkana county, but the Kenyan government has failed to raise this issue with Ethiopia. The Climate Change Law passed in May, if rigorously implemented, is expected to improve coordination and governance of national and local policies related to climate change.

### Conduct of Security Forces

Kenyan and international human rights organizations documented military and police units, including the Directorate of Military Intelligence, carrying out enforced disappearances, torture and beating of individuals suspected of links with Al-Shabab.

Kenyan authorities have not acknowledged, publicly condemned or investigated at least 32 cases of enforced disappearances and 11 unexplained deaths of people last seen in state custody in Nairobi and northeastern Kenya. Witnesses observed police and military drive with detainees into military bases and camps in Garissa, Wajir, and Mandera for detention and interrogation. Two of the 34 missing people were in late July located in state custody, with one now facing terrorism related charges. Kenya National Commission on Human Rights, a statutory human rights body, documented at least 100 cases of extrajudicial killings and enforced disappearances of those allegedly linked with Al-Shabab and continue to press for investigations.

The Commission on Administrative Justice received at least 25,000 reports of killings by police across the country since 2013. Kenyan authorities have very rarely investigated the killings or held anyone to account. In September, the Office of the Director of Public Prosecutions and the Kenya National Commission on Human Rights separately announced intentions to initiate inquests in killings by police in Kisumu in 2013 and security forces abuses at the coast, respectively.

## **Accountability**

The collapse of the last International Criminal Court (ICC) case directly related to the 2007-2008 post-election violence devastated victims' hopes for justice. National authorities made no progress to address these crimes.

The ICC vacated charges against Deputy President William Ruto and Joshua arap Sang, a former radio journalist, in April 2016 for lack of evidence. For one judge, the combination of witness interference and political obstruction warranted a mistrial. The case's collapse followed that of cases against four others, including President Uhuru Kenyatta.

Three men wanted by the ICC since 2013 and 2015 for witness interference have yet to be surrendered. A challenge to the surrender of one individual is pending in Kenyan courts. There have been no publicly available results of national investigations into the apparent murder in late 2014 of Meshack Yebai, named by the Ruto ICC defense team as its witness.

In September, an ICC trial chamber referred Kenya's lack of cooperation in the Kenyatta case to the ICC's Assembly of States Parties.

The government continues its campaign to press the AU to consider calling on its member countries who also belong to the ICC to leave the court, but several countries blocked consensus at a July 2016 summit. A bill related to Kenya's withdrawal from the ICC remains pending in parliament.

The government continues to ignore the plight of thousands of women and men who were raped during the post-election violence in 2007-08. It has failed to provide livelihood support, as well as medical and psychosocial care to them, including for children who were born from rape and face violence and discrimination. The government has not established a restorative justice fund that was promised to survivors of historical injustices, including post-election violence.

Hearings continued over the course of 2016 in the Kenyan high court on a petition brought by survivors of election-related sexual violence seeking to compel the government to investigate. A second case, related to shootings by police during the violence, is also pending.

### **Threats to Civil Society and Media**

Nongovernmental organizations (NGOs) working on a range of issues face hostile rhetoric from public officials, including draconian administrative measures and attempts at introducing repressive amendments to the NGO law. In October 2015, the NGO regulatory body announced plans to deregister more than 900 NGOs over, among other reasons, alleged failure to comply with regulatory requirements and links to terrorism. The cabinet secretary later suspended the plan.

On September 9, the cabinet secretary for devolution announced plans to implement the Public Benefits Organizations (PBO) Act, first signed into law by President Kibaki in January 2013. The announcement came just weeks after parliament voted to compel the executive to implement the law without proposed repressive amendments, such as capping NGO funding from foreign sources at 15 percent.

The government continues to enforce laws that undermine media freedom. The Kenya Information and Communication Act (KICA), the Media Act of 2013, and the Security Laws Amendment Act of 2014 contain repressive provisions, which introduce new harsh offences and penalties, that should be repealed. In 2016, at least eight journalists and bloggers were arrested and charged under vaguely worded provisions in the new laws, including “misuse of a communications gadget,” “annoying a public official” or “undermining the authority of a public officer.” In May 2016, a High Court judge declared section 29 of KICA, which creates an offense of misusing a communications gadget, unconstitutional.

### **Coerced Return of Refugees**

In April, authorities announced that Kenya would no longer grant Somali refugees prima facie refugees status and in May, disbanded the Department of Refugee Affairs (DRA), a statutory government body responsible for registration of asylum seekers, issuing of travel permits and movement passes. At the same time, Kenyan officials announced plans to close Dadaab refugee camp. The government justified the closure of the camp on the grounds that terrorist attacks were mounted from Dadaab, without providing evidence.

At time of writing, Kenya’s repatriation program does not meet international standards for voluntary refugee return. Refugees in Dadaab camp told Human Rights Watch of intimidation by Kenyan officials, silence over alternative options that would allow them to remain in Kenya, cuts in rations and inadequate and misleading information on conditions in Somalia. In November, Kenyan authorities postponed the closure of Dadaab camp by six months.

### **Sexual Orientation and Gender Identity**

Kenya’s penal code prohibits “carnal knowledge against the order of nature,” generally understood as consensual sex between men, and “indecent practices between males.” Civil society organizations and activists filed two landmark constitutional petitions against these sections in April and June 2016, arguing that the laws violate constitutional rights, including the rights to equality and non-discrimination, human dignity, freedom and security of the person, privacy, and health.

Kenya continued the prosecution of two men on charges of “carnal knowledge” after police arbitrarily arrested them in Kwale County in February 2015. The case remained open but

was suspended pending the ruling of a constitutional petition filed by the two men, asserting that state officials had violated their rights by subjecting them to a forced anal examination. The High Court rejected the petition on the grounds that the men consented to the examination, ignoring that the men were in police custody and not able to provide free and informed consent. The men have appealed the ruling.

The government appealed a 2015 High Court decision ordering the Non-Governmental Organizations Board to register the National Gay and Lesbian Human Rights Commission (NGLHRC), a civil society group. Parties were awaiting a hearing date at time of writing.

The Kenya Film Classification Board overstepped its jurisdiction in asking YouTube to remove a locally produced video addressing same-sex relationships, prohibiting a lesbian speed-dating event, and attempting to ban a podcast with alleged lesbian content.

## **Key International Actors**

Kenya plays a prominent regional role particularly regarding counterterrorism efforts in East Africa. Kenyan forces remain in Somalia as part of the African Union mission. President Kenyatta also participated in various attempts at peace negotiations in South Sudan and Burundi.

Kenya's criticism of its Western partners has become less vociferous following the end of its ICC cases, but there remain serious concerns about the human rights situation in the country. Both US Secretary of State John Kerry and Japanese Prime Minister Shinzo Abe held talks with President Kenyatta in Nairobi. Kerry raised human rights concerns.

International partners, including China, the UK, Turkey, Israel, Italy, and the US pledged support for Kenya's counterterrorism efforts and economic development. The US consistently raised concerns—publicly and privately—about abuses related to Kenya's counterterrorism efforts and took steps to restrict assistance to certain units. There was little indication that other international partners expressed similar concerns.