

/ KENYA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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Political context

The December 2007 Presidential elections were marred by serious irregularities, and set off a wave of violence throughout Kenya until the end of February 2008, which claimed over 1,000 lives and displaced over 300,000 people¹. Serious human rights violations included organised violence by militia, gender-based violence, and spontaneous, disorganised uprisings of mobs protesting the flaws, during which there was a disproportionate and excessive use of force by the police against protesters, mainly in opposition strongholds. After the signing in February 2008 of a power-sharing agreement between President Mwai Kibaki and the opposition, a new government was formed in April 2008, headed jointly by the President and, as Prime Minister, by the opposition leader Raila Odinga.

Following the election violence, a Commission of Inquiry led by Justice Philip Waki was set up to investigate the violations². In October 2008, the Waki Commission found that Kenyan politicians from both sides had organised and financed attacks on supporters of their opponents. It also denounced the use of excessive force against civilians by security forces, including extrajudicial executions as well as crimes ranging from looting to rape. It recommended the establishment of a special tribunal to try major perpetrators of the violence. Following the political agreement decided by President Kibaki and Prime Minister

1./ See Report of the Commonwealth Observer Group, January 2008, Press Release of the EU Election Observation Mission, January 2008, and Kenya Human Rights Commission Press Release, February 7, 2008.

2./ See East and Horn of Africa Human Rights Defenders Project Report, *The Situation of Human Rights Defenders in the East and Horn of Africa, Report to the Forum on the participation of NGOs at the 44th session of the African Commission on Human and People's Rights (ACHPR), Kenya Chapter*, November 2008.

Odinga on December 17, 2008, this special tribunal should have been established by January 30, 2009 – but the deadline was missed³.

Furthermore, in early March 2008, the Kenyan army was deployed in the Mount Elgon district (western province of Kenya) to clamp down on the activities of the Sabaot Land Defence Forces (SLDF) in an action called "Operation Okoa Maisha". The SLDF was accused of carrying out an increasing number of attacks on villages, killing people, stealing cattle and destroying homes. According to the Kenyan NGO Independent Medico-Legal Unit (IMLU), the military operation reportedly resulted in mass arrests and subsequent prosecution of over 1,200 persons with most of the persons arrested raising complaints of torture⁴.

Threats, assaults and harassment of defenders denouncing post-electoral human rights violations

In the post-election context, the lives, safety and security of human rights defenders were placed at great risk and their work severely impaired, especially when denouncing post-electoral human rights violations⁵: in its concluding observations in November 2008, the UN Committee against Torture noted "with concern allegations of reprisals, serious acts of intimidation and threats against human rights defenders, especially those who report acts of torture and ill-treatment, and in particular human right defenders involved in addressing the post-election violence"⁶. The establishment of the Grand Coalition Government also had a negative impact on civil society by bringing both the Government and the opposition together in a shared consensus to limit the space accorded to civil society and to restrict efforts to shed light on violations committed by both parties⁷.

3./ Parliamentarians rejected the special tribunal twice, on January 29 and February 13, 2009, after a constitutional amendment motion to institute the tribunal by the Government was defeated.

4./ See IMLU, *Preliminary report of medico-legal investigation of torture by the military at Mount Elgon "Operation Okoa Maisha"*, April 2008.

5./ See Memorandum to the ACHPR on the human rights situation in Kenya signed by 27 Kenyan organisations, 43rd extraordinary session of the ACHPR, February 15, 2008.

6./ See UN Document CAT/C/KEN/CO/1, November 21, 2008. The Committee also noted the common practice of unlawful and arbitrary arrest by the police and the widespread corruption among police officers, which particularly affects the poor living in urban neighbourhoods.

7./ See East and Horn of Africa Human Rights Defenders Project, Report above-mentioned.

For instance, on January 25, 2008, Mr. **James Maina**, a member of "Bunge La Mwananchi" (the People's Parliament), reported that he received a series of death threats from members of the militia Mungiki for having shared details of attempts by the President's Party of National Unity to involve Mungiki in the organised counter-attacks. At the end of January, Mr. Maina was forced to change his phone number and the place where he was staying, and subsequently fled the country. Likewise, in late January 2008, Mr. **Maina Kiai**, Chairman of the Kenya National Commission on Human Rights (KNCHR), and Mr. **Haroun Ndubi**, lawyer and member of the Kenya Domestic Observers Forum, also received phone calls from anonymous people who told them that they would "cut off their heads" if they went on criticising the outcome of the elections. In January 2008, human rights defenders, including Ms. **Muthoni Wanyeki**, Executive Director of the Kenya Human Rights Commission (KHRC), Ms. **Gladwell Otieno**, Director of the Africa Centre for Open Government, Ms. **Njeri Kabeberi**, Executive Director of the Centre for Multi-Party Democracy, as well as Messrs. Maina Kiai, Haroun Ndubi, **Ndung'u Wainaina**, member of the National Convention Executive Council, James Maina and **David Ndi**, co-founder and Director of the Kenya Leadership Institute, were also termed as traitors by a criminal group calling itself the "Thagicu" Renaissance Movement. On January 10, they had denounced the irregularities in the elections and submitted a complaint on behalf of the Kenya for Peace, Truth and Justice Coalition to Kilimani police station against the Electoral Commission of Kenya with regard to criminal offences, including the fabrication of false certificates, the neglect of duty, the disobedience of statutory duty, the forgery of judicial or official documents, etc. The death threats became true when Mr. **Kiriinya Ikunyua**, a driver for the police force who wished to testify on unlawful killings by police forces, was shot at his front door on October 16, one day after the release of the Waki report by the Commission of Inquiry⁸.

A new challenge for human rights defenders also arose at the end of the year with regards to the discussions on the establishment of the special tribunal for Kenya to investigate and prosecute perpetrators of the last election violence. Many NGOs gathered in the Kenya for

8./ *Idem*.

Peace, Truth and Justice Coalition indeed feared that defenders who will be willing to witness the serious human rights violations they have documented before the special tribunal will face serious threats and harassment if no real protection is guaranteed.

Harassment of human rights defenders denouncing human rights violations in the Mount Elgon district

The report of the Waki Commission failed to investigate the violence in Mount Elgon or to include it into its recommendations of issues to be dealt with once a national tribunal is established – primarily because the SLDF was not directly involved in the post-elections violence. This situation has constituted a significant threat to human rights defenders who spoke out against the violations taking place, and several activists were reported to have been intimidated and interrogated. For instance, on August 14, 2008, Dr. **Walter Wekesa Nalinya**, who participated in documenting human rights violations in Mount Elgon Hospital Kitale in regard to Mount Elgon torture cases⁹, was summoned by police and taken to Kakamega's Provincial Criminal Investigation Office. The police alleged that Dr. Wekesa Nalinya was not registered under private practice and thus ought not to have documented the Mount Elgon torture allegations. The police then told him to write a report on his involvement in the Mt. Elgon torture allegations made by the KNCHR. Dr. Walter Wekesa Nalinya was released later on the same day. In addition, "Mwatikho", a human rights organisation working in western Kenya, lost its registration on the basis that it was carrying out activities of an NGO when in fact it had registered as a community organisation. This measure was clearly linked to its release of a statement in April 2008 accusing the Government of torture and enforced disappearances in Mount Elgon district¹⁰.

Curtailment of freedoms of peaceful assembly and association

In 2008, regulations were increasingly being interpreted in a restrictive manner, which undermined the work of defenders and their rights,

9./ Dr. Wekesa Nalinya documented human rights violations in Mount Elgon Hospital Kitale for a KNCHR report that was released in May 2008. He has also actively collaborated with IMLU, a registered NGO working for the rights of torture victims in Kenya, on examining torture cases.

10./ See Mwatikho, Western Kenya-Human Rights Watch (WKHRW) and Human Rights Watch Joint Statement, April 2, 2008.

notably freedom of assembly. For example, IMLU, along with several other civil society organisations, sought to organise a peaceful procession on June 26, 2008 to mark the UN International Day in support of victims of torture. In accordance with Kenyan law, IMLU sent a prior notification to the police on the event, but their notification was rejected on security grounds. The march was called off but participants nonetheless gathered on the given day and were dispersed by the police using tear-gas. As of the end of 2008, IMLU was seeking to bring this case to court based on the principle that the police's decision to reject the notification was illegal and unconstitutional as under the Public Order Act organisers are only bound to inform the police and are not subject to their approval¹¹.

In addition, police officers continued to use excessive force in dispersing peaceful processions. Thus, on May 30, 2008, the police violently dispersed a peaceful procession organised by the grass root movement "Bunge La Mwananchi" to protest against the soaring food prices. Yet, the organisation had given a notice to the police as required by the law. The police further arrested six members of Bunge La Mwananchi, Mr. Gacheke Gachihi, Mr. Jacob Odipo, Ms. Hellen Ayugi, Mr. Samson Ojiayo, Mr. Fredrick Odhiambo and Mr. Stephen Gitau. They were later arraigned in court but the charges were subsequently dropped after the police failed to prove their case. Members of Bunge La Mwananchi were on different occasions in 2008 arrested, harassed and intimidated by the police, and their meetings were termed illegal, further compromising on their right to association.

Furthermore, in November 2008, the UN Committee on Economic, Social and Cultural Rights expressed concern about reported delays in the registration of trade unions, closure based on vague grounds, interference by officials with the Office of the Registrar of Trade Unions and the Ministry of Labour in the management and operation of trade unions, and excessive restrictions on the right to strike, in particular in the Export Processing Zones (Article 8)¹².

11./ *Idem*.

12./ See UN Document E/C.12/KEN/CO/1, November 19, 2008.

Urgent Interventions issued by The Observatory in 2008¹³

Names of human rights defenders / NGOs	Violations	Intervention Reference	Date of Issuance
Members of the Kenyans for Peace with Truth and Justice Initiative (KPTJ) and Mr. Maina Kiai	Threats	Urgent Appeal KEN 001/0108/OBS 005	January 14, 2008
Ms. Muthoni Wanyeki, Ms. Gladwell Otieno, Ms. Njeri Kabeberi, Messrs. Maina Kiai, Haroun Ndubi, Ndung'u Wainaina, James Maina and David Ndii	Death threats	Urgent Appeal KEN 001/0108/OBS 005.1	February 6, 2008
Dr. Walter Wekesa Nalinya	Summoning / Intimidation	Urgent Appeal KEN 002/0808/OBS 135	August 14, 2008
	Release	Urgent Appeal KEN 002/0808/OBS 135.1	August 19, 2008

13./ See the Compilation of cases in the CD-Rom attached to this report.