

Kenya: Human Rights Priorities for the New Administration Human Rights Watch 23 April 2013

Introduction

Uhuru Kenyatta and William Ruto were sworn into office as president and deputy president respectively on April 9, 2013, following the dismissal of court petitions challenging the results of the March 4, 2013 elections. The new leadership takes over at a time when the country is facing numerous human rights challenges that require urgent action. Long-standing grievances over land and other historical injustices, such as the failure to develop some regions, compounded by the lack of accountability for past crimes, continue to fuel violence across Kenya, including in the lead up to and following the 2013 elections. (...)

Kenyatta and Ruto are due to face trial before the International Criminal Court (ICC) on charges of crimes against humanity related to Kenya's post-election violence in 2007-2008. Ruto faces ICC charges of organizing attacks to displace and kill perceived supporters of then-President Mwai Kibaki's Party of National Unity (PNU) following the disputed 2007 presidential results. Kenyatta is accused of enlisting a local militia and criminal gang to kill and rape in a reprisal attack against perceived supporters of the then-opposition party. Both Kenyatta and Ruto have denied the charges.

This paper sets out four key priorities for Kenya's new administration and offers recommendations for achieving progress in each area.

I. Uphold Key Rights for Civil Society

Kenya is a state party to United Nations and African regional human rights treaties, and its constitution provides for the freedom of assembly, association, expression, and the media. The new government should enforce these rights and freedoms by promptly and impartially investigating recent incidents of intimidation, ensuring civil society has full freedom to operate, and affirming media freedoms.

II. Ensure Accountability for Serious Crimes

Kenya faces enormous challenges in providing accountability for serious crimes. Despite efforts by both governmental and nongovernmental agencies to document violations, there have been worrying gaps, particularly in the following areas. *Killings and Forced Disappearances in Mt. Elgon*

Authorities should set up an independent commission of inquiry into crimes committed in Mt. Elgon with the view to holding those responsible to account, including through criminal investigations and prosecutions. As documented in an October 2011 Human Rights Watch report, "Hold Your Heart': Waiting for Justice in Kenya's Mt. Elgon Region," some 325 people were forcibly disappeared, 1,000 killed, and thousands tortured, raped, and forcibly displaced by the Sabaot Land Defense Forces (SLDF), a militia group, and the Kenyan military in 2008. (...)

Perpetrators of Post-Election Violence

Kenyan government should urgently investigate and prosecute cases related to the 2007-2008

post-election violence, which resulted in the killing of at least 1,100 people and displacement of 650,000 others. The report of the Commission of Inquiry into Post-Election Violence (CIPEV), known as the Waki Commission, identified a list of those it considered most responsible for the violence in what was described by the Kenyan media as “a secret envelope.” The ICC prosecutor initially brought cases against six individuals; three—including Kenyatta and Ruto—now face trial. Kenyan media have suggested that the secret envelope could have contained as many as 26 names of high ranking individuals, including some members of parliament. Names in this envelope handed to Kofi Annan have never been made public. (...)

As Human Rights Watch documented in a report on accountability for post-election violence, “Turning Pebbles’: Evading Accountability for Post-Election Violence in Kenya,” weaknesses in Kenya’s criminal justice system contributed to a paltry rate of convictions for serious election-related crimes. (...)

The government should ensure full cooperation with the ICC in its investigations and pending cases (see below). The government should also establish special mechanisms to investigate, prosecute, and adjudicate other cases involving the most serious election-related crimes, using the International Crimes Act and other Kenyan laws, while ensuring that, where possible, cases of lesser crimes or against lower-level perpetrators are effectively handled by the ordinary courts. (...)

Extrajudicial Killings

The new Kenyan government should investigate extrajudicial killings by police and prosecute those responsible, and remove them from the police force. It should vet police officers for involvement in extrajudicial killings and other abuses. (...) *Abuses against Ethnic Somalis*

The new government should ensure accountability for abuses by the Kenyan security forces, including police, against ethnic Somalis, both Kenyans and refugees, particularly in northern Kenya. (...) **III. Pursue Reforms to Address Long-Standing Grievances**

Since the 2007 elections the Kenyan government has embarked on a set of essential institutional and legal reforms, largely in response to the recommendations of at least two commissions of inquiry formed after the 2007-2008 post-election violence. Progress implementing them has been slow and insufficient, however. The new government should accelerate reforms in the security sector, particularly police reforms, the land sector, and public administration, especially as the 2010 constitution creates a framework and timelines for institutional and legislative reforms, and contains a strong bill of rights. There has been progress in judicial reforms, but police reforms have been slow and partial, and at times have failed to respond to the key human rights concerns. Police officers have not been investigated and prosecuted for alleged abuses in the 2007-2008 post-election violence. Some have been promoted or simply given additional responsibility despite pending allegations. (...)

IV. Cooperate with the International Criminal Court

The new government should ensure full cooperation with the ICC. Three Kenyans—including

Kenyatta and Ruto—face trial before the ICC on charges of crimes against humanity related to the post-election violence of 2007-2008. The ICC prosecutor stepped in following the failure of the national authorities to set up a local mechanism to try those responsible for the violence. Kenya is a state party to the Rome Statute, which it signed in 2005. The country has on numerous occasions promised to cooperate with the ICC, in line with its obligations under the Rome Statute and as implemented in national law through the International Crimes Act. Kenya has challenged the ICC in and out of court. In 2011 Kenya filed an admissibility challenge to the ICC's jurisdiction. The judges rejected the challenge—a decision confirmed on appeal—finding no evidence that the government was actually investigating any of the six people then-named in the two cases. (...)

The new government should signal unequivocal support for the ICC and take steps to strengthen Kenya's cooperation with the court. These steps should include ensuring free movement within the country for ICC staff, defense counsel, and victims' legal representatives and expeditious and meaningful responses to requests for assistance from the ICC or its prosecutor. In light of what the ICC prosecutor has termed "unprecedented" witness interference in the Kenya cases, the government should also state publicly that every witness has a right to testify and that it will investigate reports of witness interference. Kenya's authorities should prosecute threats, harassment, and bribery amounting to violations of national law, evidence permitting. The ICC treaty requires Kenya to extend its criminal laws to offenses against the ICC's administration of justice when committed in Kenya or one of its nationals. This includes corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, and retaliating against a witness for giving testimony.

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