
KENYA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2011

In 2010-2011, human rights defenders who exposed and publicised grave violations of human rights as well as facilitated their investigation and prosecution faced heightened risks and reprisals. Defenders of sexual minorities' rights were also victims of harassment because of their activities.

Political context

A referendum held on August 4, 2010 approved a new Kenyan Constitution by 67% of the voters, which provides for a detailed bill of rights and reforms the electoral system, the administration of land as well as the judiciary¹. The Constitution was officially promulgated by President Kibaki on August 27, 2010 during a ceremony attended by among others, the Sudanese President Omar Al Beshir who is currently subject to two arrest warrants by the International Criminal Court (ICC) for “war crimes”, “crimes against humanity” and “genocide” committed in Darfur.

Despite an important judgement of the High Court of Nairobi on July 21, 2010 awarding compensation amounting to about 39 million shillings (about 315,000 euros) to victims of torture under Daniel Arap Moi's Government (1978-2002), impunity for serious violations of human rights remained the rule for the crimes perpetrated during the 2007-2008 post-election violence but also for other crimes such as those perpetrated during the army deployment in the Mount Elgon district (western province of Kenya) in 2008 to clamp down on the activities of the Sabaot Land Defence Forces (SLDF).

Given the failure of the Kenyan Government to address impunity for the crimes perpetrated during the post-election violence, the ICC opened an investigation into these crimes on March 31, 2010. The Government initially showed some willingness to cooperate with the ICC, which transformed into opposition when the ICC Prosecutor revealed its list of six suspects – including senior politicians – in December 2010. When on March 8, 2011, the ICC delivered its decision granting the Prosecutor request for the delivery of summons against the six suspects to appear in April 2011, the Kenyan authorities intensified their efforts to prevent

1/ Constitutional reform was part of the 2008 Agreement on the Principles of Partnership of the Coalition Government reached after the violence that erupted following the 2007 general elections.

the proceedings from continuing, lobbying for the United Nations (UN) Security Council's deferral of the ICC proceedings for one year under Article 16 of the Rome Statute². Moreover, on December 22, 2010, the Parliament passed a motion requesting the executive to take steps to withdraw from the ICC Statute³. In addition, a few days before the initial appearance of all suspects before the ICC, on March 31, 2011, the Government filed a request for inadmissibility of the cases on the ground that with the new Constitution it was now in capacity to investigate the case⁴.

In this context, the protection of witnesses became a key issue. A positive step was taken in May 2010 toward reforming the witness protection system, with the President's signature of the Witness Protection Amendment Act. It stripped witness protection from the Attorney General's control and created a witness protection agency. A Witness Protection Advisory Board, chaired by the Attorney General and composed of the governmental heads of intelligence, police, and prisons and a representative of the Kenya National Commission on Human Rights (KNCHR), was appointed. Nevertheless, concerns about the efficiency of this agency arose. For instance, it is composed of State bodies while some of them were accused of perpetrating violations during the post-election violence. In December 2010, the ICC Prosecutor warned that he was conducting investigation on reported threats against witnesses.

Furthermore, while homosexuality is illegal in Kenya and can be sanctioned by up to fourteen years of imprisonment pursuant to Articles 162 and 163 of the Criminal Code⁵, the gay community remained specifically targeted by politicians and religious leaders. For instance, in January 2011, at a rally, Prime Minister Raila Odinga stated that gay couples should be arrested and as a result several members of the gay community were threatened⁶.

On June 6, 2010, the Kenya's Broadcasting Content Advisory Council was inaugurated by the Minister of Information and Communications, which is now the one to control content on TV and radio instead of the Government. It includes the Permanent Secretary in the Ministry of

2/ Pursuant to Article 16 of the Rome Statute, the Security Council can request the Court to defer investigation for a year if it deems that there is a threat to international peace and security.

3/ It was feared that a bill, seeking the same effect and repealing the International Criminal Act of 2008, would be tabled. However, as of the end of April 2011, no such bill had been tabled.

4/ As of the end of April 2011 the ICC had not decided yet on the application.

5/ Condemnations are very rare since the police most of the time do not have evidence but it is used by the police to arrest individuals and extract bribes from them.

6/ See Gay and Lesbian Coalition of Kenya (GALCK).

Information and six other members to be appointed by the Information Minister. The creation of the Council resulted from the adoption by the Parliament of the 2009 amendments to the Communications Act⁷, which were agreed upon between the media and the Government as interim measures pending a further and more elaborate review of the law governing communications and the media⁸.

Ongoing reprisals against human rights defenders who denounced human rights violations by the police forces

While impunity remained the rule for abuses committed by the police and military forces, human rights defenders who denounced such violations continued to face reprisals. Members of “Bunge la Mwananchi”, a grass roots movement that aims at fighting social injustice and promoting accountable leadership at all levels in Kenya, were particularly targeted. On April 22, 2010, Mr. **Kenneth Kirimi Mbae**, an active member of Bunge la Mwananchi and a member of Release Political Prisoners (RPP), was arrested near the headquarters of the General Service Unit (GSU) in Nairobi by four persons in civilian clothes. Mr. Kenneth Kirimi Mbae was detained in an isolated house at Suswa market, Narok district, until April 26, 2010, when he was released without charges. While in detention he was subjected to beating and intimidation including threats of sexual violence against his wife. As a result, he had to undergo medical treatment. Mr. Kirimi Mbae was interrogated about the work carried out by Mr. **Stephen Musau**, RPP Executive Coordinator, and the organisation’s activities concerning the Mount Elgon military operations, as well as about the work of Mr. Musau and the RPP regarding extrajudicial killings and the subsequent sharing of their report with Professor Philip Alston, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Furthermore, on April 23, 2010, Mr. **George Nyongesa**, a community organiser who works for Bunge la Mwananchi’s website, received an anonymous phone call threatening to silence him “if he did not close it and if he keeps doing noises”, and asking him to pull the website down. One of his colleague, Mr. **Lawrence Maina**, web manager of the organisation, received two similar phone calls earlier the same day. On May 4, 2010, the Commanding Officer of the police department came to the Jeevanjee Garden in Nairobi where Bunge la Mwananchi was holding a meeting to discuss current issues in the country and the post-election violence. The officer ordered the 200 persons present at the meeting to leave and arrested four activists of Bunge La Mwananchi, Messrs. **Jacob Odipo**, **Francis**

7/ See The Statute Law (Miscellaneous Amendments) Act, 2009.

8/ See Annual Report 2010.

Wetukha and **Jebtekeny Tariq** as well as **Ms. Ruth Mumbi**. They were subsequently released without charge after arriving at the police station. In addition, Messrs. **Samson Owimba Ojiayo** and **Godwin Kamau Wangoe**, two members of Bunge La Mwananchi who had been arrested and maltreated in September 2009, before being released, after campaigning to end impunity for serious economic crimes and extrajudicial killings, were still awaiting trials as of April 2011 for, respectively, “belonging to an illegal organisation” and “participation in an illegal protest”⁹.

Moreover, as of April 2011, the investigation into the assassination of Messrs. **Oscar Kamau King’ara**, a lawyer and Chief Executive Officer of the Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and **John Paul Oulu**, OFFLACK Communications and Advocacy Officer, remained at the preliminary investigation stage, although the Minister for Justice, Mr. Mutula Kilonzo, indicated that the deaths were under investigation during the Universal Periodic Review (UPR) session of Kenya held by the UN Human Rights Council in June 2010¹⁰. The two defenders, who had been particularly active in reporting on police death squads and had provided information to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions during his mission in February 2009, were murdered in March 2009.

Threats and reprisals against human rights defenders who provided information related to the ICC investigation

Human rights defenders who were instrumental in providing information related to the ICC investigation were also at serious risk¹¹. For instance, since December 2010, five human rights defenders have been forced to relocate from their regions after being threatened due to their activities. Another human rights defender was threatened at the beginning of 2011, by receiving anonymous calls as well as having a note pasted in her compound asking her why she was betraying her community. In addition, the human rights organisations that provided information in the framework of the ICC investigation saw their offices broken into in search of information and in some instance computers and hard drives were stolen, as for example in September 2010 in Nairobi and in November 2010 in Eldoret. Moreover, starting from mid-2010, human rights defenders

9/ Their lawyer had requested a postponement of their trials since they were in hiding following numerous threats. As of the end of April 2011, they were back to their normal work and the trial was supposed to start soon.

10/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Kenya*, UN Document A/HRC/15/8, June 17, 2010.

11/ Names of defenders and organisations are withheld for security reasons.

working on other human rights issues were also being targeted and labelled as working for the ICC even if it was not the case.

Intimidations against journalists exposing human rights violations

In 2010, journalists who reported about and exposed human rights violations also remained subjected to acts of intimidation. For instance, on December 17, 2010, Mr. **Sam Owida**, a reporter for the private *Daily Nation*, received two anonymous threatening phone calls warning him that he could “share Nyaruri’s fate”¹². Mr. Sam Owida reported the incident to the police, which would reportedly have launched an investigation. Mr. Sam Owida had reported about and publicised the murder of Mr. **Francis Nyaruri**, a journalist who wrote on corruption cases for the private *Weekly Citizen*, and who was found decapitated on January 29, 2009. Mr. Nyaruri had written a series of articles that exposed financial scams and other malpractice by the local police department. An investigation was immediately opened and one suspect was arrested, but the trial was postponed several times. It started afresh on April 5, 2011, after one additional suspect was added to the case, and the next hearing was scheduled to begin on May 25, 2011. As of April 2011, two civilian suspects were in custody. Furthermore, Mr. **Ken Wafula**, a journalist and the Director of the Centre for Human Rights and Democracy (CHRD), continued to be prosecuted in 2010-2011 for “incitement” to violence and disobedience of the law and “publishing inciting materials” after being charged in October 2009 for reporting on the clandestine re-arming of communities in the Rift Valley with the support of Government officials, partly in anticipation of possible violence during the 2012 parliamentary poll¹³.

Climate of fear and harassment of sexual minorities’ rights defenders

Sexual rights defenders lived in fear as the gay community in Kenya and their defenders became targets from the community on instigations by politicians and religious leaders. For instance, in February 12, 2010, in Mtwapa, religious leaders issued anti-gay statements and requested the closure of the Kenya Medical Research Institute (KEMRI), a centre that conducts research and provides treatment on HIV/AIDS. On the following days, the centre was attacked by a crowd and one of the centre’s volunteer was beaten while others were taken to custody by police reportedly to protect them. All were released without charge. Nevertheless, none of the attackers were arrested¹⁴. Mr. **Denis Karimi Nzioka**, Public Affairs and Media Relations Officer at the Gay and Lesbian Coalition of

12/ See Kenyan Human Rights Commission (KHRC).

13/ On May 2, 2011, the ruling was delivered and the charges dismissed. See KHRC.

14/ See KHRC.

Kenya (GALCK) but also an extensive writer of Lesbian, Gay, Bisexual and Transgender (LGBT) rights and lifestyle in Kenya who appeared on various occasions on TV and on the radio to advocate for LGBT rights, faced stigmatisation and increasing difficulties in his day-to-day life. As a result, he barely goes out. On November 23, 2010, at around midnight, one of his neighbours, accompanied by two other people, knocked at his door, in Buruburu, Eastlands section of Nairobi, and told him that he had been sent to inform him to leave the premises as soon as possible since they knew from TV and radio that he was an homosexual, adding that Mr. Nzioka was corrupting their children and will rape them. The neighbour further warned him that if he did not move out soon, they will remove him by force. The next day, the neighbour came back, this time accompanied with three people, and delivered a letter to Mr. Nzioka and further warned him that he should move quickly. The letter also mentioned that they had been observing his movements and the persons visiting him. His landlord, informed of his work and orientation by the neighbours, requested him to leave. Mr. Nzioka was therefore forced to move within three days¹⁵. In May 2010, Mr. Nzioka had already been requested to move out from his apartment, after his photo was published in the *Daily Nation*. Mr. Nzioka was also targeted by unknown persons approaching him on the streets and threatening him with violence or death as well as hate e-mail. In November 2010, he was hit by a small bus driver, and his colleagues insulted him, as he was boarding it. His partner also faced threats and humiliating experiences when he was seen with him and, as a consequence, he had to undergo psychological counselling to assist him deal with the trauma and threats¹⁶. Similarly, Mr. **Paul Ogendi**, GALCK Deputy General Manager in charge of legal and human rights issues and then GALCK General Manager, also faced stigmatisation in his daily life due to his work and difficulties to carry his function. For instance, on the night of February 25, 2011, he was humiliated and brutally removed from a club in Nairobi city centre, when he introduced himself as a GALCK representative to the club's security officers in order to intervene in favour of members of the gay community who were being discriminated against. His shirt was torn and his arm and legs were bruised and slightly swollen¹⁷.

15/ He did not file a complaint to the police as he was unsure of the police reaction toward a defender of sexual minorities. He contacted a human rights organisation that assisted him but told him to never mention them.

16/ See GALCK.

17/ He did not file a complaint to the police fearing that it could make the situation worst for LGBT people who frequent the Club. See GALCK.

Urgent Interventions issued by The Observatory from January 2010 to April 2011

Names	Violations / Follow-up	Reference	Date of Issuance
Messrs. Kenneth Kiriimi Mbae and Stephen Musau	Arbitrary arrest / Release / Ill-treatments / Threats / Harassment	Urgent Appeal KEN 001/0410/OBS 053	April 29, 2010
Bunge la Mwananchi / Messrs. George Nyongesa, Jacob Odipo, Francis Wetukha and Jebtekeny Tariq and Ms. Ruth Mumbi	Threats / Harassment / Intimidation	Urgent Appeal KEN 002/0510/OBS 057	May 7, 2010