

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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### Annual reports

Events of 2009

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Intensifying Attacks on Human Rights Defenders, Organizations, and Institutions

Health Providers Complicity in Torture and Cruel, Inhuman or Degrading Treatment

In Search of Authoritative Local Voices

A damning United Nations report on widespread abuses by, and impunity of, the security forces was followed by the police commissioner's removal in August, but incidents of extrajudicial killings and excessive use of force by police and military continued unchecked in 2009. There were also renewed reports of systematic torture and mistreatment of civilians during disarmament operations. Kenya's coalition government, formed in the wake of the flawed 2007 general elections, made little progress in implementing promised reforms.

At least 50,000 new refugees fleeing the conflict in neighboring Somalia arrived in the dramatically overstretched Dadaab refugee camps in northeast Kenya in the first nine months of 2009, prompting urgent calls for additional donor aid and more land for new camps.

More than 1,000 people lost their lives and an estimated 300,000 were displaced from their homes in the violence that followed the December 2007 elections. The coalition government formed in February 2008 had agreed to implement the recommendations of a commission established to investigate the post-election violence (known as the Waki Commission for its chairperson, Justice Philip Waki). The commission recommended in October 2008 that the government establish a national tribunal to investigate and prosecute those most responsible for the violence, or refer the crimes to the International Criminal Court.

Instead of implementing these recommendations, the government dragged its feet throughout 2009. Government officials failed to fully support a national tribunal, and several attempts to introduce a bill to establish the tribunal failed to muster enough support in parliament. The government has not made a referral to the ICC at this writing, despite agreeing in a July 2009 meeting with ICC officials to do so if the national option failed to coalesce. In November the ICC prosecutor announced that he would seek authority from the ICC's pretrial chamber to begin investigations in Kenya. Even if the ICC does investigate a small number of those deemed most responsible for the crimes, Kenya will still require a national mechanism that is independent of the existing judicial system to investigate and prosecute other perpetrators.

The police regularly targeted civilians for killings and other violence in 2009, as in previous years. Members of rival factions within the regular and administration police were also victims of extrajudicial killings. The UN special rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, investigated police abuses and other serious crimes in the course of the government's 2008 counterinsurgency campaign in Mt. Elgon, during a February 2009 visit to Kenya.

In his report to the UN Human Rights Council, Alston noted widespread extrajudicial killings by the police that "clearly implicated senior officials," including the police commissioner. He also found compelling evidence that at least 200 people had been killed or were "disappeared" by the security forces in Mt. Elgon. Alston called for Police Commissioner Hussein Ali to be replaced and for Attorney General Amos Wako to resign, singling them out as key individuals "with direct responsibility for the current state of affairs." Ali was replaced as police commissioner in August, but the government failed to investigate or prosecute security forces implicated in the Mt.

Elgon abuses.

Allegations of torture and ill-treatment of civilians by police and military in the course of an October 2008 joint police-military disarmament operation in Mandera district surfaced within days of the start of the operation. Human Rights Watch investigated the allegations in northeast Kenya in February 2009 and found that security forces tortured scores of men, beat and injured at least 1,200 people (including one man who died from his wounds), and raped at least a dozen women over the course of the three-day operation. Human Rights Watch called for an independent investigation into the abuses and for prosecutions of the officers responsible for directing the operation, neither of which occurred.

In February 2009 similar abuses were reported in Samburu when, in response to fighting between different groups, the Kenyan police and military confiscated cattle and beat civilians.

Bernard Kiriinya, a whistleblower from the Kenya police who had supplied information about police extrajudicial executions to the Kenya National Commission on Human Rights (KNCHR), was assassinated in October 2008. Witnesses who had provided information to the Waki Commission in 2008 were also threatened and some went into witness protection programs. Three human rights groups reported intimidation by state agents because of their persistent calls for justice and accountability.

Following the visit of the UN special rapporteur on extrajudicial executions, human rights defenders who had provided information to him were harassed and intimidated in Mt. Elgon and Nairobi; some fled the country for several months. The assassination, in Nairobi, of Oscar Kamau Kingara and John Paul Oulu of the Oscar Foundation Free Legal Aid Clinic on March 5 shocked Kenya's human rights community and highlighted the growing threats to Kenyan civil society activists in 2009. Kingara and Oulu had been prominent campaigners on the issue of police killings of members of the Mungiki, a criminal gang. Many suspected police involvement in the murders, and Prime Minister Raila Odinga publicly voiced this suspicion in a statement.

The killings of Kingara and Oulu followed the murder, on January 29, of Francis Nyaruri, a journalist who had written extensively about corruption and malpractice by the police in Nyanza province. The police officer assigned to investigate Nyaruri's murder also faced intimidation and harassment from his fellow police officers.

Children's access to health services, including HIV treatment, continues to pose serious challenges. While the number of children receiving antiretroviral treatment rose significantly in 2009, to around 28,000, tens of thousands of children still remained without access to the life-saving drugs.

Criminalization of same-sex activities drives lesbian, gay, bisexual, and transgender young people and adults away from accessing HIV/AIDS prevention, treatment, and care.

The government health budget, an estimated 7 percent of total expenditure, fell far below the government's commitment to devoting 15 percent of the budget to health. The child protection system remained weak, and many children, including orphans, failed to get medical care because of neglect and abuse by their carers.

As of October 2009 the almost 20-year-old refugee camps in Dadaab, northeast Kenya, held around 280,000 mostly Somali refugees, more than three times their initial planned capacity. At least 50,000 of the refugees were new arrivals in 2009. The massive overcrowding has resulted in appalling conditions, with insufficient shelter, water, and other services. By October donors had committed around US\$40 million to Dadaab, about 45 percent of the estimated needs. The Kenyan government failed to provide more land for new camps, despite lengthy negotiations with the UN High Commissioner for Refugees.

Many of the new refugees from Somalia faced abuses at the hands of Kenyan police while crossing the officially-closed border.

As the Somali crisis intensified throughout 2009, there were growing reports that Somali refugees in Kenya were being targeted for recruitment by parties to the armed conflict in Somalia, including the Transitional Federal Government (TFG) and al-Shabaab, an Islamist opposition group. The recruitment of refugees violates the fundamental principle in international law that refugee camps should be entirely civilian and humanitarian in character.

In October Human Rights Watch documented a recruitment drive, on behalf of the TFG and supported by the Kenyan authorities, that swept up Kenyan nationals alongside hundreds of Somali men and children from the Dadaab camps. The men and youths were often duped into enlisting by tales of high salaries and UN or international support for the force, and were then taken to a Kenyan military facility for training. Human Rights Watch also received credible accounts of al-Shabaab forcibly recruiting men and boys, both within south/central Somalia (see Somalia chapter), and to a lesser extent, inside Somali refugee communities in Kenya.

Most of Kenya's international partners, including the African Union, are united in putting pressure on Kenya's coalition government to deliver the reforms it agreed to implement in 2008. Accountability for the post-election violence is widely viewed as a crucial first step to ensure that the violence does not recur, particularly with elections scheduled for 2012. Former UN Secretary-General Kofi Annan, the chief mediator who negotiated the grand coalition, criticized the parties for failing to make progress when visiting in October 2009, stating that violence "is a serious risk if tangible reform is not achieved." The United States sent letters to key government officials warning that their future relationship with the US will be "tied to their support for implementation of the reform agenda and opposition to the use of violence." The US indicated in September that it would deny visas to senior officials implicated in post-election violence or who obstructed the reform process in Kenya, and in October denied Amos Wako a visa.

Regionally, the conflict in Somalia and the growing strength of the al-Shabaab faction of the insurgency remains a key concern for Kenya. The Kenyan government has been strongly supportive of Somalia's TFG and has become increasingly apprehensive about the possibility of terrorist attacks on its soil carried out by al-Shabaab.

Human Rights Watch defends the rights of people in 90 countries worldwide, spotlighting abuses and bringing perpetrators to justice

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