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Kenya: The state of the country, including the political situation, human rights, tribal conflicts and the cause of those conflicts (2002 - August 2006)

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Political situation

During the December 2002 election campaign, the Kenyan president promised to enact a new constitution (BBC 24 July 2004; *ibid.* 30 June 2004). The new constitution, which was to be enacted within the first 100 days of his term in office (*ibid.*; *ibid.* 30 June 2004), "was intended to reduce the power of the office of the president" (OneWorld.net n.d.; see also *Mail and Guardian* 25 Nov. 2005), to introduce a parliamentary system and to create a position for a prime minister [translation] "who would head national politics, leaving the president with only a right of review" (*Esprit et Vie* n.d.; see also *Mail and Guardian* 25 Nov. 2005). However, the failure to meet the deadline has divided the National Rainbow Coalition (NARC) (BBC 9 July 2004; *ibid.* 7 July 2004; *ibid.* 3 July 2004), especially after several members of the Liberal Democratic Party (LDP) were excluded from the cabinet (BBC 3 July 2004; *ibid.* 7 July 2004; UN 7 July 2004; *Le Monde* 6 July 2004) or were marginalized (*ibid.*; UN 7 July 2004). Moreover, some members of the former ruling party, the Kenyan African National Union (KANU) were brought into the government after the cabinet shuffle (BBC 7 July 2004; *ibid.* 3 July 2004; *ibid.* 30 June 2004; UN 1 July 2004). The postponement of the deadline for the new constitution led to demonstrations in early July 2004, which police suppressed with gunfire, batons, tear gas, water cannons and/or physical force (BBC 7 July 2004; *ibid.* 3 July 2004; UN 7 July 2004; *Courrier International* 9 July 2004; *Le Monde* 6 July 2004; AFP 7 July 2004).

During a 21 November 2005 referendum (*Africa Confidential* 2 Dec. 2005, 1; US 8 Mar. 2006, Intro.), the proposal for the new constitution was rejected (*ibid.*; Afrol News 24 Nov. 2005; OneWorld.net n.d.) by a majority of 57 percent of the vote (*Africa Confidential* 2 Dec. 2005, 1; US 8 Mar. 2006, Intro.). However, some analysts attribute the opposition to the constitution to Kenyans' desire to punish the government because it has not kept its promises, particularly with regard to fighting corruption (Afrol News 24 Nov. 2005; *Mail and Guardian* 25 Nov. 2005; see also *Africa Confidential* 8 Nov. 2005, 8). The results of the referendum have been interpreted by some as "a clear sign of no confidence" in the Kenyan president (*Mail and Guardian* 25 Nov. 2005; see also OneWorld.net n.d.). One source indicates that "[a]ccording to the 'no' side, the proposed changes would do little to curb the power of the chief executive, or to protect minority ethnic rights" (*ibid.*).

However, the *World Law Bulletin*, published by the United States Law Library of Congress, indicates that the Kenyan president's announcement that he plans to restart the review of the Constitution - without specifying a date - was met with opposition from many political, professional and religious groups, who suggested that the process had already cost a great deal of money and that, this time, the task should be handed over to experts (US Feb. 2006).

The rejection of the constitutional proposal reportedly hurt the NARC (*Africa Confidential* 2 Dec. 2005, 1; UN 25 July 2006; *East African Standard* 28 July 2006). The *East African Standard*, a newspaper published in Nairobi, notes the "death of NARC" (28 July 2006). *Africa Confidential* states that the rejection of the new constitution "has killed the Rainbow coalition" (2 Dec. 2005, 1). A United Nations (UN) report uses the term "moribund" to describe what is left of the NARC, which came into power in December 2002 (25 July 2006). Many of the members of parliament (MPs) and political parties that campaigned against the constitution are not part of the new cabinet, particularly the LDP (*Africa Confidential* 16 Dec. 2005, 7; UN 25 July 2006; *East African Standard* 28 July 2006).

Another outcome of the rejection of the constitutional proposal of 21 November 2005 is the emergence of the Orange Democratic Movement (ODM), a coalition of prominent public figures and political parties that opposed the adoption of the new constitution (*Africa Confidential* 16 Dec. 2005, 7; *ibid.* 2 Dec. 2005, 2; *Mail and Guardian* 25 Nov. 2005). The ODM has called for early elections (*Africa Confidential* 16 Dec. 2005, 7) and has positioned itself as a political party in anticipation of elections expected in 2007 (*East African Standard* 28 July 2006; *Africa Confidential* 17 Mar. 2006, 5; see also *The Standard* 6 Aug. 2006).

A 25 July 2006 report from the UN notes the recent appearance of another political party called "NARC-Kenya," which was created to accommodate politicians allied with President Kibaki; "the president might choose to

run on a NARC-Kenya ticket . . . in presidential elections due in December 2007" (since the original NARC no longer exists) (25 July 2006).

Human rights

According to a report from the World Organisation Against Torture (Organisation mondiale contre la torture, OMCT), the current Kibaki government has a better human rights record than the two previous governments (June 2005, 17). The report was published in cooperation with four non-governmental organizations (NGOs) in Kenya: the Coalition on Violence Against Women (COVAW), the Kenyan section of the International Commission of Jurists, the Kenya Alliance for Child Rights Advisory and Advancement of Children, and the Child Rights Advisory and Advancement of Children Documentation Legal Centre (*ibid.*, 3).

However, the OMCT's report, corroborated by other sources, indicates that certain human rights are still being violated in Kenya (*ibid.*, 31, 48, 67; *The Nation* 20 June 2006; AI 1 May 2006; *ibid.* 23 May 2006; Afrol News 2 Mar. 2006). Although the country is a signatory to the UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OMCT June 2005, 19), Kenyan police are reportedly behind many cases of "torture" (*ibid.*, 14, 38; AI 1 May 2006; *ibid.* 23 May 2006; US 8 Mar. 2006, Intro.). Some sources report "unlawful killings" by state agents who are supposed to enforce the law (*ibid.*; OMCT June 2005, 31; AI 1 May 2006; *ibid.* 23 May 2006). Although Kenya has ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) (OMCT June 2005, 19), women continue to fall victim to all kinds of violence, particularly rape (AI 1 May 2006; *ibid.* 23 May 2006; OMCT June 2005, 67-69; US 8 Mar. 2006, Sec. 5), as well as discrimination (*ibid.*; AI 1 May 2006; *ibid.* 23 May 2006; see also OECD Aug. 2004, 27).

With regard to the situation of prisoners, the OMCT report describes Kenya's prisons as "death chambers," in which prisoners receive and sometimes die of "cruel, inhuman and degrading treatment or punishment" (OMCT June 2005, 48; see also US 8 Mar. 2006, Intro.). The same report notes that Kenya's prisons have a capacity to hold 16,868 prisoners, but that, on October 29, 2004, they housed 47,960 - approximately three times the recommended capacity (OMCT June 2005, 52).

On the subject of freedom of the press, various sources report that certain media groups and journalists in Kenya have been intimidated and harassed (AI 1 May 2006; *ibid.* 23 May 2006; Afrol News 2 Mar. 2006; AFMF 20 Mar. 2006; CRN 31 Mar. 2006; Freedom House 2005; OneWorld.net n.d.). One reported case is that of the Standard Group, which had copies of its newspaper *The Standard* burned, its Kenya Television Network (KTN) shut down, its equipment seized and three of its journalists arrested at the beginning of March 2006 (Afrol News 2 Mar. 2006; see also *Africa Confidential* 17 Mar. 2006, 4; AFMF 20 Mar. 2006). One source notes the reactions of representatives of the UN, the United Kingdom (UK) and the United States (US) in Kenya, who have condemned the attitude of the Kenyan government toward the media and on freedom of the press (Afrol News 2 Mar. 2006). Freedom House has changed Kenya's rating from "partly free" to "not free" (2005). Another source notes that, with regard to freedom of the press, "Reporters Without Borders lowered Kenya's international ranking from 75th in 2002 to 109th in 2005" (OneWorld.net n.d.).

Ethnic conflicts

Sources report certain tribal conflicts over the control of natural resources, particularly land, pastures and water sources (*Libération* 8 Feb. 2005; IPS 12 Apr. 2005; Project Ploughshares Jan. 2006; Oxfam 6 Feb. 2006). The conflicts have sometimes escalated as a result of drought (*ibid.*; IPS 12 Apr. 2005; *Esprit et Vie* n.d.), foreign interference (*ibid.*; Project Ploughshares Jan. 2006) and an increasing number of firearms circulating in Kenya (Oxfam 6 Feb. 2006). Clashes between Masai and Kikuyu farmers in the Rift Valley have killed dozens (*Libération* 8 Feb. 2005; US Mar. 2005, Sec. 5) and displaced thousands of others (*Libération* 8 Feb. 2005). Other ethnic fighting has been reported in the far northeast region of the country between the Murule and Garre (IPS 12 Feb. 2005; Project Ploughshares Jan. 2006) and between the Borana and Gabra (*ibid.*). In the western part of the country, there are land disputes between the Pokot and other ethnic groups, particularly the Luhya (*Libération* 8 Feb. 2005; see also US 8 Mar. 2006, Sec. 5). One source indicated that, [translation] "little has changed" since Mwai Kibaki came into power and established his government, despite promises to resolve land disputes with a redistribution of land (*Libération* 8 Feb. 2005).

No information on politically motivated ethnic conflicts could be found among the sources consulted by the Research Directorate. However, according to Koigi wa Wamwere, Subukia MP and Assistant Minister for Information and Communication, the Kenyan population votes according to the candidates' ethnic origins and not according to their merit (*Kenya Times* 9 Aug. 2006). The Kenyan politician suggests that ethnic voting is common among the Kikuyu of Central Kenya, the Luo in the Nyanza region, the Kalenjin in the Rift Valley and the Ukambani (*Kenya Times* 9 Aug. 2006). Moreover, *Africa Confidential* notes in its 2 December 2005 issue that, during the 21 November 2001 referendum, people voted along ethnic lines (2). The Central Province (where the population is mainly Kikuyu) and the Western Province (which is predominantly Luhya) voted in favour of the constitutional proposal, while the majority of the Luo in Kisumu, Bondo and Siaya in the Nyanza region voted against it (*Africa Confidential* 2 Dec. 2005, 2). According to *Africa Confidential*, the underlying pattern is that most of the people who voted against the constitutional proposal did so to demonstrate their opposition to "Kibaki's Central Kenya power clique" (2 Dec. 2005, 2).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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