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Kenya: Authorities and leaders must respect and protect human rights and take steps to prevent violence

The Kenyan authorities and all leaders – including political and religious leaders – have a responsibility to ensure respect and protection of human rights in the run-up to, during and after the referendum on the Proposed Constitution scheduled for 4 August. They need to take steps to prevent politically-motivated violence and hold accountable those responsible for human rights abuses and where appropriate bring them to justice in fair and prompt trials.

The 2005 referendum on a proposed Constitution and previous general elections in 1992, 1997, 2002 and 2008 were all marred by violence and human rights abuses by politically and/or ethnically aligned militia, as well as human rights violations by law enforcement officials. In the aftermath of the 2007 general elections, over 1,000 people were killed as a result of politically and ethnically-motivated violence and of killings by police. Hundreds of thousands of people were displaced from their homes.

Amnesty International is concerned at reports that human rights abuses have already occurred in the run-up to the public referendum. Shortly before 7 p.m on 13 June there were three grenade attacks on a public rally led by religious and political leaders opposing the proposed Constitution at Nairobi's Uhuru Park. Six people were killed and over 100 injured in the explosions and ensuing stampede. Dozens remain in hospital.

The government announced that criminal investigations have been initiated. These investigations and any investigations into other campaign related violence must be independent, impartial and thorough. The government must also ensure that, where sufficient evidence is available to support criminal charges, the suspected perpetrators are prosecuted and brought to trial in accordance with international fair trial standards.

The National Cohesion and Integration Commission established after the post-elections violence of 2007/8, has in the last few weeks repeatedly and publicly expressed concerns at threatening or intimidatory statements made by political leaders that may incite violence. The Commission has called for criminal investigations and prosecutions of a number of leaders suspected of making inflammatory remarks that may constitute incitement to ethnic hatred or violence. On 15 and 16 June three Members of Parliament and one political activist were arrested and charged in court over remarks and alleged circulation of leaflets that could be construed to mean that certain communities must be prepared to leave their constituencies if the proposed constitution is ratified in the referendum. The Commission has a mandate to "facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof".

Kenyan media has also reported on the general circulation of pamphlets and leaflets in certain parts of the country allegedly inciting ethnically-motivated violence. It is not clear if there are wider investigations into these reports, and so far, no prosecutions have been instituted.

It is essential that the authorities ensure that any political or other leaders, of any political party or grouping, responsible for carrying out or inciting or threatening politically or ethnically-motivated violence or human rights abuses in the context of the referendum are held accountable. Those charged with a recognizable criminal offence must be tried in accordance with international standards of fair trial.

The National Cohesion and Integration Act, 2008, in section 13 on “hate speech”, makes it a criminal offence to:

“use threatening, abusive or insulting words or behaviour, or [display] any written material....which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour.... Intend[ed] thereby to stir up ethnic hatred...”

Amnesty International calls on the Kenyan authorities, including the judicial authorities, in applying this law to have regard also to Kenya’s obligations under international law, specifically Article 20(2) of the International Covenant on Civil and Political Rights, which defines in strict terms the scope of “hate speech” which state parties should prohibit by law as: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Specifically, in taking action to hold individuals accountable for stirring up ethnic hatred, the authorities should ensure that the application of this provision of the National Cohesion and Integration Act also complies with Kenya’s international obligations in this regard.

In line with Kenya’s obligations to protect individuals from human rights abuses, the prosecution and trial of suspected perpetrators forms only one part of a broader strategy to prevent any political violence in the lead up to, during and after the referendum.

Amnesty International calls on the government and all leaders to:-

- Publicly state that acts of politically or ethnically-motivated violence, including intimidation and threats of such violence, by any leaders will not be tolerated.
- Call for and cooperate with effective investigations by the relevant authorities into cases of human rights abuses in the context of referendum campaign-related violence. Where human rights abuses take place, ensure that the perpetrators are held accountable and, where appropriate, brought to justice in prompt and fair trials in accordance with international standards.
- Take effective steps to ensure that political leaders do not engage or hire vigilante groups or armed gangs to intimidate political opponents and supporters and/or to cause political violence leading to human rights abuses.