

@CHAPTER = KENYA

In 1989, the Bush administration avoided public criticism of human rights violations under the government of President Daniel arap Moi. Most of the eight Reagan years saw the same U.S. silence, but twice, in 1986 and 1987, the Reagan administration publicly condemned Kenyan abuses -- the torture of political detainees -- in a manner that significantly contributed to an improvement in the human rights climate in Kenya. The success of these public statements should have served as an important model for the Bush administration. Instead, the new administration reverted to the virtual silence of the earlier Reagan years.

In 1989 the Kenyan government continued to abuse its ethnic Somali population. The repression was harshest in the North Eastern Province, where the government used state-of-emergency laws to harass, detain and torture civilians. The state of emergency, in effect in that area since independence, restricts trade, residence and movement, overriding civil rights guaranteed in the Kenyan constitution. The situation is a legacy of colonial days, when the area was separated from Somalia by an artificially imposed border, resulting in a war of secession from Kenya until 1967.

A newly introduced "screening" procedure compelled all Kenyans of Somali origin to report with identity documents to Kenyan authorities. The procedure led in mid-December to the forcible expulsion to Somalia of some 400 Somalis, mostly from the Harwiye and Majerteen clans. Many of those expelled were Kenyan citizens. The Somali government refused them entry and forced them back to the Kenyan border. The Kenyan government, for its part, refused to allow their return. In late December, they remained stranded in the bush between the two countries, without adequate food or water. Scores of others were being held in army barracks prior to expulsion.

Kenyan authorities have also beaten and harassed refugees fleeing the war in Somalia and, until recently, denied the United Nations High Commissioner for Refugees access to them. These refugees are in danger from the Kenyan government's "shoot to kill" policy -- instituted in September 1988 to stop the poaching of wildlife -- which has resulted in at least 30 deaths, all described as "Somali."

The Bush administration has remained silent in the face of these abuses, without publicly condemning them. Nor have we received any information indicating that private diplomacy has been used.

In contrast to its harsh repression in the north, the Kenyan government took an important positive step in June 1989 by freeing seven political detainees who had been held without trial, although the Preservation of Public Security Act under which they were held remains in force. Three of those released -- two lawyers and a university professor -- had sued the government for torture and false imprisonment. They were represented by Gibson Kamau Kuria, an attorney who had himself been detained for several months in 1987. Kuria was later awarded the Robert F. Kennedy human rights award but was prevented from traveling to accept it when the government confiscated his passport. His lawyer, Paul Muite, also had his passport confiscated after he accepted the award on Kuria's behalf. Neither passport has been returned. Although the government later allowed a delegation from the Kennedy Memorial to come to Kenya and present the award to Kuria, the government's intolerance of criticism was highlighted when government officials, including the president, publicly attacked the delegation for statements made at a press conference.

Despite the welcome release of the detainees, human rights groups continue to be concerned about at least 40 persons who remain in prison after having been convicted in 1986-87 on charges of belonging to Mwakenya, a clandestine group

of government opponents. At the time, over 75 were convicted, after trials lacking the most basic judicial safeguards. There were frequent allegations of coerced confessions, torture and ill treatment, and several reported cases of death in police custody. In response to public expressions of concern about torture by the Reagan administration, Congress and human rights groups, reports of torture have declined. However, the passage of a constitutional amendment in August 1988, which increased from one to fourteen days the period of time that police can hold incommunicado a person accused of a capital offense, vastly increases the possibility of physical abuse. A second amendment empowers the president to dismiss judges and members of the Public Service Commission, which is responsible for the appointment and discipline of civil servants. Even before this change, the judiciary was not seen as an effective check on executive and police power -- concerns which were underscored by the Mwakenya trials. The constitutional amendment only heightens judicial vulnerability to pressure in politically sensitive cases.

Sensitivity to political criticism was at the center of frequent clashes between the Moi government and its critics which led to a new government offensive against freedom of expression. Over the past 18 months, the government has banned three magazines and threatened similar action against the country's largest selling daily newspaper.

The first casualty of this crackdown was the monthly *Beyond*, published by the National Christian Council of Churches and banned by the government in March 1988. *Beyond* had been a vocal critic of the controversial 1986 constitutional amendment requiring all future parliamentary elections to include a preliminary stage at which voters must queue openly for the candidates of their choice. The amendment, though widely criticized as intimidating, potentially divisive and open to easy manipulation by those in power, was forced through parliament in time for the February-March 1988 general elections. *Beyond* published findings showing how the system has been used to rig results in several constituencies. Two weeks after its March issue reached the newsstand, *Beyond* was banned and its editor, Bedan Mbugua, was jailed on charges of failing to submit annual sales returns to the Registrar of Books and Newspapers. At least three people have been arrested for possessing copies of *Beyond*.

The second victim of this crackdown was *Financial Review*, originally a financial weekly, which began to undertake political analysis and reporting on abuse of power by government officials and corruption in high places. The journal was banned in April 1987, and its editor, Peter Kareithi, was detained in December 1988. Kareithi and the editor of another publication, the *Nairobi Law Monthly*, were also charged with failing to file financial returns.

In June 1988, the government began harassing and ultimately banned another publication, *Development Agenda*, a relatively obscure monthly business journal with only two issues to its name. The government gave no explanation for the banning but the journal's fate is probably linked to one of its sponsors, Charles Nyachae, who is the son of Simeon Nyachae. In 1988, the senior Nyachae was refused permission to contest a parliamentary seat by the Kenyan African National Union ("KANU," the only authorized political party in Kenya) and later alleged publicly that he has been the victim of a vicious campaign to ostracize him politically.

In June, the government continued its crackdown on the press, prohibiting the largest-selling daily newspaper, the *Daily Nation*, and its sister publications, from covering parliamentary proceedings. Members of the KANU-controlled parliament vied to condemn the paper, accusing it of disrespect for Kenya's leadership and tribalism in its employment policies. The *Daily Nation's* real crime, however, appears to have been its reporting on corruption and the

decline of freedom of expression within parliament. Four months after the ban, the *Daily Nation* was readmitted to parliament.

Systematic harassment of the press and consistent efforts to suppress freedom of expression have compounded the difficulty faced by the judiciary and parliament in attempting to operate effectively in a one-party state. The government's intolerance of dissent has also had a chilling effect on the ability of church leaders to voice concern about issues of national importance. Independent student political activity has been severely curbed through the banning of student organizations and the frequent closure of institutions. In 1987, Nairobi University was closed after clashes with the police, following the arrest of student leaders for statements that the government deemed critical. The University was closed again on November 9, 1989, after students rioted over poor facilities and the banning of their organizations. In addition, outspoken academics have been harassed and jailed, with several forced into exile.

Despite these abuses, the Bush administration has failed to condition significant economic and military aid to Kenya on an improved human rights climate. Nor did it issue any public protest. In contrast, Congress was an important factor in the release of detainees earlier in 1989 when it threatened a cut in aid if human rights did not improve.

In fiscal year 1989, the administration provided \$44 million in development assistance, \$10 million in economic support funds and almost \$7 million in food aid. Military aid was sizeable, with \$15 million given under the Military Assistance Program and \$1 million for the International Military and Educational Training program.

The amount of aid reflects the perception of Kenya as an important strategic ally. Under a 1980 defense agreement, the United States has access to Kenyan airports and naval facilities on the Indian Ocean. And the U.S. regards Kenya as an important part of the Central Command, previously known as the rapid deployment force.

Strategic considerations have unfortunately been paramount in the formulation of policy toward Kenya. Despite the considerable financial and diplomatic leverage, the Bush administration has continued to address rights violations with only friendly encouragement, and limited results.

We urge the Bush administration to make respect for human rights an integral part of its policy toward Kenya. We renew our call for public representations on the need to reform laws and procedures that provide for prolonged detention without charge or trial as well as the denial of prompt access to judicial authority, legal counsel and family members. We also urge the administration to protest restrictions on freedom of expression and restraints on the independence of the judiciary.