

Freedom in the World 2018 - Kenya

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Freedom Status: Partly Free

Aggregate Score: 48 (0 = Least Free, 100 = Most Free)

Freedom Rating: 4.0 (1 = Most Free, 7 = Least Free)

Political Rights: 4 (1 = Most Free, 7 = Least Free)

Civil Liberties: 4 (1 = Most Free, 7 = Least Free)

Quick Facts

Population: 45,400,000

Capital: Nairobi

GDP/capita: \$1,350

Press Freedom Status: Partly Free

Net Freedom Status: Free

OVERVIEW

Kenya is a multiparty democracy that holds regular elections, but its political rights and civil liberties are seriously undermined by pervasive corruption, and brutality by security forces. The country's media and civil society sector are vibrant, even as journalists and civil society workers remain vulnerable to restrictive laws and intimidation.

Key Developments in 2017:

- President Uhuru Kenyatta overwhelmingly won a rerun of the year's presidential election, which was boycotted by the main opposition candidate, Raila Odinga. The first presidential election, held in August as part of the year's general elections, was annulled by the Supreme Court, which cited irregularities in the vote count.
- Chris Msando, the Independent Electoral and Boundaries Commission (IEBC) member in charge of the vote-counting system, was murdered days ahead of the August vote, with his body showing signs of torture.
- Dozens of people were killed in a police crackdown on opposition protests that erupted after the general elections in August.
- A number of nongovernmental organizations (NGOs) that questioned the election process faced threats of deregistration, and other intimidation by officials.

POLITICAL RIGHTS: 19 / 40 (-3)

A. ELECTORAL PROCESS: 6 / 12 (-1)

A1. Was the current head of government or other chief national authority elected through free and fair elections? 1 / 4 (-1)

The president and deputy president, who can serve up to two five-year terms, are directly elected by majority vote; they are also required to win 25 percent of the votes in at least half of Kenya's 47 counties.

President Kenyatta was reelected in October 2017 in a disputed election, the rerun of which was boycotted by the main opposition candidate, Raila Odinga, on account of a lack of electoral reforms. The first presidential election, held in August, was annulled the following month by the Supreme Court, which ruled that vote-counting procedures by the Independent Electoral and Boundaries Commission (IEBC) had been severely flawed, and that a rerun should be held. (The count had returned a solid victory by Kenyatta, which many analysts had predicted.) In the ruling's wake, the main opposition coalition, the National Super Alliance (NASA), threatened to boycott the rerun unless a number of reforms were implemented at the IEBC. Some of these reforms were not met, prompting a boycott of the rerun by Odinga, who urged his supporters not to participate in the poll. The final results showed that Kenyatta won the rerun with 98.3 percent of the vote. Turnout for the rerun was just 38 percent – much lower than turnout for the August polls, when it had reached nearly 80 percent. Odinga continued to harshly criticize the election process after the rerun, and Kenyatta began his final term facing a significant legitimacy crisis.

Violence and intimidation marred the presidential election period. Chris Msando, the IEBC member in charge of the vote-counting system, was murdered days ahead of the August vote, with his body showing signs of torture. In the weeks between the annulled election round and the rerun, one IEBC commissioner fled Kenya for the US, prompting the IEBC chairman to assert that the body could not guarantee a free election given the atmosphere of intimidation. At the same time, police in Nairobi and Kisumu used excessive force in attempt to quell sometimes-violent opposition protests. Dozens of people were reportedly killed by police in the capital alone, according to Human Rights Watch (HRW).

Score Change: The score declined from 2 to 1 because a rerun of the presidential election was marred by an opposition boycott, and because intimidation and violence against IEBC members affected the body's ability to guarantee free and fair elections.

A2. Were the current national legislative representatives elected through free and fair elections? 3 / 4

The legislature consists of the 349-seat National Assembly and the 67-seat Senate. In the National Assembly, 290 members are directly elected from single-member constituencies. A further 47 special women representatives are elected from the counties, and political parties nominate 12 additional members according to the share of seats won. The Senate has 47 elected members representing the counties, 16 special women representatives nominated by political parties based on

the share of seats won, and four nominated members representing youth and people with disabilities. Both houses have speakers who are ex-officio members.

Stakeholders broadly accepted the results of the parliamentary contests. Irregularities and violations were reported, but they were neither systematic nor serving to harm or benefit any specific party.

A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 2 / 4

The IEBC is mandated with conducting free and fair elections, and operates under a robust electoral framework. However, the IEBC faces frequent allegation of favoritism toward both the incumbent Jubilee Coalition and the opposition, and in 2017 its members experienced violence and intimidation severe enough to prompt its chairman to declare in October that he could not guarantee the integrity of the presidential rerun.

Also in October, a judge ruled that government had made of illegal use of state resources to promote the Jubilee Party, and that the IEBC had failed to enforce the rules against such practices.

After the annulment of the first presidential election in August, the National Assembly approved controversial measures mandating that if a candidate withdraws from a rerun election, the other candidate would automatically win the poll. The amendments additionally limited the Supreme Court's power to annul election results. The measures took effect a few days after the rerun was held.

B. POLITICAL PLURALISM AND PARTICIPATION: 8 / 16 (-2)

B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 2 / 4 (-1)

Citizens are free to organize into political parties. Kenyan parties represent a range of ideological, regional, and ethnic interests, but are notoriously weak, and are often amalgamated into coalitions designed only to contest elections. Under the Political Parties Act, parties that receive at least 5 percent of the votes cast in a national election are eligible for public funds.

Security forces responded violently to protests in opposition strongholds that took place around the August 2017 elections. In October, as the protests continued, the government implemented a ban on demonstrations in Kenya's three largest cities. Police cracked down violently on protesters who attempted to defy the ban, and dozens of deaths were reported. The unrest also hampered parties' normal campaign activities in the period ahead of the presidential rerun.

Score Change: The score declined from 3 to 2 because of violent police crackdowns on opposition protesters, and because election-related unrest hampered campaign activities ahead of the presidential rerun.

B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 2 / 4 (-1)

Opposition parties and candidates are competitive in Kenyan elections, and the 2017 polls saw a high number of incumbents voted out of office. However, Odinga's decision to boycott the runoff election in protest of a lack of reforms at the IEBC left Kenyatta opponents without a viable candidate to vote for, effectively guaranteeing that Kenyatta would win reelection.

Score Change: The score declined from 3 to 2 because the main opposition candidate boycotted the presidential election rerun in protest of a lack of reforms at the IEBC, raising questions about the fairness of the election process and leaving opposition supporters without a viable candidate to vote for.

B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 2 / 4

People's political choices are generally free from undue influence by powerful, democratically unaccountable actors. However, ethnicity remains the dominant organizing principle in Kenyan politics, and two ethnic groups – the Kikuyu and Kalenjin – have dominated the presidency since independence.

B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 2 / 4

The 2010 constitution was intended to reduce the role of ethnicity in elections. Fiscal and political devolution, implemented in 2013, has served to generate more intraethnic competition at the county level. Nevertheless, the ongoing politicization of ethnicity at the national level hinders effective representation of different segments of Kenya's diverse population, limits voter choice, and impedes meaningful policy debates.

The stipulation that all voters must possess a National Identity Card impedes historically marginalized groups from obtaining greater access to the political process, particularly the nearly seven million pastoralists from the upper Rift Valley and North Eastern regions.

There are significant implicit barriers to the participation of non-Christian and LGBT (lesbian, gay, bisexual, and transgender) people in national politics. A 2017 European Union election monitoring mission reported harassment and attacks against women candidates during the year's campaign period.

C. FUNCTIONING OF GOVERNMENT: 5 / 12

C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 2 / 4

The ability of elected officials to set and implement policy is undermined by corruption and other dysfunction. In 2017, government ineffectiveness was reflected in an inadequate response to a cholera outbreak that was left to rage across pockets across the country without any clear strategy for containment.

C2. Are safeguards against official corruption strong and effective? 1 / 4

Corruption continues to plague national and county governments in Kenya, and state institutions tasked with combating corruption have been ineffective. The country's Ethics and Anti-Corruption Commission (EACC) lacks prosecutorial powers. The EACC's weakness is compounded by shortcomings at the Office of the Director of Public Prosecutions (ODPP) and within the judiciary. In 2017, the ODPP halted at least two corruption cases, including one against high-level officials.

C3. Does the government operate with openness and transparency? 2 / 4

Elaborate rules govern public finance in Kenya, but enforcement is often lacking. Parliament's Budget and Appropriations Committee effectively delegates the budget process to the Treasury, and the legislature has demonstrated limited willingness to ensure the Treasury respect budget-making procedures. When budget information is made available, it is generally released long after the planning stages during which stakeholders could offer input.

The central government engages in undisclosed expenditures. In November 2017, the Auditor General accused several counties of fraudulent use of funds. The 2016 Access to Information law contains a broad exemption for national security matters.

CIVIL LIBERTIES: 29 / 60

D. FREEDOM OF EXPRESSION AND BELIEF: 10 / 16

D1. Are there free and independent media? 2 / 4

Kenya has one of the more vibrant media landscapes on the African continent, with journalists actively working to expose government corruption and other wrongdoing. However, several laws restrict press freedom, and the government and security forces harass journalists, leading to self-censorship in some cases. A significant portion of the mainstream media in Kenya deliberately failed to report on the extent of violence and the security sector's use of force following the August election. Many journalists and activists have turned to online outlets and social media platforms to bypass political and business influences at established media groups.

D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 2 / 4

The government generally respects the constitutional guarantee of freedom of religion. However, counterterrorism operations against the Somalia-based Shabaab militant group have left Muslims exposed to state violence and intimidation. Shabaab militants have at times specifically targeted Christians in Kenya.

D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 3 / 4

Academic freedom in Kenya, though traditionally robust, is increasingly threatened by ethnic politics and political and other violence. In September 2017, one student was killed in a melee that erupted at the University of Nairobi, when police responded violently to protests against the arrest of a student who had allegedly insulted Kenyatta. In October, two lecturers were killed and several other people were injured when suspected Shabaab militants attacked a vehicle on the campus of the Technical University of Mombasa.

Student union elections have led to allegations of fraud and violent protests. In addition, there is evidence that ethnic considerations have influenced university hiring, leaving the staff of some institutions with significant ethnic imbalances.

D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 3 / 4

The relatively unfettered freedom of private discussion in Kenya has suffered somewhat from state counterterrorism operations and intimidation by security forces and ethnically affiliated gangs. The government in recent years had also invested in technology used to monitor mobile phone communications.

E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 7 / 12

E1. Is there freedom of assembly? 2 / 4

The constitution guarantees the freedom of assembly. However, the law requires organizers of public meetings to notify local police in advance, and in practice police have regularly prohibited gatherings on security or other grounds, and violently dispersed assemblies that they had not explicitly banned. In October 2017, the government implemented a ban on demonstrations in Kenya's three largest cities, which was viewed as designed to end continued opposition protests. When the opposition went ahead with the protests anyway, those in attendance were met with police violence. According to the Kenya National Commission for Human Rights (KNCHR), 30 people were killed during and following the October election, largely by security forces. Previously, around the August elections, security forces responded violently to protests in opposition strongholds.

E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work? 2 / 4

Kenya has an active NGO sector, but civil society groups have faced growing obstacles in recent years, including repeated government attempts to deregister hundreds of NGOs for alleged financial violations. The attempts were seen in part as an effort to silence criticism of the government's human rights record.

In August 2017, the country's NGO Coordination Board deregistered the Kenya Human Rights Commission (KHRC), but the move was suspended by the interior minister. The August closure of the Africa Centre for Open Governance (AfriCOG) – which had questioned election processes – was reversed by a court in December. The NGO board questioned several other organizations and

activists that had criticized the election process, in some instances threatening deregistration for offenses including failing to have certain paperwork in order.

E3. Is there freedom for trade unions and similar professional or labor organizations? 3 / 4

The 2010 constitution affirmed the rights of trade unions to establish their own agendas, bargain collectively, and strike. Unions are active in Kenya, with approximately 40 unions representing nearly two million workers. However, labor leaders sometimes experience intimidation, notably in the wake of strike actions. A number of strikes took place in 2017, including those organized by medical workers and university staff.

F. RULE OF LAW: 5 / 16

F1. Is there an independent judiciary? 2 / 4

The judiciary is generally considered to be independent, but judicial procedures are inefficient. In September 2017, Kenya became the first African country in which a court of law annulled a presidential election involving the incumbent president. Members of ruling Jubilee Coalition responded to the ruling with threats and intimidation against judges, but Kenyatta ultimately accepted the ruling and participated in the rerun of the presidential election. Legislation approved later in 2017 limited the Supreme Court's power to annul election results.

F2. Does due process prevail in civil and criminal matters? 1 / 4

Constitutional guarantees of due process are poorly upheld. There remains a significant backlog of court cases. The police service is thoroughly undermined by corruption and criminality.

F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 1 / 4

Violence by the Shabaab militant group continued in 2017. Violence against suspects and detainees by security forces remains a serious concern. In November 2017, the *Daily Nation* reported that Kenyan police had shot and killed 214 people between January and the end of October 2017, up from 204 people in all of 2016, and 141 in 2015.

There is widespread impunity for the serious postelection violence that took place after the 2007 presidential election.

F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 1 / 4

Consensual same-sex sexual activity is criminalized under the penal code, with a maximum penalty of 14 years in prison. Members of the LGBT community continue to face discrimination, abuse, and violent attacks. In 2016, a High Court judge in Mombasa upheld the use of forced anal examinations and testing for HIV and hepatitis B as a means of gathering supposed evidence of

same-sex sexual activity. The UN special rapporteur on torture and other experts have condemned such practices. Reports of police abuses against refugees and asylum seekers continued.

G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 7 / 16

G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 2 / 4

While the constitution provides protections for freedom of movement and related rights, they are impeded in practice by security concerns and ethnic tensions that lead many residents to avoid certain parts of the country. Election-related violence in 2017 impeded movement in some areas. Additionally, there were reports that the opposition NASA alliance took steps to prevent voters from leaving Nairobi in the days before the August elections, to ensure that they would vote. Local authorities characterized the strategy as a response to alleged moves by the Jubilee Coalition to instigate fears of postelection violence and drive voters away from opposition strongholds.

G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 1 / 4

Organized crime continues to threaten legitimate business activity in Kenya. Political corruption and ethnic favoritism also affect the business sector and exacerbate existing imbalances in wealth and access to economic opportunities, including public-sector jobs.

G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 2 / 4

The constitution recognizes marriage as a union between two people of the opposite sex, but otherwise does not place explicit restrictions on social freedoms. Rape and domestic violence remain common and are rarely prosecuted.

G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 2 / 4

Kenya remains an unequal society, with wealth generally concentrated in towns and cities. The arid and semi-arid north and northeastern parts of the country have particularly high poverty rates.

Refugees and asylum seekers from neighboring countries, particularly children, have been vulnerable to sex trafficking and forced labor in Kenya, though Kenyan children are also subject to such abuses. Kenyan workers are recruited for employment abroad in sometimes exploitative conditions, particularly in the Middle East.