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Freedom in the World 2010 - Kenya

Capital: Nairobi

Population: 39,070,000

Political Rights Score: 4 *

Civil Liberties Score: 4 *

Status: Partly Free

Ratings Change

Kenya's civil liberties rating declined from 3 to 4 due to the government's failure to address abuses by the security forces, including their role in postelection violence in 2008.

Overview

Prominent international leaders criticized the Kenyan government in 2009 for its lack of progress on key reforms. These included the establishment of a tribunal to investigate postelection violence in 2008, much-needed land reform, a strengthened anticorruption campaign, and improved accountability for abuses by the security forces.

Kenya achieved independence from Britain in 1963. Nationalist leader Jomo Kenyatta served as president until his death in 1978, when Vice President Daniel arap Moi succeeded him. While the Kenyan African National Union (KANU) party remained in

power, Moi diminished the influence of the previously dominant Kikuyu ethnic group, favoring his own Kalenjin group.

In 1992, after a lengthy period of single-party rule, domestic unrest and pressure from international donors forced Moi to hold multiparty elections. However, he and KANU continued to win elections during the 1990s by using political repression, state patronage, media control, and dubious electoral procedures. Government corruption remained common, as did police abuses, political influence in the judiciary, and state efforts to undermine independent civil society activity. Political polarization increased amid government-sponsored ethnic violence, perpetrated in most cases by Kalenjin or Maasai KANU supporters against members of the Kikuyu and Luhya ethnic groups, who were believed to support opposition parties. Despite these problems, political space for opposition views continued to open, and many of the core elements necessary for a democratic political system developed.

The opposition united to contest the 2002 elections as the National Rainbow Coalition (NARC). It won a majority in the National Assembly, and its presidential candidate, Mwai Kibaki, defeated KANU's Uhuru Kenyatta, the son of Kenya's first president. The new leadership's ambitious reform program achieved some successes, but the effort was blunted by a number of factors, including the fragility of the governing coalition, a complex and unsuccessful bid to overhaul the constitution, significant fiscal constraints, and the threat of terrorism. An independent anticorruption commission was established, but it produced few successful prosecutions. John Githongo, a respected anticorruption activist whom Kibaki had appointed to lead the Office of Governance and Ethics, resigned from that post in early 2005, citing his frustration with ongoing corruption and the Kibaki administration's failure to enact meaningful reforms.

The lively press and public investigative commissions became increasingly critical of the substance and slow pace of the government's reform agenda, and in November 2005 referendum voters soundly rejected a draft constitution that failed to shift power away from the presidency. In January 2006, Githongo issued an authoritative report indicating that corruption had reached the highest ranks of the government. The findings implicated the vice president and prompted the resignation of several cabinet ministers.

Kenya's democratic and economic development suffered a sharp reversal as a result of the apparent manipulation of the December 2007 presidential election. While the concurrent parliamentary polls showed major gains for the opposition Orange Democratic Movement (ODM), Kibaki was declared the winner of the presidential vote amid credible, multiple allegations of fraud. He had long been accused of favoring his Kikuyu ethnic group, and the presidential results sparked weeks of violence between the

Kikuyu, the Luo, and other groups. More than 1,500 people were killed, and over 300,000 were displaced, although many eventually returned or were resettled by the government. In late February 2008, Kibaki and ODM presidential candidate Raila Odinga, a Luo, negotiated a compromise agreement in which Odinga gained the newly created post of prime minister and his party joined Kibaki's recently formed Party of National Unity (PNU) in a coalition cabinet.

A Commission of Inquiry into Post-Election Violence, also known as the Waki Commission, began work in June 2008. Its report, issued in October, concluded that systemic failures in Kenya's security institutions, governmental impunity, and popular anger were the primary instigating factors in the crisis. The report called for the creation of a special tribunal to prosecute crimes committed during the postelection violence, and stated that in the absence of such a tribunal, the names of organizers of the violence should be sent to the International Criminal Court (ICC) for possible prosecution.

In 2009, the government and legislature made little progress in addressing the postelection violence. Their failure to act prompted former UN secretary general Kofi Annan, who had overseen negotiations for the 2008 power-sharing deal, to provide the ICC with a list of alleged perpetrators, although the names were not made public. Also during the year, the parliament rejected Kibaki's bid to reappoint the ineffective Aaron Ringera as head of the anticorruption commission, and General Mohammed Hussein Ali was fired as chief of the police force in the wake of a highly critical UN report on police brutality, though structural reforms to address the root of the problem were not implemented.

The Kenyan economy in 2009 continued to suffer from high inflation and a serious drought, which affected the important agricultural sector and caused food and energy shortages. An estimated 10 percent of the population required food aid.

Political Rights and Civil Liberties

Kenya is an electoral democracy. While there were few claims of irregularities in the December 2007 parliamentary polls, which the opposition won, reports on the flawed presidential vote highlighted apparent vote rigging and other administrative manipulations that had the effect of favoring the incumbent, Mwai Kibaki. The election commission nevertheless declared Kibaki the winner, and he was quickly sworn in. In September 2008, an international commission issued a final report stating that the legitimacy of the election results was undermined by several factors, including a defective voter registry and widespread fraud. The report also recommended electoral reforms that have yet to be fully implemented.

The president is elected for a five-year term. Under the 2008 postelection compromise, he now shares power with a prime minister, who is the leader of the largest party or coalition in the National Assembly. The unicameral body consists of 210 members elected for five-year terms, with an additional 12 members appointed by the president and nominated by the parties on the basis of their shares of the popular vote. Political parties representing a range of ideological, regional, and ethnic interests are active and vocal, and there are no significant impediments to party formation.

Corruption remains a very serious problem. Political parties, nongovernmental organizations (NGOs), and the press, as well as some official bodies, have exposed many examples of government corruption and malfeasance. However, official probes and prosecutions have yielded meager results. Since 2003, the Kenya Anti-Corruption Commission's efforts have led to just 51 convictions, and in 2009 the parliament rejected Kibaki's attempt to appoint its director for another five-year term. Transparency International's 2009 Corruption Perceptions Index ranked Kenya 146 out of 180 countries surveyed. The 2009 East African Bribery Index identified the Kenyan police as the most corrupt institution in East Africa, followed in Kenya by the Ministry of Defence and the judiciary.

The constitution provides for freedom of speech and a free press. These rights are generally respected in practice, and Kenya features one of the liveliest media environments on the continent. However, there have been intermittent restrictions on media freedom. In March 2006, security forces raided the independent KTN television station and stole documents and equipment. Amid the violence that followed the December 2007 elections, the authorities imposed a temporary ban on live broadcasts. Most Kenyans rely on the broadcast media, particularly radio, for news. A number of private television and radio stations operate, although their reach is limited. The government-owned Kenya Broadcasting Corporation continues to dominate the broadcast sector, particularly outside urban centers. The government does not restrict access to the internet.

The authorities generally uphold freedom of religion, though there have been some reports of government hostility toward Muslims. Religious groups are required to register with the government, which permits them to apply for tax-exempt status. Religious tension has risen since terrorist attacks in 1998 and 2002 that were associated with Islamic fundamentalism, but religion was not a major factor in the political and ethnic unrest of early 2008. A record 13 Muslims were appointed to the cabinet that year.

Academic freedom is the norm in Kenya, reflecting the country's broader respect for freedom of thought. In 2008, however, a leading education think tank, the Institute of

Policy Analysis and Research, published a report stating that the education sector is "in crisis" due to structural deficiencies in the learning environment, poor education policy choices made by the government, and inadequate funding levels, among other problems. The 2008 postelection violence had at least a temporary chilling effect on freedom of private discussion, as many individuals became hesitant to discuss ethnic-related issues openly.

The constitution guarantees freedom of assembly. This right is generally respected, although there have been cases of unnecessary use of force at demonstrations, and public gatherings were curtailed during the 2008 postelection violence. One of the core strengths of Kenya's political culture, even in recent periods of political polarization, has been its robust civil society. However, two leading human rights activists who had been investigating police abuses in the deaths of individuals linked to the Mungiki criminal sect were murdered in 2009. A police whistleblower who provided information to the national human rights body was also murdered during the year, and the police were unable to identify the perpetrators.

There are some 40 trade unions in the country, representing about 500,000 workers. Most of the unions are affiliated with the sole approved national federation, the Central Organization of Trade Unions. The Industrial Relations Charter gives workers the right to engage in legitimate trade union organizational activities, and all workers other than police officers are legally free to join unions. The 2007 Labour Relations Act explicitly establishes broad criteria for trade union registration, leaving authorities with limited grounds for suspending or refusing to register a union. Some unions have complained that employers resist unionization efforts, and that the relevant government bodies have been ineffective in enforcing the law. Historically, much of the trade union movement has been subservient to the authorities.

The judiciary's actions have reflected the primacy of the executive branch for much of the period since independence, and judicial corruption remains an impediment to the rule of law. The courts are understaffed and underfinanced, leading to long trial delays that violate defendants' right to due process. The 2008 inquiry on postelection violence noted the public's lack of confidence in the judiciary and called for the establishment of a truth, justice, and reconciliation commission, which began work in 2009. The country has officially recognized Kadhi courts, which administer Sharia (Islamic law) for issues including marriage and inheritance in areas with a predominantly Muslim population.

Legal checks on arbitrary arrest are not uniformly respected, and police still use force to extract information from suspects and deny them access to legal representation. Security forces engaged in extrajudicial killings during the 2008 postelection violence.

Philip Alston, the UN special rapporteur on extrajudicial executions, visited Kenya in 2009 and found evidence of "a systematic, widespread and clearly planned strategy to execute individuals carried out on a regular basis by the Kenya police." Such condemnations, however, have not resulted in any prosecutions. Also in 2009, the government admitted that the inmate population in Kenyan jails was almost 300 percent above their intended capacity.

Kenya's population comprises more than 40 ethnic groups, and friction between them has led to frequent allegations of discrimination and periodic episodes of violence. Land disputes frequently underlie ethnic clashes, as seen in the 2008 fighting, and long-awaited land reforms have languished. The Mungiki sect of mainly Kikuyu youth has been associated with postelection and other criminal violence. In addition, the continued presence of refugees from Somalia, and criminal activities by some of them, have exacerbated the problems faced by Kenya's own Somali minority. Other factors contributing to ethnic tension include widespread firearms possession, the commercialization of traditional cattle herding, poor economic conditions, drought, and ineffective security forces.

The Waki Commission's report cited specific cases of both state- and opposition-sponsored violence and massive internal population displacements during the 2008 postelection crisis. The population movements led in some cases to expropriation of property and belongings. Resettlement of internally displaced people has proceeded slowly, and in September 2009 Kibaki ordered that the remaining 7,000 individuals be resettled immediately.

Women in Kenya continue to face serious obstacles. They are denied equal property rights, putting them at greater risk of poverty, disease (including HIV/AIDS), violence, and homelessness. Kenyan women's rights groups have pointed out that 60 percent of the charges stemming from the 2008 postelection violence involved cases of rape, noting evidence that police committed the most abuses against women. Several bills aimed at strengthening women's rights with regard to marriage and property have been introduced by the government in recent years, but have yet to be enacted. Traditional attitudes limit the role of women in politics, although there are no legal restrictions and some progress has been made. In 2006 Kibaki declared that women would receive 30 percent of appointments in the public service, but this has yet to be realized. The 2007 elections increased the number of women in the National Assembly to 20, or about 8 percent of the total.

According to the Kenya AIDS Indicator Survey Report released in 2009, the national HIV prevalence rate among adults was 7.8 percent, with 1.4 million Kenyans living with HIV at the end of 2007. The national HIV prevalence rate had been 6.7 percent in 2003.

**Countries are ranked on a scale of 1-7, with 1 representing the highest level of freedom and 7 representing the lowest level of freedom.*

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