

Freedom in the World 2014 - Kenya

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2014 Scores

Status: Partly Free

Freedom Rating (1 = best, 7 = worst): 4.0

Civil Liberties (1 = best, 7 = worst): 4

Political Rights (1 = best, 7 = worst): 4

OVERVIEW

Kenya experienced a turbulent year in 2013. The March presidential and parliamentary elections – the first since a disputed 2007 presidential vote led to deadly ethnic conflict – were relatively peaceful and well-organized. Prior to the campaign period, all parties pledged to work to avoid violence, and this was aided by a stepped-up security presence. However, the elections suffered from serious problems with voter registration, vote tabulation, and confusion over the number and definition of rejected ballots. Uhuru Kenyatta, son of Kenya's first president, Jomo Kenyatta, was ultimately declared the winner following a controversial Supreme Court ruling.

Throughout 2013, the impending International Criminal Court (ICC) trials of Kenyatta and his deputy president, William Ruto, for crimes against humanity in connection with the 2007-08 postelection violence loomed large. Witnesses against them disappeared or withdrew amid threats, and civil society organizations and media outlets that focused on the trials faced intimidation. In December, the government passed a highly repressive media law, in a further example of threats to civil society activities and free expression in Kenya.

In September, a terrorist attack by the Somali Islamist group Al-Shabaab on the Westgate shopping complex in Nairobi resulted in the deaths of nearly 70 civilians and security personnel. The attack and its aftermath served as a reminder both of the continuing weakness of rule of law in Kenya and the ongoing mistreatment of the country's ethnic Somali population by the security services.

POLITICAL RIGHTS AND CIVIL LIBERTIES

Political Rights: 22 / 40 (+1)

A. Electoral Process: 7 / 12 (+1)

The 2010 constitution included wide-ranging reforms, such as limiting previously expansive executive powers and shifting some authority from the central government to local officials. Under the new charter, 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 newly created 47 counties. The National Assembly consists of 349 elected members (290 directly elected, 47 special women representatives, and 12 nominated by each party according to their share of the assembly vote), plus 1 ex-officio member elected as speaker. The newly created Senate consists of 67 elected members (47 directly elected, 16 special women representatives, 2 representing youth, and 2 representing people with disabilities), plus 1 ex-officio member elected as speaker.

The March 4, 2013, presidential, parliamentary, and county elections were Kenya's first held under the new constitution and legal framework. There were 8 presidential candidates and over 20 parties competing for legislative seats, aligned into four main groupings – the Jubilee Coalition, the Coalition for Reforms and Democracy (CORD), the Amani Coalition, and the EAGLE Alliance. As in the past, political alliances were formed primarily along ethnic lines, rather than ideology. During the campaign, Jubilee candidates Kenyatta and Ruto used their upcoming ICC trials to drum up support, framing the indictments as part of an alleged attempt by the West to impose its agenda on Africa.

Election observers – including the U.S.-based Carter Center, the European Union, and the Commonwealth, as well as regional and domestic bodies – noted important improvements compared with 2007, but also serious shortcomings. With all sides, including the political parties and the media, agreeing prior to the campaign to promote calm and refrain from using potentially inflammatory language, the election period was mostly peaceful. However, some observers pointed to a harsher security environment and a large degree of self-censorship.

Voting itself was more organized and streamlined than in 2007, especially considering the high turnout at most polling stations; nationwide, turnout was reported at about 86 percent. However, there were serious questions surrounding the tabulation of results: the electronic transmission system implemented by the Independent Electoral Boundaries Commission (IEBC) failed, and the manual delivery of ballots was delayed and not transparent. Moreover, there was significant confusion initially over the total number of rejected, or invalid, ballots, as well as controversy over whether to include the rejected ballots in the total number of votes cast in the presidential vote.

On March 9, the IEBC declared Kenyatta the winner of the presidential election with 50.07 percent of the vote, with his closest challenger, CORD candidate and former prime minister Raila Odinga, winning 43.7 percent. Kenyatta's vote share – which was calculated without including the rejected ballots – allowed him to claim victory in the first round by a very narrow margin. Odinga, citing widespread irregularities, filed a challenge to the result with the Supreme Court on March 16. Despite high tensions, observers noted that all sides made efforts to preserve calm and not resort to violence, although police used tear gas to disperse Odinga supporters who gathered in front of the Supreme Court building the day their candidate filed his appeal. On March 30, the court upheld the result despite acknowledging several errors in the electoral process, asserting that they did not alter

the outcome. While recent judicial reforms had increased the legitimacy of the Supreme Court as an arbiter, the decision nevertheless had questionable legal merit, since it used the number of valid votes cast rather than all votes cast – which would have included the rejected ballots – in its calculations. However, Odinga announced that he would accept the decision and called on his followers to do the same, and there were only sporadic incidents of violence and protest following the court ruling.

Meanwhile, the Jubilee Coalition claimed 167 of the National Assembly seats, 30 of the Senate seats, and 18 of the gubernatorial races. CORD won 141 of the National Assembly seats, 28 of the Senate seats, and 23 of the gubernatorial races. These elections were not free of controversy, and there were more than 180 petitions to either the High or Magistrate Courts. However, this was far less than expected, and the vast majority of these petitions were ultimately rejected.

The framework for the 2013 elections was guided by the requirements set forth in the new constitution, but some aspects, such as campaign finance reform, were not implemented. The IEBC's central members were appointed through a credible process with legislative oversight, yet their effectiveness was hampered by the problems with vote tabulation. In addition, the IEBC's capacity was hindered by ambiguity regarding its mandate and interference from the legislature. For instance, voter registration was delayed by the legislature in order to implement a biometric system, giving the IEBC only 30 days to register voters. Last-minute amendments to the Election Act extended the deadline for nominating candidates to 45 days before the election, leaving the IEBC little time to oversee disputes.

B. Political Pluralism and Participation: 10 / 16

People have the right to organize into political parties that represent a range of ideological, regional, and ethnic interests, and there are no significant impediments to party formation. Opposition party leaders and members are not routinely harassed by the state, but in 2013 there were sporadic outbursts of violence committed by party activists and affiliated ethnic gangs. Kenyan political parties are notoriously weak, often amalgamated into coalitions designed only to contest elections.

In the 2013 elections, there were impediments to political choice posed by domestic economic interests. There was pervasive use of unverified sums of money during campaigns due to the absence of an adequate campaign finance law and evidence of direct vote buying by candidates of both parties.

The new constitution was intended to reduce the role of ethnicity in elections. Although the Political Parties Act requires each party to have at least 1,000 members in 24 of the 47 counties as a mechanism for ensuring diversity, ethnicity remains an entrenched political factor, as the major coalitions reflected distinctive – though rarely exclusive – ethnic groupings. The stipulation that all voters must possess a National Identity Card impeded historically marginalized groups from greater access to the political process, in particular nearly seven million pastoralists from the upper Rift Valley and North Eastern Provinces. Finally, ongoing extrajudicial harassment by the security forces on the substantial Somali population diminished their electoral opportunities.

C. Functioning of Government: 5 / 12

Corruption is a serious problem in Kenya. While the new constitution includes measures for increased accountability and transparency, official prosecutions of corruption have yielded meager results, and no top officials have been successfully prosecuted. In 2013, the new head of the Ethics and Anti-Corruption Commission, Mumo Matemu, was charged with corruption during his time at the Agricultural Finance Corporation. Transparency International's 2013 Corruption Perceptions Index ranked Kenya 136 out of 177 countries surveyed.

Weak institutional capacity has undermined attempts at increased transparency regarding the budget-making process and other actions of the government. There is little input from civil society, and uncertainty exists regarding the allocation of public contracts. For instance, requests made in 2013 by the International Monetary Fund to publicize agreements between the government and mining corporations were denied. In June, reporters were evicted from the parliamentary media center. Ambiguities surrounding the devolution of power to Kenya's counties have led to conflicts between governors and the central government.

Civil Liberties: 31 / 60 (-3)

D. Freedom of Expression and Belief: 11 / 16 (-2)

The new constitution strengthened protections for freedoms of speech and of the press, and there is a large, independent, and active media in Kenya. In practice, however, several laws restrict these rights, and the government and security forces harass members of the press, leading to self-censorship in some cases. Media outlets deliberately avoided reporting on the shortcomings of the IEBC, government corruption, or the ICC proceedings, often under threat of reprisals. In April, Bernard Wesonga, a reporter for the *Star* newspaper, was murdered in Mombasa, apparently for reporting on illegal sales of expired fertilizer. Later that month, two journalists for the private KTN network were threatened for reporting on possible foul play in connection with the 2012 death of former interior minister George Saitoti. In the aftermath of the Westgate attack, authorities threatened and summoned several reporters who documented looting of the mall by the police and military.

In early December, parliament passed the Kenya Information and Communication (Amendment) Bill and the Media Council Bill, which provided for wide-ranging government control of the media sector. Among the bills' provisions, a new government-controlled board would have the authority to regulate all forms of journalism, including the power to impose potentially crippling fines on media houses and individual journalists for alleged violations of a code of conduct, which will be drafted by legislators.

The authorities generally uphold freedom of religion on civil matters. The Islamic (*Kadhi*) court system is subordinate to the superior courts of Kenya. The Kadhi courts adjudicate cases related to personal status, marriage, divorce, or inheritance for people who profess the Muslim religion and who voluntarily submit to the courts' jurisdiction. Religious groups are required to register with the government, which permits them to apply for tax-exempt status. Religious tension has risen in recent years due to terrorist attacks carried out in Kenya by Al-Shabaab, the Kenyan government's decision in late 2011 to send troops to Somalia to fight the group, and extrajudicial attacks and harassment by the security forces against the mainly Muslim ethnic Somali population.

Academic freedom is the norm in Kenya, though the education system suffers from structural and funding problems.

Increasing intimidation from the security forces and ethnically affiliated gangs such as the Mungiki has inhibited open and free private discussion. In addition, since September 2012 the government has increased its ability to monitor text and internet communications for hate speech, potentially limiting free discussion, including surrounding the March elections.

E. Associational and Organizational Rights: 7 / 12 (-1)

The constitution guarantees freedom of assembly. Local police must be notified in advance of any public meetings, and may prohibit such meetings. In May, security forces dispersed a protest outside parliament against a proposed increase in legislators' salaries. In August, police dispersed a protest of mine workers over an alleged breach of contract in Kwale. In November, the government attempted to block a peaceful demonstration in Nairobi against the media bills and proposals to limit foreign funding of nongovernmental organizations (NGOs).

There is freedom for Kenya's active NGO sector, but in 2013 there was a reduction in the leeway given to such groups. Nearly 200 NGOs were deregistered for alleged financial impropriety. In particular, human rights NGOs and those supportive of the ICC proceedings have been targeted. In August, security officers killed human rights activist Hassan Guyo in the northern town of Moyale, and in September unidentified gunman killed human rights lawyer Peter Wanyonyi Wanyama in the western town of Bungoma. The Law Society of Kenya also reported increased threats against its members. In October, supporters of Kenyatta in the National Assembly proposed amendments to the Public Benefit Organization Bill that would have capped foreign funding of NGOs at 15 percent, among other provisions. While these were blocked in December – amid pressure from international and domestic organizations – they nevertheless had a chilling effect.

Trade unions are active in Kenya, with approximately 40 unions representing over 1 million workers. Most of the unions are affiliated with the sole approved national federation, the Central Organization of Trade Unions. The 2007 Labor Relations Act establishes broad criteria for union registration, leaving authorities with limited grounds for suspending or refusing to register a union. However, there are restrictions on the right to strike, and the relevant government bodies have been accused of failing to adequately enforce labor laws and protections. In July 2013, a teachers' strike lasted for nearly a month. However, in September a proposed strike by the Nairobi county government over collective bargaining rights was banned.

F. Rule of Law: 6 / 16

The new constitution enhanced the independence of the judiciary. Chief Justice Willy Mutunga has built the judiciary's image as a trusted institution, and has overseen the creation of a new Supreme Court, Court of Appeal, and High Court. The new Judicial Services Commission handles the vetting and appointment of judges, and has been cited as an early success. In 2013, the judiciary received an increased budget, including the use of an aircraft to reach rural areas. However, instances of corruption at lower levels of the court have increased.

Rule of law does not prevail in many civil and criminal matters. According to a 2013 survey conducted by Transparency International Kenya, the police were considered the most corrupt

institution in Kenya. The 2010 constitution created the position of police inspector general and the National Police Service Commission, meant to oversee police reform. However, little progress has been made in this process, and in August 2013 the newly appointed police commissioner, Johnston Kavuludi, received a serious death threat.

In December 2013, the ICC prosecutor requested an adjournment in Kenyatta's case, citing the withdrawal of witnesses and a lack of cooperation from the government. During the year, several witnesses were murdered, disappeared, or subjected to violent intimidation. Despite these events, the trial of Ruto, along with his codefendant, former radio journalist Joshua arap Sang, began in September.

Kenya's Truth, Justice, and Reconciliation Commission (TJRC), formed in the aftermath of the 2007-08 violence, released its report in May 2013. However, in December parliament passed a bill giving the National Assembly the power to amend parts of the TJRC report. That included potentially removing the names of prominent Kenyans from the report, including Kenyatta, and manipulating its findings.

There is little protection from political terror or unjustified imprisonment, especially for certain segments of the population. Arbitrary arrests, beatings, and extrajudicial killings remained prevalent in 2013. On March 30, police opened fire on a protest against the Supreme Court's election verdict in Kisumu, killing 5 people and injuring more than 20. There was evidence that the police tried to cover up this incident, which occurred in an Odinga stronghold. Prison conditions are dangerous and often life-threatening due to problems such as severe overcrowding and poor hygiene.

There were also continued tensions between security forces and Muslim populations throughout 2013. These tensions were exacerbated in the aftermath of the brutal terrorist attack launched on September 21 by Al-Shabaab at Nairobi's Westgate shopping complex in Nairobi, in which an undetermined number of heavily armed militants entered and laid siege to the mall. The security services did not regain complete control of the complex for three days. In October, the National Intelligence Service killed Sheik Ibrahim Ismail and three others in Mombasa over their alleged ties to Al-Shabaab, sparking clashes between Muslim youths and the security forces in the city. A ban on the Mombasa Republican Council – a group that advocated the secession of mainly Muslim Coast Province (which under the new constitution is now six separate districts) – continued in 2013, and the trial of seven of its leaders remained unresolved. Authorities continued to target suspected members and supporters of the group.

Significant groups and communities are not given equal treatment under the law. Kenyan security forces deliberately target ethnic Somalis – both Kenyan citizens and refugees from the war in neighboring Somalia – subjecting them to systematic arrest, torture, and rape. In recent years, there has been increased pressure to expel the nearly 500,000 Somali refugees residing in Kenya, many whom live in the massive Dadaab refugee camp. Additionally, friction between Kenya's numerous ethnic groups often leads to discrimination and violence. In late 2012 and early 2013, dozens of people were killed and thousands displaced in clashes between the Pokomo and Orma communities in the Tana River valley. Between March and June, there was a string of violent clashes between the Degodia and Gare in Wajir, in the northeast. In August, clan violence in the northern district of Moyale left approximately 20 people dead.

An estimated 200,000 people internally displaced by the 2007-08 postelection violence still have not returned to their homes. There is evidence of discrimination during the process of resettlement and allocation of land in favor of the Kikuyu group – to which Kenyatta belongs – over the Kalenjin.

Consensual same-sex sexual activity is criminalized, with a maximum of 21 years in prison for sex between men. Members of the LGBT (lesbian, gay, bisexual, and transgender) community faced discrimination, abuse, and violent attacks in 2013.

G. Personal Autonomy and Individual Rights: 7 / 16

Citizens generally enjoy freedom of travel, residence, employment, and education. However, the prevalence of petty corruption inhibits these freedoms. There is also continued discrimination based on gender and ethnicity, as well as banditry in rural areas, that hinders these rights.

Kenyans have the right to establish private businesses, but often are required to pay petty bribes during the process. There is discrimination based on gender and ethnicity that limits access to property and economic opportunity. Criminal networks and ethnic gangs such as the Mungiki frequently impede economic activity through extortion and threats.

Rape and domestic violence are reportedly common but rarely prosecuted, and spousal rape is not criminalized. Customary law often trumps statutory law, leaving women with little legal recourse. Underage marriage is illegal but still occurs. The brutal rape of a 16-year-old girl in October, and the lenient punishment given to her attackers, sparked protest and renewed concern over gender-based violence. Female genital mutilation has declined among some ethnic groups but continues to be widely practiced among others, including the Somali and Kisii populations. Women remain underrepresented in parliament. A constitutional provision requiring that at least one-third of the members of elective bodies be women was not implemented for the 2013 elections, and there was evidence that the creation of special women's seats allowed political parties to sideline women during the primaries. Only 16 women were directly elected to the National Assembly, and none were directly elected to the Senate or to a governorship.

Scoring Key: X / Y (Z)

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

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