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Freedom in the World 2015 - Kenya

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2015 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

The Shabaab, the Somali extremist group, continued its assault on Kenyan territory in 2014, carrying out bombings and other attacks in retaliation for Kenya's involvement in the African Union peacekeeping mission in Somalia. The Kenyan government responded with a heavy-handed counterterrorism campaign. Following several attacks in Nairobi and Mombasa, the government in April began Operation Usalama Watch, in which thousands of Somali refugees were rounded up in mass arrests and put in camps, and more than 350 others were deported under the premise of "emergency security challenges." The sweep disproportionately affected Kenyan residents of Somali ethnicity, and was described by rights groups as a violation of national and international law.

After a late-year spike in terrorist attacks, President Uhuru Kenyatta in December signed the Security Laws (Amendment) Act, which gave the government expansive powers to restrict basic rights in the interest of national security. Among other controversial clauses, the legislation authorized the government to monitor and intercept communications, detain terrorism suspects

without charge for up to one year, and restrict media reporting on terrorism and related issues. Also that month, the Non-Governmental Organizations Coordination Board deregistered more than 340 nongovernmental organizations (NGOs) that it claimed had not submitted financial records, alleging that they were "vulnerable to abuse as conduits of terrorism financing and money laundering." The deteriorating security situation toward the end of the year sparked protests in Nairobi and led to the replacement of Kenya's police chief and the cabinet secretary of the interior.

While Kenyatta remained popular in 2014, his government continued to face challenges from former prime minister Raila Odinga's Coalition for Reforms and Democracy (CORD). In July, CORD led the so-called Saba Saba rally to protest increasing insecurity and call for a national dialogue on rising ethnic tensions. More than 10,000 people participated in the rally, during which opposition leaders also proposed a referendum to address major issues including land reform and devolution of power to regional governments.

International Criminal Court (ICC) cases against Kenyatta and Deputy President William Ruto for crimes against humanity in connection with 2007-08 postelection violence continued to unravel in 2014. As in the previous year, prosecution witnesses disappeared or withdrew amid threats, and civil society organizations and media outlets that focused on the trials faced intimidation. In September, the parliament voted in favor of the country's withdrawal from the ICC, a process that would take up to a year to complete. Lawmakers argued that the ICC cases were politically motivated and infringed on Kenya's sovereignty. Kenyatta in October attended a hearing on his case in The Hague, the Netherlands, becoming the first sitting head of state to appear before the court. In December, ICC prosecutor Fatou Bensouda announced the withdrawal of charges against Kenyatta, citing a lack of evidence and the Kenyan government's failure to cooperate. The case against Ruto was ongoing as of the end of 2014.

POLITICAL RIGHTS AND CIVIL LIBERTIES

Political Rights: 22 / 40

A. Electoral Process: 7 / 12

Under the 2010 constitution, 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 2013 elections were Kenya's first held under the new constitution. There were 8 presidential candidates and over 20 parties competing for legislative seats, aligned into 4 main groupings – the Jubilee Coalition, CORD, the Amani Coalition, and the EAGLE Alliance. Regional and international election observers noted a generally peaceful election period and important improvements compared with 2007, but also serious shortcomings. Some observers pointed to a harsher security environment and a large degree of self-censorship. The Independent Electoral Boundaries Commission (IEBC) declared Kenyatta the winner of the presidential election with

50.07 percent of the vote, with his closest challenger, Odinga, taking 43.7 percent. Kenyatta's Jubilee Coalition took 167 National Assembly seats, 30 Senate seats, and 18 gubernatorial races. CORD won 141 National Assembly seats, 28 Senate seats, and 23 gubernatorial races.

There were serious questions surrounding the tabulation of results. The IEBC's electronic transmission system 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.

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 the body's effectiveness was hampered by ambiguity regarding its mandate and interference from the legislature.

B. Political Pluralism and Participation: 10 / 16

Citizens are free to organize into political parties that represent a range of ideological, regional, and ethnic interests, but Kenyan parties are notoriously weak, often amalgamated into coalitions designed only to contest elections. Opposition party leaders and members are not routinely harassed by the state, though there have been sporadic outbursts of violence by party activists and affiliated ethnic gangs.

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. In August 2014, the High Court upheld the right of three political parties – the National Alliance, the Orange Democratic Movement, and the United Republican Party – to collectively receive more than \$4 million based on the outcome of the 2013 elections.

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 to ensure diversity, the major coalitions continue to reflect distinctive – though rarely exclusive – ethnic groupings. 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. Finally, the security forces' ongoing harassment of the substantial ethnic Somali population diminishes their political engagement.

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. The Ethics and Anti-Corruption Commission (EACC) lacks prosecutorial authority and can only pass the results of its investigations to the office of the attorney general. In April 2014, the EACC annulled two contracts issued by the Kenyan Ports Authority, worth more than \$21 million combined, that had been "irregularly awarded," and arrested the officials involved. In December, news leaked of a scandal in which

former election commission officials solicited bribes from a British firm seeking ballot-printing contracts for two 2009 special elections. The company's representatives were convicted in a British court, and in late December the EACC announced that it would pursue cases against the implicated Kenyan officials. Kenya was ranked 145 of 175 countries and territories surveyed in Transparency International's 2014 Corruption Perceptions Index.

Weak institutional capacity has undermined attempts to increase transparency on the budget-making process, procurement, and other government activities. There is little input from civil society. In August 2014, the government launched its Integrated Financial Management Information System, a website that documents the procurement process – including the tender announcement, bids received, and contracts awarded – in order to increase efficiency and reduce direct interaction, and therefore opportunities for bribery, between businesspeople and government officials.

Civil Liberties: 29 / 60 (-2)

D. Freedom of Expression and Belief: 11 / 16

The 2010 constitution strengthened protections for freedoms of speech and of the press, and there is a large, independent, and active media sector in Kenya. In practice, however, several laws restrict press freedom, and the government and security forces harass journalists, leading to self-censorship in some cases. Media outlets avoid reporting on issues such as official corruption or misconduct, counterterrorism operations, or the ICC proceedings, often under threat of reprisals. In October 2014, *Star* journalist Justus Ochieng was threatened and harassed after reporting on alleged criminal activity by the police in Kisumu.

In late 2013, the 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. Under 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 deregistration on individual journalists for alleged violations of a code of conduct, which would be drafted by legislators. In January 2014, a three-judge panel of the High Court in Nairobi halted implementation of the two laws until the full court could consider whether they were unconstitutional; the court had yet to rule on the issue by the end of 2014.

The December 2014 security legislation contained several vaguely worded clauses curtailing press freedom, including the threat of three years in prison for journalists who failed to obtain police permission before reporting on terrorism investigations or operations, or who published images of dead or injured people that were "likely to cause fear." In December, Kenya's Interior Ministry announced that it would investigate Qatar-based media network Al-Jazeera after it aired a documentary on possible extrajudicial killings by Kenya's Anti-Terrorism Police Unit (ATPU).

The government does not restrict access to the internet, but it does monitor websites and social media for hate speech and alleged incitement to violence.

The authorities generally uphold freedom of religion on civil matters. The Islamic (*Kadhi*) court system, which adjudicates cases related to personal status, marriage, divorce, or inheritance for Muslims, is subordinate to the superior courts of Kenya. Religious groups are required to register with the government, which permits them to apply for tax-exempt status. In November 2014,

Attorney General Githu Muigai said the government would establish a task force to review legislation on the registration process and verify that religious institutions and communities are acting in accordance with the law; Muigai also suspended registration of new religious organizations until further notice. Religious tension has risen in recent years due to terrorist attacks carried out by the Shabaab and extrajudicial attacks and harassment by Kenyan security forces against the Muslim and ethnic Somali populations.

For the most part, academic freedom remains secure in Kenya. However, 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 the country.

E. Associational and Organizational Rights: 6 / 12 (-1)

The constitution guarantees freedom of assembly. Local police must be notified in advance of any public meetings, and may prohibit them. In November 2014, demonstrations broke out across Nairobi in support of a woman who was stripped and assaulted by a large mob of men for allegedly being dressed inappropriately – one of an increasing number of similar incidents. The attack, which was caught on video, also prompted a social-media campaign. Ruto called for the arrests of the aggressors, and more than 100 men were taken into custody. Separately, in late December, police assaulted and arrested several civil society activists who were peacefully protesting against the new security bill.

Kenya has an active NGO sector, but civil society groups have faced growing obstacles in recent years, particularly those deemed supportive of the ICC proceedings. In late 2013, 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 amendments were initially withdrawn, the bill was reintroduced in October 2014, shortly before Kenyatta appeared at the ICC, with the funding restriction intact, sparking protests. Some estimates suggest that the cap could result in the loss of over 100,000 Kenyan jobs at the country's 8,500 registered NGOs. The NGO board's December deregistration of more than 340 NGOs, including 15 with alleged ties to terrorist groups, also shuttered Christian groups, orphanages, and health and development organizations. Other groups, such as the international NGOs Doctors Without Borders and Concern Worldwide, were not deregistered, but the government accused them of failing to submit financial audits and gave them a three-week deadline to do so.

Trade unions are active in Kenya, with approximately 40 unions representing nearly two million workers. Most unions are affiliated with the sole approved national federation, the Central Organization of Trade Unions. However, in April 2014 public-sector workers created their own umbrella group – the Federation of Public Service Trade Unions of Kenya – in the face of government attempts to curb wages. The 2007 Labor Relations Act establishes broad criteria for union registration, leaving authorities with limited grounds for suspending or refusing to register a union. The 2010 constitution affirmed the rights of unions to establish their own agendas, bargain collectively, and strike.

F. Rule of Law: 5 / 16 (-1)

The 2010 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.

Nevertheless, rule of law does not prevail in many civil and criminal matters. In July 2014, legislators criticized police corruption, revealing that officers were soliciting bribes from potential recruits. The following month, the National Police Service Commission canceled the recruitment of more than 1,200 new officers, and sought the arrest of officers found guilty of patronage or corruption in a previous recruitment effort.

There is little protection from political terror, especially for segments of the population that have been caught up in the Shabaab attacks and the counterinsurgency campaign in the traditionally marginalized, mostly Muslim coastal region. In June and July 2014, several attacks in the coastal counties of Lamu and Tama River killed more than 100 people. The Shabaab claimed responsibility for some – but not all – of these attacks. There were suggestions that local political elites, ethnic rivalries, and land grievances also played a role in the violence. In July, the government imposed a dusk-to-dawn curfew in Lamu County. The Law Society of Kenya filed a lawsuit in December to challenge the curfew, stating that residents had faced increased victimization by security forces since its imposition. In November, the government launched a series of raids against the Shabaab inside Somalia in retaliation for the group's murder of 28 non-Muslims in northeastern Kenya. In December, the Shabaab killed 36 quarry workers close to the border with Somalia, separating out and executing only the non-Muslims.

Arbitrary arrests, beatings, and extrajudicial killings remained prevalent in 2014, with several high-profile cases in the coastal region. In November in Mombasa, separate attacks by unidentified gunmen killed terrorism suspect Hassan Gutu and Sheikh Salim Bakari Mwarangi, a moderate cleric who was one of many local leaders working to counter the radicalization of Muslim youth. Al-Jazeera's December report on allegations that the ATPU engaged in hundreds of extrajudicial killings of terrorism suspects each year included interviews with ATPU officers, and suggested that some foreign governments provided intelligence to support the campaign.

A ban on the Mombasa Republican Council (MRC), a group that advocates for the secession of the coastal region, was overturned in 2012. However, in December 2014 MRC leader Omar Mwamnuadzi and six other MRC members were charged with unlawful assembly and membership in an outlawed group; Mwamnuadzi was also charged with drug possession.

Ethnic Somalis – both Kenyan citizens and refugees from neighboring Somalia – were singled out in the wide-ranging roundups, detentions, and deportations in response to Shabaab attacks in 2014, and security forces have often subjected Somali detainees to torture and rape. In recent years, there has been increased social and political pressure to expel the nearly 450,000 Somali refugees residing in Kenya, some 350,000 of whom live in the massive Dadaab camp complex. The December security law limited the number of refugees in Kenya to 150,000, and mandated that they remain in camps while their asylum applications are processed.

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 2014. In October, the High Court heard the National

Gay and Lesbian Human Rights Commission's case against the NGO board, which had denied its registration application in 2013. In a similar case in July, the High Court had sided with Transgender Education and Advocacy, ruling that it was unconstitutional to discriminate against individuals or deny them freedom of association "on the basis of gender or sex."

G. Personal Autonomy and Individual Rights: 7 / 16

Citizens generally enjoy freedom of travel, residence, employment, and education, and have the right to establish private businesses. However, the prevalence of petty corruption inhibits these freedoms, as do discrimination based on gender and ethnicity and banditry in rural areas. Criminal networks and ethnic gangs frequently impede economic activity through extortion and threats. The curfew in Lamu County and the extensive security-force mobilization in other counties, notably Garissa and Mandera, restricted movement and harmed business activity in some areas in 2014.

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 few remedies for discriminatory customary practices. Underage marriage is illegal but still occurs. Female genital mutilation has declined among some groups but is widely practiced among the Somali and Kisii populations. Women remain underrepresented in politics. A constitutional provision requiring that at least one-third of the members of elective bodies be women has yet to be implemented. Only 16 women were directly elected to the National Assembly in 2013, and none were directly elected to the Senate or a governorship.

In April 2014, Kenyatta signed a law intended to consolidate the country's seven existing marriage laws and streamline legal definitions of marriage and divorce. Female legislators walked out of the parliament amid heated debate about a clause that allows polygamy without the consent of existing wives. Advocates of the legislation hailed it for creating legal criteria, and consequences, for widespread customary practices that had been harmful to women. However, many women's groups criticized the law, saying it severely restricted women's rights.

Scoring Key: X / Y (Z)

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

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