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Freedom in the World 2011 - Kenya

Capital: Nairobi

Population: 39,070,000

Political Rights Score: 4 *

Civil Liberties Score: 3 *

Status: Partly Free

Ratings Change

Kenya's civil liberties rating improved from 4 to 3 due to the reduced threat of ethnic and political violence demonstrated by a peaceful August 2010 constitutional referendum.

Overview

Kenyan voters in August 2010 approved a constitution that imposed new checks on the authority of the president and central government. The power-sharing arrangement between President Mwai Kibaki and Prime Minister Raila Odinga remained in place during the year, though political jockeying in advance of 2012 national elections limited the hybrid government's effectiveness.

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 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). The bloc won a majority in the National Assembly, and its presidential candidate, Mwai Kibaki, emerged victorious. The new leadership's ambitious reform program achieved some successes, but the effort was blunted by factors including the fragility of the governing coalition, a complex bid to overhaul the constitution, significant fiscal constraints, and the threat of terrorism.

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, John Githongo, formerly Kibaki's anticorruption chief, 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 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 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, though 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 received the newly created post of prime minister and the ODM joined Kibaki's Party of National Unity (PNU) in a coalition cabinet.

A Commission of Inquiry into Post-Election Violence, also known as the Waki Commission, issued a report in October 2008 that identified systemic failures in Kenya's security institutions, governmental impunity, and popular anger as 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, which 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, though the names were not made public. Also during the year, the parliament rejected Kibaki's bid to reappoint the ineffective 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. However, structural reforms to address the root of the brutality problem were not implemented.

In March 2010, having determined that Kenya was unable to bring perpetrators of the postelection violence to justice, the ICC initiated an investigation into crimes against humanity. In August, Kenyan referendum voters overwhelmingly approved a new constitution that delineated and checked the roles and powers of the executive, legislative, and judicial branches of government. The new arrangement particularly limited previously expansive presidential and other executive powers, and shifted some authority from the central government to local officials. Friction between the two sides of the power-sharing government increased as the 2012 national elections drew nearer, hampering its ability to function.

Political Rights and Civil Liberties

Kenya is not an electoral democracy. While there were few claims of irregularities in the December 2007 parliamentary vote, the flawed presidential poll featured apparent vote rigging and other administrative manipulations that favored the incumbent, Mwai Kibaki. In September 2008, an international commission found that the legitimacy of the

election results had been undermined by several factors, including a defective voter registry and widespread fraud. The panel's recommended electoral reforms have yet to be fully implemented. However, the conduct of the constitutional referendum held in August 2010 was considered legitimate and competitive, indicating an improvement in electoral transparency.

Under the new constitution, which entered into force in August, the president is still elected for up to two five-year terms. However, following the 2012 elections, the post of prime minister – created as part of the 2008 compromise – will be abolished, and a new position of deputy president will be established. The unicameral National Assembly, which consists of 210 members elected for five-year terms and 12 members appointed by the president based on each party's share of the popular vote, is set to be replaced by a bicameral legislature. The upper house, the Senate, will have 60 members, while the lower house is expected to number about 290 members. Ministers may not serve in the parliament, which will have the authority to approve or reject cabinet appointments. Local authorities are to be granted heightened powers. The country will be divided into 47 counties, each of which will have a directly elected governor and assembly.

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, 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. The efforts of the Kenya Anti-Corruption Commission, established in 2003, have failed to produce the conviction of any senior officials. Transparency International's 2010 Corruption Perceptions Index ranked Kenya 154 out of 178 countries surveyed. National and international watchdog bodies have identified the police, the judiciary, and the Ministry of Defence as some of the most corrupt institutions in the country.

The constitution provides for freedom of speech and a free press, and these rights are generally respected in practice. However, there have been intermittent restrictions on media freedom. 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, though 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. The new constitution established an Islamic (*Kadhi*) court as a subordinate body to the superior courts of Kenya. The *Kadhi* court system adjudicates cases related to personal status, marriage, divorce, or inheritance for people who profess the Muslim religion and who voluntarily submit to the *Kadhi* courts' jurisdiction authority. 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 Kenya in 1998 and 2002 that were associated with Islamic extremism, but religion was not a major factor in the political and ethnic unrest of early 2008.

Academic freedom is the norm in Kenya, though the education system suffers from structural, funding, and other problems. Kibaki suspended the education minister in 2010 over allegations of corruption. The 2008 postelection violence had at least a temporary chilling effect on freedom of private discussion, as many individuals became hesitant to openly discuss ethnic issues. This effect had eased significantly by the end of 2010.

The constitution guarantees freedom of assembly. This right is generally respected, but there have been cases of unnecessary use of force at demonstrations, and public gatherings were curtailed during the 2008 postelection violence. Kenya's civil society

sector has remained robust even in recent periods of political polarization. However, two leading human rights activists who had been investigating police abuses involving 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 that year, and the police were unable to identify the perpetrators. No similar deaths were reported in 2010.

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 2007 Labour 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. 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 new constitution includes provisions designed to enhance judicial independence, including the establishment of an Independent Judiciary Service Commission to handle the appointment of judges. A truth, justice, and reconciliation commission pertaining to the 2008 postelection violence was established in 2009, but only started operating in October 2010.

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. In 2010, the inmate population in Kenyan prisons was determined to be more than double the 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, and long-awaited land reforms have languished. The Mungiki sect of mainly Kikuyu youth has been linked to postelection and other criminal violence. In addition, the continued presence of refugees from Somalia, and associated criminal activity, 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. In August 2010, Kibaki ordered that all remaining displaced people be expeditiously resettled, but this had not occurred by year's end.

Women in Kenya continue to face serious obstacles. They are denied equal property rights, putting them at greater risk of poverty, violence, homelessness, and disease. In 2009, HIV prevalence among women was 8 percent – nearly twice as high as the male rate of 4.3 percent. 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. Traditional attitudes limit the role of women in politics, though there are no legal restrictions and some progress has been made. The 2007 elections increased the number of women in the National Assembly to 20, or about 8 percent of the total. The new constitution

guarantees women at least one-third representation in all elected bodies and state commissions.

** 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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