

FREEDOM IN THE WORLD 2021 - KENYA

PARTLY FREE

48

/ 100

Political Rights 19 / 40

Civil Liberties 29 / 60

LAST YEAR'S SCORE & STATUS

48 / 100 Partly Free

Global freedom statuses are calculated on a weighted scale. [See the methodology.](#)

Overview

Kenya holds regular multiparty elections. However, pervasive corruption and brutality by security forces remain serious problems. The country's media and civil society sectors are vibrant, even as journalists and human rights defenders remain vulnerable to restrictive laws and intimidation.

Key Developments in 2020

- Over 96,000 people tested positive for COVID-19, and 1,670 people died from the virus during the year, according to government figures reported by the World Health Organization (WHO). Authorities imposed strict lockdown measures, including a curfew and movement restrictions, which police implemented with excessive, sometimes fatal force.
- In March, 13-year-old Yassin Moyo was struck by a police bullet fired as officers were violently enforcing a coronavirus lockdown in his Nairobi neighborhood. Moyo was among at least 20 people killed by police enforcing the lockdown.
- In July, police teargassed and arrested activists at a Nairobi protest against police brutality during the enforcement of coronavirus curfew measures.
- In September, a probe by the Ethics and Anti-Corruption Commission (EACC) found that at least 15 top government officials and businesspeople had misused millions of dollars designated for the Kenya Medical Supplies Authority's purchase and distribution of funds and supplies to prevent the spread of COVID-19.

Political Rights

A Electoral Process

A1 0-4 PTS

WAS THE CURRENT HEAD OF GOVERNMENT OR OTHER CHIEF NATIONAL AUTHORITY ELECTED THROUGH FREE AND FAIR ELECTIONS?

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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 2017 in a disputed election, the rerun of which was boycotted by the main opposition candidate. The first election, held that August, returned a solid victory by Kenyatta, which many analysts had predicted; this 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 main opposition coalition, the National Super Alliance (NASA), threatened to boycott the rerun unless a number of reforms were implemented at the IEBC. When some of these reforms were not met, opposition candidate Raila Odinga boycotted the rerun, urging his supporters not to participate.

The final results showed that Kenyatta won the rerun with 98.3 percent of the vote. Turnout for the rerun was only 38.8 percent—much lower than turnout for the August polls, which reached nearly 80 percent. Odinga continued to harshly criticize the election process after the second vote, and Kenyatta began his final term facing a significant legitimacy crisis.

Violence and intimidation marred the 2017 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 and the rerun, one IEBC commissioner fled Kenya for the United States, prompting the IEBC chairman to assert that the body could not guarantee a free election given the atmosphere of intimidation. Police in Nairobi and Kisumu used excessive force in an attempt to quell sometimes-violent opposition protests. Several dozen people were reportedly killed by police in the capital alone, according to Human Rights Watch (HRW).

A2 0-4 PTS

WERE THE CURRENT NATIONAL LEGISLATIVE REPRESENTATIVES ELECTED THROUGH FREE AND FAIR ELECTIONS?

**3 /
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The bicameral Parliament 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 their 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.

In 2017, Kenyatta's Jubilee Coalition secured majorities in both the National Assembly and the Senate, and stakeholders broadly accepted the results. Irregularities and violations were reported, but they were not systematic and did not harm or benefit any specific party.

A3 0-4 PTS

ARE THE ELECTORAL LAWS AND FRAMEWORK FAIR, AND ARE

2 /

THEY IMPLEMENTED IMPARTIALLY BY THE RELEVANT ELECTION MANAGEMENT BODIES?

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The IEBC is mandated with conducting free and fair elections, and operates under a robust electoral framework. However, the IEBC faces frequent allegations of favoritism toward the incumbent Jubilee Coalition, and in 2017 its members experienced violence and intimidation severe enough to prompt its chairman to declare that he could not guarantee the integrity of the presidential rerun. After the annulment of the first presidential election in 2017, the National Assembly approved controversial measures mandating that if a candidate withdraws from a rerun election, then the other candidate automatically wins 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.

In May 2018, after a public reconciliation, Kenyatta and Odinga formed the Building Bridges Initiative (BBI). Under the initiative, a task force was convened, and entrusted with studying public opinion on the problems that plague Kenyan politics such as ethnic strife, corruption, and political dysfunction, and ultimately producing recommendations for reform. The BBI report was launched in November 2019 and was officially sent to the president in October 2020. Its recommendations were geared toward changing some structures of the government in advance of the 2022 elections, including introducing a prime minister and reducing the size of the cabinet, among other measures that aimed to encourage whistleblowers and boost local development.

B Political Pluralism and Participation

B1 0-4 PTS

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?

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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. As of October 2020, there were 71 fully registered and 9 provisionally registered parties.

A March 2018 rapprochement between Kenyatta and Odinga helped deescalate political tensions somewhat, though little has been done to bring to justice the perpetrators of political violence that took place in the previous years.

B2 0-4 PTS

IS THERE A REALISTIC OPPORTUNITY FOR THE OPPOSITION TO INCREASE ITS SUPPORT OR GAIN POWER THROUGH ELECTIONS?

**2 /
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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 rerun

election in protest of a lack of reforms at the IEBC left Kenyatta opponents without a viable candidate to vote for, effectively guaranteeing Kenyatta's reelection.

Politics have been unstable since March 2018, when Kenyatta and Odinga publicly reached a truce in an event that became popularly known as "the handshake." Some analysts say the handshake dealt a blow to the foundations of both the ruling Jubilee Coalition and the opposing NASA, because each party's opposition to the other had served as a key factor in keeping them each united. Odinga was later named African Union High Representative for Infrastructure Development in October 2018, a role that distanced him from national politics. In October 2020, Jubilee officials recommended stripping the sitting deputy president, William Ruto, of his post as deputy party leader, deepening rifts in the ruling coalition that have surfaced since their victory in 2017.

B3 0-4 PTS

ARE THE PEOPLE'S POLITICAL CHOICES FREE FROM DOMINATION BY FORCES THAT ARE EXTERNAL TO THE POLITICAL SPHERE, OR BY POLITICAL FORCES THAT EMPLOY EXTRAPOLITICAL MEANS? 2 / 4

While people's political choices are somewhat free from undue influence by powerful, democratically unaccountable actors, groups such as Mungiki, a Kikuyu-affiliated gang, exert control over daily services such as matatu (minibus) routes in some regions, and may use violence, intimidation, and other extrapolitical means to influence local and national electoral outcomes.

B4 0-4 PTS

DO VARIOUS SEGMENTS OF THE POPULATION (INCLUDING ETHNIC, RACIAL, RELIGIOUS, GENDER, LGBT+, AND OTHER RELEVANT GROUPS) HAVE FULL POLITICAL RIGHTS AND ELECTORAL OPPORTUNITIES? 2 / 4

Ethnicity remains the most salient organizing principle in Kenyan politics, and two ethnic groups—the Kikuyu and Kalenjin—have dominated the presidency since independence. The 2010 constitution intended to reduce the role of ethnicity in elections, and 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 possess a National Identity Card hinders historically marginalized groups from obtaining greater access to the political process, particularly the nearly seven million pastoralists from the upper Rift Valley and the North Eastern Province. There are significant implicit barriers to the participation of non-Christian and LGBT+ people in national politics. Somali Kenyans, especially in the Eastleigh community of Nairobi and in the coastal and northeastern parts of the country, have been the target of government crackdowns in the name of combatting the militant group Shabaab, and are underrepresented politically. Coastal communities have historically

been politically marginalized and received less government support, fueling a sense of grievance and fostering political instability.

C Functioning of Government

C1 0-4 PTS

DO THE FREELY ELECTED HEAD OF GOVERNMENT AND NATIONAL LEGISLATIVE REPRESENTATIVES DETERMINE THE POLICIES OF THE GOVERNMENT?

**2 /
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The ability of elected officials to set and implement policy is undermined by corruption and other dysfunction. Although the 2010 constitution reduced the powers of the executive branch and improved the oversight role of Parliament, corruption limits the independence of the legislative branch, and in practice, the parliament is generally subordinate to the president.

C2 0-4 PTS

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 Ethics and Anti-Corruption Commission (EACC) lacks prosecutorial power and has been largely unsuccessful in pursuing corruption cases. The EACC's weakness is compounded by shortcomings at the Office of the Director of Public Prosecutions (ODPP) and within the judiciary.

However, following the April 2018 appointment of Noordin Haji as the Director of Public Prosecutions (DPP), the ODPP stepped up anticorruption investigations, arresting and charging a number of high-profile officials, and in 2019, Finance Minister Henry Rotich and the prominent governor of Nairobi County, Mike "Sonko" Mbuvi, were both served with corruption charges. In September 2020, the EACC recommended charges be brought against several officials and businesspeople in connection with the Kenya Medical Supplies Authority's misuse of funds intended to combat COVID-19. In December, the head of the Energy and Petroleum Regulatory Authority was arrested for allegedly accepting bribes.

C3 0-4 PTS

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 that the Treasury respects budget-making procedures. When budget information is made available, it is generally released long after the planning stages during which stakeholders could offer input.

Many of the central government's expenditures are not disclosed. At the county level, while the number of budgeting documents published increased somewhat in 2020, the availability of financial

information still falls below levels that would allow for adequate public participation in local-government budgetary processes.

Civil Liberties

D Freedom of Expression and Belief

D1 0-4 PTS

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, incidents that are rarely investigated by police. For example, in October 2020, the personal assistant of a member of Parliament attacked a reporter in Meru County because the assistant believed the reporter had encouraged interviewees to criticize the parliamentarian. The combination of restrictive laws on press freedom and the potential for harassment and violence leads to self-censorship in some cases.

In March 2020, Kenyan officials threatened those who publish misinformation about COVID-19 with two years in jail and a \$50,000 fine. The nongovernmental organization (NGO) Article 19 reported that arbitrary arrests and cases of harassment and assault have increased since the coronavirus outbreak began, with journalists, bloggers, and online activists accused of spreading false information about the pandemic. In October, the National Security Advisory Committee released guidelines that allow for the Multi-Agency Team on Public Order “to monitor, document, and enforce compliance” with media broadcasting laws and social media usage guidance ahead of the 2022 general election, guidelines that have been severely criticized by a large coalition of media stakeholders.

D2 0-4 PTS

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 0-4 PTS

IS THERE ACADEMIC FREEDOM, AND IS THE EDUCATIONAL SYSTEM FREE FROM EXTENSIVE POLITICAL INDOCTRINATION? 3 / 4

Academic freedom in Kenya is traditionally robust. However, 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. In January 2020, the Cabinet Secretary for Education disbanded the council of the University of Nairobi and revoked the appointment of a new vice chancellor (who had been

officially installed five months earlier), a struggle that underscored long-standing tensions around the appropriate level of autonomy from state interference of academic institutions.

D4 0-4 PTS

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, intimidation by security forces, and ethnically affiliated gangs. The government in recent years has used its broadly defined surveillance powers to monitor mobile phone and internet communications. Still, over 80 percent of Kenyans access social media sites, and “Kenyans on Twitter” have their own hashtag, #KOT, demonstrating their influence. Likewise, political candidates have increased their use of social media to reach younger voters.

E Associational and Organizational Rights

E1 0-4 PTS

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 July 2020, police teargassed and arrested activists at a Nairobi protest against police’s use of disproportionate force while enforcing coronavirus curfew measures. Police also violently dispersed a protest in August, which activists had organized in response to the EACC investigation into theft and corruption within the Kenya Medical Supplies Authority.

E2 0-4 PTS

IS THERE FREEDOM FOR NONGOVERNMENTAL ORGANIZATIONS, PARTICULARLY THOSE THAT ARE ENGAGED IN HUMAN RIGHTS– AND GOVERNANCE-RELATED WORK? 2 / 4

Kenya has an active nongovernmental organization (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 government has still not implemented the Public Benefits Organizations (PBO) Act, which was passed in 2013 to improve the regulatory framework for NGOs and offer greater freedom for them to operate.

E3 0-4 PTS

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 57 unions representing 2.6 million workers in 2018. However, labor leaders sometimes experience intimidation, notably in the wake of strike actions. A number of strikes have taken place in the past several years, including those organized by medical workers and university staff, who faced additional pressures and resource constraints in 2020 as they dealt with the coronavirus pandemic.

F Rule of Law

F1 0-4 PTS

IS THERE AN INDEPENDENT JUDICIARY? 2 / 4

The judiciary is generally considered to be independent, but judicial procedures are inefficient. The government has occasionally refused to comply with court orders. In 2018, it refused to release opposition politician and Odinga supporter Miguna Miguna and halt his deportation, as ordered, and to end the shutdown of several television stations. In September 2020, the Chief Justice recommended that President Kenyatta dissolve Parliament because it had failed to meet the constitutionally required two-thirds gender quota, a move the High Court suspended pending further deliberation.

After the High Court annulled the first 2017 presidential election, members of the ruling Jubilee Coalition threatened and intimidated judges. In June 2018, President Kenyatta signed an appropriations bill that reduced the budget for the judiciary to \$143 million, compared to \$173 million the previous year, which some critics claimed was retaliation for the 2017 election annulment. The National Assembly's Budget and Appropriations Committee further reduced allocations to the judiciary for the 2020–21 financial year.

F2 0-4 PTS

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 0-4 PTS

IS THERE PROTECTION FROM THE ILLEGITIMATE USE OF PHYSICAL FORCE AND FREEDOM FROM WAR AND INSURGENCIES? 1 / 4

Following their January 2019 two-day terrorist attack on the DusitD2 hotel and office complex in Nairobi, which left more than 20 people dead, the Islamist militant group the Shabaab continued to pose a security threat in 2020. In June, the group attacked a passenger bus in northeastern Kenya, injuring eight people.

Violence against suspects and detainees by security forces, including extrajudicial killings, remains a serious concern, and abuses are rarely punished. Extrajudicial killings are especially prevalent in

low-income areas in Nairobi. Some officers have posted photos of executed victims on social media.

These trends accelerated in 2020 as Kenyan police utilized excessive and sometimes lethal force to impose coronavirus curfew measures. According to the Deadly Force database kept by the *Nation Newsplex*, 137 people were killed by police in 2020, exceeding the death toll for 2019 by 12 percent. In a widely publicized case, an officer shot and killed 13-year-old Yassin Moyo, who was standing on his family's balcony in a low-income neighborhood of Nairobi as police enforced curfew in late March. Other incidents are believed to have gone unreported.

F4 0-4 PTS

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. In May 2019, the High Court dismissed a challenge to the law. LGBT+ people face discrimination, abuse, and violent attacks. Reports of police abuses against refugees and asylum seekers continue. Somali Kenyans are often stereotyped as refugees and terrorists, a misconception that has been exacerbated by the Shabaab's successive attacks in Kenya since the 2010s, and have been the target of government crackdowns as a result. Coastal communities have long experienced government underinvestment, resulting in worse educational, health, and economic outcomes in the region.

G Personal Autonomy and Individual Rights

G1 0-4 PTS

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. The enforcement of COVID-19 lockdown measures were disproportionate and often excessively implemented. Police beat, tortured, and sometimes killed individuals allegedly for breaking curfew—including some essential workers—who were returning home from their place of employment. Some incidents occurred before curfew was in effect.

G2 0-4 PTS

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. Forced evictions without compensation are prevalent in low-income areas, particularly in Nairobi.

G3 0-4 PTS

**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. Polygamy is legal, and approximately 10 percent of the married population are in polygamous marriages, according to the most recent data. Rape and domestic violence remain common and are rarely prosecuted.

G4 0-4 PTS

**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 semiarid 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.