

Kenya

PARTLY FREE

52
/100

<u>Political Rights</u>	22 /40
<u>Civil Liberties</u>	30 /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 2022

- Presidential elections held in August saw then deputy president William Ruto defeat opposition candidate Raila Odinga to be elected president with 50.49 percent of the vote. Following the election, Odinga filed a petition with the Supreme Court to overturn the results, citing alleged problems with the digital voting system. The Supreme Court upheld the results of the election in September, and Ruto was inaugurated that month.
- In October and November, Director of Public Prosecutions Noordin Haji dropped corruption charges against a number of President Ruto's allies, including newly elected deputy president Rigathi Gachagua, drawing swift condemnation from legal advocates and opposition leaders.
- In January, police began an investigation following the discovery of at least 39 bodies in the River Yala in recent years. Though the police investigation was ongoing throughout the year, President Ruto publicly attributed the deaths to the Special Service Unit (SSU), a police unit implicated in numerous forced disappearances and extrajudicial killings; Ruto dissolved the SSU in October.

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?

3/4

The president and deputy president, who can serve up to two five-year terms, are directly elected by majority vote, and are required to win 25 percent of the votes in at least half of Kenya's 47 counties.

Despite weeks of polls predicting a win for longtime opposition leader Raila Odinga, who had been endorsed by incumbent president Uhuru Kenyatta, then deputy president William Ruto was elected president in August 2022 with 50.49 percent of the vote, narrowly avoiding a runoff. Though the results were supported by parallel vote tabulation, Odinga and his supporters filed a petition with the Supreme Court shortly after the election seeking to nullify the results, alleging that foreigners had obtained unauthorized access to the Independent Electoral and Boundaries Commission (IEBC)'s digital system, and results forms had been altered. In September, the Supreme Court rejected the petitioners' claims and unanimously upheld the election results.

The election was widely seen as Kenya's most transparent and technologically advanced to date. The IEBC employed biometric voter identification kits, and uploaded results forms to a public online portal, with more than 90 percent uploaded within a day of the election. Both candidates urged their supporters to remain peaceful and committed to respecting the outcome of the court challenge.

Nevertheless, there were reports of irregularities and instances of intimidation and violence, including the abduction and murder of an election official. Youth in some areas reported being hired to disrupt rival campaigns. Youth voter registration lagged behind previous years, and some polling stations reported problems with biometric voter identification kits and incorrect usage of the backup manual register.

Score Change: The score improved from 1 to 3 because the voting process and electoral period for the presidential election were more transparent and less violent than in the past.

A2 0-4 pts

Were the current national legislative representatives elected through free and fair elections?

3/4

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 the August 2022 elections, Ruto’s Kenya Kwanza coalition secured a one-seat advantage in the Senate, while Odinga’s Azimio la Umoja coalition won a one-seat lead in the National Assembly. Voters elected a historic 29 women to Parliament; however, this still fell short of constitutionally-mandated two-thirds gender balance, which requires that no more than two-thirds of an elected body be of the same gender. Some irregularities were reported, including printing mistakes that rendered a number of ballots invalid, resulting in the IEBC having to delay voting for eight positions, including the gubernatorial race in Mombasa.

A3 0-4 pts

Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?	2 / 4
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The IEBC is mandated with conducting free and fair elections and operates under a robust electoral framework. However, the August 2022 election exposed continued rifts and politicization within the IEBC. Days after the election, as the IEBC chairperson prepared to announce the results, fighting briefly erupted at the announcement location, and four of the seven commissioners—who were appointed by President Uhuru Kenyatta in 2021—held a separate press conference stating they could not uphold the forthcoming results, claiming opacity in the tabulation process. After calm was restored, the chairperson declared Ruto the winner, raising questions about whether the chairperson can act independently of the majority of the commission.

In September, the Supreme Court affirmed that the power to verify and tally presidential election results is vested in the IEBC itself and not the chairperson. Nevertheless, the court found that the IEBC had carried out its constitutional responsibilities to verify, tally, and announce the results of the election, and upheld Ruto’s victory.

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?

2/4

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 (PPA), parties that receive at least 5 percent of the votes cast in a national election are eligible for public funds.

In January 2022, then president Kenyatta signed into law amendments to the PPA that, among other things, allow for coalition parties, over Ruto's strong objections. However, significant disadvantages to youth and women aspirants—including indirect candidate nomination processes—remain.

Little has been done to bring to justice the perpetrators of political violence that took place in previous years. In September 2022, Paul Gicheru, a lawyer on trial at the International Criminal Court (ICC) on charges of witness tampering following electoral violence in 2007–08, was found dead. The ICC case against Gicheru was officially closed in October. International rights groups have since called on the Kenyan authorities to “thoroughly and transparently” investigate Gicheru's sudden death.

B2 0-4 pts

Is there a realistic opportunity for the opposition to increase its support or gain power through elections?

3/4

Opposition parties and candidates are competitive in Kenyan elections. In the August 2022 elections, then deputy president Ruto, who portrayed himself as

standing outside Kenya's longstanding political dynasties, defeated five-time presidential candidate Odinga, who had been endorsed by incumbent president Kenyatta. The 2022 polls were highly competitive, and unlike the previous election, were not boycotted by opposition groups.

Score Change: The score improved from 2 to 3 because the polls were not marred by an opposition-led boycott, which had affected the previous election.

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 politicization of ethnicity at the national level still hinders effective representation of different segments of Kenya's diverse population, limits voter choice, and impedes meaningful policy debates. While ethnicity played a less prominent role in the 2022 presidential election—with Ruto's campaign focused on economic issues, and voters in Kikuyu strongholds voting for the Kalenjin Ruto over the Kikuyu Kenyatta's endorsed candidate, Odinga—longstanding political mistrust between

the Kikuyu and the Luo ethnic group, to which Odinga belongs, may have contributed to his loss.

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 North Eastern Province. There are significant implicit barriers to the participation of non-Christian and LGBT+ people in national politics. Somali Kenyans, especially in Nairobi's Eastleigh community and in the coastal and northeastern parts of the country, have been the target of government crackdowns ostensibly combating the Shabaab militant group, and are underrepresented politically.

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?

2/4

The ability of elected officials to set and implement policy is undermined by corruption and 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, Parliament is generally subordinate to the president. In 2021, Kenyatta, Odinga, and leaders of Kenyatta's Jubilee Coalition used threats and intimidation to secure support among party members, local officials, and judges for the Building Bridges Initiative (BBI), a bill to alter government structures ahead of the 2022 election, prior to the bill's defeat in the courts in March 2022.

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.

Following the 2018 appointment of Noordin Haji as Director of Public Prosecutions, the ODPP stepped up anticorruption investigations, arresting and charging a number of high-profile officials. However, the August 2022 election of Rigathi Gachagua as Ruto's deputy president has been widely criticized as emblematic of continued impunity for those accused of corruption. In 2021, Gachagua was charged with six counts relating to corruption; he was ordered to repay \$1.7 million in July 2022, less than two weeks before the election. In October, Haji withdrew charges against a number of Ruto's allies, resulting in swift criticism by the Law Society of Kenya, as well as other advocates and opposition leaders. Haji withdrew charges against Gachagua in November, purportedly due to insufficient evidence.

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 budget transparency is gradually improving, the availability of financial information generally is insufficient to ensure adequate public participation in local governments' 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 wrongdoing. However, several laws restrict press freedom. The government and security forces regularly harass journalists, and such incidents are rarely investigated by police. The combination of restrictive laws on press freedom and the potential for harassment and violence leads to self-censorship in some cases. Women journalists generally face greater harassment and risk of attack.

Two journalists were assaulted in March 2022 while covering an event at Azimio headquarters. In October, Pakistani journalist Arshad Sharif was shot and killed by police in Nairobi at a roadblock; Pakistani authorities later claimed that Sharif's death had been a targeted killing. According to the Independent Policing Oversight Authority (IPOA), investigations into Sharif's death were ongoing as of December.

Media outlets have expressed concern about Ruto's relationship with local press: his team has repeatedly stated that Kenyan media is biased against him, and in March 2022, his United Democratic Alliance (UDA) party temporarily barred journalists from covering its national delegates convention. The Media Council of Kenya reported that in the months leading up to the election, Odinga received significantly more media attention than Ruto during the campaign, although the tone of political reporting was generally neutral.

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. Police have also arrested and used tear gas on protesting students. There is evidence that ethnic considerations have influenced university hiring, leaving the staff of some institutions with significant ethnic imbalances.

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 has used its broadly defined surveillance powers to monitor mobile phone and internet communications, including by deploying new digital surveillance tools during the COVID-19 pandemic.

Kenyan internet users are sometimes exposed to disinformation. Online disinformation campaigns accelerated during the 2022 presidential election.

E. Associational and Organizational Rights

E1 0-4 pts

Is there freedom of assembly?	2/4
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The constitution guarantees the freedom of assembly. However, the law requires organizers of public meetings to notify local police in advance. In practice, police have regularly prohibited gatherings on security or other grounds, and violently dispersed assemblies that they had not explicitly banned.

In June 2022, police fired live ammunition on demonstrators protesting wildlife incursions, killing four people. In August, police deployed tear gas against protesters in Kisumu, an Odinga stronghold, after Ruto was declared president. However, the IPOA broadly commended Kenya's police and security forces for displaying greater restraint in controlling crowds during the 2022 election period than in the past.

A coronavirus-related ban on large outdoor gatherings was lifted in March 2022.

E2 0-4 pts

Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work?	2/4
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Kenya has an active civil society, but nongovernmental organizations (NGOs) have faced growing obstacles in recent years, including repeated government attempts to deregister hundreds of NGOs for alleged financial violations.

Several environmental activists have been killed in Kenya in recent years. In March 2022, the body of missing Kenya Wildlife Service officer Francis Oyaro, who disappeared in August 2021, was identified among the numerous bodies retrieved from the River Yala in western Kenya. The deaths of those found in the River Yala have been unofficially attributed to extrajudicial killings by police forces.

E3 0-4 pts

Is there freedom for trade unions and similar professional or labor organizations?	3/4
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The 2010 constitution affirmed the rights of trade unions to establish their own agendas, bargain collectively, and strike. Unions are active in Kenya. However, labor leaders sometimes experience intimidation, notably in the wake of strike actions. In September 2022, nine public sector unions threatened to initiate legal action to disband the government's Salaries and Remuneration Commission (SRC), which oversees the salaries of public employees, and which the unions claim is an obstacle to labor negotiations.

A number of strikes have taken place in the past several years. In November, the Kenya Airline Pilots Association (KALPA) held a four-day strike, halting flights on Kenya's national airline until a court ordered them to return to work.

F. Rule of Law

F1 0-4 pts

Is there an independent judiciary?	3/4
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While judicial procedures are inefficient, the Kenyan judiciary is generally considered to be independent, and the courts have demonstrated this independence through a series of high-profile rulings in recent years. In September 2022, the Supreme Court ruled against the incumbent government to unanimously uphold the results of the presidential election, bolstering its role as the independent final arbiter of electoral disputes. Likewise, the August 2021 Court of Appeals ruling on the BBI bill's constitutionality was widely considered a victory for judicial independence; the Supreme Court upheld the ruling in March 2022.

Nevertheless, the government has occasionally refused to comply with court orders and has ignored the recommendations of the Judicial Service Commission (JSC). In 2019, then president Kenyatta initially refused to appoint 41 judges recommended by the JSC, citing integrity concerns; he later appointed 34 of them, and in September 2022, newly elected president Ruto appointed another 6.

Score Change: The score improved from 2 to 3 because the Supreme Court upheld William Ruto's election victory and other courts ruled against government

policies, demonstrating the judiciary's independence.

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. Government figures released in late 2022 indicated that the number of cases pending before the courts had reached a six-year high. For the year ending June 2021, there were 649,112 pending cases, with 375,671 classified as backlogged.

The police service is thoroughly undermined by corruption, misconduct, and reports of extrajudicial killings. Although Parliament established the IPOA in 2011, the agency's work secured the conviction of only 17 officers through 2021, out of more than 20,000 complaints and nearly 3,500 investigations.

F3 0-4 pts

Is there protection from the illegitimate use of physical force and freedom from war and insurgencies?

1/4

Following their 2019 terrorist attack on the DusitD2 complex in Nairobi, which killed over 20 people, Shabaab has continued to pose a security threat, with militants threatening to continue attacks until Kenyan troops withdraw from Somalia. According to the Kenya-based Centre for Human Rights and Policy Studies, Shabaab militants committed 77 attacks in 2022, injuring numerous people and killing 117.

Severe drought has exacerbated violent conflict in the north and east, with local NGOs calling for a stronger government response to alleviate hunger and reduce the pressures that drive conflict. Food shortages were further exacerbated following the Russian military invasion of Ukraine in February 2022, which resulted in a sharp decrease in food imports from the region.

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

in low-income areas in Nairobi. In January 2022, police began an investigation following the discovery of at least 39 bodies in the River Yala in recent years; some of the deceased appeared to have been tortured. Though the investigation was ongoing throughout 2022, President Ruto publicly attributed the deaths to Kenya's Special Service Unit (SSU), an "elite" police unit implicated in numerous forced disappearances and extrajudicial killings. In October, Ruto dissolved the SSU; the same month, several officers were charged in the disappearances of two Indian nationals who worked for Ruto's campaign.

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, with a maximum penalty of 14 years in prison. LGBT+ people face discrimination, abuse, and violent attacks. In April 2022, six men raped and murdered Sheila Lumumba, a lesbian woman. At least one person was arrested and charged in relation to Lumumba's murder by year's end.

In July, the government enacted the Children Act 2022, which provides intersex children with legal recognition and equal access to services.

Reports of police abuses against refugees and asylum seekers continue. Somali Kenyans are often stereotyped as refugees and terrorists—a misconception exacerbated by Shabaab attacks in Kenya since the 2010s—and have been targeted by government crackdowns as a result. Coastal communities have long experienced government underinvestment and political marginalization, 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

2/4

change their place of residence, employment, or education?	
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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 was disproportionate and often excessively implemented. However, all COVID-19-related restrictions were lifted by May 2022.

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
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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. In 2021, Nairobi authorities evicted over 40,000 people in an informal settlement to make way for a highway.

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
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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. Rape and domestic violence remain common and are rarely prosecuted. In a 2021 report, Human Rights Watch (HRW) warned that survivors of gender-based violence receive insufficient government support.

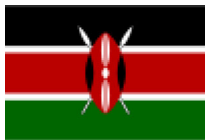
G4 0-4 pts

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 and southeast Asia.



On Kenya

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Country Facts

Global Freedom Score

52/100 Partly Free

Internet Freedom Score

66/100 Partly Free

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1850 M St. NW Floor 11
Washington, DC 20036
(202) 296-5101

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info@freedomhouse.org

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press@freedomhouse.org

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