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Kenya

International Religious Freedom Report 2004

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The Constitution provides for freedom of religion, and the Government generally respects this right in practice. The Constitution does not provide for an official state religion.

There was no change in the status of respect for religious freedom during the period covered by this report, and government policy continued to contribute to the generally free practice of religion. However, some Muslim leaders have charged that the Government is hostile toward Muslims.

There generally is a great level of tolerance among religious groups; however, some Muslims continued to perceive themselves to be treated as second-class citizens in a predominantly Christian country. There are some interfaith movements and political alliances, but one of the main alliances, the Ufungamano Initiative, faltered during the period covered by this report.

The U.S. Government discusses religious freedom issues with the Government as part of its overall policy to promote human rights.

Section I. Religious Demography

The country has a total area of approximately 225,000 square miles, and its population is approximately 32 million, of which approximately 88 percent lives in rural areas. According to official government figures, Protestants are the largest religious group, representing approximately 38 percent of the population. Approximately 28 percent of the population is Roman Catholic. Seven percent of the population practices Islam, 1 percent practices Hinduism, and the remainder follows various traditional indigenous religions or offshoots of Christian religions. There are very few atheists. Muslim groups dispute government estimates; most often they claim to represent 15 to 20 percent of the population, sometimes even higher.

Members of most religious groups are active throughout the country. Certain religions dominate particular regions. For example, Muslims dominate North Eastern Province, where the population is chiefly Somali. Muslims also dominate Coast Province, except for the western areas of the province, which predominantly are Christian. Eastern Province is approximately 50 percent Muslim (mostly in the north) and 50 percent Christian (mostly in the south). The rest of the country largely is Christian, with some persons practicing traditional indigenous religions.

Many foreign missionary groups operate in the country, the largest of which are the African Inland Mission (Evangelical Protestant), the Southern Baptist Church, the Pentecostal Assembly of Kenya, and the Church Missionary Society of Britain (Anglican). The Government generally has permitted these missionary groups to assist the poor and to operate schools and hospitals. The missionaries openly promote their religious beliefs and have encountered little resistance.

Section II. Status of Religious Freedom

Legal Policy/Framework

The Constitution provides for freedom of religion, and the Government generally respects this right in practice. The Government at all levels strives to protect this right in full and does not tolerate its abuse, either by governmental or private actors. However, Muslim and Christian groups remain engaged in a long-standing debate over whether special Islamic courts should be

recognized in the country's Constitution. The Government is currently involved in this dispute in its efforts to write a new constitution. Religious groups have also voiced their concerns over a proposed anti-terrorism bill and over government assistance to Islamic schools.

The Constitution and the Kadhis' Courts Act of 1967 established a venue to have certain types of civil cases adjudicated based on Islamic law. Article 66 of the Constitution provides for the establishment of Kadhis' courts where "all the parties profess the Muslim religion" in suits relating to "questions of Muslim law relating to personal status, marriage, divorce or inheritance." Articles 65 and 67 make it clear that Kadhis' courts are "subordinate" courts, meaning that the High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate court. It also indicates that if a constitutional or legal interpretation question arises in a Kadhis' court proceeding, any party involved in the proceedings may refer the question to the High Court. For example, in May, the High Court overruled a decision made by the Chief Khadi (Islamic judge) that a matrimonial dispute in the town of Kisumu in the western part of the country should be transferred to Mombasa on the Indian Ocean coast.

In March, the Constitution of Kenya Review Commission (CKRC), which began its work in April 2003, completed a new draft constitution. Article 9 of the draft constitution states that the State and religion shall be separate, that there shall be no state religion, and that the State shall treat all religions equally. Article 48 provides for freedom of religious expression, protects the rights of religious communities to provide religious instruction in places of education, proscribes discrimination in employment based on religious belief, and prohibits any person from compelling another person to engage in any practice that is contrary to that person's religious beliefs. Articles 198 and 199 retain Kadhis' courts as subordinate courts with essentially the same jurisdictions as are included in the Constitution. However, unlike in the current Constitution, the draft constitution does not mention a minimum or maximum number of Kadhis' courts, nor does it specify how the Kadhis will be selected.

The political debate over the draft constitution has revolved mainly around issues such as the role of the executive branch and the devolution of authority to sub-national units of government. The articles regarding the Kadhis' courts have highlighted latent religious animosities between the country's Muslims and Christians. In 2003, an interfaith group launched a separate initiative to draft a constitution. This effort, called the Ufungamano Initiative, originally included both Christians and Muslims. However, when the Muslims realized that the Christians opposed including Kadhis' courts in the new constitution, they withdrew.

Some Christian clerics argue that Muslims will be given preferential treatment if Kadhis' courts are incorporated into the new constitution. The National Christian Council of Kenya (NCCCK) states that it is not opposed to Kadhis' courts as such. They agree that Parliament should have the right to establish these courts or any other subordinate court. However, they argue that including Kadhis' courts in the constitution would grant formal recognition to Islam, which contradicts the provisions of Article 9 in the draft constitution proscribing the establishment of any religion. Some opponents of Kadhis' courts also contend that the courts' inclusion in the constitution could pave the way for the full application of Shari'a law in the country. In May 2004, a group of 34 Protestant churches, allied under the name of the Federation of Churches in Kenya, threatened to take legal action to expunge Article 66, which establishes Kadhis' courts, from the draft constitution. The Catholic Church believes that Parliament should adopt the provisions of the draft constitution that are not in dispute and subject contentious issues to a popular referendum.

Proponents of Kadhis' courts argue that other religious groups could establish their own courts if necessary. Some also argue that the Kadhis' courts should be seen as a matter concerning the judiciary and not religion. They further contend that the recognition of Kadhis' courts was a condition for the integration of the coastal strip at the time of independence and question why opponents now object to this system. Moreover, they argue that the proposed constitutional provision does not signify the full application of Shari'a law in the future. In May 2004, two leading Muslim groups, the Council of Imams and Preachers of Kenya and the Supreme Council of Kenya Muslims, threatened protests and strikes if the draft constitution was not adopted in its entirety. By the end of this reporting period, the effort to adopt a new constitution remained stalemated.

In April 2003, the Government published the Suppression of Terrorism Bill. Many observers, including the NCCCK, found the bill objectionable on human rights grounds, arguing that it contains provisions that violate the Constitution. Muslim leaders argue that the bill specifically

targets members of their community. In June 2004, the Council of Imams and Preachers of Kenya, referring to the arrest of some 30 Muslims on terrorism charges, accused the Government of targeting Muslims and applying the bill even before it is enacted. In 2003, the Law Society of Kenya produced an amended version of the bill that eliminated or revised the articles to which the religious and human rights groups most objected. However, in June 2004, the Council of Imams and Preachers called for rejection of even the amended version of the bill. The Suppression of Terrorism Bill has not yet been voted on in Parliament, and the debate was still ongoing at the end of the period covered by this report.

The Government requires new religious organizations to register with the Registrar of Societies, which reports to the Office of the Attorney General. The Government allows traditional indigenous religious organizations to register, although many choose not to do so. Once registered, religious organizations may apply for tax-free status, including exemption from paying duty on imported goods. Applications for tax exemptions are not automatic but are granted on a case-by-case basis. Some religious institutions accused the former Government of revoking their exempt status on value added tax and custom duties. For example, the Presbyterian Church of East Africa claims that the Government revoked its exempt status because the Church supported opposition political groups.

Religious organizations generally receive equal treatment from the Government; however, some small splinter groups have found it difficult to register when the Government views them as an offshoot of a larger religious organization. The Government has not granted registration to the Tent of the Living God, a small Kikuyu religious order banned during the single-party era (pre-1992). However, since the arrival of a multiparty system in 1992, membership in the Tent of the Living God has decreased greatly. It is still not registered and has made no recent attempts to do so.

Political parties also must register with the Government. Despite 1997 reforms and the subsequent registration of a large number of political parties, the Government has refused to reverse its 1992 denial of registration of the Islamic Party of Kenya (IPK) on the grounds that the IPK, which in 1992 was involved in a number of violent confrontations with police, offended the "secular principle" of the Constitution.

In the areas of the country that are largely Christian, there are morning prayers in public schools. All children participate in the assembly but are not punished if they remain silent during prayers. The Government and some churches frequently disagree over school management when both the Government and the church have a stake in the school. Often churches provide the land and the buildings for the schools, while the Government provides the teachers. This has led to disputes over school management and occasionally the closing of schools. In its May 2003 report on religious freedom in public schools, the Standing Committee on Human Rights found that the Africa Inland Church (AIC) infringed on students' freedom of worship. The AIC sponsors a number of schools, some of which are public schools. The report found that the AIC compelled all students admitted to its schools to adhere to AIC beliefs, which contradicts the Constitution.

Islamic institutions sponsor a few public schools that the Government supports through the employment of teachers and the provision of equipment. Some members of the Muslim community have expressed concern that the lack of a university in Coast Province, which has a large Muslim population, hinders educational opportunities for Muslims; however, higher education is available to Muslim students in other regions of the country. Throughout the period covered by this report, some Muslims voiced opposition to a planned government program, financed in part by the U.S. Government, which would work with Islamic schools to improve the quality and efficiency of primary education. They charge that the aim of this program is to dilute the teaching of true Islam.

The Ministry of Transport and Communication has approved regional radio and television broadcast licenses for several Muslim and Christian groups. The petition of the Catholic Church for a national frequency was not resolved by the end of the period covered by this report. To date, no media organization except the government-owned Kenya Broadcasting Corporation has been granted a national frequency. Rather, some organizations—both secular and religious—have been assigned a series of regional broadcasting frequencies to give their broadcasts national reach. These include Radio Iqra (Muslim), Radio Baraka FM Radio (interdenominational Christian), Waumini (Catholic), Hope FM (Pentecostal), and Family Radio FM (interdenominational Christian). In addition, HOPE Radio of the Pentecostal Church of East

Africa began broadcasting in Nairobi in 2003.

The Government celebrates several religious holidays as national holidays, including Christmas, Good Friday, Easter Monday, Idd-ul-Fitr, and Idd—ul-Azha.

Restrictions on Religious Freedom

Government policy and practice contributed to the generally free practice of religion. However, some Muslim leaders have charged that the Government is hostile toward Muslims. They complain that non-Muslims receive better treatment when requesting citizenship documents. According to these leaders, authorities more rigorously scrutinize the identification cards of persons with Muslim surnames and require them to present additional documentation of their citizenship, such as birth certificates of parents and, sometimes, grandparents. The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only group whose members are issued and required to carry an additional form of identification to prove that they are citizens. They must produce upon demand their national identification card and a second identification card verifying screening. Both cards also are required to apply for a passport. The Government says that this heightened scrutiny is an attempt to deter illegal immigration, rather than to discriminate against the religious affiliation of ethnic Somalis. Muslim leaders claim that since the 1998 bombing of the U.S. Embassy in Nairobi, the November 2002 terrorist attacks in Mombasa, and terrorist attacks elsewhere, government discrimination against their community has worsened, especially demands for identity documents.

In the past, the misuse of authority by mainly Christian security forces in the northeast, which largely is Muslim and in which banditry is widespread, had contributed to Muslim mistrust. However, during the period covered by this report, there continued to be greater inclusion of Muslims in security forces and provincial administration. For example, in April the Government named Brigadier General Mohammed Hussein Ali, a Muslim, as the new Commissioner of Police.

The former Minister of Trade and Industry Nicholas Biwott also has been engaged in a public dispute since 1998 with the Catholic Church over an intended project to use public land to create an educational facility to be named after the Minister's mother. Father Michael Rop, who is in charge of the local parish where the facility is proposed, protested the appropriation of public land to honor Biwott's mother. The Bishop of Eldoret, Cornelius Korir, accused Biwott of harassing Father Rop and his supporters and claimed that the former Minister was persecuting the church and its followers. The dispute culminated in a confrontation between Biwott's supporters and the Catholic Church in July 2001 when armed police attempted to block Bishop Korir from entering Father Rop's church. Biwott has vowed to continue with the building project. Church supporters who oppose the project destroyed the site's perimeter fencing in 2003. The dispute was ongoing at the end of the period covered by this report.

In June 2002, in Busia, a district officer who was a Seventh-day Adventist was suspended for refusing to perform his official duties on Madaraka Day, which fell on a Saturday. During the same month, in Nandi, the Board of Governors suspended 10 high school students, who were Seventh-day Adventists, for refusing to take a test on a Saturday. Supporters of the students challenged the board's decision, arguing that the school did not have the constitutional right to deny individuals the right to observe their religious practices. No further information was available at the end of the period covered by this report.

In May 2004, members of the Seventh-day Adventist Church claimed that they were among hundreds of workers that were fired by private companies operating in Nairobi's Export Processing Zone. The church members claimed that they lost their jobs because they refused to work on Saturdays.

Unlike in the past, there were no reports that religious meetings at the Emmanuel Church of God were restricted.

The Government historically has been unsympathetic to tribal religious groups that have engendered protest movements. The Government frequently harassed and periodically arrested and detained members of the Mungiki, a cultural and political movement based in part on Kikuyu ethnic traditions, which espouses political views and cultural practices that are controversial in mainstream society. While religion may have played a role in the formation of

the Mungiki, observers believe that it is no longer a key characteristic of the group. The Mungiki do not adhere to any single religion, and members are free to choose their own religion; the group includes Muslims and Christians. The number of Mungiki members is unknown, but the group draws a significant following from the unemployed and other marginalized segments of society.

Mungiki members have been accused of extortion, killings, illegal drug sales, and for-hire vigilantism. In February, a group of Mungiki defectors charged a Mungiki leader with kidnapping another defector. In March, the police arrested 30 Mungiki members, including the alleged kidnapper, charging them with various crimes, including the killings of group defectors. Subsequently, the police rounded up 100 additional persons alleged to be Mungiki, including 2 police officers, and later 83 were released. In May and June, one of the released prisoners was beheaded and a young woman with alleged connections to Mungiki was also killed. Observers believe that as many as 14 killings or disappearances of former Mungiki in the period from February to June 2004 were meant to punish Mungiki defectors. At the end of the period covered by the report, a former Member of Parliament (M.P.) and 13 alleged Mungiki were in detention on charges that they murdered 10 persons in January 2003. The killings allegedly occurred after the M.P. hired Mungiki to instigate violence after his re-election defeat in the December 2002 general elections. In addition, 40 Mungiki were also awaiting trial for the alleged killing of a matatu (minibus taxi) driver in 2002.

Practicing witchcraft is a criminal offense under colonial-era laws; however, persons generally are prosecuted for this offense only in conjunction with some other offense, such as murder. Witchcraft traditionally has been a common explanation for diseases for which the causes were unknown. The practice of witchcraft is understood widely to encompass attempts to harm others not only by magic, but also by covert means such as poisons. Although many traditional indigenous religions include or accommodate belief in the efficacy of witchcraft, they generally approve of harmful witchcraft only for defensive or retaliatory purposes and purport to offer protection against it.

In May 2004, police arrested a Nigerian pastor, a prominent doctor, and six other members of Winners Chapel International in the Western Province town of Kitale and charged them with torturing a church member. Local newspapers alleged that the man was tortured to force him to give up his child as a human sacrifice. The Nigerian-based religion, which has 10 churches in the country, has denied the allegations.

Abuses of Religious Freedom

Although the Constitution provides for freedom of assembly, in the past, the Government has used sections of the Public Order Act and the Penal Code to restrict or disrupt public meetings that religious groups organized or participated in, primarily for political reasons. During the period covered by this report, however, there were no reports that the Government restricted public meetings organized by religious groups.

Prominent Muslims in the country continue to charge the Government with arbitrarily harassing Muslims in the name of the war on terrorism. In May 2004, a Somali-Kenyan M.P. wrote a letter to a leading newspaper citing several cases of what he alleged were arbitrary arrests and deportation of Muslims. The M.P. also said that the Government is deliberately attempting to keep Muslims out of the country on the instructions of certain foreign embassies who are "enemies of Muslims" and who have no "regard for the lives of other human beings except those of their own (citizens)."

In March 2002, government authorities charged Wanjiru Nduhiu, the leader of an unregistered Kikuyu group, with urging her followers to renounce Christianity and revert to traditional beliefs and practices, such as female genital mutilation. Nduhiu denied the charges and remained in custody at the end of the period covered by this report.

There were no other reports of religious prisoners or detainees.

Forced Religious Conversion

There were no reports of forced religious conversion, including of minor U.S. citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such

citizens to be returned to the United States.

Abuses by Terrorist Organizations

There were no reported abuses targeted at specific religions by terrorist organizations during the period covered by this report.

Section III. Societal Attitudes

There generally is a great level of tolerance among religious groups, although some Muslims perceive themselves to be treated as second-class citizens in a predominantly Christian country. Inter-marriage between members of Christian denominations is common, and interfaith prayer services occur frequently. Inter-marriage between Muslims and Christians, although less frequent, also is socially acceptable, and mosques and Christian churches are found on the same city blocks.

For years Muslims and Christians have held an open debate over their respective places in society. Each group claims to have a larger number of adherents than is plausible, and some Muslim groups believe that the Government and business communities deliberately have impeded development in predominantly Muslim areas. Some Muslim leaders claim that discrimination against Muslims has resulted in a greater incidence of poverty among Muslims than among other religious groups; however, there is no statistical evidence to support this claim. At times the debate has undermined mutual trust.

In June 2003, Muslims in Bura Division of Tana River District reportedly burned down five churches after an Islamic preacher was arrested and briefly interrogated by police. The Muslims were followers of the cleric and were reportedly angered by the arrest. The cleric had converted to Islam from Christianity and had reportedly angered the Christians in the area with his teachings against Christianity; he was released from police custody at the request of a Member of Parliament. The churches that were burned down were the Anglican Church of Kenya in Bura, the Pentecostal Evangelism Fellowship of Africa (PEFA), the East African Pentecostal Church, the Full Gospel Church of Kenya, and the Bethel Church. Reverend Simon Mgumba of PEFA said his congregation was diminishing after the incident, due to fears of additional attacks. Reconciliation efforts between the communities are underway and no further church burnings occurred during the period covered by this report.

Unlike in previous years, there were no reports of Muslim youths or demonstrators burning down churches.

There were several disputes over land ownership and institutional conflicts between rival religious factions during the period covered by this report; some resulted in violence.

In March 2003, Joseph Okech was killed in a fight during Sunday services between two factions of St. Stephen's Church in Dandora, Nairobi. The conflict reportedly was the result of a leadership struggle. However, church leaders contend that non-church members were actually responsible for the incident, which remained under investigation during the period covered by this report.

In May 2003, rival factions of the African Independent Pentecostal Church of Africa in Nyeri clashed violently and several worshippers were injured. The two factions are aligned to two feuding archbishops.

In December 2002, eight persons were arrested in connection with the invasion of the African Independent Pentecostal Church during services. Three worshippers and the bishop were injured during the attack and property was damaged. The invasion was suspected to have resulted from an internal church conflict that was sparked when the previous bishop was ordered to retire by church headquarters.

In previous years, members of the Othaya Presbyterian Church and the Pentecostal Assemblies of God were not forcibly dispersed during services.

In early 2002, Egerton University officials barred approximately 300 worshippers from the

AIC from conducting services in the Lord Egerton Castle, which has been the subject of a longstanding property dispute between the University and the AIC. According to the AIC, former President Moi allocated the castle and the 50 adjacent acres to the Church in 1995; according to records at the Ministry of Lands, the property belongs to the chaplain of the University and 2 other individuals. Former President Moi issued a statement soon after the January 2002 incident indicating that the castle and surrounding property belonged to the University; however, AIC leaders urged their followers to ignore the statement. The dispute was ongoing at the end of the period covered by this report.

No actions have been taken against youths involved in the forcible dispersion of persons from a church in Nairobi in March 2002.

In April, a mob killed a man in Mt. Elgon whom they accused of practicing witchcraft. Villagers claimed they had found a snake and witchcraft paraphernalia in the man's house and blamed him for the death of 810 persons. A week earlier, a group of Mt. Elgon villagers stormed the homestead of another man they suspected of witchcraft. The man escaped, but the mob set fire to five houses in his homestead. Unlike similar cases in past years, no one alleged that either of these incidents was politically motivated.

Upon the request of several Christian organizations, the government of former President Moi appointed a commission to investigate the Freemasons and any other organizations that might be practicing devil worshipping. In January, the Anglican Church in Nairobi refused to preside over the funeral of a Member of Parliament, who was also an Assistant Minister, because the M.P. was said to be a grand master of the Freemasons Society. However, when the funeral moved to the M.P.'s hometown in Nyanza Province, the local Anglican bishops, together with Catholic and Evangelical Protestant clergy, presided over the funeral. Unlike their counterparts in Nairobi, the Nyanza clergy were all members of the same ethnic group, Luo, as the deceased M.P.

In April, a High Court Registrar postponed an inquiry into the death of Father John Anthony Kaiser, a Catholic priest working in the country for more than 30 years. Kaiser was found dead of gunshot wounds near Naivasha town in August 2000. Father Kaiser was a vocal human rights activist and a critic of key members of the Government. Although there was much public speculation to the contrary, an investigative report released by a foreign government in 2001 concluded that the evidence was most consistent with suicide, and that it was unlikely that Father Kaiser had been murdered. The Catholic Church disputed this report and called for further independent investigation. The newly elected Government, under pressure from the Catholic Church, agreed in April 2003 to hold an inquest into Kaiser's death. The High Court Registrar suspended the inquiry after the presiding magistrate was retired amid corruption allegations. The inquiry resumed in June 2004 and was ongoing at the end of the period covered by this report. The Catholic Church has also called for fresh investigations into the deaths of other Catholic priests who it believes died under suspicious circumstances during the previous government's term.

There have been reports of intolerance among refugee groups in the country. Somali refugees reportedly have attacked relatives who marry refugees belonging to faiths other than Islam. Somali refugees at the Dadaab camps also reportedly have verbally and physically attacked Sudanese refugee women who wear westernized clothing considered "too revealing" by Somali standards.

In the first 6 months of 2004, youth groups in Coast Province threatened to strip women they perceived as wearing westernized clothing that was "too revealing." However, the Minister of Tourism made it clear that these threats were unacceptable and any such acts would meet with arrest. No such acts were reported.

There have been societal efforts to bridge religious divides. The Inter-Faith Peace Movement represents a broad religious spectrum, and its members include the Anglican Church of Kenya, the Supreme Council of Kenyan Muslims, the Muslim Consultative Council (MCC), the Methodist Church, the Catholic Church, the National Council of Churches of Kenya (NCCK), the AIC, the PCEA, and the Hindu Council. The NCCK generally is involved in a variety of civil society initiatives, including conflict resolution. The Catholic Justice and Peace Commission, the MCC, and the NCCK launched a pilot program in 2002 to promote interfaith dialogue and reduce ethnic conflict in Isiolo district. There are other cooperative efforts among religious

groups to work on societal problems, including the Inter-Religious Steering Committee for Elimination of Female Genital Mutilation, formed in April 2003.

In April 2003, the Supreme Council of Kenya Muslims (SUPKEM) withdrew from the Ufungamano Initiative, an interfaith movement that helped spur the constitutional review process. SUPKEM left Ufungamano after some Christian members of the group decided to oppose the inclusion of Kadhis' courts in a new constitution.

Section IV. U.S. Government Policy

The U.S. Government discusses religious freedom issues with the Government as part of its overall policy to promote human rights. The U.S. Embassy has made a concerted effort to bridge the gaps that exist between Muslims and Christians. Embassy officials maintain regular contact with all religious communities, and the Ambassador regularly hosts meetings with religious leaders to discuss issues affecting their communities. The Ambassador and Embassy officials routinely travel throughout the country to meet with various religious and community leaders in an effort to facilitate dialogue on religious freedom.

U.S. Government agencies also provide assistance to many communities that, for historical and religious reasons, perceive themselves to have been marginalized by previous Governments. This assistance takes the form of grants by the U.S. Agency for International Development, the Ambassador's Self-Help Fund, and the Embassy's Democracy and Human Rights Fund. The U.S. military also carries out civic action programs to provide medical and veterinary assistance as well as to build and repair schools in marginalized communities. The U.S. Peace Corps also provides volunteers to many of these communities.

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