



Freedom in the World 2013 - Kenya

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2013 Scores

Status: Partly Free
Freedom Rating: 4.0
Civil Liberties: 4
Political Rights: 4

Ratings Change

Kenya's civil liberties rating declined from 3 to 4 due to increased ethnic and religious tensions and incidents of violence throughout the country in advance of 2013 elections, driven in part by the heavy-handed counterterrorism efforts of the police and security services.

Overview

In 2012, leading politicians jockeyed for position in the run-up to general elections set for March 2013, the first polls since a disputed ballot in 2007 resulted in deadly ethnic and political violence. However, the International Criminal Court's indictment of prominent Kenyans, including a top candidate for president, overshadowed the elections, with the trial scheduled to begin in the spring of 2013. Throughout 2012, ethnic and religious tensions and violence increased, exacerbated by factors including the upcoming elections, abuses by the security forces, and Kenya's military involvement in fighting the Islamist group Al-Shabaab in Somalia.

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 endemic, 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. 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 the fragility of the governing coalition, a complex bid to overhaul the constitution, significant fiscal constraints, and the threat of terrorism.

A lively press and public investigative commissions became increasingly critical of the substance and slow pace of the government's reform agenda, and in 2005, referendum voters soundly rejected a draft constitution that failed to shift power away from the presidency. In 2006, John Githongo, Kibaki's former anticorruption chief, issued an authoritative report indicating that corruption had reached the highest ranks of the government, prompting the resignation of several cabinet ministers.

Kenya's democratic development and economic performance suffered sharp reversals as a result of apparent manipulation of the December 2007 presidential election, which aggravated public discontent and fostered large-scale violence. While the concurrent parliamentary polls showed major gains for the opposition Orange Democratic Movement (ODM), Kibaki was declared the winner of the presidential vote over ODM candidate Raila Odinga amid credible allegations of fraud. Kibaki had long been accused of favoring his Kikuyu group, and the presidential results sparked weeks of violence between the Kikuyu, the Luo, and other groups. Approximately 1,150 people were killed and over 350,000 were displaced. In late February 2008, Kibaki and Odinga, a Luo, negotiated a compromise agreement under intense foreign pressure in which Odinga received the newly created post of prime minister and the ODM joined Kibaki's Party of National Unity in a coalition cabinet.

A Commission of Inquiry into Post-Election Violence issued a report in 2008 that identified governmental impunity, popular anger, and systemic failures in Kenya's security institutions 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). The Kenyan government made little progress in addressing the postelection violence, prompting the ICC to initiate an investigation into crimes against humanity in 2010. In April 2011, six high-profile Kenyans, including Deputy Prime Minister Uhuru Kenyatta and former cabinet minister William Ruto, appeared before the ICC.

In an August 2010 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 limited previously expansive presidential and other executive powers, and shifted some authority from the central government to local officials. Throughout 2011 and 2012, legislative bodies, government commissions, and civil society groups worked to implement the far-reaching reforms called for in the new constitution. These included the creation of the Independent Electoral and Boundaries Commission, which is tasked with organizing the first presidential and parliamentary elections since the flawed 2007 polls; these elections are scheduled for March 2013. In 2012, Kenyatta, with Ruto as his running mate, and Odinga emerged as the front-runners in the presidential campaign. Their two rival political groupings – Kenyatta's Jubilee Coalition and Odinga's Coalition for Reform and Democracy – are generally based on ethnicity, not ideology, raising concerns that postelection violence could again erupt along ethnic lines.

In January 2012, the ICC ordered Kenyatta, Ruto, and two others to stand trial for crimes against humanity in connection with the 2007-08 postelection violence, with the trial dates set for April 2013, just after a possible presidential runoff vote. The ICC charges against Kenyatta and Ruto became political capital in some circles, as anti-Western and anti-ICC rhetoric became prevalent during the campaign and attracted some voters to the defendants' ticket.

In retaliation for Kenya's military involvement in the African Union Mission in Somalia, which was battling the radical Islamist group Al-Shabaab, supporters of the group perpetrated multiple attacks inside Kenya in 2012, mainly in areas of North Eastern Province and Nairobi with large ethnic Somali populations. In the deadliest incident, 17 people were killed and around 60 were injured when gunmen opened fire and threw grenades in two churches in Garissa, near the Somali border, in July. In September, the police said that they had foiled a terrorist attack in the final stages of planning in Nairobi, and that the perpetrators had ties to Al-Shabaab. In a May 2012 report, Human Rights Watch documented human rights abuses against ethnic Somalis – both Kenyan citizens and refugees – by police and security forces, including sexual assault, beatings, arbitrary detention, and destruction of property. According to the UN High Commissioner for Refugees, there are more than 540,000 refugees from Somalia in Kenya, mainly in the Dadaab camp complex near the Somali border. In December, in the wake of the Al-Shabaab attacks, the head of Kenya's refugee agency ordered all Somali refugees in Kenya to move to the Dadaab.

Political Rights and Civil Liberties

Kenya is not an electoral democracy. The 2007 presidential poll was undermined by several factors, including a defective voter registry and widespread fraud. However, the conduct of the constitutional referendum in August 2010 was considered legitimate and competitive, indicating an improvement in electoral transparency. Registration and other preparations for the 2013 vote were behind schedule throughout most of 2012.

Under the new constitution, the president is elected for up to two five-year terms. Following the 2013 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, 12 members appointed by the president based on each party's share of the popular vote, and 2 ex-officio members, is set to be replaced by a bicameral legislature. The upper house, the Senate, will have at least 60 members, while the lower house is expected to number about 290 members. Ministers may not serve in the legislature, which will have the authority to approve or reject cabinet appointments. Local authorities are to be granted heightened powers. From the 2013 election on, 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. However, parties generally do not have an enduring presence, but are often amalgamated into coalitions designed only to win elections.

Kenya's new constitution includes measures for increased accountability and transparency to combat pervasive corruption, and an open government data portal is already available. However, official probes and prosecutions of corruption have yielded meager results, and no top officials have been successfully prosecuted for corruption since 2002. National and international watchdog bodies have identified the police, the judiciary, and the Ministry of Defense as some of the most corrupt institutions in the country. Transparency International's 2012 Corruption Perceptions Index ranked Kenya 139 out of 176 countries surveyed.

The new constitution strengthened protections for freedoms of speech and of the press; however, several laws restrict these rights in practice. The government monitors in some civil society meetings, and individuals run the risk of legal retaliation for expressing certain views. In addition

to an existing hate speech law, the government in September announced plans to begin monitoring text messages and internet communications for hate speech; anyone caught expressing these views could face a fine of up to five million shillings (\$58,100). Security forces harassed members of the media during the year. In April, two journalists were threatened by officers after covering a police raid on a supermarket in the western town of Kitale. Government officials brought several successful defamation suits against media outlets during the year. Journalists practice a degree of self-censorship, especially regarding topics such as corruption and drug trafficking. Nevertheless, Kenya's press environment remains one of the most vibrant in Africa. The government-owned Kenya Broadcasting Corporation dominates the broadcast sector, particularly outside urban centers. The government does not restrict access to the internet.

The authorities generally uphold freedom of religion in civil matters. The Islamic (*Kadhi*) court system is subordinate to the superior courts of Kenya. The Kadhi courts adjudicate cases related to personal status, marriage, divorce, or inheritance for people who profess the Muslim religion and who voluntarily submit to the courts' jurisdiction. Religious groups are required to register with the government, which permits them to apply for tax-exempt status. Religious tension has risen in recent years due to terrorist attacks carried out in Kenya in 2011 and 2012 by Al-Shabaab, the Kenyan government's decision to send troops to Somalia to fight Al-Shabaab in late 2011, and extrajudicial attacks by the Kenyan security forces against the mainly Muslim ethnic Somali population, which consists of both Kenyan citizens and refugees.

Academic freedom is the norm in Kenya, though the education system suffers from structural, funding, and other problems.

The constitution guarantees freedom of assembly. Local police must be notified in advance of any public meetings, and may prohibit such meetings from going forward. In 2012, the police regularly prohibited human rights groups from holding public meetings, and broke up meetings that had been permitted to begin. In April, police used tear gas and fired live rounds into the air in order to break up a political rally near Nairobi, citing the presence of a former leader of the Mungiki, a sect of mainly Kikuyu youth that has been linked to the postelection violence and other criminal activity. In October, police used tear gas to disperse demonstrators protesting a huge bonus that outgoing Kenyan legislators had awarded themselves. Kibaki later vetoed these bonuses in the wake of the protests. However, most nonpolitical protests in Kenya are tolerated. Domestic and international nongovernmental organizations are generally allowed to operate unimpeded.

There are some 40 trade unions in the country, representing about 900,000 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.

The new constitution includes several provisions designed to enhance the independence of the judiciary, which had been subservient to the executive for much of the period since the end of colonial rule. A Supreme Court, Court of Appeal, and Constitutional Court were established, and the new Supreme Court chief justice, Willy Mutunga, has built up the court's image as a trusted institution. The new Judicial Services Commission handles the vetting and appointment of judges, and has been cited as an early success. However, the courts remain understaffed and underfinanced, leading to long trial delays that violate defendants' right to due process. A task force appointed in February 2012 to probe cases of postelection violence in 2007 and 2008 did not lead to any successful prosecutions during the year. The Truth, Justice, and Reconciliation Commission, established in 2008 to investigate gross human rights abuses and historical injustices between independence and 2008, made only minor progress in 2012, heavily overshadowed by the ICC proceedings. Prison conditions remain life-threatening.

Impunity for arbitrary arrests, beatings, killings, and corruption among the security forces remained prevalent in 2012. In April, three people were killed during the forceful dispersion of a crowd by police in a suburb of Nairobi; six officers were suspended for the incident, but criminal proceedings had not begun at year's end. However, in the first conviction of police for extrajudicial killings, six officers were sentenced to death in December for the 2010 murders of seven taxi drivers; the sentence was being appealed.

At least seven prominent Muslim leaders with alleged ties to Al-Shabaab were disappeared or killed by the police in 2012. In April, clerics Samir Khan and Mohammed Kassim were taken from a bus in Mombasa by armed men; Khan's mutilated body was found two days later, while Kassim remained missing. In August, Sheik Aboud Rogo Mohammed, who had been accused of involvement in funding and recruitment for Al-Shabaab, was assassinated, allegedly by police. This ignited several days of violent riots in Mombasa, resulting in several deaths and injuries. Human rights organizations alleged that this is part of a targeted campaign by the security forces against terrorism suspects in Kenya.

In June, a High Court panel overturned a ban on the Mombasa Republican Council, a group that advocated the secession of mainly Muslim Coast Province. Authorities continued to target the group and its members, including incidents of beatings, raids, and killings. The ban was reinstated in October.

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. Between December 2011 to May 2012, clashes between the Borana and Turkana groups near Isiolo, in central Kenya, displaced at least 7,500 people and killed dozens. Meanwhile, violence between the Borana and Gabra in the northern district of Moyale displaced up to 40,000, as pastoralists fought over access to land and political control of the region in the run-up to the 2013 elections. Unresolved land usage and sharing issues also spiked in the Tana River valley in the southeast, as violent skirmishes between agricultural and pastoralist groups broke out in August and September, and again in December, killing 160 people and displacing thousands. An assistant minister was charged with inciting violence and was fired by the president, though these charges were eventually dismissed.

An estimated 200,000 internally displaced people (IDPs) from the 2007-08 postelection violence still have not returned to their homes. Approximately 118,000 IDPs were created in 2012 as a result of ethnic and resource clashes.

Consensual same-sex sexual activity is criminalized in Kenya, with a maximum of 21 years in prison for sex between men. Rape and domestic violence are widespread and rarely prosecuted, and spousal rape is not prohibited by law. Female genital mutilation is widely practiced, especially in rural areas, despite efforts to stop the practice. Women face severe discrimination in access to employment and credit, matrimonial rights, and property rights. The new constitution introduced significant reforms that could signal an improvement in equal treatment, domestic protections, inheritance rights, and government representation for women.

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