

FREEDOM IN THE WORLD

Kenya

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OVERVIEW:

The Kenyan government and civil society groups worked throughout 2011 to implement wide-ranging reforms stipulated in a new constitution approved in August 2010. In April 2011, six prominent Kenyans—including Deputy Prime Minister Uhuru Kenyatta—appeared before the International Criminal Court in connection with its probe of Kenya's postelection violence in late 2007 and early 2008. In October, Kenyan forces moved into Somalia in response to abductions by Somali Islamist group Al-Shabaab in Kenyan territory, and a week later retaliatory grenade attacks in Nairobi killed one person.

Kenya achieved independence from Britain in 1963. Nationalist leader Jomo Kenyatta served as president until his death in 1978, when Vice President Daniel arap Moi succeeded him. While the Kenyan African National Union (KANU) party remained in power, Moi diminished the influence of the previously dominant Kikuyu ethnic group, favoring his own Kalenjin group.

In 1992, after a lengthy period of single-party rule, domestic unrest and pressure from international donors forced Moi to hold multiparty elections. However, he and KANU continued to win elections by using political repression, state patronage, media control, and dubious electoral procedures.

Government corruption remained common, as did police abuses, political influence in the judiciary, and state efforts to undermine independent civil society activity. Political polarization increased amid government-sponsored ethnic violence, perpetrated in most cases by Kalenjin or Maasai KANU supporters against members of the Kikuyu and Luhya ethnic groups, who were believed to support opposition parties. Despite these problems, political space for opposition views continued to open, and many of the core elements necessary for a democratic political system developed.

The opposition united to contest the 2002 elections as the National Rainbow Coalition. The bloc won a majority in the National Assembly, and its presidential candidate, Mwai Kibaki, emerged victorious. The new leadership's ambitious reform program achieved some successes, but the effort was blunted by factors including the fragility of the governing coalition, a complex bid to overhaul the constitution, significant fiscal constraints, and the threat of terrorism.

The lively press and public investigative commissions became increasingly critical of the substance and slow pace of the government's reform agenda, and in November 2005 referendum voters soundly rejected a draft constitution that failed to shift power away from the presidency.

In January 2006, John Githongo—who in 2005 as Kibaki's anticorruption chief had resigned and fled the country after receiving threats arising from his investigation of top officials—issued an authoritative report indicating that

2012 SCORES

STATUS

Partly Free

FREEDOM RATING

3.5

CIVIL LIBERTIES

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corruption had reached the highest ranks of the government. The findings implicated the vice president and prompted the resignation of several cabinet ministers.

Kenya's democratic and economic development suffered a sharp reversal as a result of apparent manipulation of the December 2007 presidential election, causing existing public discontent to lead to 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 amid credible allegations of fraud. He had long been accused of favoring his Kikuyu ethnic group, and the presidential results sparked weeks of violence between the Kikuyu, the Luo, and other groups. Approximately 1,500 people were killed, and over 300,000 were displaced, though many eventually returned or were resettled by the government. In late February 2008, Kibaki and ODM presidential candidate Raila Odinga, a Luo, negotiated a compromise agreement 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, also known as the Waki Commission, issued a report in October 2008 that identified systemic failures in Kenya's security institutions, governmental impunity, and popular anger as the primary instigating factors in the crisis. The report called for the creation of a special tribunal to prosecute crimes committed during the postelection violence, and stated that in the absence of such a tribunal, the names of organizers of the violence should be sent to the International Criminal Court (ICC) for possible prosecution.

In 2009, the government and legislature made little progress in addressing the postelection violence, prompting former UN secretary general Kofi Annan—who had overseen negotiations for the 2008 power-sharing deal—to provide the ICC with a list of alleged perpetrators, though the names were not made public. In March 2010, the ICC, having determined that Kenya was unable to bring the alleged perpetrators to justice, initiated an investigation into crimes against humanity. In December, ICC prosecutor Luis Moreno-Ocampo named six high-profile Kenyans, including Deputy Prime Minister Uhuru Kenyatta, as the chief organizers of the violence. Summonses for all six were issued in March 2011, and they appeared at The Hague in April. The Kenyan government and the African Union have been lobbying for the charges to be dropped.

In a peaceful and well-organized August 2010 referendum, Kenyan voters overwhelmingly approved a new constitution that delineated and checked the roles and powers of the executive, legislative, and judicial branches of government. The new arrangement particularly limited previously expansive presidential and other executive powers, and shifted some authority from the central government to local officials.

In 2011, numerous 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 (IBEC), which became fully functional in late 2011. The IBEC is tasked with organizing the first presidential and parliamentary elections since the flawed 2007 polls; these elections are scheduled for late 2012 or early 2013.

POLITICAL RIGHTS AND CIVIL LIBERTIES:

Kenya is not an electoral democracy. While there were few claims of irregularities in the December 2007 parliamentary vote, the flawed presidential poll featured apparent vote rigging and other administrative manipulations that favored the incumbent, Mwai Kibaki. In September 2008, an international commission found that the legitimacy of the election results had been undermined by several factors, including a defective voter registry and widespread fraud. The panel's recommended electoral reforms have yet to be fully implemented. However, the conduct of the constitutional referendum held in August 2010 was considered legitimate and competitive, indicating an

improvement in electoral transparency.

Under the new constitution, which entered into force in August 2010, the president is still elected for up to two five-year terms. However, following the next 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 parliament, which will have the authority to approve or reject cabinet appointments. Local authorities are to be granted heightened powers. The country will be divided into 47 counties, each of which will have a directly elected governor and assembly.

Political parties representing a range of ideological, regional, and ethnic interests are active and vocal, and there are no significant impediments to party formation.

Corruption remains a very serious problem. Political parties, nongovernmental organizations, and the press, as well as some official bodies, have exposed many examples of corruption and malfeasance at all levels of government. However, official probes and prosecutions have yielded meager results. 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. In September 2011, the Ethics and Anti-Corruption Commission (EACC)—created under the new constitution—replaced the ineffective Kenya Anti-Corruption Commission. Although the EACC had an expanded investigative mandate, like its predecessor, it lacks prosecutorial authority. Transparency International's 2011 Corruption Perceptions Index ranked Kenya 154 out of 183 countries surveyed.

The constitution provides for freedoms of speech and of the press, and these rights were strengthened in the new constitution. However, the government occasionally attempts to restrict these rights in practice. There were several cases in 2011 of government officials bringing libel and defamation cases against journalists or media outlets for reporting on alleged corruption. There were also reports of harassment and threats against media workers by the security forces, allegedly for reporting on issues such as corruption and the 2007–08 postelection violence. Most Kenyans rely on the broadcast media, particularly radio, for news. A number of private television and radio stations operate, though their reach is limited. The government-owned Kenya Broadcasting Corporation continues to dominate the broadcast sector, particularly outside urban centers. The government does not restrict access to the internet.

The authorities generally uphold freedom of religion. The Islamic (*Kadhi*) court is a subordinate body to the superior courts of Kenya. The *Kadhi* court system adjudicates cases related to personal status, marriage, divorce, or inheritance for people who profess the Muslim religion and who voluntarily submit to the *Kadhi* courts' jurisdiction authority. Religious groups are required to register with the government, which permits them to apply for tax-exempt status. Religious tension has risen since terrorist attacks in Kenya in 1998 and 2002 that were associated with Islamic extremism, but religion was not a major factor in the political and ethnic unrest of early 2008.

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

The constitution guarantees freedom of assembly. This right is generally respected, but there have been cases of unnecessary use of force at demonstrations, and public gatherings were curtailed during the 2008 postelection violence. Kenya's civil society sector has remained robust even in recent periods of political polarization.

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 judiciary's actions have reflected the primacy of the executive branch for much of the period since independence, and judicial corruption remains an impediment to the rule of law. The courts are understaffed and underfinanced, leading to long trial delays that violate defendants' right to due process. The new constitution includes provisions designed to enhance judicial independence, including the establishment of an Independent Judiciary Service Commission to handle the appointment of judges. The Truth, Justice, and Reconciliation Commission (TJRC) was established in 2008 to investigate gross human rights abuses and historical injustices between independence at the end of 1963 and 2008. The TJRC started holding hearings in 2011.

Legal checks on arbitrary arrest are not uniformly respected, and police still use force to extract information from suspects and deny them access to legal representation. Security forces engaged in extrajudicial killings during the 2008 postelection violence. Philip Alston, the UN special rapporteur on extrajudicial executions, visited Kenya in 2009 and found evidence of "a systematic, widespread and clearly planned strategy to execute individuals carried out on a regular basis by the Kenya police." In January 2011, plainclothes police officers were photographed executing three alleged criminals on a public road, prompting an outcry. Such condemnations, however, have not resulted in prosecutions. In 2011, the inmate population in Kenyan prisons was determined to be more than double the intended capacity.

Kenya's population comprises more than 40 ethnic groups, and friction between them has led to frequent allegations of discrimination and periodic episodes of violence. Land disputes frequently underlie ethnic clashes, and long-awaited land reforms have languished. The Mungiki sect of mainly Kikuyu youth has been linked to postelection and other criminal violence. In addition, the continued presence of refugees from Somalia, and associated criminal activity, have exacerbated the problems faced by Kenya's own Somali minority. The Somali Islamist organization Al-Shabaab has recently threatened Kenya with attacks, and it has been accused by the Kenyan government of several kidnappings in Kenyan territory, including four in 2011. In response, Kenya in October sent forces into southern Somalia to pursue Al-Shabaab. A week later, two grenade attacks in Nairobi killed one person and injured more than twenty others. At the end of the month, a 28 year-old man who identified himself as a member of Al-Shabaab was convicted of the attacks and given a life sentence; the trial of two alleged accomplices was ongoing at year's end.

Other factors contributing to ethnic tension include widespread firearms possession, the commercialization of traditional cattle herding, poor economic conditions, drought, and ineffective security forces.

The Waki Commission's report cited specific cases of both state- and opposition-sponsored violence and massive internal population displacements during the 2008 postelection crisis. The population movements led in some cases to expropriation of property and belongings. Resettlement of internally displaced people (IDPs) has proceeded slowly. In August 2010, Kibaki ordered that all remaining displaced people be expeditiously resettled, but by mid-2011, government statistics indicated that 6,713 families were still displaced. That figure likely understated the scale of the problem, as anyone who had fled without an identity card would not have been registered as an IDP. Kenya has also neglected IDPs who were evicted from the Mau forest in 2009, as part of an environmental initiative to restore this vital water tower; about 6,500 families were moved, but the promise of resettlement in three months has yet to be fulfilled.

Women in Kenya continue to face serious discrimination. Rape and domestic violence are widespread but rarely prosecuted; due to poor police investigative procedures and societal stigma, an estimated 95 percent of sexual offenses

were not reported. Traditional attitudes also limit the role of women in politics. However, noticeable progress has been made. The 2007 elections increased the number of women in the National Assembly to 20, or about 8 percent, and the new constitution guarantees women at least one-third representation in all elected bodies and state commissions. It also voids any customary law inconsistent with constitution, eliminates gender differentiation regarding the right to pass on Kenyan citizenship to spouses and offspring, and guarantees women equal inheritance rights for the first time. A 2011 World Bank report, *Women, Business and the Law*, found that Kenya showed the greatest improvements among the countries studied—due primarily to the reforms in the new constitution—with significant gains in women entering institutions, utilizing property, and accessing the courts.

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