

Kenya

Country:[Kenya](#)**Year:**

2016

Freedom Status:

Partly Free

Political Rights:

4

Civil Liberties:

4

Aggregate Score:

51

Freedom Rating:

4.0

Overview:

During 2015, the precarious domestic security situation in Kenya continued. In April, the Somali extremist group the Shabaab attacked Garissa University College in northeastern Kenya, killing 148 students and injuring more than 100. Following the siege, Cabinet Secretary for Interior Joseph Nkaissery said that, despite intelligence warnings of an attack, local security officials had done little to prepare. Nine regional officials were suspended over the response to the siege. The attack was the latest in a spate of violence by the Shabaab in retaliation for the Kenyan government's involvement in the African Union peacekeeping mission in Somalia.

Despite the attack, the Kenyan government continued cross-border air strikes as part of an ongoing military campaign against the Shabaab in Somalia and also pursued a controversial domestic counterterrorism campaign. The counterterrorism campaign includes both heavy-handed repression of suspect groups as well as continued heavy police and military deployments in some areas of the country, especially in the northeast. In September, the autonomous Kenya National Commission on Human Rights (KNCHR) released a preliminary report alleging 25 extrajudicial killings and more than 80 "enforced disappearances" at the hands of the Kenyan government as part of its counterterrorism campaign. The report also alleged the use of extended detentions, aggressive interrogation techniques, and several forms of torture.

In connection with its counterterrorism strategy, the Kenyan government continued its crackdown on nongovernmental organizations (NGOs). In October, the government's NGOs Coordination Board threatened to deregister more than 950 NGOs due to alleged financial mismanagement and noncompliance with government regulations, and said that some of the groups were suspected of money laundering and support for terrorist activity. The board also said that, in an audit of more than 10,000 groups, it had found more than 25 billion shillings (\$248 million) in donations unaccounted for. Many of the organizations refuted the allegations and some alleged that the

government was targeting groups that criticized it. At first, the NGOs were given two weeks to refute the audit findings or be deregistered, but Cabinet Secretary for Devolution Anne Waiguru revoked the NGO Board's ruling, saying that the two-week timeline was unrealistic. This was the second time the government had threatened mass deregistration in as many years. In December 2014, the government deregistered over 500 NGOs, including 15 it accused of having ties to terrorism, for "noncompliance" after they failed to provide financial records. However, nearly 200 groups were reinstated within one week of the ban. Though the government has walked back on civil society crackdowns in both 2014 and 2015, the situation remains uncertain.

In 2014, the International Criminal Court (ICC) had withdrawn its case against President Uhuru Kenyatta for crimes against humanity in connection with 2007–08 postelection violence, citing a lack of evidence and the Kenyan government's failure to cooperate. In August 2015, an ICC appeals court reopened an inquiry into whether the government had actively blocked prosecutors in the case. The case against Deputy President William Ruto remains ongoing. In September, ICC prosecutors unsealed arrest warrants for two Kenyan men who had been arrested by Kenyan authorities in July; the warrants alleged that the men were involved in interfering with potential ICC witnesses.

Political Rights and Civil Liberties:

Political Rights: 22 / 40 [Key]

A. Electoral Process: 7 / 12

Under a constitution approved by voters in 2010, the president and deputy president, who can serve up to two five-year terms, are directly elected by majority vote; they are also required to win 25 percent of the votes in at least half of Kenya's newly created 47 counties. The National Assembly consists of 349 elected members (290 directly elected, 47 special women representatives, and 12 nominated by each party according to their share of the assembly vote), plus 1 ex-officio member elected as speaker. The Senate, created under the 2010 constitution, consists of 67 elected members (47 directly elected, 16 special women representatives, 2 representing youth, and 2 representing people with disabilities), plus 1 ex-officio member elected as speaker.

The March 2013 elections were Kenya's first held under the new constitution. There were 8 presidential candidates and over 20 parties competing for legislative seats, aligned into 4 main groupings—the Jubilee Coalition, the Coalition for Reforms and Democracy (CORD), the Amani Coalition, and the EAGLE Alliance. Regional and international election observers noted a generally peaceful election period and important improvements compared with 2007, but also serious shortcomings. Some observers pointed to a harsher security environment and a large degree of self-censorship. The Independent Electoral Boundaries Commission (IEBC) declared Kenyatta the winner of the presidential election with 50.07 percent of the vote, with his closest challenger—former prime minister Raila Odinga of CORD—taking 43.7 percent. Kenyatta's Jubilee Coalition took 167 National Assembly seats, 30 Senate seats, and 18 gubernatorial races. CORD won 141 National Assembly seats, 28 Senate seats, and 23 governorships.

There were serious questions surrounding the tabulation of the results of the 2013 elections. The IEBC's electronic transmission system failed, and the manual delivery of ballots was delayed and not transparent. Moreover, there was significant confusion initially over the total number of rejected or invalid ballots, as well as controversy over whether to include the rejected ballots in the total number of votes cast in the presidential vote.

The framework for the 2013 elections was guided by the requirements set forth in the 2010 constitution, but some aspects, such as campaign finance reform, were not implemented. The

IEBC's central members were appointed through a credible process with legislative oversight, yet the body's effectiveness was hampered by ambiguity regarding its mandate and interference from the legislature. In January 2015, Ezra Chiloba Simiyu was appointed to be the board's chief executive officer.

B. Political Pluralism and Participation: 10 / 16

Citizens are free to organize into political parties that represent a range of ideological, regional, and ethnic interests, but Kenyan parties are notoriously weak, often amalgamated into coalitions designed only to contest elections. In 2015, the member parties of the ruling Jubilee coalition agreed to merge into a single party, but the merger had not taken place by year's end. At the same time, the more fragile CORD coalition rejected calls to merge its parties ahead of the 2017 elections.

Under the Political Parties Act, parties that receive at least 5 percent of the votes cast in a national election are eligible for public funds. In August 2014, the High Court upheld the right of three political parties—the National Alliance, the Orange Democratic Movement, and the United Republican Party—to collectively receive more than \$4 million based on the outcome of the 2013 elections. The Political Parties Act also established an independent Office of the Registrar of Political Parties, but an acting registrar has held the position since it was created in late 2011.

During the 2013 elections, there were impediments to political choice posed by domestic economic interests. There was pervasive use of unverified sums of money during campaigns due to the absence of an adequate campaign finance law and evidence of direct vote buying by candidates of both parties.

The 2010 constitution was intended to reduce the role of ethnicity in elections. Although the Political Parties Act requires each party to have at least 1,000 members in 24 of the 47 counties to ensure diversity, the major coalitions continue to reflect distinctive—though rarely exclusive—ethnic groupings. The stipulation that all voters must possess a National Identity Card impedes 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 regions. In December 2015, the ODM accused the Kenyan government of slow distribution of ID cards in opposition strongholds. Security forces' ongoing harassment of Kenya's substantial ethnic Somali population diminishes their political engagement.

C. Functioning of Government: 5 / 12

Corruption is a serious problem in Kenya. The country was ranked 139 of 168 countries and territories surveyed in Transparency International's 2015 Corruption Perceptions Index. The government's Ethics and Anti-Corruption Commission (EACC) lacks prosecutorial authority, can only pass the results of its investigations to the office of the attorney general, and was plagued by political infighting in 2015. Investigation of the so-called Karen land-grabbing scandal by the EACC implicated several politicians and civil service employees. In June, Cabinet Secretary for Lands Charity Ngilu was suspended from her office, and the director of public prosecutions charged her with obstruction of EACC investigations into the issue. In July, Ngilu and Cabinet Secretary for Transport Michael Kamau—who was also suspended—successfully lodged cases before the High Court contesting the constitutionality of the EACC's powers to conduct investigations and recommend prosecution.

While the 2010 constitution includes measures for increased accountability and transparency, official prosecutions of corruption have yielded meager results, and no top officials have been successfully prosecuted. An auditor general's report released in July 2015 showed that approximately one-quarter of the spending in Kenya's 2013–14 federal budget had not been properly accounted for, causing a public uproar. The report described "persistent and disturbing problems in collection and accounting for revenue" across many departments and agencies. Shortly before the report's release, Kenyatta signed an agreement with U.S. president Barack Obama outlining U.S. technical support for the Kenyan government's fight against corruption, including curriculum development for a mandatory ethics training for all government employees.

Weak institutional capacity has undermined attempts to increase transparency on the budget-making process, procurement, and other government activities. There is little input from civil society. In August 2014, the government launched its Integrated Financial Management Information System (IFMIS), a website that documents the procurement process—including the tender announcement, bids received, and contracts awarded—in order to increase efficiency and reduce direct interaction, and therefore opportunities for bribery, between businesspeople and government officials. In March 2015, Kenyatta issued an executive order requiring ministries to use the system. Later in the month, he made the fight against corruption a theme of his State of the Nation address, directing all officials named in an EACC report on corruption—including 12 governors and 5 cabinet officials—to step down. Two of the cabinet officials were later charged in connection with the report's allegations. Also in 2015, Waiguru was at the center of a corruption scandal, after investigations indicated that the IFMIS system had been used to make or attempt to make some \$8,200,000 worth of illegal payments from the National Youth Service (NYS). In November, Waiguru—facing criticism even from some members of the Jubilee coalition—resigned, citing health issues.

Civil Liberties: 29 / 60

D. Freedom of Expression and Belief: 11 / 16

The 2010 constitution strengthened protections for freedoms of speech and of the press, and there is a large, independent, and active media sector in Kenya. In practice, however, several laws restrict press freedom, and the government and security forces harass journalists, leading to self-censorship in some cases. Media outlets avoid reporting on issues such as official corruption or misconduct, counterterrorism operations, or the ICC proceedings, often under threat of reprisals.

In October 2015, the National Assembly passed the Parliamentary Powers and Privileges Bill, which included controversial provisions restricting journalists' ability to report on parliamentary proceedings and levying heavy penalties on journalists accused of maligning the legislature. However, the bill was never enacted. Meanwhile, Kenya's High Court has yet to rule on the constitutionality of two highly controversial 2013 bills that provided for wide-ranging government control of the media sector, the Kenya Information and Communication (Amendment) Bill and the Media Council Bill. Under the bills, a new government-controlled board would have the authority to regulate all forms of journalism, including the power to impose potentially crippling fines on media houses and deregistration on individual journalists for alleged violations of a code of conduct, which would be drafted by legislators. In February 2015, the High Court annulled several controversial clauses in a separate bill, the December 2014 Security Laws (Amendment) Act, including significant restrictions on the media.

The government does not restrict access to the internet, but it does monitor websites and social media for alleged incitement to violence. The 2014 security law also includes clauses authorizing the National Intelligence Service to "obtain any information, material, record, document or thing" while conducting surveillance of communications. In July, WikiLeaks released a series of e-mails

from recent months demonstrating that the Kenyan government had reached out to Hacking Team, a Milan-based surveillance company, to procure software “designed to attack, infect and monitor target PCs and Smartphones, in a stealth way.” In a May 2015 e-mail, an unidentified government representative requested that, as “proof of concept,” the Hacking Team “urgently bring down” a blog called Kahawa Tungu, which had been reporting on corruption in the Kenyan government; the e-mails show Hacking Team representatives refusing the request.

The authorities generally uphold freedom of religion on civil matters. The Islamic (*Kadhi*) court system, which adjudicates cases related to personal status, marriage, divorce, or inheritance for Muslims, is subordinate to the superior courts of Kenya. In January, the attorney general’s office announced the proposed Religious Societies Compliance Rules, a series of regulations aimed at religious institutions and clergy, including requirements that they register with the government. Although Ruto in August mentioned plans to enact the laws, they were not adopted before the end of the year. Religious tension has risen in recent years due to terrorist attacks carried out by the Shabaab and the government’s counterterrorism campaign, which has disproportionately targeted Kenyan Muslims and members of the Somali community, including for extrajudicial killings and harassment. In July 2015, Afrobarometer released the results of a survey conducted in late 2014 in which 51 percent of ethnic Somali respondents in Kenya reported that they “always” or “often” faced unfair treatment from the government.”

For the most part, academic freedom remains secure in Kenya. However, the education system suffers from structural and funding problems. Increasing intimidation from the security forces and ethnically affiliated gangs such as the Mungiki has inhibited open and free private discussion in the country.

E. Associational and Organizational Rights: 6 / 12

The constitution guarantees freedom of assembly. Local police must be notified in advance of any public meetings, and may prohibit them. The police responded to protests with a heavy hand in 2015, including using tear gas on schoolchildren protesting the sale of a playground to a private developer in January.

Kenya has an active NGO sector, but civil society groups have faced growing obstacles in recent years, particularly in light of the government’s counterterrorism campaign and the related NGO crackdown. There are about 15,000 registered NGOs in Kenya.

In 2014, Waiguru, in her capacity as devolution secretary, appointed a taskforce composed of representatives from government and civil society to consider amendments to a 2013 law, the Public Benefits Organizations (PBO) Act, which had not yet been implemented. The task force produced a report in May 2015, drawing criticism from civil society groups, including those that had participated in the task force, who said several restrictive recommendations in the report did not reflect citizen input given at a series of public hearings. A controversial provision to the PBO Act that would have placed a 15 percent limit on all foreign funding for NGOs was dropped in the fall.

Trade unions are active in Kenya, with approximately 40 unions representing nearly two million workers. Most unions are affiliated with the sole approved national federation, the Central Organization of Trade Unions (COTU). In 2014, public-sector workers created the Federation of Public Service Trade Unions of Kenya in the face of government attempts to curb wages. The 2007 Labor Relations Act establishes broad criteria for union registration, leaving authorities with limited grounds for suspending or refusing to register a union. The 2010 constitution affirmed the rights of unions to establish their own agendas, bargain collectively, and strike. In November, COTU called on its affiliates to demand higher wages to account for recent tax hikes. Earlier in the fall, Kenyan

teachers' unions had undertaken a five-week strike over pay issues. Negotiations were ongoing in December.

F. Rule of Law: 5 / 16

The 2010 constitution enhanced the independence of the judiciary. Chief Justice Willy Mutunga has built the judiciary's image as a trusted institution, and has overseen the creation of a new Supreme Court, Court of Appeal, and High Court. The Judicial Services Commission handles the vetting and appointment of judges, and has been cited as a success. A major reshuffling of judiciary staff in April was rumored to be an attempt to dismantle corruption "cartels" within the judiciary.

Rule of law does not prevail in many civil and criminal matters. The police are among the most egregious violators of public trust. In July, the *Daily Nation* newspaper cited interviews with unidentified high-level police officials who claimed that the police service was plagued by tribalism and favoritism, and that bribery was rampant. In October, the National Police Service Commission announced that 63 top police officers had been dismissed for "corruption and integrity issues."

There is little protection from political terror, especially for segments of the population that have been caught up in the Shabaab attacks and the counterinsurgency campaign in the traditionally marginalized, mostly Muslim coastal region. However, the Shabaab continued attacks in northeastern Kenya on government and other targets in 2015. In addition to the Garissa University attack, in July the Shabaab claimed responsibility for an attack on a compound of quarry workers in northeastern Kenya, in which 14 people were killed and 11 injured. In late December, heavy casualties were avoided when Muslims refused to be separated from Christian passengers during a Shabaab attack on a bus in Mandera.

Arbitrary arrests, beatings, and extrajudicial killings remained prevalent, with several high-profile cases reported in the coastal region. Police in Mombasa were criticized for detaining dozens of people in response to a series of attacks, including the killing of a senior officer in the police counterterrorism unit.

A ban on the Mombasa Republican Council (MRC), a group that advocates for the secession of the coastal region, was overturned in 2012, but its leader, Omar Mwamnuadzi, is regularly arrested on various charges. In June, the government accused 14 people it had arrested in a poaching sting of participating in a scheme to sell elephant tusks to raise funds for the MRC.

Ethnic Somalis—both Kenyan citizens and refugees from neighboring Somalia—continue to be singled out in the wide-ranging roundups, detentions, and deportations in response to Shabaab attacks in 2015, and security forces have often subjected Somali detainees to torture and rape. In recent years, there has been increased social and political pressure to expel the more than 440,000 Somali refugees residing in Kenya, nearly 330,000 of whom live in the Dadaab camp complex. Heavy police surveillance and detentions were noted in Nairobi's Somali-dominated Eastleigh neighborhood in the wake of the Garissa University attack.

Consensual same-sex sexual activity is criminalized under the penal code, with a maximum penalty of 14 years in prison. Members of the LGBT (lesbian, gay, bisexual, and transgender) community continued to face discrimination, abuse, and violent attacks in 2015. In May, Ruto declared while speaking at a church service in Nairobi that there was "no room for gays" in Kenya. In July, at a joint press conference with Obama in which the U.S. president urged an end to discrimination against LGBT people in Kenya, Kenyatta described human rights for LGBT people as a "non-issue" in his country, saying Kenya had more pressing concerns. In a significant legal victory for Kenya's LGBT community, in April the Kenyan High Court ruled that the National Gay and Lesbian Human Rights Commission (NGLHRC) could legally register as an NGO under the country's Nongovernmental

Organizations Coordination Board Act. The group had been prohibited from registering with the NGO Coordination Board in 2013. A three-judge panel of the High Court, which voted unanimously, called the prohibition unconstitutional.

G. Personal Autonomy and Individual Rights: 7 / 16

Citizens generally enjoy freedom of travel, residence, employment, and education, and have the right to establish private businesses. However, the prevalence of petty corruption inhibits these freedoms, as do discrimination based on gender and ethnicity and banditry in rural areas. Criminal networks and ethnic gangs frequently impede economic activity through extortion and threats. The curfew in Lamu County and the extensive security-force mobilization in other counties, notably Garissa and Mandera, restricted movement and harmed business activity in some areas in 2015.

Rape and domestic violence are reportedly common but rarely prosecuted, and spousal rape is not criminalized. Customary law often trumps statutory law, leaving women with few remedies for discriminatory customary practices. Underage marriage is illegal but still occurs. Female genital mutilation has declined among some groups but is widely practiced among the Somali and Kisii populations. Women remain underrepresented in politics. The constitution says the government must work toward “the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender,” and the Political Parties Act prevents the distribution of public funds to parties whose elected officials are not at least one-third women. Nineteen percent of representatives in the National Assembly are women, as are some 26 percent of senators. Following a cabinet reshuffle in November 2015, five of 20 cabinet ministers were women.

According to the U.S. State Department’s 2016 *Trafficking in Persons* report, Kenya is a source, transit, and destination country for sex trafficking and forced labor. Refugees and asylum seekers from neighboring countries, particularly children, have been vulnerable to trafficking and forced labor in Kenya.

Scoring Key: X / Y (Z)

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

Full Methodology

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