

Kenya: Human rights situation

Kenya's new Constitution, adopted in 2010, has enabled it to make progress on a number of fronts, especially in enhancing democratic governance and the role of the judiciary. Massive human rights violations, however, continue to be perpetrated by the Somalia-based terrorist organisation Al-Shabaab and to some extent also by the security forces operating against it.

Ratification of international instruments

Kenya has [ratified](#) seven of the ten core UN Human Rights instruments without major reservations. It has not ratified [the International Convention on the Protection of the Rights of All Migrant Workers](#), [the International Convention for Protection of All Persons from Enforced Disappearance](#), the [Optional Protocol to the Convention against Torture](#), and most other additional protocols. Kenya has [ratified](#) all binding African human rights instruments. Its 2010 [Constitution](#) provides that the general rules of international law form part of Kenyan law, but whether or not international treaties are directly applicable is still subject to [legal controversy](#). Kenya has ratified the Rome Statute of the [International Criminal Court](#), but in September 2013 its Parliament [voted](#) a withdrawal motion, which has not yet been carried out by the executive branch.

Relations with the EU and the EP's position

The [EU National Indicative Programme for Kenya](#) for the 2014-20 period, funded by the [European Development Fund](#), seeks to promote, among other things, human rights, democracy and peace in Kenya.

The EP has repeatedly taken a stance on human rights violations in Kenya. It [condemned](#) the loss of life in the aftermath of the 2007 general elections, and [reaffirmed](#) its commitment to freedom of the press and of expression in Kenya in 2009. The EP is currently preparing a [resolution](#) on the killing of students by Al-Shabaab.

Political climate and related issues

Kenya's political life has been marked by [strong division](#) along [ethnic lines](#), and this led to post-electoral violence in 2007-08, leaving over [1 100](#) dead and 650 000 displaced. The crimes committed in this context have been investigated by the International Criminal Court, which indicted the incumbent President Uhuru Kenyatta, his vice-president and a journalist for orchestrating the violence. The charges against the president were [dropped](#) in 2014, after key witnesses refused to testify. His trial was [undermined](#) by alleged witness intimidation. The violence was also [investigated](#) by a Kenyan extra-judicial commission including international experts. Nobody was held accountable for the crimes committed.

In 2010, Kenya adopted a new [liberal](#) constitution through a referendum, which was considered fair. The subsequent [Political Parties Act](#) (2011) obliges political parties to have a larger territorial, and hence ethnic, base, in order to avoid ethnic divisions. The 2013 general elections were largely [peaceful and fair](#). Kenya's [Constitution](#) includes an extensive Bill of Rights and provides for the establishment of a [National Human Rights Commission](#) (KNHRC). A Truth, Justice and Reconciliation Commission was created to investigate gross human rights violations between 1963 and 2008. It issued an extensive [report](#) in 2013.

Human rights in practice

Human dignity

Kenya retains the death penalty for murder, armed robbery and treason, but there have been [no executions](#) since 1987.

Kenya has witnessed an increase in terror attacks, inter-communal conflicts and violence targeting law enforcement officers since 2010. As a result, [3 060](#) persons (both civilians and security officers) were killed between 2010 and 2014. Almost [200 000](#) persons have been displaced because of insecurity. The most

horrendous human rights violations have been caused by Al Shabaab's terror campaign in retaliation for Kenya's participation in the African Union mission in Somalia. This terrorist group has carried out several attacks, including bombings, in which it has often targeted non-Muslims. In its most recent and horrific attack of 2 April, it killed almost 150 students, most of them Christian, on a university campus in the town of Garissa. The response of the security forces to the Garissa attack was [very slow](#), allowing the perpetrators to carry on killing for hours. These forces have been [criticised](#) for not doing enough to prevent or stop such attacks and for not properly investigating security shortcomings afterwards.

[According to the KNHRC](#), police are the leading violators of human rights through extra-judicial executions: these have been the cause of more than half of the insecurity-related fatalities since 2010. Kenyan security forces have also been [accused](#) of arbitrary detention, torture and the [enforced disappearance](#) of terrorist suspects. Attempts to enhance [civilian oversight](#) have brought [little progress](#), including with regard to accountability. The police and other security forces appeared ill equipped and insufficiently trained to tackle the security challenges with respect to human rights and can easily fall [victim themselves](#).

As a consequence of the Garissa attack, Kenyan authorities want to [close down the Dadaab refugee camp](#), which hosts several hundred thousand refugees, and send them back to Somalia. This could imply a violation of the UN Convention on the Status of Refugees, since these refugees could face serious risks to their security back home.

Freedoms and citizens' rights

In December 2014, after heated political debate, the President ratified the [Security Laws \(Amendment\) Act](#) restricting basic rights (such as the rights of arrested and accused people, and the freedoms of expression and assembly) in the interest of national security, but some parts of it were [nullified](#) by a February 2015 decision of the Constitutional Court.

[According to Freedom House](#), the Kenyan media are independent, diverse and active, but government and security forces harass journalists whenever they try to cover corruption or counterterrorism operations.

Equality

Many counterterrorism actions have specifically [targeted](#) ethnic Somalis (either Kenyan citizens or Somali refugees) and there have been allegations that the government and politicians aim to channel public outrage over terrorism into opposition to this whole ethnic group.

Although the Constitution protects women from violence and discrimination, violence against women, including sexual violence, [persists](#). Female genital mutilation is still practiced in several parts of the country, despite the government's efforts to outlaw it. There have been several incidents of women being stripped in public by a mob of men who deemed them indecently dressed. [A series of such incidents](#) in November 2014 led to widespread public protests. [Discrimination](#) also affects LGBT persons, who can face [prison sentences](#).

Solidarity

The 2010 Constitution (Article 43 of its Bill of Rights) recognises social and economic rights, including the rights to housing, health, education, to be free from hunger, and to clean water. These rights are enforceable in courts, but their realisation by the state is subject to available resources. Since 2010, Kenyan courts have [adjudicated several cases](#) with a mixed record: some courts have been more inclined to enforce these rights (especially protection from [forced home eviction](#)), while others have been more reluctant. The Constitution also affirms the right to collective bargaining and to strike. Trade unions are active and operate freely in Kenya.

Justice

The independence of the judiciary has been enhanced by the 2010 Constitution, and [further reforms](#) have been attempted in practice. However, [allegations of corruption](#) persist, despite [official efforts](#) to fight it.

Possible evolution

Kenya appears to have left behind the divisive political rhetoric which led to violence in 2007-08, despite a lack of accountability for its perpetrators and instigators. The adoption of a new constitution in 2010 enhanced human rights and strengthened the judiciary, which has asserted its role in a number of cases. On the other hand, the campaign of terror which Al-Shabaab has unleashed on the country risks undermining these achievements. It has already led to [attempts](#) to modify the legal framework in a way that restricts human rights, and has provoked unchecked violence by the security forces themselves against terrorist suspects.