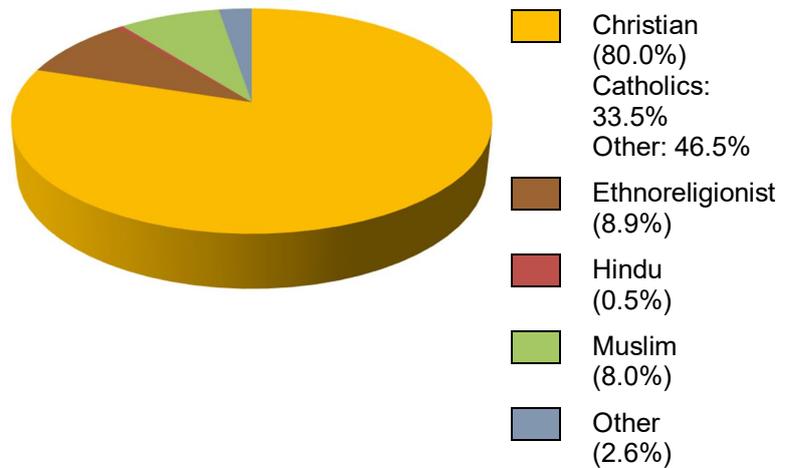
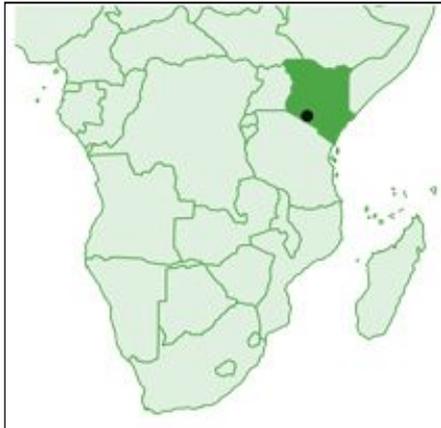


KENYA



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|---|------------------------------------|---------------------------------------|--|
| Area: 582,646 km ² | Population: 43.2 million | Political system: Democracy | Major Language(s): English, Swahili, Kikuyu, Luo, Kamba. |
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Legal framework of freedom of religion and actual application

Kenya's constitution, promulgated on 27th August 2010, enshrines in article 32 the right to free exercise of religion.

The Societies Act mandates that every association in Kenya must either register or be exempt from registration by the Registrar of Societies. Up until now, the government required "new" churches to seek registration through government approval. The Attorney General, however, has already started the process of creating a new and more demanding policy on religious organisations and bodies, of which the government will have greater oversight. The government's new vetting powers for religious groups will encompass administrative approval of the composition of governing boards, the distribution of financial assets, the regulation of internal procedures and the examination of theological qualifications of Church leaders.¹ Some Church leaders have expressed concern about several aspects of the policy which, they say, might contradict the government's original commitment to freedom of religion.²

Kadhis courts are recognised as subsidiary courts for certain cases related to personal status, marriage, divorce or inheritance, provided all parties profess the Muslim religion as it is expressed in article 170 of the constitution.³

Although the state in theory protects and stands for the main principles of religious freedom, in practice this is not always the case. Kenya's attempts to curb religious extremism through coercive means has resulted in quite a few instances of collective punishment and harassment of Muslims, particularly of Kenyans of Somali descent or Somali citizens living in Kenya.⁴ There is a widespread feeling, especially among Muslims and human rights activists, that anti-terrorist actions by Kenya's security agencies are discriminatory, arbitrary, excessive in their use of force and at times potentially illegal in their extent.⁵

Incidents

Murder – act of terrorism on 14th June 2014⁶: About 100 armed men attacked Mpeketoni town, a town in Lamu County, killing at least 49 people and destroying 26 buildings and some other

properties. The victims were stabbed, beheaded, hacked to death or shot by gunfire. The following day Al-Shabaab claimed responsibility for the attack.⁷

Murder – act of terrorism on 23rd June 2014: Kakate village was attacked by armed men. Five men had their throats slit by daggers; one man was released after he recited a verse from the *Qur'an*.⁸ This is the only attack where the attackers first posed as policemen instead of claiming that they were Al-Shabaab fighters.

Murder – act of terrorism on 5th July 2014: At least 50 attackers entered the Hindi area in the Tana River-Lamu road, slitting the throats of by-passers. They killed 13 people. Simultaneously, Gamba Police Station in the Tana River area was attacked. Nine people, including a police sergeant, were killed.⁹

Murder – act of terrorism on 4th November 2014: Salim Bakari Mwarangi, a moderate Muslim cleric and outspoken critic of Al-Shabaab group, was gunned down in Mombasa.¹⁰

Harassment on 17th November 2014: One man was killed and 200 others were arrested during raids on Mombasa mosques carried out by Kenyan security agencies. Human Rights organisations criticised the raids.¹¹ Following these raids, several mosques in Mombasa were closed down by the government, a move which was seen to have increased the tension in the area.¹²

Murder – act of terrorism on 2nd December 2014: 36 Christian workers of a quarry in Korome were killed after Islamic militants separated them from Muslims. Four of them were beheaded and the others were shot dead.¹³

Murder – act of terrorism on 13th January 2015: George Karidhimba Muriki, assistant pastor of Maximum Revival Ministries Church, was shot in Mombasa by gunmen believed to be part of Al-Shabaab.¹⁴

Murder – act of terrorism on 2nd April 2015: 147 students from Garisa University College were killed and more than 80 injured by Al-Shabaab militants. The Islamists, who claimed responsibility for the attack, seized 700 students and separated the Muslims from the Christians. Reports stated that the attackers freed those who identified as Muslims and killed those who described themselves as Christians. The siege ended the same day when all four of the attackers were killed. A reward was offered for the organiser of the attack. Five men were later admitted into custody in connection with the attack, which was the deadliest in Kenya since the 1998 bombing of the U.S. embassy.¹⁵

Murder – act of terrorism on 13 June 2015: Al-Shabaab fighters attacked a camp of the Kenyan Defence Forces, killing two soldiers. Later on, the Kenyan Army killed 11 of the attackers.¹⁶

Murder – act of terrorism on 21st December 2015: Two persons were killed in an attack against a bus from Nairobi to Mandera near Elwak town. Some Kenyan Muslims defied the orders of the attackers by refusing to be separated from the Christians. They protected the Christian passengers in the bus.¹⁷

Attack on 31st January 2016: Four Christians were killed – one of them beheaded – in the Kaisari area of Maporomoko village, in what was believed to be an attack carried out by Al-Shabaab.¹⁸

Prospects for freedom of religion

Kenyan citizens have been the target of numerous terrorist attacks in recent years, particularly since the country stepped up military interventions in Somalia against Al-Shabaab forces. The massive attack on the upmarket shopping mall of Westlands on 21st September 2013, in which at least 67 people were killed, has been seen by some as the Kenyan equivalent of the 9-11 bombings in the U.S. in 2001. Kenya's security agencies have mounted an on-going hunt for terrorists but to little or no avail. Kenyan citizens do not feel protected by their security forces. The

repeated failures, internal troubles and the general impunity of the security forces, together with what is felt as anti-Arab or anti-Somali feelings, are bringing about a trend of radicalisation among Muslim youth as well as a general loss of trust in the general population, and particularly among Muslim citizens.¹⁹

Some leaders close to the presidency have stated that Al-Shabaab “wants a religious war”.²⁰ Indeed the actions of Al-Shabaab do not augur any kind of improvement in the peaceful coexistence of religious communities. This is demonstrated by the militants’ repeated singling out of Christians for execution. The problem is compounded by the defiant response of the state – harassing, keeping suspects incommunicado for longer periods than allowed by law, assaulting homes and closing down mosques. Moreover, in its attempts to control the situation, the government has exercised a crackdown on a number of organisations working for human rights because of their affiliations with Islam. Poverty and corruption also play an important role in compounding this already complex scenario.

The solution to this difficult situation is the responsibility of the central government and local politicians. Unfortunately, nepotism, tribalism and corruption continue to play a role in Kenya’s politics, arguably impeding well-meant attempts to halt the spread of religious extremism.

Religious violence is a reality in Kenya today, and it is both Christians and Muslims who experience the consequences of this. Fear and apprehension is a reality in many parts of the country, with different communities living under stress. Barriers are built up involving physical or social walls between neighbouring groups. When bloody attacks occur, violent retaliation is often a very real temptation for many, especially in instances where the police and other security agencies fail to act. The last months have seen a relative improvement of the situation, and it is hoped that the government will grasp this opportunity to improve mechanisms that so far have failed to provide true solutions and create a better atmosphere of religious tolerance.

¹ This process was prompted by a couple of scandalous cases uncovered by media in which ruthless and unqualified pastors took advantage of the gullibility of some believers deceiving them and obtaining funds from them. Cf. *New rules seek to rein in errant religious leaders*, DAILY NATION (3rd January 2016) <http://www.nation.co.ke/news/Tough-laws-to-now-tame-rogue-clergy/-/1056/3019554/-/5b6uhn/-/index.html>

² *The Catholic Church in Kenya challenges new rules on religious bodies*, VATICAN RADIO (18th January 2016) http://en.radiovaticana.va/news/2016/01/18/kenyan_bishops_challenge_new_rules_on_religious_bodies/1202008

³ An analysis of the genesis, the nature and the controversies around Kadhis’ courts can be found in *The case of Kadhi courts in a secular Kenya*, PEACE AND LIFE INSTITUTE (17th April 2015) <http://life-peace.org/hab/the-case-of-kadhi-courts-in-a-secular-kenya/>

⁴ As an example of these kind of police actions: “In September 2015, the independent, governmental Kenya National Commission on Human Rights (KNCHR) released a detailed report documenting at least 4,000 arrests since April 2014, mostly of ethnic Somalis, many of whom suffered severe abuses in detention; hundreds were later released and the charges against them dropped for lack of evidence. Kenya’s Independent Oversight Policing Authority (IPOA) and international human rights groups reported that security officers deployed to Nairobi’s Eastleigh neighbourhood and elsewhere in the country beat scores of people; raided homes, buildings, and shops; and extorted massive sums of money. In Mombasa, three prominent radical Muslim clerics were assassinated, purportedly by Kenyan security officers. Also in Mombasa, mosques accused of radicalism were closed and subsequently re-opened a short time later.” *Annual report 2016*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, (April 2016) Page 216. Report available at <http://www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf>

⁵ Most serious is the accusation of governmental agencies getting involved in extra-judicial killings: “Kenyan security forces have also been implicated in targeted killings and disappearances of Muslims, including prominent clerics. The human rights organization Haki Africa alleged that Kenyan security agencies have killed at least 21 Muslim clerics in its counterterrorism campaign over the past three years. Human Rights Watch research also found credible evidence that the Anti-Terrorism Police Unit (ATPU), working with other security agencies, has forcibly disappeared or killed alleged terrorism suspects. These killings and enforced disappearances of suspects documented by human rights organizations have not been investigated and those responsible have not been held to account.” *Insult to Injury, the 2014 Lamu and Tana River Attacks and Kenya’s abusive response*, HUMAN RIGHTS WATCH (15 June 2015), <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response>

⁶ These attacks of June-July 2014 have a component of religious violence as it has been shown in the Human Rights Watch Report on the incidents: “The attackers targeted non-Muslims, witnesses said, killing those who could not

recite an Islamic creed to prove they were Muslims.” Cf. *Insult to Injury, the 2014 Lamu and Tana River Attacks and Kenya's abusive response*, HUMAN RIGHTS WATCH (15 June 2015), <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response> In practically all the actions, the attackers identified themselves as Al-Shabaab fighters. Cf. *Ibid.*

- ⁷ Cf. *Insult to Injury, the 2014 Lamu and Tana River Attacks and Kenya's abusive response*, HUMAN RIGHTS WATCH (15 June 2015), <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response>
Kenya attack: Mpeketoni near Lamu hit by Al-Shabab raid, BBC NEWS (16th June 2014) <http://www.bbc.com/news/world-africa-27862510>
- ⁸ *Insult to Injury, the 2014 Lamu and Tana River Attacks and Kenya's abusive response*, HUMAN RIGHTS WATCH (15 June 2015), <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response>
- ⁹ *Gunmen kill at least 29 in latest raids on Kenyan coast*, REUTERS (6th July 2014) <http://uk.reuters.com/article/uk-kenya-attacks-idUKKBN0FB05P20140706>
Insult to Injury, the 2014 Lamu and Tana River Attacks and Kenya's abusive response, HUMAN RIGHTS WATCH (15 June 2015), <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response>
- ¹⁰ *Kenyan Muslim Cleric Salim Bakari Mwarangi shot dead in Mombasa*, BBC NEWS (5th November 2014) <http://www.bbc.com/news/world-africa-29915602>
- ¹¹ *Deadly raids on mosques in Kenya's Mombasa*, AL JAZEERA NEWS (17th November 2014) <http://www.aljazeera.com/news/africa/2014/11/deadly-raids-mosques-kenya-mombasa-2014111715249473661.html>
- ¹² *Religious tension high after mosque closures in Mombasa, Kenya*, THE HUFFINGTON POST (22nd November 2014) http://www.huffingtonpost.com/2014/11/22/mombasa-mosque-closures_n_6199788.html
- ¹³ *Al-Shabaab massacres non-Muslim at Kenya quarry*, BBC NEWS (2nd December 2014) <http://www.bbc.com/news/world-africa-30288137>
- ¹⁴ *Pastor shot dead by extremist group in Kenya*, CHRISTIAN TODAY (13th January 2015) <http://www.christiantoday.com/article/pastor.shot.dead.by.extremist.group.in.kenya/45864.htm>
- ¹⁵ *Kenya attack: 147 dead in Garissa University assault*, BBC NEWS (3rd April 2015) <http://www.bbc.com/news/world-africa-32169080>
- ¹⁶ *Al-Shabaab attacks KDF camp in Lamu, 11 militia and 2 KDF soldiers killed*, KENYA TODAY (14th June 2015) <http://www.kenya-today.com/news/alshabaab-attacks-kdf-camp-in-lamu-11-militia-and-two-kdf-soldiers-killed>
- ¹⁷ *Muslims 'shielded Christians from Al-Shabaab'*, DAILY NATION (21st December 2015) <http://www.nation.co.ke/counties/Two-dead-3-injured-Mandera-bus-attack/-/1107872/3004522/-/12gsxkc/-/index.html?platform=hootsuite>
- ¹⁸ *Al-Shabaab kills Christians in raid on village in coastal Kenya*, Morning Star News (2nd February 2016) <http://morningstarnews.org/2016/02/al-shabaab-kills-christians-in-raid-on-village-in-coastal-kenya/>
- ¹⁹ *Muslims feel under siege in Kenya*, ALJAZEERA (13th November 2014) <http://www.aljazeera.com/indepth/opinion/2014/11/muslims-feel-under-siege-kenya-201411911737464684.html>
- ²⁰ *Kenya attack: Al-Shabab 'wants religious war'*, BBC NEWS, (22nd November 2014) <http://www.bbc.com/news/world-africa-30160199>