

Institute on Religion and Public Policy Report

Religious Freedom in Kenya

Executive Summary

(1) The Constitution of Kenya provides for freedom of religion, separates church and state, and guards its citizens from religious discrimination and unwelcome religious pressure. However, some Christian groups charge that the entrenchment of Islamic Shari' a law into the new Constitution will provide preferential treatment for Muslims while proponents seek to establish a legal system in accordance with their religious principles. There are a few reports of government sponsored discrimination, but the past three years have witnessed increased outbreaks of mob violence, including murder, against suspected "witches." Grievances by the Muslim community over the denial of passports and identity cards (among other issues) have been recently addressed by a Presidential committee, though it remains to be seen whether their response will be considered satisfactory.

The Institute on Religion and Public Policy

(2) Twice nominated for the Nobel Peace Prize, the Institute on Religion and Public Policy is an international, inter-religious non-profit organization dedicated to ensuring freedom of religion as the foundation for security, stability, and democracy. The Institute works globally to promote fundamental rights, and religious freedom in particular, with government policy-makers, religious leaders, business executives, academics, non-governmental organizations and others. The Institute encourages and assists in the effective and cooperative advancement of religious freedom throughout the world.

Legal and Policy Framework

(3) The Constitution of Kenya provides for the freedom of religion in public and private life, the separation of church and state, and the equal treatment of all religions under the law. The Constitution prohibits any discrimination on the basis of religion and, most directly in its Preamble, outlines a vision for a unified nation of diverse religious practices.

(4) Kenyan Constitutional law effectively prohibits forced religious conversion as no one may compel another to perform, observe, undergo, or adhere to a religious practice or rite that is either contrary to one's beliefs or involves the expression of an unheld belief. Additionally, a person cannot be compelled to disclose their religious beliefs. According to the Constitution, a person has the

right to refuse any act contrary to their religion or belief, including the taking of an oath. Even when in police custody, a person has the right to observe his or her religion and remains protected from treatment that violates his or her religion. Indeed, all public officers, state organs, and their employees have the responsibility to understand and deal with the special needs of religious communities.

(5) In one sense, the wall of separation between church and state is sharply drawn because the establishment of a state religion is prohibited. Additionally, political parties cannot be founded on a religious basis nor may they engage in religious propaganda. Religious instruction, observance, and celebration at state-aided institutions is permissible, but only if equitable and only if attendance is voluntary.

(6) However, the Constitution also establishes an Advisory Committee on the Presidential Power of Mercy that includes one representative from the Christian, Muslim, and Hindu religious groups in the country, but makes no mention of indigenous groups. New religious organizations must register with the Registrar of Societies, which reports to the Office of the Attorney General. Once registered, these organizations are allowed to apply for tax-exempt status, including exemption from duty on imported products.

(7) Since Kenyan independence in 1963, Islamic Shari' a law has been permitted in cases where all parties are Muslim and, by the 1967 Kadhis' Courts Act, jurisdiction has been limited to certain districts and strictly civil matters of personal status, marriage, divorce, or inheritance. There are a total of 17 Kadhis whose hierarchy is appointed by the Judicial Service Commission. The jurisdiction of the secular High Court is not limited by the Kadhis' Court Act nor is any subordinate court preceding it. In fact, the Act explicitly states that the Kadhis' courts are subordinate to the High Court and that the Chief Justice of the High Court may make rules of procedure and practice for the Kadhis' courts. Indeed, appeals from the Kadhis' courts go to the High Court. Some argue that the establishment of even these federally-funded Kadhis' courts gives Muslims preferential treatment and legitimizes Shari' a under federal law.

(8) As a new Constitution is presently being written, the entrenchment of the Kadhis' courts has become a contentious issue between Muslims and Christians. On one hand, supporters (such as the Council of Imams and Preachers of Kenya and the Supreme Council of Kenya Muslims) argue that an independent Shari' a court system is necessary for civil and criminal matters regardless of district as long as all parties are Muslim. This reform would also include an appeals court system for the Kadhis' courts, thus removing secular oversight. Other versions of reform also propose that the Chief Kadhi be based in Nairobi and that the Chief Kadhi be promoted to a High Court Judge.

(9) Opponents (such as the Anglican Bishop and the Evangelical Alliance of Kenya) cite the current Constitution's protections against religious discrimination and prohibition against preferential treatment to support the claim that it is unnecessary and inappropriate to place the Kadhis' courts into a new Constitution. Opponents also contend that special privileges for Muslims would inevitably be established by the creation of what they view as a parallel court system. Further, since the Kadhis' courts would be federally funded, opponents point out that they would also incur the expense of these courts without any privileges.

Official and Societal Abuse and Discrimination

(10) In 2008 there was an outbreak of mob violence against suspected "witches" and "wizards" in the Kisii Central district when at least eleven people, mostly elderly women, were brutally murdered and had their bodies and homes burned after being accused of "bewitching" local children. In 2007, the Kilifi District saw a disturbing trend in murders of elderly people suspected of witchcraft. In that case, officials explained that "the local Mijikenda community attributes misfortune to the work of wizards." Another mass murder of suspected witches was reported in early 2009. It is especially noteworthy that many traditional indigenous religions involve belief in practices commonly associated with witchcraft, including the Akamba and Masai. While the practice of witchcraft is illegal, it is often only prosecuted in conjunction with a more serious offense.

(11) Some Muslim leaders claim that the 2003 Suppression of Terrorism Bill and the establishment of the Anti-Terrorism Police Unit have resulted in religious discrimination against and the harassment of Muslims. This alleged discrimination has largely taken the form of denied passports and identity cards, but it also has resulted in the rendition of more than 100 suspected terrorists, including children, to Somalia. They subsequently returned to Kenya after 18 months with visible scars of torture.

(12) In 2007, responding to these grievances from the Muslim community, along with other complaints of improper barriers to education at Coast Province university, President Kibaki formed the Presidential Action Committee to Address Specific Concerns of the Muslim Community in Regard to Alleged Harassment and/or Discrimination. On July 22, 2009, the Committee issued its final report in which it outlined the accreditation of Islamic colleges, the permitting of schoolgirls to wear the hijab, the establishment of a High Court in the Northern Province to facilitate justice, and the establishment of a Ministry of State for Development of Northern Kenya to catalyze economic development. To deal with the unjust rendition of Muslims, President Kibaki has given joint authority to the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission. While human rights activists have called for the disbanding of the Anti-Terrorism Police Unit, there has been no such action.

U.S. Foreign Policy

(13) The United States and Kenya have maintained a pleasant relationship since Kenya's independence in 1963 and U.S. Embassy officials maintain contact with all religious communities. According to the U.S. Department of State, relations have become even closer since Kenya's transition to a democratic government in 2002. The United States has provided extensive military assistance to Kenya, including helping to establish a maritime security facility, the East Africa Counter-Terrorism Initiative, the Combined Joint Task Force-Horn of Africa, and the Anti-Terrorism Police Unit. While the Anti-Terrorism Police Unit has been the subject of controversy, a 2009 Pew Global Attitudes Project Poll reported that 80% of Kenyans favored the U.S. anti-terrorism efforts.

(14) Overall, the United States assists Kenya in five main objectives: improving healthcare, ending poverty, advancing democracy, fighting terrorism, and fostering peace. The U.S. Department of State continues to see Kenya as an important and willing partner to the U.S. Government's overall goal of advancing human rights and religious freedoms around the globe.

Conclusion

(15) Kenya holds a generally strong record on religious freedom. Though the Muslim community has brought grievances against the government, there appears to be a genuine effort on the part of the Presidential administration to correct these injustices and prevent their reoccurrence. The conflict between the Evangelical Christian community and the Muslim community over the entrenchment of Shari' a law into the new Constitution poses the most significant challenge to the Kenyan government in terms of religious freedom. This conflict will be a crucible for the Kenyan Government's ability to separate church and state while ensuring the rights of Muslim persons to observe their religious principles in the public administration of justice.