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## Country Profile: Republic of Kenya

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## I. Introduction

The Republic of Kenya is an East African country. It is bordered by the Indian Ocean in the South East; Tanzania to the South; Uganda to the West; Ethiopia to the North; South Sudan to the North West and Somalia to the North East. Kenya has about 43,013,341 in population and cover 580,367 sq km<sup>1</sup> of land and water space. The country has a diverse ethnic nationalities of more than 40 groups including the Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Kisii 6%, Meru 6%, other African 15%, non-African (Asian, European, and Arab) 1%<sup>2</sup>. It gained independence from Great Britain on 12 December 1963. Kenya is divided into seven provinces and one area viz Central, Coast, Eastern, Nairobi Area, North Eastern, Nyanza, Rift Valley, Western with Nairobi the administrative capital of the country. However the new constitution which was promulgated in August 2010 defined forty seven (47) counties as administrative units. Kenya operates a bilingual language system. While English remains an official language inherited from the British, Swahili is also an official language in Kenya. The country is also a multi-religious state with Christians, Muslims and indigenous traditionalist all forming core of Kenya religious diversity.

## II. Political History

The colonial history of Kenya is linked slightly to the Portuguese but more prominently to the British. Portuguese took control of the area in the early 1500s from the Arab seafarers, which was believed to have inhibited the areas for about 2 million years. However in 1890 the land became British protectorate and thereafter in 1920 became a crown colony by the name British East Africa signifying the influence and control of the British. The British colonial rule usurped control of Kenya and brought everything under the control and administration of West Minister in England. Following successive decades of colonial rule, nationalist struggle began around 1940s and intensified in the 1952 onwards following the formation and struggle of the Mau Mau nationalist movement and the subsequent militant struggles against the government that lasted till 1956. During the nationalist struggles, the British repressed forcefully and jailed some prominent nationalists including the first President Jomo Kenyatta.

After nearly eight decades of colonial rule and nationalist struggle Kenya gained their independence from Britain on 12 December 1963. At the birth of a new Kenya in 1963, Jomo Kenyatta, a nationalist leader during the independence struggle became the president of Kenya and his death in 1978 led to the Vice President Daniel Arap Moi to become president under the Kenya African National Union (KANU). Moi's regime was very ironic in terms of democracy and growth. While Moi's regime was characterised by dictatorship, Kenya under his reign became one of the most prosperous African nations especially through aid during the Cold War. Moi's reign was

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<sup>1</sup> Kenya, World Factbook. [www.cia.gov](http://www.cia.gov)

<sup>2</sup> [http://www.information.go.ke/index.php?option=com\\_content&task=view&id=54&Itemid=180](http://www.information.go.ke/index.php?option=com_content&task=view&id=54&Itemid=180)

characterised by sit-tight system of government and Kenya became a de-facto one party state from 1969 until 1982 when KANU party was made the official and only party in Kenya.

After years of domestic and international pressure, President Moi accepted a transition and organised election in 1992 and 1997, but the opposition were unable to dislodge Moi from power. The 2002 election proved to be the decisive period for change in power in Kenya. After Moi stepped aside, a multi-ethnic party National Rainbow Coalition (NARC), defeated KANU candidate Uhuru KENYATTA and Mwai KIBAKI assumed power as the President after December 2002 election. Despite the initial unity that helped the Rainbow coalition win the 2002 elections, the party split in 2005 over a constitutional review process leading to some factions of the Rainbow Coalition joining the KANU to form the Orange Democratic Movement (ODM), which defeated the government in the draft constitution in a popular referendum in November 2005. Kibaki's regime did little to ensure broad based participation and consensus, which culminated into an acrimonious election in 2007 that claimed lives and properties in Kenya. Attempt to win re-election by Kibaki brought nearly three months of post-election violence of unprecedented scale in Kenya that required the intervention of the African Union through the African Union Panel of Eminent African Personalities and the International community to resolve.

The resolution of the post electoral conflict of 2007/08 led to a power sharing deal that brought the ODM candidate Raila ODINGA into the government in a power sharing deal that restored the hitherto scraped position of Prime Minister and further through the African Union mediation Panel of Eminent African Personalities led by former United Nations Secretary General; Kofi Annan agreed on constitutional amendments and reforms that changed the power structure back and eliminated the position of Prime Minister whilst establishing a bicameral legislature in the next presidential election. The new constitution was adopted through a national referendum in August 2010, which is the framework upon which the 2013 election would be conducted.

### **III. Structure of Government**

Kenya is a multi-party Presidential democratic state comprising the Executive, Legislative and the Judiciary. The power sharing deal after the post electoral conflict of 2007/08 created the office of Prime Minister which was not properly defined.

#### **i. The Executive**

The chief executive is the President who is in-charge of the armed forces and also head of the government. The President exercises the executive powers and is assisted by the Vice President. However the power sharing deal of 2008 rested the day to day government business in the hands of the Prime Minister. Therefore, Executive function is shared between the President and Prime Minister while the Vice President supports the President. This arrangement which came into

force as a result of the power sharing deal will cease to exist after the March 2013 Election.

## **ii. The Legislature**

Kenya currently operates a unicameral legislature comprising 224 members of parliament; 210 members elected by popular vote to serve five-year terms, 12 nominated members appointed by the president but selected by the parties in proportion to their parliamentary vote and 2 ex-officio members. However the constitution of August 2010 has changed the Kenya Legislative organ to bicameral thus creating two houses; the National Assembly and the Senate. 290 member National Assembly amongst, which forty-seven shall be women and twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90. The Senate consist forty-seven (47)members each elected by the registered voters of the counties and sixteen (16) women members who shall be nominated by political parties according to their proportion of members of the Senate and additional two (2) members (male and female) representing the Youths, two (2) representing persons with disability. The parliament members will serve five year terms. The new legislative structure will come into effect after the March 2013 Elections.

## **iii. The Judiciary**

Kenya Judiciary and legal system borrows from a mixture of British common law, Islamic law and customary law and supported by judicial review in the high court. Kenya judiciary is primarily made up of the courts and tribunal. The current judicial system derives from Article 159 of the constitution. It created two separate three tier court systems. The first tier are Supreme Court, Court of Appeals, and High Court and the second tier consisting of Magistrate courts, Kadhis courts (sentences according to Muslim law), and Courts Martial. The country's judicial system also recognises the tribunal.

The Supreme Court is established under the Article 163 of the Constitution and comprises of the Chief Justice, who is the president of the Court, the Deputy Chief Justice, who is the deputy to the Chief Justice and the vice-president of the court and five other judges<sup>3</sup>. The Supreme Court is deemed to be properly constituted in Kenya when it composed of five judges with original jurisdiction over cases and matter relating to electoral dispute for the position of the President as contained in the Article 140 and subject to the determination of clauses 4 and 5 of Article 163 of the constitution. It also has the right to receive appeal from Court of Appeal and any other tribunal as contained in the constitution.

The Appeal Court is established under Article 164 of the Constitution and consists of no of Judges not fewer the 12 and has jurisdiction to hear appeals from the High Court and any other court or tribunal.

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<sup>3</sup> See <http://www.judiciary.go.ke/portal/the-supreme-court.html>

The High Court is established under Article 165 and it consists of a number of judges to be prescribed by an Act of Parliament. It has unlimited original jurisdiction in civil and criminal matter and to determine question of Bill of Rights and fundamental freedom and can hear appeal emanating from a tribunal and other matter as dully assigned to the Court by the Constitution<sup>4</sup>.

## **IV. Legal Framework for Elections**

### **i. The Electoral System**

Kenya operates a secret ballot system. Under the Kenyan constitution, the President is elected for a five-year term (eligible for a second term). To become the President, a candidate must be a citizen and at least thirty five years of age at the time of contesting for an election. The candidate must be nominated and supported by at least one thousand registered voters. Beside the age and citizenship criteria, a presidential candidate has to be registered in a constituency as a voter in election to the National Assembly. The President is thus elected directly by the electorate through a general election and must win an absolute majority as well as 25% of the valid votes cast in at least five of the eight provinces. The constitution also allows for both party and independent Presidential candidates. The Vice President is appointed by the President from among the Ministers who are elected members of the National Assembly. The National Assembly members are also elected directly during general elections. However when vacancy exist, a bye-election is organised to fill the seat.

### **ii. The Legal Framework**

The legal framework governing elections in Kenya cut across several norms and frameworks. Primarily, the framework for conducting elections in Kenya is governed by the Elections Act NO 24 of 2011 and the subsequent supplementary Acts 160; Registrations of Voters Regulations and supplementary Acts 161; General Regulations of 2 November 2012 respectively. Beside the Elections Acts and the supplementary Acts, the Political Parties Act NO 11 of 2011 equally stipulated registrations and regulations governing the character and activities of political parties. The conduct of election in Kenya also draws substantially from the 2010 constitution that laid the general conditions, terms of office and criteria for various electoral officers. It also covers areas as rights of voters and candidates.

## **V. Election Management**

The management and conduct of election in Kenya rests with the Independent Electoral and Boundaries Commission (IEBC) of Kenya. IEBC was created under Article 88 of the Constitution. The Act provides for the

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<sup>4</sup> Ibid

operations, powers, responsibilities and functions of the Commission to supervise elections and referenda at County and National government levels (Art. 3). In order to ensure the conduct of elections and referenda as enshrined in the constitution and the IEBC Act, the Commission also has the responsibility to compile credible and clean electoral register, conduct voter education in partnership with relevant and interested partners and register candidates for election. The Commission also supervises the conduct of parties and candidates during elections drawing its power from the Political Party Act. The IEBC also oversees the delimitation of constituencies and wards and the process of party nominations. It also has the responsibility to resolve electoral dispute relating to nomination but excluding election petitions and disputes subsequent to the declaration of election results (Art 4). Additionally IEBC perform the following functions

- Observation, Monitoring and Evaluation of Elections
- Regulation of political expenses
- Development and enforcement of Code of Conduct
- Monitoring compliance to all Electoral Laws
- Investigation and Prosecution of Electoral Offences
- Decision and use of appropriate technology for the conduct of the election.

The independency of the Commission lies in its access to a consolidated fund under the Independent Electoral and Boundaries Commission Fund, which is allocated to the commission for the discharge of its duties through the Act of Parliament. The Commission also reserves the rights to own property and can receive grants, gifts donations or other endowments.

The Commission is composed of a chairperson and eight other members appointed in accordance with Article 250(4) of the Constitution. The Chairperson of the Commission must be qualified to hold office as a judge of the Supreme Court. A person is qualified to be appointed as a commissioner if the person is:

- A Kenyan Citizen
- Holds University Degree with experience in
- Electoral Field
- Management
- Finance
- Governance
- Public Administration
- Law

The members of the commission are appointed on a six year non-renewal term and serve on full time basis. They shall not hold any other job at the time of the appointment as members of the Commission. The current chairperson of the Commission is Ahmed Issack Hassan

## **VI. Voter and Candidate Registration**

### **i. Voter Registration**

To be registered as a voter a person must be an adult citizen (18 and above) of Kenya with sound mind and must not have been convicted of an electoral offense within the last five years. The responsibility for voter

registration lies with the IEBC whose role also ensures that voter education is conducted throughout the country prior to registration. The Constitution of Kenya demands that the Commission shall do everything within its powers to ensure that no eligible and qualified citizen is denied the right to vote or be voted for. The division of voter registration area is solely the responsibility of the Independent Electoral and Boundary Commission.

The voter registration exercise for the March 2013 election started on 18 November and last for a month period. A total of **14.3 million** voters were registered at the end of the one month registration and IEBC has subsequently opened the voter register for public inspection and possible correction.

## ii. Registration of Candidates and Parties

The Kenya constitution stipulates the age limit for candidate for various elective positions. A candidate must be thirty five (35) and above to become eligible to contest for the position of the President and must be a national of Kenya. The requirement for political parties to field candidate for election is simply to be registered as a political party and fulfil all conditions as contained in Article 91 of the 2010 constitution.

## VII. Candidates that Contested the 4 March 2013

The IEBC on 30 January 2013 cleared eight candidates to run for the office of the President. They are:

First Name	Party
Rila Odinga	ODM
Uhuru Kenyatta	TNA
Mohamed Abduba Dida	ARC
Paul Muite	Safina
Musalia Mudavadi	UDF
Peter Kenneth	KNC
James ole Kiyaiipi	RBK
Karua	Narc Kenya

## VIII. Election Outcome and Political Developments

The Independent Electoral and Boundary Commission of Kenya on 9 March, 2013 announced that Jubilee's Uhuru Kenya won an outright majority with 50.7% of the vote in more than 25% of the constituencies. However the closest contender Cord's Raila Odinga has filed a petition challenging result of the election and accusing the IEBC of malpractices.