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**UNITED NATIONS, HUMAN RIGHTS,
FREEDOM OF RELIGION OR BELIEF**

*The Tandem Project is a UN NGO in Special Consultative Status with the
Economic and Social Council of the United Nations*

Separation of Religion or Belief and State

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Universal Periodic Review - Kenya

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posted on this webpage*

Date of consideration: Thursday 6 May 2010, 9:00 - 12:00 am

National report ¹ : [A](#) | [C](#) | [E](#) | [E](#) | [R](#) | [S](#)

Compilation of UN information ² : [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Summary of stakeholders' information ³ : [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)



Questions submitted in advance : [E](#) only

Questions submitted in advance - Addendum 1 : [E](#) only

Questions submitted in advance - Addendum 2 : [E](#) only

Questions submitted in advance - Addendum 3 : [E](#) only

Outcome of the review :

Report of the Working group : [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

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**NATIONAL REPORT & WORKING GROUP – RECOMMENDATIONS
RELATING TO FREEDOM OF RELIGION OR BELIEF**

National Report: c) Freedom of movement, religion and association 39. Freedom of movement and travel, religion, and association are all constitutionally protected and respected. There are sporadic allegations of intimidation and government interference in these areas, but they are not the norm. NGOs (non-government organizations) are also given access to the country, and allowed to investigate human rights abuses without restriction.

Working Group Report: Conclusions and Recommendations 1-128 enjoy the support of Kenya. There were no direct references relating to freedom of religion or belief. Paragraphs 51-57 refer to elimination of Female Genital Mutilation without direct reference to role of religion or belief.

UN SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF

<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx>

There have been no Country Visits to **Kenya** by the UN Special Rapporteur on Freedom of Religion or Belief

CONSTITUTION OF KENYA

http://en.wikipedia.org/wiki/Constitution_of_Kenya

Mainstream Christian leaders in Kenya object to the constitution

1. The Proposed Constitution of Kenya in Sec 26(4) reiterates and reaffirms the current Kenyan penal code by stating: Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law. However, the church insists that the weak drafting of the clause, especially the last two parts, could allow for the same clause to be used to enact laws or justify procurement of on-demand abortion.^[15]
2. The Proposed Constitution of Kenya in Sec 24(4) exempts a section of society that profess Islam as their religion from broad sections of the Bill of Rights that relate with Personal Status, Marriage, Divorce and Inheritance.
3. The Proposed Constitution of Kenya in Sec 170 Provides for the Establishment of [Kadhi Courts](#).
4. The Proposed Constitution of Kenya in Sec 170 (2)a Discriminates against all other sectors of society by limiting the Kadhi's Job opportunity only to persons that Profess the Muslim Religion. The church leaders also insist that for the clarity of the separation of religion and state doctrine and equality of religion, the Kadhi courts should not be in the constitution.

A three Judge Bench of the High Court has since in a landmark ruling of a case filed six year ago, declared the inclusion of the Kadhi court illegal and against the principles of non-discrimination, separation of religion and state and constitutionalism.^[16] A section of the Muslim leadership has vowed to retaliate the ruling by seeking their own judicial declaration that the teaching of Christian religious Education in public school curriculum is illegal.^[17] The education curriculum includes religious education syllabus for both Christianity and Islam.

DISCUSSION

The Tandem Project selects articles, issues and insights from a variety of sources for national and local open public discussion of ideas and dialogue on human rights and freedom of religion or belief. Preamble to the December 2011 UN General Assembly Resolution 66/167:

Recognizes that the open public debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels can be among the best protections against religious intolerance, and can play a positive role in strengthening democracy and combating religious hatred, and convinced that a continuing dialogue on these issues can help overcome existing misperceptions.

Excerpts from U.S. State Department 2010 International Religious Freedom Report, Kenya

“The constitution and the 1967 Kadhis' Courts Act establish a venue for the adjudication of certain types of civil cases based on Islamic law. The constitution provides for Kadhi courts in situations where "all the parties profess the Muslim religion" in suits addressing "questions of Muslim law relating to personal status, marriage, divorce, or inheritance." However, the secular high court has jurisdiction over civil or criminal proceedings, including those in the Kadhi courts; any decision can be directly appealed to the high court. In May 2010 the constitutional court ruled that the inclusion of Kadhi courts in the constitution and the use of state funds in support of the Kadhi court system, is illegal. The attorney general immediately appealed the ruling, and the case continued at the end of the reporting period.”

“Some Christian groups argued that the constitution's inclusion of the federally funded Kadhi courts gave preferential treatment to Muslims. The National Council of Churches Kenya filed a 2004 lawsuit contesting the legality of the Kadhi courts, which was upheld by the constitutional court in a May 2010 ruling. The ruling was immediately appealed; the case continued at the end of the reporting period.”

“Some Muslim leaders charged that the government was hostile toward Muslims. According to Muslim leaders, authorities rigorously scrutinized the identification cards of persons with Muslim surnames, particularly ethnic Somalis, and sometimes required additional documentation of citizenship, such as birth certificates of parents and even grandparents. The government stated that the heightened scrutiny was an attempt to deter illegal immigration rather than to discriminate against ethnic Somalis or their religion; however, there were reports that the government arbitrarily arrested Muslim men as terrorist suspects. For example, in September 2009 the Muslim Human Rights Forum (MHRF) alleged that five Muslims suspected by the government of involvement in terrorist activity were abducted by the Anti-Terrorist

Police Unit and subsequently disappeared; however, the MHRF provided no further proof of the alleged abductions.”

“Muslim leaders also accused the government of using the pretense of fighting terrorism to arrest and deport Muslim scholars to curtail Muslim proselytizing. In January 2010 the government deported Sheikh Abdullah al Faisal, a Jamaican-born Muslim cleric, for preaching sermons advocating violence.”

BACKGROUND HUMAN RIGHTS & FREEDOM OF RELIGION OR BELIEF

General Comment 22 on Article 18 of the International Covenant on Civil and Political Rights

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument)

The 1981 UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief http://www.tandemproject.com/program/81_dec.htm.

UN History on Freedom of Religion or Belief: <http://www.tandemproject.com/program/history.htm>

List of Religion or Belief by Countries: http://en.wikipedia.org/wiki/List_of_religious_populations

A CULTURE OF TOLERANCE AND PEACE BASED ON RELIGION OR BELIEF

On December 19, 2011 resolution A/RES/66/167 was **adopted by consensus** by the United Nations General Assembly, after several years of contentious issues between the European Union (EU), Organization of the Islamic Conference (OIC), and other UN Member States. A/RES/66/167 is a hopeful beginning for resolution of these issues.

[United Nations Resolution – a Culture of Tolerance & Peace Based on Religion or Belief](#)

Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief

Introduced by Pakistan on behalf of the Organization of the Islamic Conference (OIC) adopted by consensus without a vote. - Resolution A/HRC/16/18/L.38, Geneva, March 24 2011

Recognizes that the open public debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels can be among the best protections against religious intolerance, and can play a positive role in strengthening democracy and combating religious hatred, and convinced that a continuing dialogue on these issues can help overcome existing misperceptions.

Calls for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs, and decides to convene a panel discussion on this issue at its seventeenth session within existing resources.

Pakistan (on behalf of the OIC) Mr. Zamir Akram [\[English\]](#) 10 minutes **Saudi Arabia** Mr. Ahmed Suleiman Ibrahim Alaquil [\[English\]](#) [\[Arabic\]](#) 1 minute **Norway** Ms. Beate Stirø [\[English\]](#) 2 minutes **United States of America** Ms. Eileen Chamberlain Donahoe [\[English\]](#) 5 minutes **Hungary (on behalf of the European Union)** Mr. András Dékány [\[English\]](#) 3 minutes

[UN Human Rights Council Panel Statements, Resolution A-HRC-16-18, 2010 General Assembly Third Committee Actions](#)

Introduced by United Arab Emirates on behalf of the Organization of the Islamic Conference (OIC) adopted by consensus without a vote – Resolution A/C.3/66/L.47, New York, 15 November 2011

[UN Third Committee Press Release - Resolution L.47 Adopted by Consensus](#)

http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/66/L.47/Rev.1

The Resolution identified as A/RES/66/167 by the General Assembly welcomes the establishment of the “King Abdullah Bin Abdulaziz International Centre for Interreligious and Intercultural dialogue in Vienna, initiated by King Abdullah of Saudi Arabia on the basis of purposes and principles enshrined in the Universal Declaration of Human Rights, and acknowledging the important role that this Centre is expected to play as a platform for the enhancement of interreligious and intercultural dialogue.” - King Abdulaziz Dialogue Center – Vienna <http://www.kacnd.org/eng/>

Surely one of the best hopes for humankind is to embrace a culture in which religions and other beliefs accept one another, in which wars and violence are not tolerated in the name of an exclusive right to truth, in which children are raised to solve conflicts with mediation, compassion and understanding.

ISSUES & CHALLENGES

Anders Behring Breivik is the ethnic Norwegian perpetrator of the most horrific acts of terrorism in Norway since WW II. In an opinion page article in the New York Times, 31 July 2011, by Thomas Hegghammer, Senior Research Fellow of the Norwegian Defense Research Establishment, Breivik is quoted as saying he is “extremely proud of his Odinistic/Norse heritage and while he is Christian admits ‘I’m not a very religious person.’ “While Breivik’s violent acts are exceptional, his anti-Islamic views are not. His goal is to reverse what he views as the Islamization of Western Europe.”

[Assimilation’s Failure, Terrorism’s Rise](#)

[Discussion at Augsburg with Kjell-Magne Bondevik](#)

FREEDOM OF RELIGION OR BELIEF

U.S. State Department 2010 International Religious Freedom Report, Kenya

International Religious Freedom Report 2010

November 17, 2010

The constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion.

The government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the government during the reporting period; however, some Muslim leaders continued to charge that the government is hostile toward Muslims.

While there were few reports of societal abuse or discrimination based on religious affiliation, belief, or practice, some Muslims perceived themselves as treated as second-class citizens in the predominantly Christian country. Christian leaders also complained of perceived discrimination in the historically Muslim areas of Coast and North Eastern Province.

The U.S. government discusses religious freedom with the government as part of its overall policy to promote human rights.

Section I. Religious Demography

The country has an area of 225,000 square miles and a population of 39 million. Approximately 80 percent of the population is Christian and 10 percent is Muslim. Groups that constitute less than 1 percent of the population include Hindus, Sikhs, and Baha'is. The remainder follows various indigenous religions. Protestants are 58 percent of Christians, with 42 percent Roman Catholics.

North Eastern Province, where the population is predominantly ethnic Somali, is home to 15 percent of the Muslim population. Sixty percent of the Muslim population lives in eastern Coast Province, making up 50 percent of the population there. Western areas of Coast Province are mostly Christian. The upper part of Eastern Province is home to 10 percent of the country's Muslims, mostly ethnic Borana but also some Somalis, where they are the majority religious group. Apart from a small ethnic Somali Muslim population in Nairobi, the rest of the country is largely Christian.

Upper Eastern, North Eastern, and Coast provinces, which together are home to approximately 75 percent of the Muslim population, were less developed than other parts of the country.

Section II. Status of Government Respect for Religious Freedom

Legal Policy/Framework

The constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion.

The constitution and the 1967 Kadhis' Courts Act establish a venue for the adjudication of certain types of civil cases based on Islamic law. The constitution provides for Kadhi courts in situations where "all the parties profess the Muslim religion" in suits addressing "questions of Muslim law relating to personal status, marriage, divorce, or inheritance." However, the secular high court has jurisdiction over civil or criminal proceedings, including those in the Kadhi courts; any decision can be directly appealed to the high court. In May 2010 the constitutional court ruled that the inclusion of Kadhi courts in the constitution and the use of state funds in support of the Kadhi court system, is illegal. The attorney general immediately appealed the ruling, and the case continued at the end of the reporting period.

Some Christian groups argued that the constitution's inclusion of the federally funded Kadhi courts gave preferential treatment to Muslims. The National Council of Churches Kenya filed a 2004 lawsuit contesting the legality of the Kadhi courts, which was upheld by the constitutional court in a May 2010 ruling. The ruling was immediately appealed; the case continued at the end of the reporting period.

The government observes the following religious holidays as national holidays: Good Friday, Easter Monday, Eid al-Fitr, Christmas, and Diwali. Although Eid al-Adha was observed as a national holiday before the 2007 election, the government subsequently did not take the necessary steps to make the holiday permanent.

The Ministry of Information and Communications routinely approved regional radio and television broadcast licenses for Christian and Muslim groups. The ministry has not granted the petition of the Catholic Church for a national frequency; however, the ministry has not granted a national frequency to any media organization except the government owned Kenya Broadcasting Corporation

The government required new religious organizations to register with the Registrar of Societies, which reported to the Office of the Attorney General. The government allowed indigenous religious organizations to register, although many chose not to do so. After registration, religious organizations may apply for tax exempt status, including exemption from paying duty on imported goods. Religious organizations generally received equal treatment from the government; however, some small splinter groups found it difficult to register when the government viewed them as an offshoot of a larger religious organization. The government outlawed and refused to register the Mungiki sect as a quasireligious criminal organization.

Practicing witchcraft with intent to cause fear, annoyance, or injury in mind, person, or property is a criminal offense under colonial era laws; however, persons generally were prosecuted for this offense only in conjunction with some other charge, such as murder, or to preempt vigilante action against them.

Restrictions on Religious Freedom

The government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the government during the reporting period.

Some Muslim leaders charged that the government was hostile toward Muslims. According to Muslim leaders, authorities rigorously scrutinized the identification cards of persons with Muslim surnames, particularly ethnic

Somalis, and sometimes required additional documentation of citizenship, such as birth certificates of parents and even grandparents. The government stated that the heightened scrutiny was an attempt to deter illegal immigration rather than to discriminate against ethnic Somalis or their religion; however, there were reports that the government arbitrarily arrested Muslim men as terrorist suspects. For example, in September 2009 the Muslim Human Rights Forum (MHRF) alleged that five Muslims suspected by the government of involvement in terrorist activity were abducted by the Anti-Terrorist Police Unit and subsequently disappeared; however, the MHRF provided no further proof of the alleged abductions.

Muslim leaders also accused the government of using the pretense of fighting terrorism to arrest and deport Muslim scholars to curtail Muslim proselytizing. In January 2010 the government deported Sheikh Abdullah al Faisal, a Jamaican-born Muslim cleric, for preaching sermons advocating violence.

In July 2009 President Kibaki received a report prepared by the Presidential Action Committee to Address Specific Concerns of the Muslim Community in Regard to Alleged Harassment and/or Discrimination in the Application/Enforcement of the Law. The report supported the claims of discrimination in the issuance of identity documents and passports to Muslims and found that counterterrorism operations violated existing national laws. The report also found that Muslims were unlawfully deported to foreign countries, Muslim communities did not have fair access for obtaining land title deeds, and that the Kadhi courts were inadequately funded.

Abuses of Religious Freedom

In January 2010 demonstrations by Muslims protesting the detention of Sheikh Abdullah al Faisal turned violent when protesters clashed with onlookers and street merchants. Police fired upon the protesters, killing two, while one police officer was shot and wounded by protesters. The government charged Al-Amin Kimathi, chairman of the MHRF, with incitement to violence for his role in organizing the protests.

The government continued to restrict the religious activities of Mungiki. In March 2009 unidentified gunmen, reportedly acting on orders from the commissioner of police, shot and killed Oscar Kamau King'ara, the executive director of the local nongovernmental organization (NGO) Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and Paul Oulu, OFFLACK's program coordinator. On the day of the killings, government spokesman Alfred Mutua accused OFFLACK of being a front for Mungiki, the country's largest criminal organization, and criticized OFFLACK's role in providing information on extrajudicial killings of Mungiki members to the UN special rapporteur. In 2008 OFFLACK reported that police were linked with the continued disappearance and deaths of suspected Mungiki members. Police threatened and intimidated witnesses to the killings, and four witnesses went into exile. The prime minister requested international assistance to investigate the killings, but the minister for foreign affairs subsequently rejected such assistance, and no credible investigation had been conducted at the end of the reporting period.

Local Christian organizations reported that individuals who converted to Christianity from Islam, particularly individuals of Somali ethnic origin, were often threatened with violence or death by Muslim religious leaders and their families. These threats prompted some individuals to go into hiding.

Muslim human rights activists continued to call for the disbandment of the Anti-Terrorism Prevention Unit, alleging that it was engaging in a systematic campaign of harassment that specifically targeted Muslims, including extortion of businessmen and theft during raids.

There were no reports of religious prisoners or detainees in the country, although the government detained youth suspected of being members of the Mungiki sect. These individuals were detained for suspected criminal activity and not religious belief.

Forced Religious Conversion

There were no reports of forced religious conversion.

Section III. Status of Societal Respect for Religious Freedom

There were few reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Interfaith marriage between members of Christian denominations is common, and interfaith prayer services occurred frequently. Interfaith marriage between Muslims and Christians, although less frequent, was also socially acceptable; however, some spouses were asked to convert to Islam as a precondition for the marriage. Some Muslims perceived themselves to be treated as second-class citizens in a predominantly Christian country and believed that the government and business communities deliberately impeded development in predominantly Muslim areas.

There were multiple reports from Kisii District and in Nyanza and Western provinces of abuse and killings of persons suspected of practicing "witchcraft." (Witchcraft in this context refers to a range of traditional practices that may have a religious component.) Local authorities sometimes responded by making arrests after killings of suspected witches or by placing those suspected of witchcraft in protective custody to prevent lynching. Government officials routinely denounced vigilantism against suspected witches but also claimed to initiate crackdowns against those practicing traditional medicine. Victims of these crimes were often elderly; perpetrators were often youth and were sometimes related to the victims. Many of these incidents, which perpetrators claimed were aimed at suppressing the practice of witchcraft, appeared to have been efforts to pursue other agendas, such as obtaining access to property owned by the victims or settling family disputes.

The Tandem Project a non-governmental organization (NGO) founded in 1986 to build understanding, tolerance, and respect for diversity of religion or belief, and to prevent discrimination in matters relating to freedom of religion or belief. The Tandem Project has sponsored multiple conferences, curricula, reference material and programs on Article 18 of the International Covenant on Civil and Political Rights- Everyone shall have the right to freedom of thought, conscience and religion – and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

