

Religious rights: Christians and Muslims in Kenya

by [David A. Hoekema](#) in the [June 15, 2010](#) issue

There is an intersection in central Nairobi known as “five churches corner” (one of the buildings is actually a synagogue). But then nearly every urban intersection in Kenya features a church or two. From my flat on Daystar University’s city campus each Sunday morning, and on weekday evenings as well, my wife and I can hear the singing of two or three nearby congregations, which mix Western hymns, Kiswahili praise songs and contemporary Christian choruses.

Nearly 90 percent of Kenyans are Christian, according to 2003 figures. Religious language permeates politics, the media and daily conversation. Kenya’s proposed new constitution opens with an acknowledgment of “the supremacy of the Almighty God of all creation.”

Yet religious freedom has also long been protected in Kenya. Muslims constitute 7 percent of the population, concentrated in the coastal strip, where the Swahili people have placed mosques in the centers of their towns for a thousand years. Muslims are a growing presence in all of Kenya’s major cities as well. Several times each day we hear the muezzin’s call to prayer from a neighborhood mosque.

For the most part, the Christian and Islamic communities have lived in peace since they were abruptly joined together when the nation won independence in 1963. But the writing of a new constitution threatens to pit one religious community against the other.

Memories are vivid of the paroxysm of ethnic violence that followed disputed elections in December 2007. Observers agree that fraud and ballot-stuffing occurred and that neither the incumbent president, Mwai Kibaki, nor the challenger, Raila Odinga, had clean hands. Riots and mob attacks claimed the lives of more than 1,000 Kenyans in the months that followed. But no one has been arrested or charged for inciting the violence that raged through Nairobi’s sprawling slums and engulfed several rural areas where ethnic tensions were already high.

In authorizing indictments for crimes against humanity, the International Criminal Court in the Hague sent a clear message to the Kenyan administration and judiciary: since you lack the courage to bring the perpetrators to justice, the international community must step in.

Out of the chaos in early 2008 emerged a tenuous political compromise that ended the killing spree: a “grand coalition” yielding the presidency to Kibaki and creating the new post of prime minister for Odinga. It is a face-off more than a coalition, with elements of farce, as when the PM sacked two cabinet ministers over one of many recent corruption scandals, then saw the two reinstated a day later by the president.

The grand coalition has come together in support of the proposed constitution that would replace a document drawn up in haste in the United Kingdom in 1962. Previous drafts have been put forward and rejected since the 1980s. The current effort emerged from a carefully planned process involving broad public consultation at early stages, review by an independent “committee of experts” and parliamentary approval. Still to come, possibly in early August, is a nationwide referendum.

The draft includes what would be Kenya’s bill of rights, extending beyond personal liberty and equal treatment to guarantee health care, adequate housing and clean water to all and free basic education and nutrition to children. The assertion of these rights falls under a general proviso that says such rights will be implemented as resources are available. The proposal presents a daunting challenge in a nation where nearly half of the people lack access to clean water and 60 percent of births occur at home without a skilled attendant on hand.

Rather than adopt a British-style system in which the prime minister serves at the pleasure of Parliament, the drafters opted for an American-style presidency, with up to two five-year terms. Current presidential powers would diminish, and the potential for cronyism would diminish as judicial appointments and land ownership oversight become the responsibility of a newly created upper house of Parliament and an independent land commission.

These changes have provoked far less debate, however, than two clauses concerning abortion and Muslim courts. Kenya’s current abortion law is an 1897 British statute declaring it a felony to seek to induce miscarriage through “poison or other noxious things” or “force of any kind” except to save the mother’s life. The

draft constitution makes two changes: it states explicitly that human life deserving legal protection begins with conception; and it allows for exceptions on grounds of maternal health, not just maternal survival.

More than 300,000 abortions are performed each year in Kenya, and 20,000 women and girls are hospitalized for complications from botched procedures. Under the new constitution, most abortions would still be illegal; it is unlikely that their numbers would decrease.

The role of Muslim courts, or “kadhis’ courts” (the Swahili rendering of *qa-di-*, an Arabic term for judge), was enshrined in the 1962 constitution as a condition for Kenya’s annexation of the coastal strip. These courts were authorized to resolve matters of marriage, divorce and inheritance among Muslims. The draft constitution both narrows and expands their role: the courts may hear a case only when all parties agree to accept their ruling (which was not previously required), but they will no longer be restricted to the coastal region (Muslim communities elsewhere in Kenya would be permitted to create such tribunals).

In both cases, the draft constitution holds closely to current law. Yet a vociferous Vote No campaign has been launched by leaders of the National Council of Churches of Kenya and of the Catholic Church. The rhetoric employed is often alarmist and exaggerated.

At a recent church service, I heard a pastor characterize Christians who support recognition of the kadhis’ courts as agents of “the Muslim agenda,” which is viewed as an effort to push Christians to the margins. Immigration and higher birthrates threaten a “new colonization” by Islam, she added, while “we are encouraged to abort our Christian children.”

At an April press conference, two dozen church leaders declared their intent to campaign against the constitution because of the provisions related to abortion and kadhis’ courts. In early May, just after the draft was formally published, church leaders shared the stage with 14 members of Parliament and a cabinet minister at a Vote No rally in a Nairobi park. The head of the National Council of Churches of Kenya declared that its member churches would use their “machinery and structures” to urge voters to reject the draft. The minister for higher education, breaking ranks with his government, declared that “we shall stand on the side of people who want a fair and just constitution for our motherland, and I am confident

God will give us victory” (*Daily Nation*, May 8).

Catholic and Anglican leaders declined to take part in the rally, but they have firmly opposed the draft in public statements. Positions hardened after the breakdown of a consulting committee in which government and church representatives had sought a compromise. One day after the Kibaki government reiterated its opposition to amending the draft after it had been approved by Parliament, all the church representatives resigned from the committee.

“The government side was unable to provide any satisfactory solutions to address the concerns of the members of the church,” said a Catholic bishop who served on the committee. And in response to newspaper reports that the Anglican archbishop favored the draft as a tactical necessity, Kenya’s 27 Anglican bishops issued a public statement of opposition (*Ecumenical News International*, April 29).

A number of Catholic and Anglican priests have criticized the excesses of the Vote No campaign without taking an explicit position on the draft, and according to reports, three Anglican bishops have changed their minds. They have been joined by some leaders of African indigenous churches, including the bishop of the African Church of the Holy Spirit. A statement by the Great Commissioned Holy Christ Church (the *Roho* church, a Swahili word for “spirit”) went even further and urged its members to vote yes.

The retired Anglican archbishop has given his support to the draft and a former attorney general announced that he had withheld his tithe on a recent Sunday, protesting plans to use church resources to fund the Vote No campaign.

In March, the executive council of the Seventh-day Adventist Church of Kenya issued a statement that reviewed the history and importance of kadhis’ courts to Kenya’s Muslims, who are “people of value to God and therefore to us,” and urged Kenyans to consider the importance of religious freedom and minority rights in deciding how to vote in the referendum.

For the most part, Kenya’s Islamic community has laid low, but its leaders purchased a full-page ad in March; it reviewed the history of the constitutional provision for kadhis’ courts and asked all voters to read the draft carefully and decide whether it deserves their support.

Earlier stages of Kenya's constitutional review process prefigure the current debate, though battle lines are drawn in different places. Paul Gifford recounts in his recent book, *Christianity, Politics and Public Life in Kenya*, that the initial impetus for constitutional review in the 1990s came from church leaders, who spoke out courageously against the Moi regime's brutal suppression of its opponents and urged the adoption of a constitution that would protect human rights and authorize the formation of political parties.

When a draft was finally published and put to a vote in 2005, the mainline churches were initially supportive. But then evangelical and independent church leaders criticized the provisions concerning abortion, Muslim courts and a perceived openness to homosexuality. That opposition was widely seen as a major factor in voters' rejection of the draft. Whether the churches gained or lost credibility as a result of this episode is disputed. But the divisions that were evident then—established churches with a record of political engagement pushing for change, newer and more populist churches that had previously kept out of politics leading the opposition—are much less clear in 2010 than in 2005.

If the referendum vote goes forward on August 4, as planned, it may provide a revealing test of the influence of church leaders over public opinion. Despite the churches' campaign, a recent opinion poll found two-thirds of Kenyans ready to vote yes.

At times in recent African history, the churches have worked miracles of reconciliation and peacemaking, as during South Africa's transition to multiracial democracy. In Kenya, many church leaders now seem more interested in stirring up division than in seeking unity.