

# **KENYA 2019 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Kenya is a republic with three branches of government: an executive branch, led by a directly elected president; a bicameral parliament consisting of the Senate and National Assembly; and a judiciary. In the 2017 general elections, the second under the 2010 constitution, citizens cast ballots for president, deputy president, and parliamentarians, as well as county governors and legislators. International and domestic observers judged the elections generally credible, although some civil society groups and the opposition alleged there were irregularities. The Independent Electoral and Boundaries Commission (IEBC) declared Jubilee Coalition Party candidate Uhuru Kenyatta had won re-election as president over opposition candidate Raila Odinga. The Supreme Court subsequently annulled the results for president and deputy president, citing irregularities, and the court ordered a new vote for president and deputy president that the opposition boycotted. The IEBC declared President Kenyatta winner of the new vote, and the Supreme Court upheld the results. Kenya held three by-elections in April after the courts nullified the 2017 election results in those constituencies due to irregularities.

The National Police Service (NPS) maintains internal security and reports to the Ministry of Interior and Coordination of National Government. The National Intelligence Service collects intelligence internally as well as externally and reports directly to the president. The Kenya Defense Forces report to the Ministry of Defense and are responsible for external security but have some domestic security responsibilities, including border security and supporting civilian organizations in the maintenance of order, including postdisaster response. Civilian authorities at times did not maintain effective control over the security forces.

Significant human rights issues included: unlawful killings, including extrajudicial killings by the government or on behalf of the government and by al-Shabaab; forced disappearances by the government or on behalf of the government; torture by the government; harsh and life threatening prison conditions; arbitrary arrest and detention by the government; arbitrary interference with privacy; censorship; widespread crimes of violence against women and girls, which the government took inadequate action to prevent or prosecute; widespread acts of government corruption; and the existence and use of laws criminalizing consensual same-sex sexual conduct between adults.

The governmental Independent Policing Oversight Authority (IPOA), established to provide civilian oversight of police, investigated numerous cases of misconduct. Impunity at all levels of government continued to be a serious problem. The government took limited and uneven steps to address cases of alleged unlawful killings by security force members, although IPOA continued to refer cases of police misconduct to the Office of the Director of Public Prosecution (ODPP) for prosecution. Impunity in cases of alleged corruption was also common.

On January 15, five al-Shabaab terrorists conducted a complex terrorist attack at the Dusit D2 Hotel in downtown Nairobi, killing 21 persons including one American. Al-Shabaab also staged deadly attacks and guerilla-style raids on isolated communities along the border with Somalia, targeting both security forces and civilians. Human rights groups alleged security forces committed abuses, including extrajudicial killings, while conducting counterterror operations.

## **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were numerous reports the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. As of early December, the nongovernmental organization (NGO) Independent Medico-Legal Unit (IMLU) stated police had killed at least 91 persons during the year. Human rights groups also noted the government failed to provide compensation and redress to families of victims.

Some groups alleged authorities significantly underestimated the number of extrajudicial killings by security forces, including due to underreporting of such killings in informal settlements, particularly in dense urban areas. In July, Human Rights Watch (HRW) reported police killed no fewer than 21 men and boys in Nairobi's Dandora and Mathare neighborhoods since August 2018. Activists in these neighborhoods believed the actual number killed was considerably higher. Police alleged these persons were involved in criminal activities but did not provide justification for using lethal force. For example HRW investigated two separate incidents involving the killings of seven men and boys in April in Mathare. In both cases witnesses said the victims were shot either while kneeling in front of police or while in police custody. In the cases HRW documented, police did not report the killings or initiate the process for an inquest as required by law.

Between October 2018 and September, IPOA received 119 complaints regarding deaths resulting from police actions, compared with 78 in the prior year, and 47 complaints regarding deaths while in police custody or on police premises.

In July the Defenders Coalition noted human rights activists continued to face increased attacks in a climate of impunity. Its report cited the death of activist Caroline Mwatha, a founder of a social justice organization. A police investigation found Mwatha died after an attempted abortion, but many of the circumstances of her death remained suspicious, according to some human rights activists. Four individuals were charged with her murder, and the case remained pending at year's end.

NGOs and the autonomous governmental entity Kenyan National Commission on Human Rights (KNCHR) reported in 2017 authorities killed between 35 and 100 persons and injured many others in opposition strongholds following the August 2017 elections (see also section 1.f. on the Baby Pendo case).

Media reports and NGOs attributed many of the human rights abuses to counterterrorism operations in Nairobi and the northeast counties of Mandera, Garissa, and Wajir bordering Somalia, as well as along the coast. In August, Kenya Defense Forces personnel killed Abdullahi Kasim Yusuf, allegedly after he entered a Garissa military camp. The death led to local protests, and human rights defenders in the area called for an investigation, alleging other abuses by security forces in the region and little accountability for abuses.

In March police found six bodies in Tsavo West National Park, with injuries indicating assault, torture, and suffocation. The NGO HAKI Africa joined the postmortem with families of victims of enforced disappearances. In August, HAKI Africa stated 15 unidentified bodies had been discovered in the park over the last three years and called on the government to investigate.

Al-Shabaab terrorists continued to conduct deadly attacks (see Executive Summary).

Impunity remained a serious problem (see section 1.d.). In a few cases, authorities charged and convicted police for committing killings. Since its inception in 2012, IPOA has investigated 67 cases involving killings by police, in which 41 officers were charged with murder and six officers have been convicted. Following an IPOA investigation, in February the High Court sentenced a senior police officer to

death for fatally beating a detainee with a metal bar in 2013.

Authorities sometimes attributed the failure to investigate a case of police corruption or unlawful killing to the failure of victims to file official complaints. Victims can file complaints at regional police stations, police headquarters through the Internal Affairs Unit (IAU), and through the IPOA website and hotline. During the year the IAU launched a new hotline to report abuses. Sometimes police turned away victims who sought to file complaints at police stations where alleged police misconduct originated, directing them instead to other area stations. This created a deterrent effect on reporting complaints against police. NGOs documented threats against police officers who attempted to investigate criminal allegations against other police officers.

Police failed to prevent vigilante violence in numerous instances but in other cases played a protective role (see section 6).

## **b. Disappearance**

Observers and NGOs alleged members of the security forces were culpable of forced disappearances. The Missing Voices website, founded by a group of NGOs to track police killings and disappearances, as of October documented 71 cases of suspected enforced disappearances and extrajudicial killings in informal settlements. Human rights groups noted many unlawful killings first materialized as enforced disappearances. For example, in August, Esther Mwikali, a human rights defender who championed land rights in Muthini Village, was found dead two days after she disappeared. The NGO Muslims for Human Rights (MUHURI) reported 13 disappearances in Garissa County between January and March.

In August, NGOs commemorated the International Day of Victims of Enforced Disappearances and called on the government to enact a comprehensive law on enforced disappearances and provide a platform for the public to voice concerns on the abuse of police powers.

Media also reported on families on the coast and in northeastern counties searching for relatives who disappeared following arrest and of authorities holding individuals incommunicado for interrogation for several weeks or longer (see section 1.d.).

In January the High Court dismissed the petitions of the families of a South Sudanese human rights lawyer, Dong Samuel Luak, and a South Sudanese

opposition activist, Aggrey Idri, that charged police had not adequately investigated the kidnapping of the two men on the streets of Nairobi in 2017. The court ruled police had acted “prudently and within the law.” Human rights organizations believed it was likely police colluded with the South Sudanese government in the kidnapping. The UN Panel of Experts’ report cited evidence South Sudan’s National Security Service executed Dong and Aggrey shortly after their detention in South Sudan.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

In 2017 President Kenyatta approved the Prevention of Torture Act, which provides a basis to prosecute torture. The law provides a platform to apply articles of the 2010 constitution, including: Article 25 on freedom from torture and cruel, inhuman, or degrading treatment or punishment; Article 28 on respect and protection of human dignity; and Article 29 on freedom and security of the person. The law brings all state agencies and officials under one rather than multiple legislative mandates. Additionally the law provides protections to vulnerable witnesses and officials who refuse to obey illegal orders that would lead to torture. The government, however, had not instituted the regulations required to implement fully the Prevention of Torture Act.

NGOs continued to receive reports of torture and other inhuman or degrading treatment by government forces. As of August, IMLU had documented 12 cases of torture, most of which were allegedly perpetrated by police.

Police reportedly used torture and violence during interrogations as well as to punish both pretrial detainees and convicted prisoners. According to human rights NGOs, physical battery, bondage in painful positions, and electric shock were the most common methods of torture used by police. In June an inmate serving a life sentence at Naivasha Maximum Prison died after prison wardens allegedly beat and tortured him for not properly waiting in line for food. In September a court ordered medical examinations for suspects involved in a bank robbery following claims they had been tortured during police interrogations.

In October, MUHURI stated it planned to take legal action against police officers who allegedly assaulted residents of Lamu East while searching for a missing police officer. The group stated it was investigating acts of brutality against civilians, including small children, the majority of whom police allegedly assaulted in their homes.

A range of human rights organizations and media reported police committed torture and indiscriminate violence with impunity. For example there were numerous press and NGO reports of police brutality against protesters and unarmed citizens (see section 3). In June several health workers in Kirinyaga alleged they were beaten and kicked by riot police dispersing protests against poor working terms and conditions.

A KNCHR report released in November 2018 documented 201 cases of sexual assault in nine counties emanating from the postelection violence, primarily during periods of increased civil unrest. The study found police and other security officers committed 55 percent of the documented sexual assaults (see section 6). The report indicated KNCHR turned over its findings to IPOA for official inquiry. IPOA completed its investigations, but no information was available on the outcome of the cases.

### **Prison and Detention Center Conditions**

Human rights organizations reported prison, detention center, and police station conditions were harsh due to overcrowding, food and water shortages, and inadequate sanitary conditions and medical care. A Directorate of Prisons Health Services in the Kenya Prisons Service (PS) oversees health and hygiene issues.

Physical Conditions: According to the PS, as of September 2018 there were 51,130 persons held in prisons with a designated capacity of 26,837. More than 90 percent of prisoners were men. According to its website, the PS includes 118 correction facilities, 115 of which are for adult offenders and three for minors. While the PS noted seven prisons have been constructed since 2012, serious overcrowding was the norm, with an average prisoner population of nearly 200 percent capacity, swollen by a large pretrial detainee population, and some prisons held up to 400 percent of capacity. Authorities continued a “decongestion” program that entailed releasing petty offenders and encouraging the judiciary to increase use of the Community Service Orders program in its sentencing.

The PS reported 131 deaths between January and September 2018, many attributable to illness caused or exacerbated by overcrowding, lack of access to clean water, poor hygiene, and inadequate medical care. According to a 2017 study by the National Council on the Administration of Justice (NCAJ), sanitary facilities were inadequate, and tuberculosis remained a serious problem at eight prisons.

In 2017 the NCAJ reported that, despite the legal requirement to separate male prisoners from women and children, the mixing of genders and ages remained a problem in some police station detention facilities and court holding cells. Of the facilities inspected by IPOA between October 2018 and September, only 71.2 percent had separate cells for adult female offenders, 8.5 percent had separate cells for female juvenile offenders, and 16.1 percent had separate cells for male juvenile offenders. Sexual abuse of female prisoners was a problem. Human rights groups reported police routinely engaged in nonconsensual sex with female prisoners, and many female inmates resorted to prostitution to obtain necessities, such as sanitary items and underwear, not provided by the Prisons Service.

Authorities generally separated minors from adults except during the initial detention period at police stations, when authorities often held adults and minors of both sexes in a single cell. Minors often mixed with the general prison population during lunch and exercise periods, according to the Coalition for Constitutional Interpretation, a domestic NGO. Prison officials reported that, because there were few correction facilities for minors, authorities often had to transport them long distances to serve their sentences, spending nights at police stations under varying conditions along the way.

The law allows children to stay with their inmate mothers in certain circumstances until age four or until arrangements for their care outside the facilities are concluded, whichever is earlier.

Prisoners generally received three meals a day, but portions were inadequate. The PS stated in August 2018 it no longer served a penal diet for punishment. Water shortages, a problem both inside and outside of prison, continued. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks.

Administration: Mechanisms for prisoners to report abuse and other concerns continued due to collaboration between the PS and the KNCHR to monitor human rights standards in prisons and detention facilities. By law the Commission on the Administration of Justice serves as ombudsman on government administration of prisons. It is to receive and treat as confidential correspondence from inmates and recommend remedies to address their concerns, including those pertaining to prison living conditions and administration. Many government-designated human rights officers lacked necessary training, and some prisons did not have a human rights officer.

Noncustodial community service programs and the release of some petty offenders alleviated prison overcrowding to a degree. The total prison population did not decrease substantially, however, because of unaffordable bail and bond terms for pretrial detainees, high national crime rates, overuse of custodial sentencing, and a high number of death-row and life-imprisoned inmates. Legal rights NGOs and prison officials reported overuse of the charge of “robbery with violence” that may carry a life sentence, even when violence or threats to violence were insignificant. Some petty offenders consequently received disproportionately heavy sentences.

Prison officials sometimes denied prisoners and detainees the right to contact relatives or lawyers. Family members who wanted to visit prisoners commonly reported bureaucratic obstacles that generally required a bribe to resolve. According to the Legal Resources Foundation, prisoners had reasonable access to legal counsel and other official visitors, although there was insufficient space in many prisons and jails to meet with visitors in private and conduct confidential conversations.

Independent Monitoring: The government permitted prison visits by independent nongovernmental observers.

#### **d. Arbitrary Arrest or Detention**

The law prohibits arrest or detention without a court order unless there are reasonable grounds for believing a suspect has committed or is about to commit a criminal offense. Police, however, arrested and detained persons arbitrarily, accused them of more severe crimes than they had committed, or accused them of a crime to mask underlying police abuses.

Poor casework, incompetence, and corruption undermined successful prosecutions. Police also frequently failed to enter detainees into custody records, making it difficult to locate them. Dispute resolution at police stations resolved a significant number of crimes, but authorities did not report or record them, according to human rights organizations.

Witness harassment and fear of retaliation severely inhibited the investigation and prosecution of major crimes. The Witness Protection Agency was underfunded, doubts about its independence were widespread, and the Supreme Court cited its weaknesses as a serious judicial shortcoming. It cooperated closely with IPOA and other investigative bodies.

Human rights activists reported that at times police officers in charge of taking complaints at the local level were the same ones who committed abuses. Police officials resisted investigations and jailed some human rights activists for publicly registering complaints against government abuses.

Research by a leading legal advocacy and human rights NGO found police used disciplinary transfers of officers to hide their identities and frustrate investigations into their alleged crimes. Many media and civil society investigations into police abuse ended after authorities transferred officers, and police failed to provide any information about their identities or whereabouts.

### **Arrest Procedures and Treatment of Detainees**

The law provides police with broad powers of arrest. Police officers may make arrests without a warrant if they suspect a crime occurred, is happening, or is imminent. Victims' rights NGOs reported that in some cases authorities required victims to pay bribes and to provide transportation for police to a suspect's location to execute a legal arrest warrant.

The constitution's bill of rights provides significant legal protections, including provisions requiring arrested persons to be arraigned, charged, informed of the reason for continuing their detention, or released within 24 hours of their arrest as well as provisions requiring the issuance of a writ of habeas corpus to allow a court to determine the lawfulness of detention. In many cases, however, authorities did not follow the prescribed time limits. According to the attorney general in a response to a questionnaire from the Office of the UN High Commissioner for Human Rights in 2013, "an unexplained violation of a constitutional right will normally result in an acquittal." While authorities in many cases released detainees held longer than the prescribed period, some cases did not result in an acquittal, and authorities provided no compensation for time served in pretrial detention.

Police used excessive force in some cases when making arrests. IPOA investigated allegations of excessive force that led to serious injuries, but few cases led to convictions.

The constitution establishes the right of suspects to bail unless there are compelling reasons militating against release. There is a functioning bail system, and all suspects, including those accused of capital offenses, are eligible for bail. Many

suspects remained in jail for months pending trial because of their inability to post bail. Due to overcrowding in prisons, courts rarely denied bail to individuals who could pay it, even when the circumstances warranted denial. For example NGOs that worked with victims of sexual assault complained authorities granted bail to suspects even in cases in which there was evidence they posed a continuing threat to victims.

Although the law provides pretrial detainees with the right to access family members and attorneys, family members of detainees frequently complained authorities permitted access only upon payment of bribes. When detainees could afford counsel, police generally permitted access to attorneys.

Arbitrary Arrest: Police arbitrarily arrested and detained persons. Victims of arbitrary arrest were generally poor young men, particularly those living in informal settlements. Human rights organizations complained security forces made widespread arbitrary arrests and detentions during counterterrorism operations. These arrests in particular targeted ethnic Somalis and Kenyan Muslims.

In December 2018 the High Court ordered six police officers to pay four million shillings (\$39,300) to a lawyer who was arrested and detained illegally, and 3.8 million shillings (\$37,300) to 19 other persons who were arrested and detained at the Ongata Rongai police station in 2016 while conducting normal business.

Pretrial Detention: Lengthy pretrial detention was a serious problem and contributed significantly to prison overcrowding. Authorities held some defendants in pretrial detention longer than the statutory maximum term of imprisonment for the crime with which they were charged. The government claimed the average time spent in pretrial detention was 14 days, but there were reports many detainees spent two to three years in prison before their trials were completed. Police from the arresting locale are responsible for bringing detainees from prison to court when hearings are scheduled but often failed to do so, forcing detainees to wait for the next hearing of their cases (see section 1.e.).

Detainee's Ability to Challenge Lawfulness of Detention before a Court: The law entitles persons arrested or detained to challenge in court the legal basis or arbitrary nature of their detention, but that right was not always protected.

#### **e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, although the government did not always respect judicial impartiality. The government sometimes undermined the independence of the judiciary.

Reform of the judiciary continued. In August 2018 the director of public prosecution (DPP) directed anticorruption authorities to investigate the judiciary over allegations of misuse and loss of court funds. On August 28, 2018, authorities arrested the deputy chief justice for suspected corruption. She faced charges of abuse of office for personal gain and undermining public integrity in the judiciary. The High Court dismissed the case against her in May after ruling police failed to collect evidence properly. The DPP appealed the decision and filed a petition to remove her from office. Authorities generally respected court orders, and the outcomes of trials did not appear to be predetermined.

In September the DPP charged a magistrate with alleged involvement in the disappearance of narcotics exhibits worth 30 million shillings (\$295,000). The Kenya Magistrates and Judges Association filed a lawsuit, arguing the filing of charges violated judicial independence. The High Court dismissed the charges in December.

The Judicial Service Commission (JSC)--a constitutionally mandated oversight body intended to insulate the judiciary from political pressure--provides the president with a list of nominees for judicial appointment. The president selects one of the nominees for parliamentary approval. The president appoints the chief justice and appellate and High Court judges through this process. The commission publicly reviews judicial appointees.

In February the judiciary issued the *State of the Judiciary and the Administration of Justice Report for 2017-18*, which cited more than 60,000 cases pending in court between five and 10 years. The judiciary improved its case clearance rate during the year and substantially reduced case backlog by increasing the number of judges sitting daily on the bench. In August the JSC recommended the appointment of 30 judges, of whom 20 were to serve in the Environment and Land Courts and the other 10 in the Environment and Labor Relations Court. This recruitment would increase the number of judges assigned to the specialized courts from 45 to 75.

The constitution gives the judiciary authority to review appointments and decisions made by other branches of government. Parliament generally adhered to judicial decisions, with some exceptions.

The law provides for *qadi* courts that adjudicate Muslim law on marriage, divorce, and inheritance among Muslims. There are no other traditional courts. The national courts use the traditional law of an ethnic group as a guide in personal matters, as long as it does not conflict with statutory law.

### **Trial Procedures**

The law provides for the right to a fair public trial, although vulnerable individuals may give some testimony in closed session; the independent judiciary generally enforced this right. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence in their defense. The law also provides defendants the right to receive prompt and detailed information on the charges against them, with free interpretation if necessary, including during trials; to be tried without undue delay; to have access to government-held evidence; to be represented by an attorney of their choice or to have one appointed at the state's expense if substantial injustice would otherwise result; and not to be compelled to testify or confess guilt, and if convicted, to appeal to or apply for review by a higher court. Authorities generally respected these rights, although they did not always promptly inform persons of the charges against them. In January 2018 Chief Justice David Maraga launched the National Committee on Criminal Justice Reforms to coordinate justice sector reform. As part of these reforms, the NCAJ continued efforts to disseminate *Active Case Management Guidelines* to court users committees and planned to hold at least nine regional workshops in 2019 and 2020.

The NCAJ and ODPP continued efforts to disseminate speedy case resolution techniques to reduce case backlog and ease prison congestion. The ODPP developed plea-bargaining and diversion guidelines and continued to educate stakeholders on the role of speedy resolution mechanisms in enhancing efficiency. In March the ODPP implemented the second phase of the All for Justice Remand Review Program in Lamu. The project's objective was to implement speedy case resolution mechanisms, including plea bargaining and diversion.

Trial delays sometimes resulted because witnesses failed to present themselves, judges cancelled trial dates without notice, witnesses were not protected, prosecutors did not have police files, or legal counsel failed to appear. Authorities generally respected a defendant's right to consult with an attorney in a timely manner. Defendants generally had adequate time to prepare a defense if they were capable of doing so. The government and courts generally respected these rights. There was no government-sponsored public defenders service, and courts

continued to try the vast majority of defendants without representation because they could not afford legal counsel.

The National Legal Aid Service facilitates access to justice, with the ultimate goal of providing pro bono services for indigent defendants who cannot afford legal representation. Other pro bono legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers, an international NGO, provided it.

The ODPP's *All for Justice Remand Review 2018 Report* established that only 5 percent of persons in pretrial detention could afford the services of a lawyer. To address this gap, Kenya Prisons Services collaborated with various paralegal organizations such as Kituo Cha Sheria, Legal Resources Foundation Trust, and Africa Prisons Project to establish justice centers within prisons to facilitate delivery of legal aid. Pretrial detainees also received instructions on how to self-represent in court. Government-established special committees, which included paralegals and prison officials, also served to increase prisoners' access to the judicial system. NGOs noted there was no single system providing "primary justice" to prisoners and detainees, who instead relied on a patchwork of services largely provided by NGOs.

Discovery laws are not clearly defined, handicapping defense lawyers. Implementation of a High Court ruling requiring provision of written statements to the defense before trial remained inconsistent. Defense lawyers often did not have access to government-held evidence before a trial. There were reports the government sometimes invoked the Official Secrets Act as a basis for withholding evidence.

Defendants may appeal a verdict to the High Court and ultimately to the Court of Appeal and, for some matters, to the Supreme Court.

The ODPP significantly increased the number of trained prosecutors during the year. According to the ODPP, as of June there were an estimated 717 state prosecutors, compared with 200 in 2013, as well as 402 support staff. The expansion of the prosecution service reduced delays in court proceedings. The ODPP suffered high staff turnover, largely due to the judiciary offering better pay. To fill the gap, the office increased recruiting efforts. In August the ODPP commenced the process to hire an additional 142 prosecutors by the end of the year. To address the high turnover, the Salary and Remuneration Commission approved a salary increase (approximately 40 percent) for prosecutors.

## **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

Individuals may use the civil court system to seek damages for violations of human rights and may appeal decisions to the Supreme Court as well as to the African Court of Justice and Human Rights.

According to human rights NGOs, bribes, extortion, and political considerations influenced the outcomes in some civil cases. Court fees for filing and hearing civil cases effectively barred many from access to the courts. NGOs reported the government has been slow to comply with court orders requiring compensation for victims of torture and other police abuses in some cases. Groups also reported victims relied on civil society organizations for rehabilitative services.

## **Property Restitution**

There is no established system for restitution or compensation for those declared to be squatters and ordered to vacate land. Both private and communal clashes were common because of land disputes. The government used forced eviction and demolition to regain what it claimed was illegally occupied public land.

In 2017 the African Union Court on Human and Peoples' Rights ruled in favor of the indigenous Ogiek community evicted in 2009 from the Mau Forest. The court ruled government actions had violated seven articles of the African Charter on Human and People's Rights, to which the country is a signatory. The ruling gave the government until November 2017 to address the violations and provide a report. The government task force established to implement the decision completed a progress report in October 2018 that has not been publicly released. In November the government extended the taskforce's mandate until January 24, 2020. The court-imposed remedies have not been implemented to date.

The government proceeded with two rounds of evictions in August 2018 and again between October and November this year to remove those settled "illegally" in Mau Forest and restore the natural environment for the forest. The government also publicly stated land titles had been irregularly and unlawfully issued and were not valid. A group of settlers filed a petition to stop the evictions, but the

Environment and Land Court in Narok dismissed the case, ruling the court did not have the appropriate jurisdiction.

In June members of an organization working to protect the land rights of the Ogiek people living in the Mau Forest received death threats. In October a Kenya Forest Service officer was shot with an arrow, allegedly by members of the local community. According to human rights activists, the evictions during the year occurred without injuries or deaths. The reported number of evictees ranges from 4,000 to 10,000 households. Human rights groups and some politicians called for the government to offer compensation or resettlement assistance.

In 2018 members of the Sengwer community protested against their 2017 eviction from Embobut Forest in Elgeyo Marakwet County and called on the government to recognize them as a tribe. The government reportedly has new plans to reclaim Embobut Forest as well as Marmanet Forest in Laikipia County. In October members of the Sengwer Community walked to Nairobi to deliver a petition to President Kenyatta to stop evictions from the forest.

#### **f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions, except “to promote public benefit,” but authorities sometimes infringed on citizens’ privacy rights. The law permits police to enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants in the course of large-scale security sweeps to apprehend suspected criminals or to seize property believed stolen. For example, in 2017, according to multiple press and NGO reports, police conducted house-to-house operations in Kisumu County in connection with protests in the wake of the August 2017 election. In one of the homes, police allegedly beat a husband, wife, and their six-month-old daughter (known as “Baby Pendo”). The KNCHR confirmed the infant died of her injuries in September 2017. In November 2017 IPOA completed its investigation into the infant’s death and referred the case to the ODPP for potential prosecution. The ODPP declined to prosecute due to lack of evidence identifying the culpable officers. IPOA then referred the case to a magistrate for a public inquest. In February the magistrate found five senior police officers culpable in the death of the infant and forwarded the inquest results to the ODPP to press charges. She also ordered the DPP to investigate 31 other police officers who may have been involved in the infant’s death.

Human rights organizations reported police officers raided homes in informal settlements in Nairobi and communities in the coast region in search of suspected terrorists and weapons. The organizations documented numerous cases in which plainclothes police officers searched residences without a warrant, and household goods were confiscated when residents were unable to provide receipts of purchase on demand.

The government launched a National Integrated Identity Management System during the year through the Statute Law (Miscellaneous Amendments) Act No. 18 of 2018. This act requires citizens to register their personal details, including biometrics and DNA, in order to receive a unique identifier required to access public services. Civil society organizations called on the government to safeguard the collection and sharing of this information. In November the government enacted a new data protection law outlining guidelines for data handling and sharing by the government and the private sector.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Expression, Including for the Press**

The law provides for freedom of expression, including for the press, but the government sometimes restricted this right.

Freedom of Expression: In 2017 a branch of the High Court declared unconstitutional Section 132 of the penal code that criminalized “undermining the authority of a public officer,” ruling the provision violated the fundamental right of freedom of expression. Other provisions of the constitution and the law prohibiting hate speech and incitement to violence remained in force. The Judicial Service Commission, however, reported many cases were withdrawn due to failure of witnesses to appear in court or to facilitate mediation. Cases that did proceed often failed to meet evidentiary requirements. Authorities arrested members of parliament (MPs) on incitement or hate speech charges. In June authorities arrested MP Charles Kanyi for incitement to violence after Kanyi allegedly threatened foreigners operating businesses in Nairobi. In September the Milimani chief magistrate acquitted four serving and former MPs of hate speech charges related to statements made in 2016.

Press and Media, Including Online Media: The government occasionally interpreted laws to restrict press freedom, and officials occasionally accused the

international media of publishing stories and engaging in activities that could incite violence. Two laws give the government oversight of media by creating a complaints tribunal with expansive authority, including the power to revoke journalists' credentials and levy debilitating fines. The government was media's largest source of advertising revenue, and regularly used this as a lever to influence media owners. Most news media continued to cover a wide variety of political and social issues, and most newspapers published opinion pieces criticizing the government.

Sixteen other laws restrict media operations and place restrictions on freedom of the press. In 2016 the president signed into law the Access to Information Act, which media freedom advocates lauded as progress in government transparency. The government, however, has not issued regulations required to implement the act fully, and civil society organizations reported government departments failed in some instances to disclose information.

Violence and Harassment: Journalists alleged security forces or supporters of politicians at the national and county levels sometimes harassed and physically intimidated them. The government at times failed to investigate allegations of harassment, threats, and physical attacks on members of the media.

In February, Kenya Forest Service rangers assaulted four journalists while they were covering a ceremony in Naro Moru Forest Station. The cabinet secretary for the environment ordered the suspension of five officers involved in the assault.

In June, two Kenya Television Network (KTN) journalists were attacked and seriously injured by students and faculty of St. Stephen's Girls Secondary School in Machakos County. The school's principal was charged with assault and inciting the students to attack the journalists. The principal allegedly opposed the journalists investigating a case of a missing student.

Censorship or Content Restrictions: The mainstream media were generally independent, but there were reports by journalists government officials pressured them to avoid certain topics and stories and intimidated them if officials judged they had already published or broadcast stories too critical of the government. There were also reports journalists avoided covering issues or writing stories they believed their editors would reject due to direct or indirect government pressure.

Journalists practiced self-censorship to avoid conflict with the government on sensitive subjects, such as the first family or assets owned by the Kenyatta family.

Libel/Slander Laws: In 2017 a branch of the High Court declared unconstitutional a portion of the law that defined the offense of criminal defamation. Libel and slander remain civil offenses.

National Security: The government cited national or public security as grounds to suppress views it considered politically embarrassing.

Police arrested and detained for 14 days prominent social media blogger Robert Alai in June for posting pictures of police officers who were killed in a terror attack. Despite taking down the pictures as requested by police, he was arraigned in court and charged with two counts of treachery and disclosure of information in relation to terrorist activities. He was released on bail.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. Authorities, however, monitored websites for violations of hate speech laws. According to the Freedom on the Net report, a number of citizens have been arrested for alleged hate speech or criticizing the government. In May 2018 President Kenyatta signed into law the Computer Misuse and Cybercrime Act, which was to come into force on May 30. Later in May 2018 the High Court suspended enforcement of 26 sections of the new law pending further hearings. The court based the suspension on complaints that the law was overly vague and subject to misuse, that it criminalized defamation, and that it failed to include intent requirements in key provisions and exceptions for public use and whistleblowers. The hearings remained pending as of the year's end.

By law mobile telephone service providers may block mass messages they judge would incite violence. The National Cohesion and Integration Commission tracked bloggers and social media users accused of spreading hate speech. Leading up to the 2017 election season, online hate speech, disinformation, and surveillance were reported, and the Communications Authority of Kenya issued regulations that could limit disinformation online.

Privacy International reported the National Intelligence Service has direct access to the country's telecommunications networks that allows for the interception of communications data. Furthermore, Privacy International reported the NPS also

has surveillance powers, established in the National Police Service Act and the National Police Service Commission Act of 2011. Freedom House additionally reported authorities have used various types of surveillance technologies to monitor citizens. During the year the Citizen Lab published findings on the presence of Israeli-based NSO Group mobile phone spyware on two local internet service providers, Safaricom and SimbaNet.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events. A 2016 law provides for communities to receive compensation or royalties for the use of their cultural heritage.

### **b. Freedoms of Peaceful Assembly and Association**

#### **Freedom of Peaceful Assembly**

Although the constitution and law provide for freedom of assembly, the government sometimes restricted this right. Police routinely denied requests for meetings filed by human rights activists, and authorities dispersed persons attending meetings that had not been prohibited beforehand. Organizers must notify local police in advance of public meetings, which may proceed unless police notify organizers otherwise. By law authorities may prohibit gatherings only if there is another previously scheduled meeting at the same time and venue or if there is a perceived specific security threat.

Police used excessive force at times to disperse demonstrators. The local press reported on multiple occasions that police used tear gas to disperse demonstrators or crowds of various types. On April 30, police used tear gas to disperse protesters who had gathered at Uhuru Park in Nairobi to protest widespread corruption. The security officer in charge of Nairobi central police station cautioned protesters that “there will be no marching outside Uhuru Park.”

On June 19, two human rights activists were arrested while taking part in a peaceful demonstration to express solidarity with the people of Sudan. Police using tear gas also dispersed hundreds of peaceful demonstrators. The arrests occurred despite the fact the activists had notified the central police station of their intention to protest and requested security. Two months earlier, activist Beatrice Waithera was arrested while participating in an anticorruption protest in Nairobi.

In November videos posted on social media showed police officers kicking and assaulting a student protesting at Jomo Kenyatta University of Agriculture and Technology. The cabinet secretary for the ministry of interior immediately condemned the incident. Four officers were suspended pending the outcomes of the investigations by IPOA and the IAU.

On July 9, local police dispersed a demonstration outside the South Sudan Embassy in Nairobi, even though organizers stated they had provided proper notification. Authorities charged three demonstrators with unlawful assembly, and they were released on bail. They reported to Amnesty International police beat them while in custody.

In March the government tabled a draft amendment to the Public Order Act (2014) that would impose criminal and civil liability on anyone who, while participating in an assembly, causes grievous harm or damage to property or loss of earnings. Civil society groups criticized the draft bill for imposing undue restrictions on the right to peaceful assembly.

### **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected this right, but there were reports authorities arbitrarily denied this right in some cases. A 2018 statement by the UN Office of the High Commissioner for Human Rights noted reprisals faced by numerous human rights defenders and communities that raised human rights concerns. Reprisals reportedly took the form of intimidation, termination of employment, beatings, and arrests and threats of malicious prosecution. There were reports of restrictions on workers' freedom of association, including in the agribusiness and public sectors. Trade unionists reported workers dismissed for joining trade unions or for demanding respect for their labor rights.

In December 2018 a report by the Defenders Coalition stated a majority of human rights activists who participated in a survey reported experiencing security breaches, including unlawful access of their social media and email accounts as well as telephone tapping.

The law requires every public association be either registered or exempted from registration by the Registrar of Societies. The law requires NGOs dedicated to advocacy, public benefit, or the promotion of charity or research register with the NGO Coordination Board. It also requires organizations employing foreign staff

to seek authorization from the NGO Coordination Board before applying for a work permit.

Despite two court rulings ordering the government to operationalize the 2013 Public Benefits Organization Act, an important step in providing a transparent legal framework for NGO activities, the act had not been implemented by year's end.

In July parliament passed an amendment to the Prevention of Terrorism Act that empowered the National Counter Terrorism Center (NCTC) to become an “approving and reporting institution for all civil society organizations and international NGOs engaged in preventing and countering violent extremism and radicalization through countermessaging or public outreach, and disengagement and reintegration of radicalized individuals.” Civil society leaders expressed concerns the broad language of the amendment may allow government authorities to exert undue oversight and control over the activities of NGOs. As of year's end, the NCTC had not issued guidance to clarify implementation of the law. In November a consortium of civil society leaders filed a court case against the amendment, which continued to proceed through legal channels.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

### **d. Freedom of Movement**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation for citizens, and the government respected those rights, but it placed restrictions on movement for refugees.

In-country Movement: Refugees and asylum seekers require registration with the National Registration Bureau, and the law reiterates strict implementation of the encampment policy. The Interior Ministry's Refugee Affairs Secretariat (RAS), responsible for refugee management in the country, continued to enforce the encampment policy requiring all refugees and asylum-seekers to reside in the designated refugee camps, despite a Court of Appeal decision to the contrary. RAS issues new arrival asylum seekers with registration documents and movement passes requiring them to report to the camps. Refugees needing to move outside the designated areas (Kakuma camp, Kalobeyei settlement, and the Dadaab refugee

camp complex) must obtain a temporary movement pass issued by the RAS. Stringent vetting requirements and long processing times have delayed the issuance of temporary movement passes in the camps.

The law allows exemption categories for specific groups to live outside designated camp areas, including in protection and medical cases. The government granted limited travel permission to refugees to receive specialized medical care outside the camps, and to refugees enrolled in public schools. It made exceptions to the encampment policy for extremely vulnerable groups in need of protection. The government continued to provide in-country movement and exit permits for refugee interviews and departures for third-country resettlement.

Although there were no restrictions on movements of internally displaced persons (IDPs), stateless persons in the country faced significant restrictions on their movement (see section 1.g.).

#### **e. Internally Displaced Persons**

The National Consultative Coordination Committee on IDPs (the committee) operates under the Ministry of Interior and Coordination of National Government. Most of the committee's operations, including compensating victims, ceased at the end of 2017 when the terms of committee members lapsed. A new committee has not been reconstituted. As a result a key mechanism for implementing the 2012 IDP Act ceased to function. The NGO Internal Displacement Monitoring Centre estimated there were 162,000 IDPs in the country at the end of 2018.

Violence in Mandera County in 2014 between the communities of Mandera North District and Banisa District, and on the border between Mandera and Wajir counties, resulted in the displacement of an estimated 32,000 households. These communities remained displaced at year's end.

State and private actors also conducted displacements, usually during the construction of dams, railways, and roads. There is no mechanism to provide compensation or other remedies to victims of these displacements. In addition some residents remained displaced during the year due to land tenure disputes, particularly in or around natural reserves (see section 1.e., Property Restitution).

Water and pasture scarcity exacerbated communal conflict and left an unknown number of citizens internally displaced, especially in arid and semiarid areas. IDPs generally congregated in informal settlements and transit camps. Living conditions

in such settlements and camps remained poor, with rudimentary housing and little public infrastructure or services. Grievances and violence between IDPs and host communities were generally resource based and occurred when IDPs attempted to graze livestock. In the north IDP settlements primarily consisted of displaced ethnic Somalis and were targets of clan violence or involved in clashes over resources.

#### **f. Protection of Refugees**

The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to IDPs, refugees, asylum seekers, and other persons of concern. In 2017 the country pledged to apply the UNHCR Comprehensive Refugee Response Framework to enhance refugee self-reliance, increase access to solutions, and improve conditions in countries of origin for safe and voluntary returns. Implementation, however, has been lacking.

In 2017 the High Court blocked the government's plan to close the Dadaab refugee camp complex, ruling the plan violated the principle of nonrefoulement and refugees' constitutional rights to fair administrative action. While the court's 2017 decision eased pressure on Somalis who feared the camp would close by the government-imposed deadline, during the year the government expressed a renewed interest in closing Dadaab, requesting UNHCR to relocate all refugees from Dadaab. The camp closure discussion created uncertainty for the more than 200,000 refugees residing there.

Abuse of Migrants, Refugees, and Stateless Persons: Police abuse, including detention of asylum seekers and refugees, continued, often due to a lack of awareness and understanding of the rights afforded to refugee registration card holders. Most detainees were released after a court appearance or intervention by organizations such as the Refugee Consortium of Kenya.

During the year the security situation in Dadaab improved but remained precarious. There were no attacks on humanitarian workers and no detonations of improvised explosive devices within 15 miles of the refugee complex during the year. The security partnership between UNHCR and local police remained strong and led to improvements in camp security through community policing and neighborhood watch initiatives.

Sexual and gender-based violence against refugees and asylum seekers remained a problem, particularly for vulnerable populations including women, children, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees and asylum seekers. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, female genital mutilation/cutting (FGM/C), and early and forced marriage, particularly of Sudanese, South Sudanese, and Somali girls. Although there was increased community engagement to reduce sexual and gender-based violence and strengthened partnerships, including with the local authorities, sexual and gender-based violence continued to affect women and girls due to their low social and economic status in the community. Most urban refugees reside in slum areas where insecurity and sexual and gender-based violence is rampant. Female-headed households and young girls separated from families due to conflict are most at risk due to lack of male protection within their families. Girls and boys out of school are at risk of abuse, survival sex, and early marriage. Despite strong awareness programs in the camps, underreporting persisted due to community preference for *maslaha*, a traditional form of jurisprudence prevalent in the region, as an alternative dispute resolution mechanism; shortages of female law enforcement officers; limited knowledge of sexual and gender-based violence; and the medical forensic requirements for trying alleged rape cases.

Refugees have equal access to justice and the courts under the law. They were often unable, however, to obtain legal services because of the prohibitive cost and their lack of information on their rights and obligations. UNHCR continued to provide legal assistance and representation to refugees to increase their access to justice. The law specifically provides that refugees are eligible to receive legal aid services. The law, however, has not been fully operationalized.

Refugees generally dealt with criminality in accordance with their own customary law and traditional practices rather than through the country's justice system. Other security problems in refugee camps included petty theft, banditry, ethnic violence, and the harassment of Muslim converts to Christianity, according to UNHCR.

Exploitation of refugees with false promises of assistance in the resettlement process or in securing movement passes remained a concern.

Refoulement: There were no confirmed cases of refoulement.

During the year UNHCR assisted more than 2,500 persons to return voluntarily to their places of origin, of whom 1,889 returned to Somalia and 737 returned to Burundi. Insecurity and unfavorable conditions in countries of origin such as South Sudan, Yemen, and Somalia hindered returns.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has a system for providing protection to camp-based refugees. While the government generally coordinated with UNHCR to provide assistance and protection to refugees in the Dadaab and Kakuma refugee camps, cooperation was limited in urban areas. The government had yet to register more than 15,000 refugees and asylum seekers estimated to reside in Dadaab, the majority of whom were Somali. Pressure from UNHCR and the international community resulted in the government's registration of a number of extremely vulnerable individuals. South Sudanese refugees maintain prima facie refugee status.

According to UNHCR, as of November the country hosted 488,867 registered refugees and asylum seekers, including 217,139 in the Dadaab refugee camp complex, 193,429 in Kakuma camp, and 78,299 in urban areas. Most refugees and asylum seekers were from Somalia (260,683) with others coming from South Sudan (119,110), the Democratic Republic of the Congo (DRC) (43,186), Ethiopia (27,989), Burundi (14,674), and other countries (16,810). Most refugees arriving in Kakuma were from South Sudan, and the refugee population in Dadaab was primarily Somali. New arrivals also included individuals from Burundi, the DRC, Ethiopia, and Uganda. An agreement on voluntary repatriation between the country, Somalia, and UNHCR expired in November 2018, although it was still de facto in place. Since 2014 a total of 84,714 Somali refugees have voluntarily repatriated under the agreement.

The RAS, responsible for refugee management in the country, maintained a cooperative working relationship with UNHCR, which continued to provide technical support and capacity building to the RAS.

Freedom of Movement: Refugees' freedom of movement was significantly restricted due to the country's strict encampment policies (see section 2.d.).

Employment: Refugees are generally not permitted to work in the country.

Access to Basic Services: Despite the encampment policy, many refugees resided in urban areas, even though they lacked documentation authorizing them to do so. This affected their access to basic government services, including the National

Health Insurance Fund, education, employment, business licenses, financial institutions, mobile phones, and related services. In addition they are subject to arrest, police harassment, and extortion.

### **g. Stateless Persons**

The constitution and law provide for the protection of stateless persons and for legal avenues for eligible stateless persons to apply for citizenship. UNHCR estimated 18,500 stateless persons were registered in the country; the actual number was unknown.

Communities known to UNHCR as stateless include the Pemba in Kwale (approximately 5,000) and the Shona (an estimated 4,000). The 9,500 remaining include: persons of Rwandan, Burundian, or Congolese descent; some descendants of slaves from Zambia and Malawi; the Galjeel, who were stripped of their nationality in 1989; and smaller groups at risk of statelessness due to their proximity to the country's border with Somali and Ethiopia, including the Daasanach and returnees' from Somalia residing in Isiolo. Children born in the country to British overseas citizens are stateless due to conflicting nationality laws in the country and in the United Kingdom.

The country's legislation provides protection, limited access to some basic services, and documentation to stateless persons and those at risk of statelessness. The constitution contains a progressive bill of rights and a revised chapter on citizenship, yet it does not include any safeguards to prevent statelessness at birth. The law provides a definition of a stateless person and opportunities for such a person as well as his or her descendants to be registered as citizens. Similar provisions apply to some categories of migrants who do not possess identification documents.

Stateless persons had limited legal protection and encountered travel restrictions, social exclusion, and heightened vulnerability to trafficking, sexual and gender-based violence, exploitation, forced displacement, and other abuses. UNHCR reported stateless persons faced restrictions on internal movement and limited access to basic services, property ownership, and registration of births, marriages, and deaths. Inadequate documentation sometimes resulted in targeted harassment and extortion by officials and exploitation in the informal labor sector.

National registration policies require citizens age 18 and older to obtain national identification documents from the National Registration Bureau. Failure to do so

is a crime. Groups with historical or ethnic ties to other countries faced higher burdens of proof in the registration process. During the participatory assessments, UNHCR conducted in 2018 and during the year, stateless persons said they could not easily register their children at birth or access birth certificates as they lacked supporting documents. Formal employment opportunities, access to financial services and freedom of movement continued to be out of reach due to lack of national identity cards. Stateless persons without identity cards cannot access the National Health Insurance Fund, locking them out of access to subsidized health services, including maternity coverage.

Many stateless persons did not qualify for protection under the local refugee determination apparatus. Among these were Somali refugees born in the country's refugee camps, as well as Sudanese and South Sudanese refugees.

In October the government pledged to recognize and register persons in the Shona community who have lived in the country since the 1960s. The Civil Registration Services Department began to issue birth certificates to Shona children and process birth certificates for Shona adults who were born in the country.

### **Section 3. Freedom to Participate in the Political Process**

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

#### **Elections and Political Participation**

Recent Elections: In August 2017 citizens voted in the second general election under the 2010 constitution, electing executive leadership and parliamentarians, county governors, and members of county assemblies. International and domestic observers, such as the Kenya Elections Observation Group, African Union Observer Mission, and the Carter Center, judged the elections generally credible, although some civil society groups raised concerns about irregularities. In the presidential election, Jubilee Party candidate Uhuru Kenyatta won with a margin significantly above that of runner-up candidate Raila Odinga of the National Super Alliance (NASA). NASA challenged the results in a petition to the Supreme Court. In September 2017 the court ruled in NASA's favor, annulling the presidential elections and citing the IEBC for irregularities in voter registration and technical problems with vote tallying and transmission. The court ordered a new election for president and deputy president, which was held on October 26, 2017.

On October 10, 2017, Odinga announced his withdrawal from the new election, saying the IEBC had not taken sufficient steps to ensure a free and fair election. The October 26 vote was marred by low voter turnout in some areas and protests in some opposition strongholds. Human Rights Watch documented more than 100 persons badly injured and at least 33 killed by police using excessive force in response to protests following the August election, and the Independent Medico-Legal Unit reported another 13 deaths before, during, and after the October vote. On October 30, 2017, the IEBC declared Kenyatta the winner of the new election. On November 20, 2017, the Supreme Court rejected petitions challenging the October 26 elections and upheld Kenyatta's victory. Odinga refused to accept Kenyatta's re-election and repeated his call for people's assemblies across the country to discuss constitutional revisions to restructure the government and the elections process. On January 30, elements of the opposition publicly swore Odinga in as "the People's President," and the government shut down major public media houses for several days to prevent them from covering the event. Kenyatta and Odinga publicly reconciled in March 2018 and pledged to work together towards national unity. In November the Building Bridges to Unity Advisory Taskforce, established by the president in May 2018 as part of this pledge, issued a report recommending reforms to address nine areas: lack of a national ethos, responsibilities and rights of citizenship; ethnic antagonism and competition; divisive elections; inclusivity; shared prosperity; corruption; devolution; and safety and security.

In April the country held by-elections in three constituencies after the Supreme Court nullified the 2017 election results due to irregularities. Some criticized political parties for not selecting candidates through transparent, democratic nomination processes. The country also conducted a by-election in Kibra constituency in November following the death of a member of parliament. There were reports of voter bribery, voter intimidation, and isolated violence, although independent local observers assessed the results generally reflected the will of voters.

**Political Parties and Political Participation:** To reduce voter fraud, the government used a biometric voter registration system, first employed in 2013. Possession of a national identity card or passport was a prerequisite for voter registration. According to media reports, political parties were concerned about hundreds of thousands of national identity cards produced but never collected from National Registration Bureau offices around the country, fearing their supporters would not be able to vote. Ethnic Somalis and Muslims in the coast region and ethnic

Nubians in Nairobi complained of discriminatory treatment in the issuance of registration cards, noting authorities sometimes asked them to produce documentation proving their parents were citizens.

The country's five largest ethnic groups--the Kikuyu, Kalenjin, Luhya, Luo, and Kamba--continued to hold most political positions. Civil society groups raised concerns regarding the underrepresentation of minority ethnic groups, including indigenous communities. For example one study performed in Nakuru County found that among the Ogiek community, only two persons were members of the county assembly, and one person was a nominated senator.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate. Voting rates and measures of other types of participation in the political process by women and members of minorities remained lower than those of nonminority men.

The constitution provides for parliamentary representation by women, youth, persons with disabilities, ethnic minorities, and marginalized communities. The constitution specifically states no gender should encumber more than two-thirds of elective and appointed offices (the Two-Thirds Gender Rule). The Supreme Court set an initial deadline in 2016 for implementation of this provision, but that passed without action, and the National Assembly failed to meet a second deadline in 2017. In November 2018 and in February, parliament failed to enact the Two-Thirds Gender Rule due to lack of the requisite quorum for a constitutional amendment. In April parliament unsuccessfully appealed the court ruling on the enactment of the Gender Bill. Parliament has not reintroduced the bill despite the lapse of the six-month waiting period.

During the year men comprised the entirety of the leadership of the National Assembly, unlike in the previous parliament, in which both the deputy speaker and deputy majority leader were women. The cabinet also did not conform to the two-thirds rule; President Kenyatta appointed six women to the cabinet, representing only 21 percent of the seats.

A 2017 forum on Violence against Women in Elections that included the Elections Observation Group and the Federation of Women Lawyers in Kenya (FIDA-K) identified significant barriers to women's participation in the political process. The chief concerns were violence and insecurity stemming from economic and financial intimidation, harassment based on perceived levels of sexual or moral purity, threats of divorce, and other familial or social sanctions. The National

Democratic Institute's February 2018 study, *A Gender Analysis of the 2017 Kenya General Elections*, showed women faced the same challenges in the 2017 elections as they did in prior elections. These included inadequate political support from their parties, particularly in the primaries; a lack of financial resources; gender-based violence; gender stereotyping; and patriarchal structures across society.

The overall success rate of female candidates who ran for positions in the 2017 national elections was 16 percent, with 47 women elected to the 347-member National Assembly and three to the 67-member Senate. Women were elected to three of the 47 governorships. The constitution provides for the representation in government of ethnic minorities, but civil society groups noted minorities remained underrepresented in local and national government. The constitution also calls for persons with disabilities to hold a minimum of 5 percent of seats in the Senate and National Assembly. According to an October 2018 report by the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW), persons with disabilities comprised only 2.8 percent of Senate and National Assembly members.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for official corruption. Despite public progress in fighting corruption during the year, the government did not implement relevant laws effectively. Frequently officials allegedly engaged in corrupt practices with impunity.

Corruption: During the year the ODPP initiated investigations and prosecutions of high-level corruption involving dozens of government and parastatal officials with ties to the ruling party and to the political opposition. These investigations and prosecutions included some senior officials such as the cabinet secretary for national treasury and planning and his principal secretary. The national media closely covered the director of public prosecution's investigations into and arrests of officials stemming from the 21 billion shillings (\$206 million) procurement scandals at the Kerio Valley Development Authority, as well as corruption allegations involving the National Lands Commission, county governor offices, and high-profile business leaders. These investigations and prosecutions remained active at year's end.

The public continued to perceive corruption as a severe problem at all levels of government. A survey during the year in the country by Transparency International found 45 percent of respondents had paid a bribe, compared with 37

percent in the previous 2015 survey. Police and authorities issuing identification documents were cited the most for taking bribes. Corruption had increased according to 67 percent of respondents, and 71 percent believed the government was doing a poor job of combating corruption. The responses on these two questions had not changed significantly from the results of Transparency's 2015 poll.

In January, President Kenyatta appointed a new chief executive officer of the Ethics and Anticorruption Commission (EACC), who introduced a new approach to tackling corruption that prioritizes high-impact cases, systems reviews, assets recovery, and public communication. In the new commissioner's first five months in office, the EACC recovered assets equal to 30 percent of the corruption assets the EACC recovered over the past five years. Officials from agencies tasked with fighting corruption, including the EACC, ODPP, and judiciary, were sometimes the subjects of corruption allegations.

The EACC has the legal mandate to investigate official corruption allegations, develop and enforce a code of ethics for public officials, and engage in public outreach on corruption. The EACC, however, lacks prosecutorial authority and must refer cases to the ODPP to initiate prosecutions. At the end of 2018, the EACC reported having more than 319 corruption cases pending in court. A mixture of cash and land/immovable assets valued at approximately 3.2 billion shillings (\$31.4 million) were recovered in the period 2018-2019. The EACC had secured 39 convictions in the 2017-2018 period, an 80 percent conviction rate, with some cases including several individuals, making the 2017-2018 fiscal year the most successful year in the commission's history.

The government took additional steps to combat corruption, including increasing the number of investigations and prosecutions. The government made limited progress on other commitments, including adoption of international anticorruption standards and digitization of government records and processes. Because courts had significant case backlogs, cases could take years to resolve.

Police corruption remained a significant problem. Human rights NGOs reported police often stopped and arrested citizens to extort bribes. Police sometimes jailed citizens on trumped-up charges or beat those who could not pay the bribes. During police vetting conducted by the National Police Service Commission (NPSC) in recent years, many police officers were found to have the equivalent of hundreds of thousands of dollars in their bank accounts, far exceeding what would be

possible to save from their salaries. Mobile money records showed some officers also transferred money to superior officers.

The Judiciary and the NPS continued measures to reform the handling of traffic cases by police and courts, streamlining the management of traffic offenses to curb corruption. Despite the progress noted above, no senior police official was convicted or jailed for corruption-related offenses during the year.

Financial Disclosure: The law requires all public officers to declare their income, assets, and liabilities to their “responsible commission” (for example, the Parliamentary Service Commission in the case of members of parliament) every two years. Public officers must also include the income, assets, and liabilities of their spouses and dependent children younger than 18. Failure to submit the declaration as required by law or providing false or misleading information is punishable by a fine of one million shillings (\$9,820) or imprisonment for a term not exceeding one year or both. Information contained in these declarations was not readily available to the public, and the relevant commission must approve requests to obtain and publish this information. Any person who publishes or otherwise makes public information contained in public officer declarations without such permission may be subject to imprisonment for up to five years, a fine of up to 500,000 shillings (\$4,910), or both. Authorities also required police officers undergoing vetting to file financial disclosure reports for themselves and their immediate family members. These reports were publicly available.

The law requires public officers to register potential conflicts of interest with the relevant commissions. The law identifies interests public officials must register, including directorships in public or private companies, remunerated employment, securities holdings, and contracts for supply of goods or services, among others. The law requires candidates seeking appointment to nonelected public offices to declare their wealth, political affiliations, and relationships with other senior public officers. This requirement is in addition to background screening on education, tax compliance, leadership, and integrity. Many officials met these requirements and reported potential conflicts of interest. Authorities did not strictly enforce ethics rules relating to the receipt of gifts and hospitality by public officials.

There were no reported challenges to any declarations of wealth--which normally are not made public--filed by public officials. The requirement for asset and conflict of interest declarations was suspended by an August 2018 Public Service Commission (PSC) memo. The memo was issued after PSC engagement with government stakeholders indicated a need for clarity on the filling out of the assets

registry. The PSC's suspension of the requirement led to inconsistency in the application of the directive, with some institutions requiring declarations while others did not.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases, although some groups reported experiencing government harassment during the year. Officials were sometimes cooperative and responsive to the queries of these groups, but the government did not implement recommendations by human rights groups if such recommendations were contrary to its policies. There were reports officials intimidated NGOs and threatened to disrupt their activities (see section 2.b.). Less-established NGOs, particularly in rural areas, reported harassment and threats by county-level officials as well as security forces. Human rights activists claimed security forces conducted surveillance of their activities, and some reported threats and intimidation.

The Truth, Justice, and Reconciliation Commission issued its final, multivolume report about human rights abuses and injustices from the colonial period through the 2007-2008 postelection violence to President Kenyatta in May 2013. The government largely failed to implement the commission's recommendations on justice and accountability, despite calls from survivors, victims, religious leaders, and civil society (see section 1.e., Property Restitution). In March a lobby group, the National Victims and Survivors Network, petitioned the Senate to take over the consideration and implementation process of the commission from the National Assembly.

In 2013 a group of civil society organizations filed a High Court petition accusing the government of having failed to investigate and address properly sexual and gender-based violence that occurred during the 2007-2008 postelection violence or to provide medical and legal assistance to survivors. The case continued at year's end.

There were also reports officials and police officers threatened activists who sought justice for police killings and other serious abuses during the 2017 elections. Human Rights Watch reported that, between August 2017 and March 2018, police and other officials directly intimidated at least 15 activists and victims in Nairobi and in the western county of Kisumu. The intimidation included threats

of arrest, warnings not to post information about police brutality, home and office raids, and confiscation of laptops and other equipment.

Government and security officials promptly investigated the 2016 triple homicide case of International Justice Mission (IJM) lawyer and investigator Willie Kimani, IJM client Josphat Mwenda, and their driver Joseph Muiruri, and charged four police officers accused in the case. In October a court barred the prosecution from submitting a 2016 video confession by one of the defendants as evidence. The trial continued at year's end.

The KNCHR reported security agencies continued to deny it full access to case-specific information and facilities to conduct investigations of human rights abuses as the constitution permits.

The United Nations or Other International Bodies: The government took note of recommendations of the United Nations or international human rights groups but in many cases did not implement them.

Government Human Rights Bodies: The KNCHR is an independent institution created by the 2010 constitution and established in 2011. Its mandate is to promote and protect human rights in the country. Citing budget restrictions, the administration reduced KNCHR's budget for the fifth straight year.

The NPSC and IPOA, both government bodies, report to the National Assembly. The NPSC consists of six civilian commissioners, including two retired police officers, as well as the NPS inspector general and two deputies. In January a new commission took office. The NPSC is responsible for recruiting, transferring, vetting, promoting, and disciplining NPS members. In September the NGO consortium the Police Reforms Working Group Kenya issued a press statement noting its concerns regarding the August dismissal of IPOA's chief executive officer by the board. The working group also called for a parliamentary inquiry into the appointment process and activities of IPOA's board and urged the government to safeguard the independence of IPOA's secretariat. The CEO was reinstated in October.

The ODPP is empowered to direct the NPS inspector general to investigate any information or allegation of criminal conduct and to institute criminal proceedings in police abuse or corruption cases.

Police accountability mechanisms, including those of the IAU and IPOA,

maintained their capacity to investigate cases of police abuse, although disagreements around the dismissal and reinstatement of IPOA's CEO likely delayed some investigations. The IAU director reports directly to the NPS inspector general. Eighty-two officers served in the IAU, mostly investigators with a background in the Kenya Police Service and the Administration Police Service. During the year the IAU also began interviews to select 150 additional officers. The IAU conducts investigations into police misconduct, including criminal offenses not covered by IPOA. Between January and September, the IAU received approximately 1,200 complaints, the number of which had increased year-to-year as police and the public became more familiar with the IAU. As required by law, the IAU relocated to offices separate from the rest of the police service in late 2018. This move also contributed to the increase in the number of cases the IAU received. The EACC, an independent agency, investigates cases involving police corruption. IPOA also helps to train police officers on preventing abuses and other human rights issues.

As of June, IPOA received 3,237 complaints, bringing the total since its inception in 2012 to 13,618. IPOA defines five categories of complaints. Category One complaints comprise the most serious crimes--such as murders, torture, rape, and serious injury--and result in an automatic investigation. In Category Two serious crimes, such as assault without serious injury, are investigated on a case-by-case basis. Categories Three to Five, for less serious crimes, are generally not investigated, although during the year IPOA and the IAU entered into regular dialogue about referring cases deemed less serious offenses for disciplinary action. If, after investigation, IPOA determines there is criminal liability in a case, it forwards the case to the ODPP. As of June, IPOA launched 489 investigations.

The law requires the NPSC eventually to vet all serving police officers. Vetting required an assessment of each officer's fitness to serve based on a review of documentation, including financial records, certificates of good conduct, and a questionnaire, as well as public input alleging abuse or misconduct. The NPSC reported it had vetted more than 15,000 officers since 2012. The NPSC, however, had not vetted any officers since the new commission took office in January. Some legal challenges brought by officers removed from the service after vetting continued in court.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

### **Women**

Rape and Domestic Violence: The law criminalizes rape, defilement (statutory rape), domestic violence, and sex tourism, but enforcement remained limited. The law's definition of domestic violence includes sexual violence within marriage, early and forced marriage, FGM/C, forced wife "inheritance," damage to property, defilement, economic abuse, emotional or psychological abuse, harassment, incest, intimidation, physical abuse, stalking, verbal abuse, or any other conduct against a person that harms or may cause imminent harm to the safety, health, or well-being of the person. The law does not explicitly criminalize spousal rape. Under the law insulting the modesty of another person by intruding upon that person's privacy or stripping them of clothing are criminal offenses punishable by imprisonment for up to 20 years.

The law provides a maximum penalty of life imprisonment for rape when the victim is older than 18, although sentences were at the discretion of the judge and usually no longer than the minimum of 10 years (see also section 6, Children). In August the Milimani High Court sentenced two rugby players to 15 years' imprisonment for the gang rape of a singer, noting "a deterrent sentence is necessary."

Citizens frequently used traditional dispute-resolution mechanisms, including maslaha in Muslim communities, to address sexual offenses in rural areas, with village elders assessing financial compensation for the victims or their families. They also used such mechanisms occasionally in urban areas. In February 2018, however, the cabinet secretary for the Ministry of Interior announced the government would not permit local government officials and community leaders to use maslaha to resolve the gang rape of a 15-year-old girl in rural Wajir County and that the investigation must proceed through official channels. This case continued to proceed through the official court system.

The judiciary recorded 3,832 cases of sexual and gender-based violence filed in court between October 2018 and September. Authorities reported 947 convictions during the year.

The governmental KNCHR's November report on sexual violence during and after the 2017 election found sexual and gender-based violations accounted for 25 percent of human rights violations, and 71 percent of the sexual assaults were categorized as rape. Of the victims, 96 percent were women. The same report found security officers committed an estimated 55 percent of the documented sexual assaults. The KNCHR's report included numerous official recommendations to the Presidency, the NPSC, the Ministries of Interior and

Health, IPOA, the ODPP, the judiciary, county governments, and other state bodies. There were 201 cases of election-related sexual violence in 2017 across nine counties that had not been investigated or prosecuted. Most election-related sexual violence cases from the 2007-2008 postelection unrest were also still not investigated.

Although police no longer required physicians to examine victims, physicians still had to complete official forms reporting rape. Rural areas generally had no police physician, and in Nairobi there were only three. NGOs reported police stations often but inconsistently accepted the examination report of clinical physicians who initially treated rape victims. In January police launched the National Police Service Standard Operating Procedures on addressing gender-based violence. These procedures aim to standardize the varying quality of care that victims receive and provide a guide to police officers who do not have the relevant training.

Authorities cited domestic violence as the leading cause of preventable, nonaccidental death for women. Except in cases of death, police officers generally refrained from investigating domestic violence, which they considered a private family matter.

NGOs reported rising numbers of women and girls killed due to gender-based violence. According to data from the NGO Counting Dead Women Kenya, at least 60 women were killed between January and June. In May political leaders, including the cabinet secretary for the ministry of interior, attended a femicide vigil and committed to address the causes of domestic violence and improve the justice system's response.

Female Genital Mutilation/Cutting (FGM/C): The law makes it illegal to practice FGM/C, procure the services of someone who practices FGM/C, or send a person out of the country to undergo the procedure. The law also makes it illegal to make derogatory remarks about a woman who has not undergone FGM/C. Government officials often participated in public awareness programs to prevent the practice. Nevertheless, individuals practiced FGM/C widely, particularly in some rural areas. According to a study by ActionAid Kenya published in October 2018, despite the legal prohibition of FGM/C, myths supporting the practice remained deep-rooted in some local cultures. The study concluded approximately 21 percent of adult women had undergone the procedure some time in their lives, but the practice was heavily concentrated in a few communities, including the Maasai (78 percent) and Samburu (86 percent).

In December, as part of the government's initiative to end FGM/C by 2022, the Ministry of Public Service Youth and Gender began consultative meetings with county commissioners and chiefs from the 22 counties with the highest rates of FGM/C to improve enforcement of the FGM/C law. Following these meetings Kajiado County became the first county in the country to launch an anti-FGM/C Policy focused on educating the community on the dangers and illegality of FGM/C.

Media reported arrests of perpetrators and parents who agreed to FGM/C, but parents in regions with a high prevalence of FGM/C frequently bribed police to allow the practice to continue. There were also reports FGM/C increasingly occurred in secret to avoid prosecution.

In December 2018 a 14-year-old girl bled to death as a result of FGM/C in Meru County. After a local human rights activist brought the case to national attention, the girl's aunt surrendered to Igembe North authorities and was taken to court in March but was released for lack of evidence. There were no witnesses, and the local chief was not cooperative. The human rights activist who brought the case to national attention subsequently faced death threats and was unable to return to Meru for a part of the year.

For more information, see Appendix C.

Other Harmful Traditional Practices: Certain communities practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. Such inheritance was more likely in cases of economically disadvantaged women with limited access to education living outside of major cities. Early and other forced marriages were also common.

Sexual Harassment: The law prohibits sexual harassment. Sexual harassment was often not reported, and victims rarely filed charges.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: The constitution provides equal rights for men and women and specifically prohibits discrimination on the grounds of race, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language, or birth. The justice system widely

applied customary laws that discriminated against women, limiting their political and economic rights.

The constitution prohibits gender discrimination in relation to land and property ownership and gives women equal rights to inheritance and access to land. The constitution also provides for the enactment of legislation for the protection of wives' rights to matrimonial property during and upon the termination of a marriage, and it affirms parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution. According to a June report by FIDA-K, Isiolo Gender Watch, and Shining Hope for Communities, however, the law has not been amended to comply with these constitutional provisions and perpetuates discrimination. Additionally, the components of the law that do stipulate how to apply for succession were little known and thus many inheritances continued to pass from fathers to sons only.

## **Children**

Birth Registration: A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Birth on the country's territory does not convey citizenship. Birth registration is compulsory. An estimated 63 percent of births were officially registered. Lack of official birth certificates resulted in discrimination in delivery of public services. The Department of Civil Registration Services implements the Maternal Child Health Registration Strategy that requires nurses administering immunizations to register the births of unregistered children.

In March the High Court ruled on a case that had been filed by FIDA-K, declaring unconstitutional, null and void, Section 2 (b) of the Children Act that gave men room to accept or decline responsibility for children they sired outside marriage. The court ruled that fathers who sire children out of wedlock must have equal parental responsibility as mothers.

For additional information, see Appendix C.

Education: By law education is tuition free and compulsory through age 14. The government began implementing free secondary education for all citizens. Authorities did not enforce the mandatory attendance law uniformly.

While the law provides pregnant girls the right to continue their education until after giving birth, NGOs reported schools often did not respect this right. School executives sometimes expelled pregnant girls or transferred them to other schools.

Media outlets reported a significant number of girls failed to sit for their final secondary school examinations due to pregnancy.

Child Abuse: The law criminalizes several forms of violence that affect children, including early and forced marriage, FGM/C, incest, and physical, verbal, and sexual abuse. Violence against children, particularly in poor and rural communities, was common, and child abuse, including sexual abuse, occurred frequently. In November, HAKI Africa reported a case of a six-year-old who was the victim of statutory rape (defilement) committed by one of her teachers in school. According to the parents of the victim, other teachers tried to cover up for their colleague. The perpetrator was arrested the following day and remained in prison after failing to pay his bail. This was the fourth case of statutory rape reported to HAKI Africa in a month. In December media reported two cases of statutory rape by police officers, one in Kisumu County and the other in Mombasa County. In both cases media reported police officers attempted to cover up the crimes committed by their colleagues.

The minimum sentence for conviction of statutory rape is life imprisonment if the victim is younger than 11 years, 20 years in prison if the victim is between ages 11 and 15, and 10 years' imprisonment if the child is age 16 or 17. Although exact numbers were unavailable, during the year media reported several statutory rape convictions.

The government banned corporal punishment in schools, but there were reports corporal punishment occurred.

Early and Forced Marriage: The minimum age for marriage is 18 years for women and men. Media occasionally highlighted the problem of early and forced marriage that some ethnic groups commonly practiced. Under the constitution the qadi courts retained jurisdiction over Muslim marriage and family law in cases where all parties profess the Muslim religion and agree to submit to the jurisdiction of the courts. In January, following a tip from a neighborhood watch initiative, police and NGO workers rescued a 12-year-old girl in Kajiado who had been forced to marry a 35-year-old man. Police arrested and charged the victim's mother and the mother's partner with submitting a child to a sexual act, child marriage, and child rape. For additional information, see Appendix C.

Sexual Exploitation of Children: The law criminalizes sexual exploitation of children, including prohibiting procurement of a child younger than age 18 for unlawful sexual relations. The law also prohibits domestic and international

trafficking, or the recruitment, harboring, transportation, transfer, or receipt of children up to the age of 18 for the production of pornography or for pornographic performances. Provisions apply equally to girls and boys. The law has provisions regarding child trafficking, child sex tourism, child prostitution, and child pornography. The minimum age for consensual sex is 18. Nevertheless, according to human rights organizations, children were sexually exploited and victims of trafficking.

The Directorate of Criminal Investigations continued to expand its Anti-Human Trafficking and Child Protection Unit (AHTCPU), which is responsible for investigating cases of child sexual exploitation and abuse, providing guidance to police officers across the country on cases involving children, and liaising with the Ministry of Labour and Social Protection's Department of Children Services to identify and rescue abused children. During the year the AHTCPU opened a new office in Mombasa and increased the number of officers assigned to the unit. In March the AHTCPU also opened a cybercenter in Nairobi to increase its capacity to investigate cases involving online child exploitation.

Child Soldiers: Although there were no reports the government recruited child soldiers, there were reports that the al-Shabaab terrorist group recruited children in areas bordering Somalia.

Displaced Children: Poverty and the spread of HIV/AIDS continued to intensify the problem of child homelessness. Street children faced harassment and physical and sexual abuse from police and others and within the juvenile justice system. The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to street children whom the commercial sex industry abused and exploited.

Children continued to face protection risks in urban areas, particularly unaccompanied and separated children. Alternative care arrangements, such as foster care placement, are in place for a limited number of children. In addition government child protection services and the county's children's department often step in to provide protection to children at risk, particularly unaccompanied children.

Institutionalized Children: A special report published by the *Standard* in September alleged minors in children's homes under the care of the Child Welfare Society of Kenya (CWSK) have suffered poor living conditions, mistreatment, and lack of proper medical care and education. A local news outlet aired an

investigative report in October alleging that CWSK, against the advice of licensed medical practitioners, had taken children with more significant disabilities to unlicensed facilities for experimental treatments. The ODPP reportedly opened an investigation into the allegations. On September 12, the cabinet directed the Ministry of Labour and Social Protection to streamline the operations of the CWSK.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

### **Anti-Semitism**

The Jewish community is small, and there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **Persons with Disabilities**

The law prohibits discrimination against persons with disabilities, but the government did not effectively enforce these provisions. Several laws limit the rights of persons with disabilities. For example, the Marriage Act limits the rights of persons with mental disabilities to get married and the Law of Succession limits the rights of persons with disabilities to inheritance. The constitution provides for legal representation of persons with disabilities in legislative and appointive bodies. The law provides that persons with disabilities should have access to public buildings, and some buildings in major cities had wheelchair ramps and modified elevators and restrooms. The government did not enforce the law, however, and new construction often did not include specific accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible to persons with disabilities. According to NGOs, police stations remained largely inaccessible to persons with mobility and other physical disabilities.

NGOs reported persons with disabilities had limited opportunities to obtain

education and job training at any level due to lack of accessibility of facilities and resistance by school officials and parents to devoting resources to students with disabilities. Obtaining employment was also difficult. Data from the Public Service Commission indicated that, of 251 institutions evaluated on inclusion of persons with disabilities in fiscal year 2017/2018, only 10 institutions complied with the 5 percent requirement for employment of persons with disabilities.

Authorities received reports of killings of persons with disabilities as well as torture and abuse, and the government took action in some cases. In May women with disabilities protested against increased violence after a woman with physical disabilities was sexually assaulted and killed, a woman with a mental disability was sexually assaulted, and a deaf girl was raped. The murder case in Machakos was pursued, with three persons arrested, two of whom were still in jail while the third was released on bail. The case went to trial and hearings continued at year's end.

Persons with albinism (PWA) have historically been targets of discrimination and human rights abuses. During the year human rights groups successfully lobbied to include a question on albinism in the August national census, the first time PWA were counted. In November 2018 the Albinism Society of Kenya (ASK) organized the first Mr. and Miss Albinism East Africa beauty pageant to raise awareness of the condition and combat misconceptions. According to ASK, the treatment of PWA improved during the year; they were more broadly accepted in society and cases of statutory rape and confinement declined.

Persons with disabilities faced significant barriers to accessing health care. They had difficulty obtaining HIV testing and contraceptive services due to the perception they should not engage in sexual activity. According to the NGO Humanity & Inclusion, 36 percent of persons with disabilities reported facing difficulties in accessing health services; cost, distance to a health facility, and physical barriers were the main reasons cited.

Few facilities provided interpreters or other accommodations to persons with hearing disabilities. The government assigned each region a sign language interpreter for court proceedings. Authorities often delayed or adjourned cases involving persons who had hearing disabilities due to a lack of standby interpreters, according to an official with the NGO Deaf Outreach Program.

According to a report by a coalition of disability advocate groups, persons with disabilities often did not receive the procedural or other accommodations they

needed to participate equally in criminal justice processes as victims of crime.

The Ministry for Devolution and Planning is the lead ministry for implementation of the law to protect persons with disabilities. The quasi-independent but government-funded parastatal National Council for Persons with Disabilities assisted the ministry. Neither entity received sufficient resources to address effectively problems related to persons with disabilities.

According to a 2017 CEDAW report, persons with disabilities comprised only 2.8 percent of the Senate and National Assembly, less than the 5 percent mandated by the constitution (see section 3).

### **National/Racial/Ethnic Minorities**

There were 42 ethnic groups in the country; none holds a majority. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups, especially in the coastal and Rift Valley areas. Competition for water and pasture was especially serious in the north and northeast.

There was frequent conflict, including banditry, fights over land, and cattle rustling, among the Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and Pokot ethnic groups in arid northern, eastern, and Rift Valley areas that at times resulted in deaths. Disputes over county borders were also a source of ethnic tensions.

In July the Institute for Security Studies stated almost 40 persons were killed, schools closed, and livelihoods disrupted during ethnic violence in Marsabit County along the border with Ethiopia over the preceding months. The report alleged the conflict was driven by ethnic territorial expansion, including illegal settlements, and a bid by local politicians to increase voting numbers ahead of the 2022 elections. Since then local politicians have been arrested for political incitement, and meetings have taken place between local leaders and interfaith groups. A cross-border peace initiative met in July and decided to set up a community-based peace committee. In June the cabinet secretary for the Ministry of Interior issued a directive that “cross-border meetings between stakeholders from Kenya and Ethiopia in the Marsabit area be attended at the highest level by the national government administration.” Violence continued, however, and five children were reported among the 13 killed in violence in November.

Ethnic differences also caused a number of discriminatory employment practices (see section 7.d.).

### **Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

The penal code criminalizes “carnal knowledge against the order of nature,” which was interpreted to prohibit consensual same-sex sexual activity and specifies a maximum penalty of 14 years’ imprisonment if convicted. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years’ imprisonment if convicted. Police detained persons under these laws, particularly persons suspected of prostitution, but released them shortly afterward. In October police arrested three men for violating the penal code provisions. The men denied the charge and were released on bail.

In 2016 LGBTI activists filed two petitions challenging the constitutionality of these penal codes. On May 24, the High Court issued a ruling upholding the laws criminalizing homosexuality, citing insufficient evidence they violate LGBTI rights and claiming repealing the law would contradict the 2010 constitution that stipulates marriage is between a man and woman. The LGBTI community filed appeals against this ruling. Leading up to the hearing of this case, and in its wake, the LGBTI community experienced increased ostracism and harassment.

LGBTI organizations reported police more frequently used public-order laws (for example, disturbing the peace) than same-sex legislation to arrest LGBTI individuals. NGOs reported police frequently harassed, intimidated, or physically abused LGBTI individuals in custody.

Authorities permitted LGBTI advocacy organizations to register and conduct activities.

The 2010 constitution does not explicitly protect LGBTI persons from discrimination based on sexual orientation or gender identity. Violence and discrimination against LGBTI individuals was widespread. For example, in April secondary school authorities in Mathira Constituency reportedly abused 32 girls for allegedly being lesbians and prohibited them from taking their end-term exams. In June the government ordered a group of 76 LGBTI refugees to leave their temporary quarters in Nairobi and return to the Kakuma camp, where they had been subject to homophobic attacks and death threats.

LGBTI refugees continued to face stigma and discrimination. They were often compelled to hide their sexual orientation or gender identity to protect themselves. National organizations working with LGBTI persons offered support to refugees who were LGBTI, including access to safety networks and specialized health facilities.

In 2017 the government formed a taskforce to implement a High Court's judgment in the 2014 Baby 'A' case that recognized the existence of intersex persons. The taskforce submitted its final report to the attorney general in March. The report estimated the number of intersex persons in the country at 779,414. The taskforce found only 10 percent of the intersex population completed tertiary education, only 5 percent recognized themselves as intersex due to lack of awareness, and the majority lacked birth certificates, which caused numerous problems, including inability to obtain a national identity card. The census included intersex as a gender and reported 1,524 intersex persons. The disparity between these numbers is likely due to the report's finding that many Kenyans did not recognize themselves as intersex due to lack of awareness and thus did not mark themselves as intersex during the census. The report concluded with a number of recommendations to realize the rights of members of the intersex community.

### **HIV and AIDS Social Stigma**

The government, along with international and NGO partners, made progress in creating an enabling environment to combat the social stigma of HIV and AIDS and to address the gap in access to HIV information and services. The government and NGOs expanded their staffing support at county levels for counseling and testing centers to ensure provision of free HIV/AIDS diagnosis. In 2016 the first lady's Beyond Zero Campaign to stop HIV infections led to the opening of 47 mobile clinics across the country.

Stigma nonetheless continued to hinder efforts to educate the public about HIV/AIDS and to provide testing and treatment services. The government continued to support the HIV Tribunal to handle all legal matters related to stigma and discrimination. The tribunal, however, lacked sufficient funding to carry out its mandate across all 47 counties and thus still functioned only out of Nairobi.

### **Other Societal Violence or Discrimination**

Mob violence and vigilante action were common in areas where the populace

lacked confidence in the criminal justice system. In September police officers in Kericho County rescued a fellow officer who was in danger of being lynched by a mob that suspected the officer of being a burglar. The social acceptability of mob violence also provided cover for acts of personal vengeance. Police frequently failed to act to stop mob violence. In May the Police Reforms Working Group-Kenya, a group of 19 human rights organizations, issued a statement condemning the killings of a local chief and the head of the police station in Tharaka-Nithi by local residents. The residents allegedly killed the chief in retaliation for the killing of a local resident in connection with a prolonged land dispute. The police officer was subsequently killed while pursuing the suspects.

Landowners formed groups in some parts of the country to protect their interests from rival groups or thieves. In March 2018 the National Cohesion and Integration Commission reported more than 100 such organized groups nationwide. Reports indicated politicians often funded these groups or provided them with weapons, particularly around election periods.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the right of workers, including those in export processing zones (EPZs), to form and join unions of their choice and to bargain collectively. For the union to be recognized as a bargaining agent, it needs to represent a simple majority of the employees in a firm eligible to join the union. This provision extends to public and private sector employees. Members of the armed forces, prisons service, and police are not allowed to form or join trade unions.

The law permits the government to deny workers the right to strike under certain conditions. For example the government prohibits members of the military, police, prison guards, and the National Youth Service from striking. Civil servants are permitted to strike following a seven-day notice period. A bureau of the Ministry of Labour and Social Protection typically referred disputes to mediation, fact-finding, or binding arbitration at the Employment and Labour Relations Court, a body of up to 12 judges that has exclusive jurisdiction to handle employment and labor matters and that operates in urban areas, including Nairobi, Mombasa, Nyeri, Nakuru, Kisumu, and Kericho. The Employment and Labour Relations Court also has subregistries in Meru, Bungoma, Eldoret, Malindi, Machakos, and Garissa.

By law workers who provide essential services, interpreted as “a service the interruption of which would probably endanger the life of a person or health of the population,” may not strike. Any trade dispute in a service listed as essential or declared an essential service may be adjudicated by the Employment and Labour Relations Court.

Strikes must concern terms of employment, and sympathy strikes are prohibited.

The law permits workers in collective bargaining disputes to strike if they have exhausted formal conciliation procedures and have given seven days’ notice to the government and the employer. Conciliation is not compulsory in individual employment matters. Security forces may not bargain collectively but have an internal board that reviews salaries. Informal workers may establish associations, or even unions, to negotiate wages and conditions matching the government’s minimum wage guidelines and advocate for better working conditions and representation in the Employment and Labour Relations Court. The bill of rights in the constitution allows trade unions to undertake their activities without government interference, and the government generally respected this right.

The law prohibits antiunion discrimination and provides for reinstatement of workers dismissed for union activity. The Employment and Labour Relations Court can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities. Labor laws apply to all groups of workers.

The government enforced the decisions of the Employment and Labour Relations Court inconsistently. Many employers did not comply with reinstatement orders, and some workers accepted payment in lieu of reinstatement. In several cases employers successfully appealed the Employment and Labour Relations Court’s decisions to a branch of the High Court. The enforcement mechanisms of the Employment and Labour Relations Court remained weak, and its case backlog raised concerns about the long delays and lack of efficacy of the court.

The Employment and Labour Relations Court received many cases arising from the implementation of new labor laws. The parties filed most cases directly without referral to the Ministry of Labour and Social Protection for conciliation. The court was running a significant backlog.

The chief justice designated all county courts presided over by senior resident Magistrates and higher-ranking judges as special courts to hear employment and

labor cases. Providing adequate facilities outside of Nairobi was challenging, but observers cited the ability of workers to submit labor-related cases throughout the country as a positive step. In 2016 the Judiciary finalized the Employment and Labor Relations (Procedure) Rules. The significant changes introduced in the new court procedure rules provide parties access to file pleadings directly in electronic form, new pretrial procedures, and alternative dispute resolution. The rules also set a 30-day time limit for the court to submit a report on disagreements over collective bargaining agreements filed.

The government generally respected freedom of association and the right to bargain collectively, although enforcement was inconsistent. The government expressed its support for union rights mandated in the constitution.

Airport workers at Nairobi's Jomo Kenyatta International Airport also went on strike in March to protest potential restructuring of the airport. Six striking workers were injured during clashes with police, and 10 members of the Kenya Aviation Workers Union, including its secretary-general, were arrested. After negotiation, the union agreed to end the strike in exchange for release of the arrested union officials and an agreement not to fire striking workers.

Migrant workers often lacked formal organization and consequently missed the benefits of collective bargaining. Similarly, domestic workers and others who operated in private settings were vulnerable to exclusion from legal protections, although domestic workers' unions exist to protect their interests.

The government deployed labor attaches to Qatar, Saudi Arabia, and the United Arab Emirates (UAE) to regulate and coordinate contracts of migrant workers from the country and promote overseas job opportunities. The Ministry of East African Community and Regional Development also helped domestic workers understand the terms and conditions of their work agreements. The government operationalized a 2017 bilateral agreement with Saudi Arabia in January after revetting recruitment agencies in Riyadh. The government has additional bilateral agreements with Qatar and UAE. The ministry has a directorate to regulate the conduct of labor agents for local migrant workers, including requiring the posting of a 500,000 shilling (\$4,910) performance-guarantee bond for each worker.

The misuse of internships and other forms of transitional employment threatened the survival of trade unions, with employers often not hiring employees after an internship ends. State agencies increasingly outsourced jobs to the private sector, and in the private sector, casual workers were employed on short-term contracts.

This shift contributed to declining numbers in trade unions. In July the Public Service Commission introduced a plan to place civil servants on three-year employment contracts and eliminate permanent and pensionable terms, but a worker's union obtained a court order to halt the policy shift. NGOs and trade unionists reported replacement of permanent positions by casual or contract labor, especially in the EPZs, the Port of Mombasa, and in the agricultural and manufacturing sectors. In some cases employers staffed permanent jobs with rotating contract workers. This practice occurred at the management level as well, where employers hired individuals as management trainees and kept them in these positions for the maximum permitted period of three years. Instead of converting such trainees to permanent staff, employers replaced them with new trainees at the end of three years.

Workers exercised the right to strike. The health sector witnessed industrial strikes by county government health professionals to protest delayed salary payments. The strikes occurred intermittently in various counties, since under the 2010 constitution each county manages its own health system as part of the devolution of resources and services from the national government. According to the Kenya County Government Workers Union, during the year 21 counties had delayed salary payments. The strikes affected delivery of services in counties like Meru and Embu, but negotiations averted some threatened strikes.

#### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits most forms of forced or compulsory labor, including by children. The country made moderate advances to prevent or eliminate forced labor.

The government did not effectively enforce the law, and forced labor occurred, including forced child labor (see section 7.c.). Certain legal provisions, including the penal code and the Public Order Act, impose compulsory prison labor. Resources, inspections, and remediation were not adequate to prevent forced labor, and penalties were not sufficient to deter violations. Violations included debt bondage, trafficking of workers, and compulsion of persons, even family members, to work as domestic servants. Domestic workers from Uganda, herders from Ethiopia, and others from Somalia, South Sudan, and Burundi were subjected to forced labor in the country; however, this trend was reportedly decreasing.

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The government prohibits most, but not all, of the worst forms of child labor. The minimum age for work (other than apprenticeships) is 16, and the minimum age for hazardous work is 18. These protections, however, only extend to children engaged under formal employment agreements and do not extend to those children working informally. The ministry published a list of specific jobs considered hazardous that would constitute the worst forms of child labor. This list includes but is not limited to scavenging, carrying stones and rocks, metalwork, working with machinery, mining and stone crushing. The law explicitly prohibits forced labor, trafficking, and other practices similar to slavery; child soldiering; prostitution; the use, procuring, or offering of a child for the production of pornography or for pornographic performances; and the use by an adult for illegal activities (such as drug trafficking) of any child up to age 18. The law applies equally to girls and boys. The International Labor Organization (ILO) identified gaps in the law with regards to children working as cadets at sea.

The law allows children ages 13 to 16 to engage in industrial undertakings when participating in apprenticeships. Industrial undertakings are defined under law to include work in mines, quarries, factories, construction, demolition, and transportation, which are legally categorized as hazardous work.

The law provides for penalties for any person who employs, engages, or uses a child in an industrial undertaking in violation of the law. Fines in the formal sector were generally enough to deter violations. Employment of children in the formal industrial wage sector in violation of the Employment Act was rare. The law does not prohibit child labor for children employed outside the scope of a contractual agreement. Child labor in the informal sector was widespread, but the government did not effectively monitor or control it.

The Ministry of Labour and Social Protection enforces child labor laws, but enforcement remained inconsistent. Supplementary programs, such as the ILO-initiated Community Child Labor monitoring program, helped provide additional resources to combat child labor. These programs identified children who were working illegally, removed them from hazardous work conditions, and referred them to appropriate service providers. The government also worked closely with the Central Organization of Trade Unions, and the Federation of Kenyan Employers to eliminate child labor.

In support of child protection, the Ministry of Labour and Social Protection launched a national online database system in 2017. The Child Protection Information Management System collects, aggregates and reports on child protection data that informs policy decisions and budgeting for orphans and vulnerable children. The web-based system allows for an aggregate format of data to be made available to all the child protection stakeholders. In 2017, two new child rescue centers were established in Siaya and Kakamega counties, bringing the total number of these centers to eight. Child rescue centers remove child laborers from the workplace, rehabilitate them, and provide counseling and life-skills training.

The government continued to implement the National Safety Net Program for Results, a project that seeks to establish an effective national safety net program for poor and vulnerable households, and the Decent Work Country Program, a project designed to advance economic opportunities. Under these programs, the government pays households sheltering orphans or other vulnerable children to deter the children from dropping out of school and engaging in forced labor. For example there were some cases reported in the western part of the country of girls dropping out of secondary school and engaging in sex work in order to afford basic supplies.

Many children worked on family plots or in family units on tea, coffee, sugar, sisal, tobacco, and rice plantations, as well as in the production of khat. Children worked in mining, including in abandoned gold mines, small quarries, and sand mines. Children also worked in the fishing industry. In urban areas businesses employed children in hawking, scavenging, carrying loads, fetching and selling water, selling food, and forced begging (that puts children at risk of being involved in criminal acts). Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestic servants. Parents sometimes initiated forced or compulsory child labor, such as in agricultural labor and domestic service, but also including commercial sexual exploitation.

Most of the trafficking of children within the country appeared related to domestic labor, with migrant children trafficked from rural to urban areas.

Also, see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>, and the Department of Labor's *List of Goods Produced by Child Labor or Forced Labor* at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

#### **d. Discrimination with Respect to Employment and Occupation**

The law prohibits discrimination on race, sex, ethnicity, religion, and several other criteria, but it does not explicitly prohibit discrimination based on sexual orientation or gender identity. Several regulatory statutes explicitly prohibit discrimination against persons with disabilities; provide a legal framework for a requirement for the public and private sectors to reserve 5 percent of employment opportunities for persons with disabilities; tax relief and incentives for such persons and their organizations; and reserves 30 percent of public-procurement tenders for women, youth, and persons with disabilities.

The government did not effectively enforce the law. Gender-based discrimination in employment and occupation occurred, although the law mandates nondiscrimination based on gender in hiring. The average monthly income of women was approximately two-thirds that of men. Women had difficulty working in nontraditional fields, received slower promotions, and were more likely to be dismissed. According to a World Bank report, both men and women experienced sexual harassment in job recruitment, but women more commonly reported it. Women who tried to establish their own informal businesses were subjected to discrimination and harassment. One study of women street vendors in Nairobi found harassment was the main mode of interaction between street vendors and authorities. The study noted demands for bribes by police amounting to 3 to 8 percent of a vendor's income as well as sexual abuse were common.

In an audit of hiring practices released in 2016, the National Cohesion and Integration Commission accused many county governors of appointing and employing disproportionate numbers of the dominant tribe in their county. According to the commission, 15 of the 47 counties failed to include a single person from a minority tribe either on the county's public service board or as county executive committee members. For example, all 10 of West Pokot's committee members were Pokots. These problems were aggravated by the devolution of fiscal and administrative responsibility to county governments. Other counties, for example, Nairobi City County, were notable for apportioning roles inclusively. Observers also noted patterns of preferential hiring during police recruitment exercises (see section 1.d.).

In both private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of other members of the same group.

The law provides protection for persons with disabilities against employment discrimination, although many employers still discriminated against persons with disabilities during hiring processes (see section 6, Persons with Disabilities). Due to societal discrimination, there were very limited employment opportunities for persons with albinism. There are no legal employment protections for LGBTI persons, who remained vulnerable to discrimination in the workplace. Discrimination against migrant workers also occurred.

#### **e. Acceptable Conditions of Work**

Regulation of wages is part of the Labor Institutions Act, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category. The minimum wage for all occupations exceeded the World Bank poverty rate.

The law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. It specifically excludes agricultural workers from such limitations. It entitles an employee in the nonagricultural sector to one rest day per week and 21 days of combined annual and sick leave. The law also requires total hours worked (regular time plus overtime) in any two-week period not exceed 120 hours (144 hours for night workers), and provides premium pay for overtime.

The government did not effectively enforce the law. Authorities reported workweek and overtime violations. Workers in some enterprises, particularly in the EPZs and those in road construction, claimed employers forced them to work extra hours without overtime pay to meet production targets. Hotel industry workers were usually paid the minimum statutory wage, but employees worked long hours without compensation. Additionally, employers often did not provide nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment.

The law details environmental, health, and safety standards. The Ministry of Labour and Social Protection's Directorate of Occupational Health and Safety Services has the authority to inspect factories and work sites, but employed an insufficient number of labor inspectors to conduct regular inspections. Fines generally were insufficient to deter violations.

The directorate's health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Employers

may appeal such notices to the Factories Appeals Court, a body of four members, one of whom must be a High Court judge. The law stipulates factories employing 20 or more persons have an internal health and safety committee with representation from workers. According to the government, many of the largest factories had health and safety committees.

The law provides for labor inspections to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring compliance with labor laws. The government paid low salaries to labor inspectors and did not provide vehicles, fuel, or other resources, making it very difficult for labor inspectors to do their work effectively and leaving them vulnerable to bribes and other forms of corruption.

The law provides social protections for workers employed in the formal and informal sectors. Informal workers organized into associations, cooperatives, and, in some cases, unions. All local employers, including those in the informal sector, are required to contribute to the National Hospital Insurance Fund and the National Social Security Fund; these provide health insurance and pensions.

Workers, including foreigners and immigrants, have the legal right to remove themselves from situations that endanger health or safety without jeopardy to their employment. The Ministry of Labour and Social Protection did not effectively enforce these regulations, and workers were reluctant to remove themselves from working conditions that endangered their health or safety due to the risk of losing their jobs. In November a harvester lost an eye in an accident on a tea plantation. The Kenya Federation of Employers provided training and auditing of workplaces for health and safety practices.