

# **KENYA 2016 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 the National Assembly; and the judiciary. The country continued to transfer significant elements of fiscal and administrative authority from the central government to 47 county governments created in 2013 in accordance with the 2010 constitution. The constitution also established an independent judiciary and a supreme court. In the 2013 general elections, the first under the new constitution, citizens elected a president and deputy president, parliamentarians (including members of the new Senate), and, for the first time, county governors and legislators. International and domestic observers judged the elections generally free and credible, although some civil society groups pointed to irregularities and questioned the results. In a closely contested election, Jubilee Coalition candidate Uhuru Kenyatta won the presidency. The Supreme Court unanimously upheld the election results. Since that time, authorities have held several free and credible by-elections.

Civilian authorities at times did not maintain effective control over the security forces.

The most serious human rights problems were security force abuses, including unlawful killings, forced disappearances, and impunity.

Other human rights problems included: harsh and life-threatening prison conditions; arbitrary arrest and detention; prolonged pretrial detention; arbitrary infringement on citizens' privacy rights; restrictions on press freedom and freedom of assembly; an inefficient judiciary; widespread corruption; violence and discrimination against women; violence against children, including female genital mutilation/cutting (FGM/C); early and forced marriage; child prostitution; trafficking in persons; discrimination against persons with disabilities and albinism; discrimination based on ethnicity, sexual orientation, and HIV/AIDS status; violence against persons with HIV/AIDS; mob violence; lack of enforcement of workers' rights; and forced and bonded labor, including of children.

The governmental Independent Policing Oversight Authority (IPOA), established to provide civilian oversight over the work of police, investigated numerous cases

of misconduct. Impunity at all levels of government continued to be a serious problem, despite public statements by the president and deputy president and police and judicial reforms. The government took only limited and uneven steps to address cases of alleged unlawful killings by security force members, although IPOA continued to increase its capacity and referred 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, although President Kenyatta continued his anticorruption campaign launched in March 2015, and the inspector general of police continued his strong public stance against corruption among police officers. In November 2015 the president reshuffled his cabinet in response to corruption allegations against several cabinet secretaries.

Al-Shabaab terrorists conducted deadly attacks and guerilla-style raids on isolated communities along the border with Somalia, targeting both security forces and civilians. Human rights groups alleged that security forces committed abuses 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 allegations the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. On September 7, the nongovernmental organization (NGO) Independent Medico Legal Unit reported 114 cases of individuals killed by police between January and August, including 101 individuals who were allegedly executed extrajudicially and 13 individuals who were killed in unclear circumstances. Some groups alleged authorities significantly underestimated the number of extrajudicial killings due to underreporting of security force killings in informal settlements, including those in dense urban areas. From January to September 22, IPOA received 62 complaints regarding deaths resulting from police actions, including 28 fatal shootings involving police and 34 deaths due to other actions by police. Of these, IPOA referred one to the ODPP, based on conclusive investigations. From the 7,169 complaints IPOA received against police since its inception, authorities were trying 30 cases as of October 25.

In July the NGO Human Rights Watch (HRW) released a report documenting 34 cases of individuals who disappeared and 11 cases of individuals found dead after allegedly being taken into custody by security forces during counterterrorism

operations in Nairobi and the country's northeast region between December 2013 and December 2015. According to the report, law enforcement authorities did not meaningfully investigate these deaths and disappearances. The report attributed many of the human rights abuses to the Kenya Defense Forces in the northeast counties of Mandera, Garissa, and Wajir bordering Somalia.

In July, four police officers were charged with the homicides of International Justice Mission (IJM) investigator and lawyer Willie Kimani, IJM client Josphat Mwenda, and their driver Joseph Muiruri; the three went missing after Kimani filed a case against a police officer on behalf of Mwenda. Their severely tortured bodies were recovered from a river a week later. The case prompted demonstrations by lawyers and members of civil society across the country calling for an end to extrajudicial killings by police. In September a fifth police officer was charged. The trial continued at year's end.

Impunity remained a serious problem (see section 1.d.).

Al-Shabaab terrorists conducted deadly attacks and guerilla-style raids on isolated communities along the border with Somalia. There were numerous cases of terrorist abuses, including the killing of at least six persons in Mandera County on July 1 by suspected al-Shabaab terrorists who attacked two commercial buses and the killing of 12 persons in Mandera County by al-Shabaab terrorists in an attack on a hostel.

## **b. Disappearance**

Observers and NGOs suspected members of the security forces were culpable of forced disappearances. On the August 30 commemoration of the International Day of the Victims of Enforced Disappearances, 15 international and local human rights organizations released a joint press statement calling on the government to acknowledge the practice of abductions by security agencies. The statement also reported that human rights organizations documented more than 300 cases of individuals who had gone missing while in the hands of security agencies since 2009. *The Star*, a daily newspaper, reported on August 31 that more than 100 citizens had disappeared during the year, and it cited NGO Haki Africa claims of 78 killings and enforced disappearances in the prior two months in Mombasa County. In July, HRW reported 34 suspected cases of enforced disappearances (see section 1.a.).

Several members of parliament representing northeastern and coastal

constituencies noted their constituents reported cases of disappearances.

There were also separate media reports of 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.).

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

While the constitution and law prohibit torture, the legal code does not define torture and provides no sentencing guidelines for violating the constitutional and legal prohibitions. These gaps functionally prevent prosecution for torture. 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, being tied up in painful positions, and electric shocks were the most common methods of torture used by police. A range of human rights organizations and media reported cases of torture and indiscriminate police beatings committed with impunity. For example, local media widely reported in July on leaked autopsy results from murdered IJM investigator and lawyer Willie Kimani, IJM client Josphat Mwenda, and their driver Joseph Muiruri that revealed the three were tortured to death by police officers, including by physical beating and strangulation (see section 1.a). HRW's July report documented six cases of serious abuse of detainees that appeared to amount to torture that allegedly took place in military camps and bases in Garissa, Wajir, and Mandera Counties. The *Standard* daily newspaper reported on September 15 that a High Court awarded five million shillings (\$50,000) in compensation to four civilians who suffered permanent disabilities through physical beating and gunshot wounds inflicted by Kenya Defense Forces soldiers in Garissa in 2012.

On April 2, according to an IPOA report, police officers from the General Service Unit deployed to the University of Nairobi entered academic and dormitory buildings, evicted, and assaulted an estimated 30 students with batons. Many students sustained serious injuries from police batons, including bone fractures (see section 1.f.).

In late May and early June, police used violent and at times deadly force against demonstrators denouncing the Independent Electoral and Boundaries Commission (see section 3).

There were reports security forces deployed to quell ethnic violence committed abuses (see section 6).

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

Human rights organizations reported in 2015 that prison, detention center, and police station conditions were harsh due to overcrowding, food and water shortages, and inadequate sanitary conditions and medical care. Overall, health care improved during the year due to the Kenya Prisons Service's enhanced capacity to respond to the health-care needs of inmates.

Physical Conditions: The Kenya Prisons Service reported a prison population of 53,841 as of August, more than 90 percent of which were men. The country's 108 prisons had a designed capacity of 26,687 inmates. While the Prisons Service noted that 10 more facilities were built to improve capacity, with more than five others under construction, serious overcrowding was the norm. Authorities continued a "decongestion" program that entailed releasing petty offenders and encouraging the judiciary to increase utilization of the Community Service Orders program in their sentencing.

The Kenya Prisons Service reported 50 deaths as of August 5, mostly from natural causes, representing a dramatic reduction from previous years, which the service attributed to improvements in prison health services.

Between January and June, IPOA observed that authorities separated women from men in detention facilities 81 percent of the time in the 46 detention facilities its representatives visited. In smaller jails female prisoners were not always separated from men. There were no separate facilities during pretrial detention, and sexual abuse of female prisoners was a problem. Conditions for female inmates in small, particularly rural, facilities were worse than for men. Human rights groups reported that police routinely solicited sex from female prisoners and that many female inmates resorted to prostitution to obtain necessities, such as sanitary items and underwear, which the Prisons Service did not provide.

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. Between January and June, IPOA observed that only 16 percent of the detention facilities visited included separate housing for juveniles. In the same period, IPOA observed that only 4 percent of detention facilities inspected had child protection units. 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 detention facilities for minors, authorities often had to transport them very 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 Prisons Service stated in August that it no longer served a penal diet for punishment. Water shortages, a problem both inside and outside of prison, continued. Sanitary facilities were inadequate. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks. This was especially true for the more than one-third of inmates awaiting trial, as they were not engaged in any work programs that would allow them to leave their cells regularly.

Administration: Recordkeeping on prisoners remained inadequate despite the enactment and entry into force in 2014 of the Security Laws Amendment Act. The act requires improved recordkeeping at prisons and jails. The Prisons Service took steps to improve recordkeeping, including engaging with prison reform NGOs and IPOA, and to conduct training and improve practices.

Mechanisms for prisoners to report abuse and other concerns improved due to collaboration between the Prisons Service and the Kenya National Commission on Human Rights (KNCHR) to monitor human rights standards in prison 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. Government-established special committees, which included paralegals and prison officials, also served to increase prisoners' access to the judicial system. The Legal Aid Center of Eldoret 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. 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 somewhat prison overcrowding. 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,” which may carry a life sentence, without sufficient evidence to support it. 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.

Improvements: Overall health care in prisons improved due to strengthened capacity to respond to health-care needs. A Directorate of Health Services was established in the Prisons Department to oversee health and hygiene issues, and prison and detention facilities added more health professionals. A program was launched to provide care for inmates with HIV/AIDS and improve tuberculosis diagnoses, important factors in decreasing morbidity and mortality. The Prisons Service opened its first facility exclusively for juvenile female offenders--the Kamae Girls Borstal Institution at Kamiti Maximum Security Prison in Kiambu County, which can accommodate up to 200 girls ages 15 to 17.

#### **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 citizens arbitrarily, accused them of more severe crimes than they had committed, or accused them of a crime to mask underlying police abuses.

#### **Role of the Police and Security Apparatus**

The National Police Service (NPS) maintains internal security and is subordinate to the Ministry of Interior and Coordination of National Government (Interior).

The NPS includes the Kenya Police Service and the Administration Police Service. The Kenya Police Service is responsible for general policing and maintains specialized subunits, such as the paramilitary General Services Unit, which is responsible for responding to significant and large-scale incidents of insecurity and guarding high-security facilities. The Administration Police Service's mandate is border security, but it also assumed some traditional policing duties. The Directorate of Criminal Investigation is an autonomous department responsible for all criminal investigations and includes specialized investigative units, such as the Antinarcotics Unit, the Antiterrorism Police Unit, and the Forensics Unit.

The National Intelligence Service collects intelligence internally as well as externally and is under the direct authority of the president.

The Kenya Defense Forces are responsible for external security but have some domestic security responsibilities, including border security and supporting civilian organizations in the maintenance of order, as allowed by the constitution. The defense forces are subordinate to the Ministry of Defense. In September 2015 the defense forces and police launched a coordinated operation to drive al-Shabaab terrorists out of the Boni Forest in northern Lamu and southern Garissa Counties; the operation continued as of October.

The National Police Service Commission (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's two deputies. Two commissioner positions remained vacant despite requests from the NPSC and public pressure to fill those positions. The NPSC is responsible for recruiting, transferring, vetting, promoting, and removing police officers in the National Police Service. IPOA investigates serious police misconduct, especially cases of death and grave injury at the hands of police.

Impunity was a major problem. 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 could file complaints at regional police stations, police headquarters through the Internal Affairs Unit (IAU), and through the IPOA website and hotline. Sometimes police turned away victims who sought to file complaints at police stations where alleged police misconduct originated, and instead directed them 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 corruption remained a significant problem. Human rights NGOs reported that police often stopped and arrested citizens to extort bribes; they jailed, on trumped-up charges, those who could not pay and sometimes beat them. During police vetting conducted by the NPSC, multiple police officers were exposed as having 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 that some officers also transferred money to superior officers. Media and civil society groups reported that police used illegal confinement, extortion, physical abuse, and fabricated charges to accomplish law enforcement objectives as well as to facilitate illegal activities.

Police failed to prevent vigilante violence in numerous instances but in other cases played a protective role (see section 6, Other Societal Violence or Discrimination).

Poor casework, incompetence, and corruption undermined successful prosecutions; the overall conviction rate for criminal prosecutions was between 13 and 16 percent. 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 common (see section 4), 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 going to a police station to make a complaint. In August, Kayole police chief Ali Nuno allegedly assaulted and detained an IPOA officer sent to deliver to him a summons for an investigation into allegations of Nuno's abuse of office.

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 new whereabouts.

During the year police accountability mechanisms, including those of IPOA and the IAU, increased their capacity to investigate cases of police abuse. The IAU acting director reported directly to the inspector general of police. Close to 70 officers served in the unit, mostly investigators with a background in the Kenya Police Service and the Administration Police Service. The IAU handles allegations of bribery, harassment, and indiscipline.

Between January and June, IPOA received six reports of deaths and one report of serious injury caused by NPS officers, which is legally required to report all deaths to IPOA. IPOA repeatedly expressed its concern about the lack of compliance with this legal requirement. Since its inception in 2012, IPOA had received 219 reports of deaths in addition to 89 reports of serious injuries.

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

Between January and June, IPOA received 1,326 complaints, bringing the total since its inception to 7,835. In the same six-month period, IPOA completed 94 complaints, 13 of which were death cases. In the previous four years, IPOA completed 321 cases and referred 66 to the ODPP for prosecution. Of those 66 cases, 35 cases were before the courts. In April IPOA secured its first manslaughter conviction, against two police officers who killed a 14-year-old girl in Kwale in 2014.

The NPSC continued transitional vetting of 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 consideration of public input regarding allegations of abuse or misconduct. By September the NPSC had vetted nearly 3,000 officers, of whom 919 were vetted during the year. All of the officers vetted during the year were from the traffic department, which has a reputation for extensive corruption. Nearly 50 officers were removed from the service based on 2015 vetting. Removals based on the year's vetting had not been announced as of October 25. Some legal challenges brought by officers vetted out of the service continued in court.

## **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 for persons to be charged, tried, or released within a certain time and for issuing 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 the accused if held longer than the prescribed period, some cases did not result in an acquittal, and authorities provided no compensation.

Police used excessive force in some cases when making arrests. Some officers were charged and convicted for use of excessive force during the year. For example, in a case reported by every major domestic newspaper in 2014, police officers in Kwale shot and killed a 14-year-old girl while searching for a suspect in her residence. Police claimed she confronted them with a machete. According to press reports, an eyewitness, who subsequently went into hiding, claimed police shot her without provocation. Two police officers stood trial for the homicide, and in March a high-court judge found them both guilty of manslaughter; they were each sentenced to prison for seven years.

The constitution establishes the right of suspects to bail unless there are compelling reasons 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 that authorities granted bail to suspects even in cases in which there was evidence that 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 that authorities permitted access only upon payment of bribes. When detainees could afford counsel, police generally permitted access to attorneys.

Arbitrary Arrest: Police arrested and detained persons arbitrarily. Victims of arbitrary arrest were generally poor young men. Human rights organizations complained that security forces engaged in widespread arbitrary arrests and detentions during counterterrorism operations and targeted ethnic Somalis and Kenyan Muslims. On the August 30 International Day of Victims of Enforced Disappearances, human rights activists in Mombasa asked the National Assembly to address the issue of arbitrary arrests and murder (see section 1.a.).

Pretrial Detention: Lengthy pretrial detention was a serious problem and contributed to prison overcrowding. Some defendants were held 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; that right was not always protected in practice.

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

The constitution provides for an independent judiciary. Reform of the judiciary continued during the year. The judiciary demonstrated independence and impartiality, but there were media and other allegations of significant judicial corruption. Authorities generally respected court orders, and the outcomes of trials did not appear to be predetermined.

The Judicial Services Commission--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.

The Judges and Magistrates Vetting Board, established in 2011 to determine the suitability of judges and magistrates to hold office, completed its vetting and submitted its final report to the president on September 6. The board proposed to the president the formation of an independent disciplinary tribunal to receive complaints against judicial officers and make recommendations for appropriate action. In the final report, 44 percent of Court of Appeal judges, 15.9 percent of High Court judges, and 4.7 percent of magistrates were found unsuitable.

There were several allegations of judicial corruption. In January the Judicial Service Commission asked the president to form a tribunal to investigate claims that Supreme Court judge Philip Tunoi received an estimated 200 million shillings (\$2 million) to influence an election petition opposing Nairobi's governor. In February the president suspended the judge and appointed the tribunal, which ended its proceedings in June on the grounds that it lacked a legal mandate to investigate the judge after he retired at age 70, as required by law.

The constitution gives the judiciary authority to review appointments and decisions by other branches of government. Parliament sometimes ignored judicial decisions. For example, on August 27, a High Court deadline expired for parliament to enact legislation to implement the constitutionally mandated two-thirds gender principle (see section 3).

The law provides for "qadi" courts, which adjudicate Muslim law on marriage, divorce, and inheritance among Muslims. There were no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in personal matters as long as it did not conflict with statutory law.

### **Trial Procedures**

The law provides for the right to a fair public trial, although 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 of the charges against them, with free interpretation if necessary; to be tried without undue delay; to have access to government-held evidence; and not to be compelled to testify or confess guilt. Authorities generally respected these rights, although they did not always promptly inform persons of the

charges against them. *Sentencing Policy Guidelines*, a policy document drafted by the Judicial Task Force on Sentencing, was launched by the chief justice on January 25. The *Active Case Management Guidelines*, developed to improve prosecution procedures, were gazetted (announced via official publication) on February 29 and implemented as a pilot project in four courts as of September. A randomized bench selection system was partially implemented within the Court of Appeal to avoid the public perception that parties with vested interests could influence the composition of a bench of judges.

Trial delays sometimes resulted because witnesses failed to present themselves, judges cancelled trial dates without notice, witnesses were not protected, or legal counsel failed to appear. Authorities generally respected a defendant's right to consult with an attorney in a timely manner, although there was no public defenders service. Defendants generally had adequate time to prepare a defense if they were capable of doing so. The government and court generally respected these rights. The Legal Aid Act enacted in June established the National Legal Aid Service to facilitate access to justice and promote pro-bono services for indigent defendants who cannot afford legal representation. The National Council on the Administration of Justice was working to implement the changes as of October. Courts continued to try the vast majority of defendants without representation because they could not afford legal counsel. 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 significantly increased the number of trained prosecutors. At year's end there were an estimated 900 state prosecutors, compared with 200 in 2013. The ODPP phased out police prosecutors entirely. The expansion of the prosecution service also reduced delays in court proceedings. The judiciary improved its case clearance rate and substantially reduced case backlog by increasing benches of judges sitting daily.

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.

## **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 its decisions to the Supreme Court as well as to the African Court of Justice and Human Rights. On May 5, the judiciary launched a program of *Enhanced Service Delivery Initiatives* to promote more efficient and affordable justice. For example, the Family and Commercial Divisions of the High Court at Milimani in Nairobi commenced a pilot Court Annexed Mediation Program to give parties an alternative forum for dispute resolution.

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 some from access to the courts.

## **Property Restitution**

There is no single established system of land tenure in the country: private titles compete with customary land rights and community land, while public land is vulnerable to squatters or to unscrupulous developers. There is no clear legal framework for issuing title deeds or for adjudicating land disputes because of legal disputes between the National Land Commission, vested with powers of land adjudication through the constitution and 2012 implementing legislation, and the Ministry of Lands. Plots of land were sometimes allocated twice. The Community Land Act signed into law on August 31 allows communities to apply for land registrations as a single entity and put in train the adjudication process in which their applications will be considered alongside any competing claims.

While three-quarters of the population is rural, according to the National Land Commission, only 20 percent of citizens possessed actual titles to land.

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 restore what it claimed was illegally occupied public land. In some cases authorities arranged ad hoc restitution or relocation of residents under NGO

pressure. For example, according to the *Guardian* on August 18, more than 200 indigenous Ogiek families on the slopes of Mount Elgon were evicted in June by police and forest rangers; activists claimed the terms for compensation payments were unclear and that the families were not resettled.

#### **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.

On April 2, according to the subsequent IPOA report, police officers from the General Service Unit deployed to the University of Nairobi; they entered academic and dormitory buildings, evicted, and then assaulted approximately 30 students with batons. The incident received extensive media coverage after a live video clip was widely shared on social media. Many students sustained serious injuries from police batons, including bone fractures. Both IPOA and the IAU initiated investigations into the events, but the investigations were frustrated by a lack of police cooperation. No charges against police officers had been filed as of October 25.

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.

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

#### **a. Freedom of Speech and Press**

The law provides for freedom of speech and press, but the government sometimes restricted these rights.



Freedom of Speech and Expression: The constitution and National Cohesion and Integration Act prohibit hate speech and incitement to violence. Following inflammatory public comments in June, eight politicians--from both the ruling and opposition parties--were detained for several days. Four were charged with incitement to violence under Section 96 of the penal code: Member of Parliament (MP) Florence Mutua, MP Moses Kuria, MP Ferdinard Waititu, and Senator Johnson Muthama. Kimani Ngunjiri was charged with ethnic contempt under Section 62 of the National Cohesion and Integration Act. Three were charged with hate speech under Section 13 of the National Cohesion and Integration Act: MP Aisha Juma, Junet Nuh, and Timothy Bosire. The detention of senior politicians attracted considerable national attention to the problem of hate speech. The case against Muthama was dismissed on July 28. The cases against the other politicians continued as of October 25.

Press and Media Freedoms: 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 2013 laws--the Media Council Act and the Kenya Information and Communications (Amendment) Act--greatly increased government oversight of media by creating a complaints tribunal with expansive authority, including the power to revoke journalists' credentials and levy debilitating fines. Following the January 15 al-Shabaab terrorist attack on the Kenyan-commanded African Union Mission in Somalia (AMISOM) forward operating base in el Adde, Somalia, numerous journalists who published comments about the attack were arrested. Most were charged under Kenya Information and Communications Act (KICA) Section 29, a section of law ruled unconstitutional in April--(see Internet Freedom below).

Of the 16 other laws in place that restrict media operations, the Defamation Act, Official Secrets Act, and Preservation of Public Security Act place the most severe restrictions on freedom of the press. On August 31, the president signed into law the Access to Information bill, which media freedom advocates lauded as progress in government transparency (see section 4).

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.

Kenyan journalists held protests in multiple cities on September 8 against police harassment of journalists. For example, three men reportedly shot and killed

freelance journalist Dennis Otieno on September 7 in his home in Kitale and allegedly stole his camera and photographs covering a student demonstration over a land dispute. The protesting journalists petitioned parliament, the Office of the Director of Public Prosecutions, and the inspector general of police to brief them on the status of investigations on attacks against journalists and to assure journalists that the government was taking action. The government's response was pending as of November 7.

Most news media continued to cover a wide variety of political and social issues, and most newspapers published opinion pieces criticizing the government.

Censorship or Content Restrictions: The mainstream media were generally independent, but there were reports by journalists that 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. On January 6, Denis Galava, special projects editor at National Media Group, was suspended for a January 2 editorial deemed critical of the government. In March Godfrey Mwampembwa ("Gado"), a revered political cartoonist, had his contract with the *Nation* terminated, allegedly because of pressure from the government over Gado's oftentimes politically sensitive cartoons. He was subsequently hired by the *Standard*, another leading daily newspaper.

Libel/Slander Laws: Government officials and politicians threatened and brought defamation cases against the media. Libel and slander remain criminal offenses, although authorities did not charge any journalists during the year. There were, however, several cases of High Court rulings against media houses on libel charges resulting in large awards for damages. In June the High Court awarded Justice Samuel Mukunya 20 million shillings (\$200,000) in a libel suit against the *Nation*, and in August the High Court awarded Justice Alnasir Visram 26 million shillings (\$260,000) in a libel suit against the *Standard*.

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

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private

online communications without appropriate legal authority. Authorities, however, monitored websites for violations of hate speech laws.

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.

On April 19, the High Court declared unconstitutional Section 29 (b) of the KICA (Section 29). During the year at least 16 online activists--who were highlighting cases of corruption and abuse of public office--were prosecuted under this provision with charges of "misuse of electronic equipment." As a result of the High Court ruling on KICA Section 29, on April 29 a lower court dismissed a case against Samburu blogger John Lenkulate, who had posted online that the Samburu County government was misusing public resources.

Following the January 15 al-Shabaab terrorist attack on the Kenyan-commanded AMISOM forward operating base in el Adde, Somalia, the government arrested at least one blogger and one journalist for posting photographs and commentary about the number of Kenyan soldiers killed. Most were charged under KICA Section 29, which was overturned in April. Charges were subsequently dropped.

According to the Communications Authority of Kenya (CAK), as of September there were 37 million internet users--84 percent of the population--representing a 10 percent increase from the previous year. The total included 24.8 million mobile data subscriptions. The CAK attributed the increase to the expansion of 3G network coverage by the various mobile operators, as well as to a consistent increase in the usage of social networking sites. Mobile data expanded internet access to many less-developed parts of the country.

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

There were no government restrictions on academic freedom or cultural events. On August 21, the president signed into law the Protection of Traditional Knowledge and Cultural Expressions Bill, which promotes traditional cultural knowledge and expressions.

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

#### **Freedom of 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. In April and May, the Kenya Police Service used excessive force to disperse nationwide demonstrations led by the political opposition coalition against the Independent Electoral and Boundaries Commission (IEBC), resulting in at least 10 deaths and numerous injuries (see section 1.c.). Many human rights and civil society organizations condemned the excessive use of police force against demonstrators. IPOA's investigation of resulting complaints continued as of early October. A lack of police cooperation frustrated IPOA's investigation into some of the alleged abuses.

There were complaints during the year that police were available for hire by private interests to dissuade or disperse demonstrators.

### **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected this right, but there were reports that authorities arbitrarily denied this right in some cases. In at least one case, courts affirmed the right to freedom of association. In April 2015 a High Court panel decided that the national NGO Coordination Board's inability to register the National Gay and Lesbian Human Rights Commission because homosexual sexual acts are illegal violated the constitutional right to freedom of association and ordered the board to register it; the government's appeal remained pending as of October 25. On May 20, however, the Court of Appeal ruled the judgment of the High Court stands in the interim.

The Societies Act requires that every public association be either registered or exempted from registration by the Registrar of Societies. The NGO Coordination Act requires that NGOs dedicated to advocacy, public benefit, or the promotion of charity or research register with the NGO Coordination Board. In October 2015 the board announced its intent to deregister and freeze the bank accounts of 959

civil society organizations, including NGO Kenya Human Rights Commission (KHRC), for reportedly failing to submit proper accounting and donor funding information. The cabinet secretary for the Ministry of Devolution and Planning, which oversaw the NGO Coordination Board, suspended the deregistration notice shortly thereafter. Per the KHRC's legal challenge to the NGO Coordination Board's actions, a High Court ruled on April 29 that the NGO Coordination Board's actions were unconstitutional and "riddled with impropriety and procedural deficiencies." On September 9, the Ministry of Devolution and Planning announced its intention to implement immediately the 2013 Public Benefits Organization (PBO) Act, an important step in providing a transparent legal framework for NGO activities. On October 19, the cabinet secretary of the Ministry of Devolution and Planning dismissed the chief executive officer (CEO) of the NGO Coordination Board and dissolved the three-member board; however, a High Court injunction subsequently reinstated the CEO and restored the board. In late November the government transferred responsibility for the NGO sector to the Ministry of Interior and Coordination of National Government, without prior stakeholder consultation. As of year's end, the PBO Act had not yet been implemented.

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

See the Department of State's *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights but increasingly enforced restrictions on refugees' movements. 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 internally displaced persons (IDPs), refugees, asylum seekers, and other persons of concern.

Abuse of Migrants, Refugees, and Stateless Persons: Police abuse of asylum seekers and refugees continued, with most reports coming from Nairobi's predominantly Somali Eastleigh neighborhood.

Witnesses alleged security forces routinely confiscated or destroyed both expired and valid UN refugee documents and frequently demanded bribes to release persons in detention or in the process of arrest. According to media and NGO reports, police and military personnel mistreated refugees in retaliation for al-Shabaab attacks on security personnel.

The security situation in Dadaab remained precarious, although no new attacks on humanitarian workers occurred. Increased police presence in the camps led to some improvements and cooperation with refugees through community policing and neighborhood watch initiatives. Violence also occasionally flared over Dadaab host community protests about employment and priority contract rights related to the camp.

Gender-based violence remained a problem in both the Dadaab and Kakuma refugee camps and in Nairobi, particularly for vulnerable populations including women, children, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, FGM/C, and forced marriage, particularly of young Sudanese, South Sudanese, and Somali girls. Refugee communities sometimes targeted opponents of FGM/C. Health and social workers in Kakuma refugee camp reported that, due to strong rape-awareness programs in the camp, survivors increasingly reported such incidents, resulting in improved access to counseling. In the Dadaab refugee camp, however, the government's limited effectiveness and UNHCR's restricted access and limited ability to provide services or protection resulted in higher numbers of cases of gender-based violence and underreporting of crimes and abuse, particularly against women and girls.

While mobile courts continued to serve the camp populations, most crimes went unreported. Refugees generally dealt with criminality in accordance with 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.

In-country Movement: The country hosted a very large refugee population. Prolonged insecurity and conflict in the region forced the country to play a leading role in coping with refugee flows, especially from Somalia, South Sudan, the Democratic Republic of the Congo (DRC), and Ethiopia. The government's appeal of a 2013 High Court ruling that blocked a plan to relocate all urban refugees to camps remained unresolved. The government enforced an

encampment policy, with Kakuma and Dadaab refugee camps as the designated areas for refugees (see Protection below).

The government granted limited travel permission to refugees to receive specialized medical care outside the camps, to refugees enrolled in public schools, and to refugees in the resettlement pipeline. 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.

From January through July, the Department of Refugee Affairs issued 2,896 temporary movement passes to refugees and asylum seekers. UNHCR reported that approximately 90 percent of the individuals returned to their camps by the time their passes expired. Authorities charged 240 refugees and asylum seekers with being unlawfully present in the country (under the Citizenship and Immigration Act) and residing without authority outside designated areas (under the Refugees Act). Of the 240 refugees and asylum seekers, authorities discharged 133 and returned them to the camps, convicted 98 and ordered them to pay fines or serve three to six months in prison, and continued the cases of nine as of year's end.

### **Internally Displaced Persons**

The National Consultative Coordination Committee on IDPs (the committee) was created by the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012 (IDP Act); however, the committee did not meet and begin to implement the IDP Act until April 2015. According to the Ministry of Devolution and Planning, in 2015 the committee completed the resettlement of more than 10,000 IDPs who remained in camps after the 2007-08 postelection violence.

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 displacement of an estimated 32,000 households. According to the Ministry of Devolution and Planning, the committee provided Mandera County with financial assistance for 6,890 IDP households that had not been able to return home, and construction of new homes had commenced.

Water scarcity exacerbated communal conflict and left an unknown number of citizens internally displaced. IDPs from all locations generally congregated in

informal settlements and 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 or gather food and fuel locally. In the north IDP settlements primarily consisted of displaced ethnic Ethiopians and Somalis and were targets of clan and resource-based violence.

The Ministry of Devolution and Planning reported that citizens who had fled a 2015 security operation to flush al-Shabaab from the Boni Forest in Lamu and southern Garissa Counties returned to their homes.

### **Protection of Refugees**

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. Security threats emanating from Somalia strained the government's ability to provide security to those seeking asylum, especially in Dadaab. The government permitted registration of new refugee arrivals only during specific time periods--most recently between July and August 2015. Since that time, no registration of new arrivals took place, and there were an estimated 4,000 unregistered persons of concern, mostly from Somalia, in need of adjudication. In May the government revoked prima facie status--a group determination of refugee status--for newly arrived asylum seekers from Somalia and did not provide individual refugee status determination to new Somali refugee arrivals.

According to UNHCR, as of October the country hosted more than 500,000 registered refugees and asylum seekers: in Dadaab refugee camp an estimated 282,200, in Kakuma camp approximately 158,200, and in the Nairobi area an estimated 63,800. The unofficial estimate of refugees in urban areas was nearly 100,000. The majority of refugees and asylum seekers were from Somalia (334,728), with others coming from South Sudan (90,247), the DRC (27,485), Ethiopia (26,742), Sudan (9,790), and other countries (13,202). Most refugees arriving in Kakuma were from South Sudan, and the refugee population in Dadaab was primarily of Somali origin. New arrivals also included individuals from Burundi, the DRC, Ethiopia, and Uganda. The Somali refugee influx was lower than in previous years. In 2013 the governments of Kenya and Somalia and



UNHCR signed a tripartite agreement, which expired in November; it established a legal framework and process for the voluntary repatriation of Somali refugees when conditions permitted such returns. Under the agreement UNHCR began facilitating voluntary returns to Somalia in December 2014 and had supported the return of more than 30,200 Somali refugees as of October 25.

In May the government again announced that it planned to close the Dadaab camps for reasons of security and economic burdens when the tripartite agreement expired in November; however, in mid-November the government announced it would close the camp within six months. Officially, the country encouraged Somali refugees to return voluntarily to Somalia. UNHCR continued to provide both financial and transportation support to refugees voluntarily returning to Somalia. In September, NGO Human Rights Watch released a report that questioned the voluntariness of Somali refugee returns from Kenya and accused officials of violating international law by intimidating refugees into returning to insecure conditions in Somalia. In November, Amnesty International also issued a report alleging the government was forcing refugees to return to Somalia.

In addition to the May announcement of plans to close Dadaab, the government also in May disbanded the Department of Refugee Affairs and replaced it with a new Refugee Affairs Secretariat to carry out the department's previous work.

Negotiations concerning land for a new camp near Kakuma among UNHCR, the government, and host community in Turkana County concluded in 2015. The county governor signed over land to UNHCR for the new Kalobeyei Integrated Refugee Settlement, planned to host 60,000 refugees and benefit thousands of Kenyan nationals from the host community once completed. The new model was designed, in coordination with Turkana County, to increase the economic integration of refugees with the host community and improve access to income-generating activities, education, and health care for both refugees and citizens.

No official national refugee count existed because the government stopped registering refugees in urban areas in 2012 and in Dadaab camp in 2011. In Kakuma there remained a backlog of cases for registration and refugee status determination of new refugees. This backlog was compounded when the government disbanded the Department of Refugee Affairs.

Refoulement: On November 2, the government forcibly sent South Sudanese opposition spokesman James Gatdet Dak to South Sudan, despite the risk of

torture. In a statement UNHCR expressed its deep concern, noting that Dak had previously been granted refugee status by Kenyan authorities.

There were also multiple reports released by advocacy organizations alleging undue government pressure on refugees in Dadaab camp to repatriate voluntarily to Somalia and that inadequate information was provided to prospective refugees about conditions in areas of return inside Somalia.

### **Stateless Persons**

The constitution and the 2011 Citizen and Immigration Act provide for the protection of stateless persons and for legal avenues for eligible stateless persons to apply for citizenship. In September, UNHCR estimated that 20,000 stateless persons were registered in the country; the actual number, however, was unknown. According to UNHCR stateless persons accounted for 3.5 percent of all registered refugees and asylum seekers in the country. Communities known to UNHCR as stateless included Sudanese Nubians in Nairobi, the Somali Galjeel in the Tana River area, the Mozambican Makonde in Mombasa, and the Pemba in Kwale. There were also a number of stateless persons of mixed Eritrean-Ethiopian heritage. On October 13, President Kenyatta issued a directive that the government should issue national identity cards to all eligible Makonde persons by December and ensure that members of the community are issued title deeds for land they own. The Makonde applicants had not received their cards or title deeds at year's end.

Although legal safeguards and pathways to citizenship for stateless persons exist, the government lacked a strategy to identify and register them, significantly limiting their ability to acquire legal residence or citizenship. 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 that 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 law enforcement officials and exploitation in the informal labor sector.

National registration policies require citizens age 18 and older to register and 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. For example, Nubians, along with ethnic Somalis (such as the Galjeel community) and Muslims on the coast, experienced discriminatory registration policies that led to statelessness, according to UNHCR and domestic legal aid organizations (see section 3).

The deadline for stateless persons to apply to be considered for citizenship expired on August 30. Article 15(2) of the Kenya Citizenship and Immigration Act of 2011 provides that the cabinet secretary may extend that deadline for three years. It was unclear as of October if there would be an extension.

Many stateless persons did not qualify for protection under the local refugee determination apparatus. Among these were Somali refugees born in Kenyan refugee camps and Sudanese and South Sudanese refugees.

Pursuant to the 2011 finding by the African Committee of Experts on the Rights and Welfare of the Child that the government should grant citizenship to children of Nubian descent, during the year the government established a vetting committee of Nubian elders to identify children of Nubian descent who are eligible for registration. As of year's end the committee had not completed this process.

In 2013 then cabinet secretary for land charity Ngilu announced the allocation of 300 acres of public land to a private group representing the Nubian Council of Elders for the settlement of stateless persons. The cabinet secretary, however, left office before the titles were transferred, and there was no progress on this matter. The Nubian Council of Elders sought additional assistance from civil society organizations to obtain the land titles. The council asserted an ancestral claim to approximately 700 acres of land, including the large Kibera informal settlement in Nairobi. UNHCR reported that the National Action Plan to eradicate statelessness in Kenya had been completed but not yet approved by the government.

### **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.

The constitution provides for parliamentary representation by women, youth, persons with disabilities, ethnic minorities, and marginalized communities. Implementation of constitutional reforms continued during the year but was uneven at times. On August 27, the National Assembly's deadline to extend by

one year the five-year deadline to adopt 28 pending constitutionally mandated laws expired, including laws to implement the constitutional principle that no gender should encumber more than two-thirds of elective and appointed offices, as well as land-related and other laws. No judicial action had been taken to address the expired deadline as of October 25.

Struggles among different branches and levels of government complicated implementation of the constitution, particularly the devolution of authority to the counties. The governmental Commission for the Implementation of the Constitution publicly warned parliament against regularly amending draft legislation to delegate more authority to itself over the other branches of government, particularly county governors and the judiciary. At the county level, struggles between governors and the local representatives of the executive branch, among county commissioners, and between governors and members of the county assemblies hampered implementation. Fundamental differences in opinion among branches and layers of government over responsibility for the allocation and distribution of resources created persistent service delivery shortfalls.

### **Elections and Political Participation**

Recent Elections: In 2013 citizens voted in the first general election under the 2010 constitution, electing executive leadership and parliamentarians, including members of the then newly established Senate, county governors, and members of new county assemblies. International and domestic observers, such as the Kenya Elections Observation Group, Africa Union Observer Mission, and Carter Center, judged the elections generally free and credible, although some civil society groups raised concerns about irregularities and questioned the results. In the presidential election, Jubilee Coalition candidate Uhuru Kenyatta won with a margin significantly above that of runner-up candidate Raila Odinga. Odinga challenged the results in a petition to the Supreme Court, citing irregularities in voter registration and technical problems with vote tallying. The Supreme Court ruled unanimously in 2013 to uphold the results.

To reduce voter fraud, the government instituted biometric voter registration ahead of the 2013 elections. The electoral commission registered 14.3 million citizens. Possession of a national identity card or passport was a prerequisite for voter registration. The Independent Electoral and Boundaries Commission, census bureau, and Ministry of Immigration estimated that at least three million voting-age citizens, primarily youths, did not have national identity cards, while civil society organization estimates put the number closer to five million. Ethnic Somali

and Muslim persons on the coast and the ethnic Nubian population in Nairobi complained of discriminatory treatment in the issuance of registration cards, noting that authorities sometimes asked them to produce documentation proving their parents were citizens.

To improve voter registration ahead of the scheduled 2017 elections, the IEBC launched a mass voter registration drive from February 15 to March 15. According to a March 9 IEBC statement, the registration drive had not achieved its targets but could not be extended due insufficient funds. Political parties also launched early voter registration drives in an effort to mobilize those voters at the constituency level who were bypassed during the 2013 elections.

The IEBC conducted a total of 38 by-elections in 2014, 2015, and 2016, which observers and participants deemed free and fair.

Following protests in May and June by the political opposition, some of which were met with violent force (see sections 1.c. and 2.b.), and subsequent dialogue between government and opposition leaders, the IEBC commissioners announced on August 3 their willingness to resign as soon as replacements were selected. A joint select committee was established to determine the composition of the new commission. On December 22, the IEBC selection panel recommended candidates for the chairperson and commissioner positions, from which the president selected his appointees. The appointees were awaiting parliamentary confirmation at year's end.

Participation of Women and Minorities: Voting and the participation of women and members of minorities in the electoral process on the same basis as men or nonminority citizens remained low. The constitution provides that no more than two-thirds of persons elected or appointed to a governmental body may be of one gender, but authorities did not fully implement that provision. The constitution and law do not address minority participation.

A comprehensive study by the Federation of Women Lawyers and National Democratic Institute, *A Gender Audit of Kenya's 2013 Election Process*, identified significant barriers to women's participation in the political process. These included irregularities in political party primaries that prevented women from competing in elections; consistent lack of political party support for female candidates; the consistent failure of political parties to adhere to their own stated procedures for choosing candidates; and harassment, intimidation, and violence against women. The study reported that women comprised 52 percent of the

population but only 47 percent of registered voters. Female candidates reported that male politicians used the existence of “reserved” seats as grounds for discouraging female candidates from seeking contested positions.

The overall success rate of women candidates who ran for positions in the 2013 national elections was 12 percent, compared with the 14 percent success rate for male candidates. There were 86 women in the 11th Parliament, including 19 percent of the National Assembly and 27 percent of the Senate, compared with 9.5 percent in the (unicameral) 10th Parliament (2007-12). In 2012 the Supreme Court directed that the gender requirement be phased in over time. The court set a deadline of August 27, 2015, for parliament to institute a mechanism to comply with the gender requirement but extended it in August 2015 by one year. Parliament failed to enact implementing legislation before the deadline passed on August 27.

Following the 2013 election, women occupied more leadership roles in government but remained underrepresented, especially in parliamentary committees. The president nominated women for key positions in the cabinet, including foreign affairs, defense, and devolution and planning.

The constitution provides for the representation in government of ethnic minorities, but implementation was incomplete.

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

The law, including the criminal code, the Anticorruption and Economic Crimes Act (revised 2011), and the Leadership and Integrity Act (2012), provides criminal penalties for official corruption. Despite some progress in fighting corruption during the year, the government did not implement these laws effectively, and officials frequently engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year, including land seizures, conflicts of interest in government procurement, favoritism and nepotism, and bribery.

Officials from agencies tasked with fighting corruption, including the Ethics and Anticorruption Commission (EACC), the ODPP, and the judiciary, were sometimes the subjects of corruption allegations.

The public continued to perceive corruption as a severe problem at all levels of government. According to an EACC national survey released in March, 75 percent

of respondents characterized corruption levels as “very high” in the country, and a slight majority said that corruption had increased during the previous year. A slight majority, however, also said the government was committed to the fight against corruption. Bribery was the most commonly reported type of corruption, with 38 percent of respondents reporting they had paid a bribe in the last year.

The World Bank’s Worldwide Governance Indicators for 2015, the most recent data available, indicated that corruption was a severe problem. According to a University of Nairobi/Afrobarometer report issued in April 2015, a majority of citizens said that corruption had increased during the previous year and that the government had performed poorly in fighting it. According to the report, police, government officials, members of Parliament, and business executives were most widely perceived as corrupt. A majority of participants who said they paid bribes did not report the incidents. The main reasons for nonreporting were fear of retaliation and perceived inaction by authorities. Official corruption was pervasive at all levels of government, often in the form of land seizures, conflict of interest in government procurement, and demands for bribes

In 2013 the government initiated a new system of devolved governance through which the national government began sharing responsibilities and revenues with 47 newly established county governments, led by directly elected governors. In August the EACC released a report, based on a survey of nearly 5,000 county employees, suggesting that corruption was a severe problem at the county government level. Fifty-six percent of respondents said they considered county governments either “highly” or “moderately” corrupt. Respondents identified bribery, favoritism, procurement irregularities, and embezzlement as the most common forms of corruption in the counties. Many county executive committees struggled with budgeting fundamentals and financial accountability.

The EACC, an independent agency created in 2011, 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. The EACC and the ODPP lacked the technical and financial capacity to execute their mandates fully. EACC chairman Philip Kinisu, appointed in January, resigned on August 31 after being accused of failing to disclose a conflict of interest during his vetting process.

The government increased the EACC’s budget during the year, from 2.6 billion shillings (\$26 million) in 2015 to 2.8 billion shillings (\$28 million). According to

the government's *Economic Survey for 2016*, the EACC increased the number of cases it handled from 4,006 in 2014 to 5,551 in 2015. The pace at which the EACC investigated such cases, however, appeared to slow during the year. As of October there were more than 360 corruption cases pending in court.

Investigations into corruption allegations against 124 government officials named in a 2014 EACC report, including five former cabinet secretaries and three principal secretaries, proceeded slowly. As of September the EACC had submitted 59 of those cases to the ODPP, which approved cases for prosecution. These included cases against two cabinet secretaries (Transport Secretary Michael Kamau and Lands Secretary Charity Ngilu), two governors (Murang'a governor Mwangi wa Iria and Garissa governor Nadhif Jama), four members of parliament, several directors of state corporations, and a number of county officials. Those cases continued at year's end, often delayed by procedural motions. Courts convicted three low-level government officials of corruption-related crimes during the year but did not successfully conclude any prosecutions of current or former high-level officials for corruption.

In February, Supreme Court justice Philip Tunoi was accused of accepting a 200 million Kenyan shillings (\$2 million) bribe from Nairobi City County governor Evans Kidero to rule in Kidero's favor in an election dispute case. The president suspended Tunoi, who denied guilt, pending an investigation by an appointed tribunal, while Kidero remained in office. The tribunal ended its proceedings in June on the ground that it lacked a legal mandate to investigate the judge after he retired at age 70 as required by law.

In November an audit report was leaked which alleged five billion shillings (\$50 million) from the Ministry of Health were possibly misappropriated. Contractors implicated in the scandal allegedly included firms owned by some of President Kenyatta's relatives. As of year's end, an investigation by the EACC was pending.

The government made modest progress implementing elements of President Kenyatta's November 2015 anticorruption strategy. In March the government made public the results of a peer review of anticorruption initiatives under the UN Convention Against Corruption. The government made progress during the year toward operationalizing specialized anticorruption courts and an interagency anticorruption task force led by the attorney general. The government made only limited progress on other commitments, including the adoption of international anticorruption standards and the digitization of government records and processes.



Corruption: While police and government corruption was widely viewed as endemic, authorities rarely arrested and prosecuted public officers (see section 1.d.). The Judiciary and National Police Service continued measures to reform the handling of traffic cases by police and courts, streamlining the management of traffic offenses to curb corruption.

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 income, assets, and liabilities of their spouses and dependent children under the age of 18. 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 (\$5,000), 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 (see section 1.d.).

The 2012 Leadership and Integrity Act requires public officers to register potential conflicts of interest with the relevant commissions. The law identifies interests that 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 nonelective 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. Although the government generally did not seek criminal or administrative sanctions for noncompliance, EACC chairman Philip Kinisu resigned his position after being accused of failing to disclose a conflict of interest properly. 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.

Public Access to Information: The constitution provides citizens with a right to access information held by the state and requires the government to publish and publicize important information affecting the country.

On August 31, the president signed into law the Access to Information Act. The law allows citizens to request government information and requires government entities and private entities doing business with the government proactively to disclose certain information, such as government contracts. The act also provides a mechanism to request a review of the government's failure to disclose requested information, along with penalties for failures to disclose. The act exempts certain information from disclosure on grounds of national security.

In 2011 the government joined the Open Government Partnership, a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. It also launched a website, the Kenya Open Data Portal, to provide a comprehensive and transparent site for citizens to access data from government ministries. The government continued to add datasets to the website throughout the year. In July the government submitted its Second National Action Plan under the Open Government Partnership, committing to enhance public access to information on budgeting and public procurement processes.

The government televised its spokesperson's briefings and broadcast parliamentary debates live on television and radio.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations 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 increased government harassment during the year. Officials were sometimes cooperative and responsive to the queries of these groups, but the government generally ignored recommendations by human rights groups if such recommendations were contrary to its policies. There were reports that officials intimidated NGOs and threatened to disrupt their activities. 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.

Government and security officials promptly investigated the June triple homicide case of IJM lawyer and investigator Willie Kimani, IJM client Josphat Mwenda, and their driver Joseph Muiruri and charged four police officers accused in the case. Unless IPOA became involved, however, the police generally failed to pursue investigations of police misconduct. Many other groups requesting official cooperation in the investigation of alleged security force abuses did not receive it. HRW, for example, did not receive responses to its requests for research assistance in March from the heads of the Kenya Defense Forces or the Kenya Police Service (see section 1.a.).

In the aftermath of the al-Shabaab terrorist attack on the Kenyan-commanded AMISOM forward operating base on January 15 in el Adde, Somalia, numerous bloggers and journalists were arrested for posting photographs and commentary about the number of Kenyan soldiers killed. Most were charged under Section 29 of KICA (see section 2.a.).

The KNCHR, the legislatively established independent body with the mandate to promote and protect human rights in the country, reported that security agencies continued to deny the KNCHR full access to case-specific information and facilities to conduct its investigations of human rights abuses as the constitution permits.

The United Nations or Other International Bodies: The government generally ignored recommendations of the United Nations or international human rights groups if they were contrary to government policies.

Government Human Rights Bodies: The KNCHR is an independent institution created by the 2010 constitution and established through the KNCHR Act of 2011. Its mandate is to promote and protect human rights in the country. Funding for the KNCHR to carry out investigations and issue reports increased modestly during the year.

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

### **Women**

Rape and Domestic Violence: The law criminalizes rape, defilement, and sex tourism; enforcement remained limited, and civil society groups indicated victims did not report as much as 92 percent of sexual offenses to police. The 2015 Protection against Domestic Violence Act criminalizes abuses that include early

and forced marriage, FGM/C, forced wife “inheritance,” and sexual violence within marriage. The act’s definition of violence also includes 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.

Under the Security Laws Amendment Act, 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, although sentences were at the discretion of the judge and usually no longer than the minimum of 10 years.

Citizens frequently used traditional dispute resolution mechanisms 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. NGOs reported difficulties obtaining evidence and the unwillingness of witnesses to testify in sexual assault cases in areas where citizens employed traditional dispute resolution mechanisms.

A study released in 2014 by the Usalama Reform Forum estimated that victims reported only 40 percent of rape cases to police. A 2014 study by the NGO Peace Initiative Kenya identified 383 cases of rape reported in media between January and May, noting a 15 percent increase from the same period in 2012. The study stated that the Women’s Hospital of Nairobi reported receiving an average of 18 cases of rape and incest daily. The Coalition on Violence against Women estimated 16,500 rapes occurred per year.

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 two. NGOs reported police physicians often but inconsistently accepted the examination report of clinical physicians who initially treated rape victims.

Other factors explaining the low reporting and prosecution rates for rape included a cultural inhibition against publicly discussing sex, particularly sexual violence; stigma attached to rape survivors; survivors’ fear of retribution; police reluctance to intervene, especially in cases where the victim accused family members, friends,

or acquaintances of committing the rape; and poor training of prosecutors. Reporting also remained low due to traditional attitudes toward sexual violence, and courts dismissed many cases due to lack of evidence.

Domestic violence against women was widespread. Police officers generally refrained from investigating domestic violence, which they considered a private family matter. NGOs, including the Law Society of Kenya and the Federation of Women Lawyers, provided free legal assistance to some victims of domestic violence.

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. Nevertheless, individuals practiced FGM/C widely, particularly in some rural areas.

FGM/C was usually performed on victims at an early age. According to the UN Children's Fund (UNICEF), in February, 21 percent of girls and women between ages 15 and 49 had undergone FGM/C. Of the 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana, who together constitute approximately 25 percent of the population) did not traditionally practice FGM/C. Approximately 98 percent of ethnic Somali girls and women ages 15-49 in the country had undergone FGM/C. Government officials often participated in public awareness programs to prevent the practice.

Media reported growing numbers of female students refused to participate in FGM/C ceremonies, traditionally performed during the August and December school holidays. Some churches and NGOs provided shelter to girls who fled their homes to avoid FGM/C, but community elders frequently interfered with attempts to stop the practice. Various communities and NGOs instituted "no cut" initiation rites for girls as an alternative to FGM/C, but in some communities this effort was unsuccessful. 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 the practice of FGM/C increasingly occurred underground to avoid prosecution by authorities.

Other Harmful Traditional Practices: Certain communities commonly 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. Other forced marriages were also common. In 2014 parliament passed legislation that codified the right of men to enter into consensual marriage with additional women without securing the consent of any existing wife.

Sexual Harassment: The law prohibits sexual harassment. Sexual harassment was often not reported, and victims rarely filed charges. IPOA investigated one reported case of police officer promotions resulting from sexual favors.

Reproductive Rights: The constitution recognizes the right of couples and individuals to decide the number, spacing, and timing of their children and to have the information and means to do so free from discrimination, coercion, and violence. Subsidized contraception options, including condoms, birth control pills, and long-acting or permanent methods, were widely available to both men and women throughout the country, although access was more difficult in rural areas. In 2014 the UN Population Fund estimated that 46 percent of girls and women between ages 15 and 49 used a modern method of contraception. Skilled obstetric, prenatal, and postpartum care were available in major hospitals, but many women could not access or afford these services. Skilled health-care personnel attended an estimated 44 percent of births in 2014. Observers estimated 20 percent of maternal deaths to be AIDS related. In 2014 First Lady Margaret Kenyatta launched the Beyond Zero Campaign, a government effort to improve maternal health and reduce maternal mortality. This program continued during the year.

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. Women held only 6 percent of land titles, of which the majority were joint titles, and accessed only 7 percent of formal financial credit awarded in the country. The justice system and widely applied customary laws often 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 that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution.

In 2014 the National Assembly adopted the Marriage Act, which included

provisions to strengthen property rights for wives. The act retains a man's right to enter into multiple marriages and does not require consultation with or the consent of the existing spouse(s). The act contains a provision protecting the entitlements and interest of the first wife in matrimonial property. The bill received presidential assent and went into force during the year. A separate Matrimonial Property Act went into force in 2013 under which ownership of jointly held property depends upon how much each spouse can prove he or she contributed monetarily to that property. Many women's rights groups and female members of parliament asserted the act was discriminatory and regressive.

## **Children**

Birth Registration: A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Birth registration is compulsory. Parents in rural areas, where tradition considered community elders rather than official entities the legitimate authorities in family matters, often did not register births. 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 began implementing the Maternal Child Health Registration Strategy requiring nurses administering immunizations to register the births of unregistered children.

The law requires citizens to obtain identity cards when they turn 18 years of age; it requires identity cards for citizens to obtain public services and to vote. The law requires that at least one parent's identification document be produced for a child to obtain an identify card. Some sources reported, however, that children born out of wedlock and children born of married mothers who retained their maiden names had difficulty obtaining identity cards, unless they could produce identification of a male relative.

Education: Education is tuition free and compulsory through age 13. According to a 2016 report by international regional education initiative Uwezo Kenya, 90 percent of children ages six to 13 were enrolled in school. Authorities limited secondary enrollment to students who obtained relatively high scores on standardized examinations for students completing primary education. Authorities did not enforce the mandatory attendance law uniformly.

According to a 2014 study by NGO Plan Kenya, 47.6 percent of girls and 52.4 percent of boys enrolled in secondary education.

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

In 2014 the NGO The Cradle estimated that 41 percent of children between ages 10 and 14 worked rather than attend school.

Child Abuse: Violence against children, particularly in poor and rural communities, was common, and child abuse, including sexual abuse, occurred frequently. A 2010 government survey found that 32 percent of female respondents and 18 percent of male respondents between ages 18 and 24 had experienced sexual violence before age 18. Perpetrators of physical, sexual, and emotional violence were rarely strangers to the child. Romantic partners of students were the most common perpetrators of sexual violence, followed by neighbors, while parents and teachers were the most common perpetrators of physical and emotional violence. According to NGOs, lack of awareness of how to report child abuse and aversion to involvement in a lengthy legal process were major obstacles to doctors, teachers, and other nonfamily figures reporting child abuse. The Protection against Domestic Violence Act enacted in May criminalizes several forms of violence that affect children, including early and forced marriage, FGM/C, incest, and physical, verbal, and sexual abuse.

The minimum sentence for conviction of defilement is life imprisonment if the victim is less than 11 years old, 20 years in prison if the victim is between ages 11 and 16, and 10 years' imprisonment if the child is age 16 or 17.

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

Early and Forced Marriage: The Marriage Act of 2014 introduced a minimum age for marriage of 18 years for both women and men and voided marriages that violated this rule. Media occasionally highlighted the problem of early and forced marriage, which some ethnic groups commonly practiced. UNICEF's 2016 *The State of the World's Children Report* stated that 4 percent of children were married by age 15, and 23 percent by age 18; the Northeast and coastal regions had the highest prevalence. There was a strong correlation between poverty and early and forced marriage. Under the constitution the qadi courts retained jurisdiction over Muslim marriage and family law.



Female Genital Mutilation/Cutting (FGM/C): See information for girls under 18 in women's section above.

Sexual Exploitation of Children: According to human rights organizations, children were sexually exploited and victims of trafficking. The law criminalizes sexual exploitation of children, including prohibiting procurement of a girl under 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 Sexual Offenses Act has specific sections on child trafficking, child sex tourism, child prostitution, and child pornography.

The prostitution of children under age 18 remained a problem due to poverty, lack of law enforcement, internal displacement, and foreign and domestic tourists seeking sex with underage girls and boys. Political leaders expressed concern that minors were leaving school and being lured into prostitution to address their basic needs. According to the NGO The Cradle, child prostitution was prevalent in Nairobi, particularly in informal settlements, and in Kisumu, Eldoret, Nyeri, and the coastal areas. The same source indicated that criminals trafficked a significant number of children to urban and coastal areas from the north and west to engage in prostitution. UNICEF, the Ministry of Tourism and Wildlife, the World Tourism Organization, and NGOs continued to work with the Kenya Association of Hotelkeepers and Caterers to increase their awareness of child prostitution and sex tourism. The association encouraged hospitality-sector businesses to adopt and implement the code of conduct developed by the NGO End Child Prostitution and Child Pornography and Trafficking of Children for Sexual Purposes. The Tourism Regulatory Authority oversees hotels, rental villas, and cottages to monitor adherence to the code of conduct.

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

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 that the commercial sex industry abused and exploited.

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 [travel.state.gov/content/childabduction/en/legal/compliance.html](http://travel.state.gov/content/childabduction/en/legal/compliance.html).

### **Anti-Semitism**

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

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **Persons with Disabilities**

The law prohibits discrimination against persons with physical or mental disabilities in employment, education, access to health care, or the provision of other state services. The government did not effectively enforce these provisions. A number of laws limit the rights of persons with disabilities. The Marriage Act limits the rights of persons with mental disabilities to get married; the penal code criminalizes “rape of an imbecile”; the Law of Succession limits the rights of persons with disabilities to inheritance; and the Mental Health Act allows guardians to make all decisions for persons “of unsound mind.” The constitution provides legal safeguards for the 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 accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible for persons with disabilities. According to NGOs, police stations remained largely inaccessible to those with mobility disabilities. According to the State Department of Public Works (the Department), the Department and the Joint Committee on National Cohesion and Equal Opportunities agreed on March 8 that the Department would form a committee to review construction standards for accessibility for persons with disabilities and regulation enforcement.

There was limited societal awareness of persons with disabilities and significant

stigma attached to disability. Learning and other disabilities not readily apparent were not widely recognized. NGOs reported that persons with disabilities had limited opportunities to obtain education and job training at all levels due to lack of accessibility of facilities and resistance on the part of school officials and parents to devoting resources to students with disabilities. A survey published by NGO Twaweza ni Sisi on July 20 stated 73 percent of citizens did not believe children with disabilities in their communities should be enrolled in secondary school. The KNCHR estimated that 67 percent of persons with disabilities had a primary education, 19 percent attained secondary education, and 2 percent reached university level, while 7 percent of persons with disabilities reported that authorities denied them all access to education because of their disability.

According to a 2014 survey by the NGO Handicap International on the rights of persons with disabilities in the country, 85 percent of persons with disabilities experienced verbal abuse related to their disability and 17 percent experienced gender-based violence. Of those who reported abuse, 47 percent neither reported the incident to police or other authorities nor sought medical help or counseling. They cited fear of reprisal or of being misunderstood as their reasons. Of those who reported abuse to some authority, the majority reported the incident to community elders rather than police.

Authorities received reports of killings of persons with disabilities as well as torture and abuse, and the government took action in some cases. For example, the *Nation* newspaper reported on March 3 that a woman was arrested and would be prosecuted in Nairobi after 11 disabled children were found in poor living conditions, locked up, and malnourished in her home.

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 Handicap International, 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. Nevertheless, 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 the KNCHR, 10 secondary schools in the country could

accommodate the needs of persons with hearing limitations.

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. The Association for the Physically Disabled of Kenya carried out advocacy campaigns on behalf of persons with disabilities, distributed wheelchairs, and worked with public institutions to promote the rights of persons with disabilities. The KNCHR noted that awareness of the rights of persons with disabilities increased as a result in some counties, but it faulted the government for not ensuring equal protection of the rights of persons with disabilities throughout the country.

Nominated and elected parliamentarians with disabilities formed the Kenya Disability Parliamentary Caucus in 2013 and issued a strategy statement focusing on improving economic empowerment and physical access for persons with disabilities as well as integrating disability rights into county government policies.

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

There are 42 ethnic groups in the country; none holds a majority. The 2009 census identified eight major ethnic communities: Kikuyu, 6.6 million persons; Luhya, 5.3 million; Kalenjin, five million; Luo, four million; Kamba, 3.9 million; Kenyan Somali, 2.3 million; Kisii, 2.2 million; and Mijikenda, 1.9 million. 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.

Many factors contributed to interethnic conflicts: long-standing grievances regarding land-tenure policies and competition for scarce agricultural land; the proliferation of illegal guns; cattle rustling; the growth of a modern warrior/bandit culture (distinct from traditional culture); ineffective local political leadership; diminished economic prospects for groups affected by regional droughts; political rivalries; and the struggle of security forces to quell violence. Conflict between landowners and squatters was particularly severe in the Rift Valley and coastal regions, while competition for water and pasture was especially serious in the north and northeast. Between February and May, at least five persons were killed and scores injured in a clash to control the government-run Agricultural Development

Corporation farm in the Rift Valley, which multiple ethnic communities claimed to own.

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. For example, three persons were killed in January when the Samburu and Ndorobo communities clashed over grazing areas in Leparua on the border of Isiolo and Laikipia Counties; media reported that 60 stolen cows were recovered through joint efforts by the public and police. Intercommunal and resource-based violence also occurred in Baringo, Merua, Marsabit, and Wajir Counties.

Ethnic differences also caused a number of discriminatory employment practices.

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

The constitution does not explicitly protect LGBTI persons from discrimination based on sexual orientation or 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 April the National Gay and Lesbian Human Rights Commission (NGLHRC) filed Petition 150 of 2016 challenging the constitutionality of these penal codes. In May a coalition of human rights organizations filed a petition challenging the constitutionality of the same penal code provisions based on violence, the fear of violence, and documented human rights violations against citizens.

LGBTI organizations reported police more frequently used public-order laws (for example, disturbing the peace) than same-sex legislation to arrest LGBTI individuals. Police frequently harassed, intimidated, or physically abused LGBTI individuals in custody. In September 2015 the NGLHRC legally challenged on behalf of two individuals from Kwale County the constitutionality of court-ordered nonconsensual anal examination, HIV testing, and hepatitis B testing as a means of proving same-sex conduct. On June 16, the Mombasa High Court dismissed their case, ruling that medical examination is a legal means to obtain evidence of crime.

Authorities permitted LGBTI advocacy organizations to register and conduct activities. There were reports, however, that some organizations registered under modified platforms to avoid denial of registration by the government.

Violence and discrimination against LGBTI individuals was widespread. According to a 2015 HRW and Persons Marginalized and Aggrieved report, LGBTI individuals were especially vulnerable to blackmail and rape by police officers. Human rights and LGBTI rights organizations noted victims were extremely reluctant to report abuse or seek redress due to fear of violence against them or arrest.

In 2015 the High Court ruled in favor of the NGLHRC in a case challenging the government's refusal to register LGBTI advocacy and welfare organizations. The NGLHRC sought court intervention after unsuccessfully trying since 2012 to register under the Nongovernmental Organizations Coordination Act. The court ruled that refusing to register the organization was an infringement on constitutionally protected freedom of association. The government's appeal remained pending as of October 25. The Court of Appeal ruled on May 20 that the High Court's judgment stood in the interim.

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

In partnership with key stakeholders, the National AIDS Control Council conducted a National HIV and AIDS Stigma and Discrimination Study in 2014 that produced a composite stigma rating for Kenya of 45.16 (High), with regional variations.

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. For example, the government launched treatment guidelines for sex workers and injected drug users in collaboration with key stakeholders. The government and NGOs supported a network of at least 5,488 counseling and testing centers providing free HIV/AIDS diagnosis. Diagnosis of other sexually transmitted infections was available through hospitals and clinics throughout the country. Because of social stigma, many citizens avoided testing for HIV/AIDS. According to its website, the First Lady's Beyond Zero Campaign to stop new HIV infections led to the opening of 46 mobile clinics across the country.

## **Other Societal Violence or Discrimination**

Mob violence and vigilante action were common and resulted in numerous deaths. Many incidents of mob violence in informal settlements went unreported. Many victims were persons suspected of criminal activities, including theft, robbery, killings, cattle rustling, and of having membership in criminal or terrorist groups.

Human rights observers attributed vigilante violence to a lack of public confidence in police and the criminal justice system. The social acceptability of mob violence also provided cover for acts of personal vengeance. Police frequently failed to act to stop mob violence.

The Senate approved in June a petition to establish a joint parliamentary select committee to investigate occurrences of police brutality and mob violence. The committee's report was pending as of September.

Mobs also attacked persons suspected of witchcraft or participation in ritual killings. For example, according to media reports, on June 14, a mob attacked and set on fire a woman accused of witchcraft in Mombasa.

Societal discrimination continued against persons with albinism, many of whom left their home villages due to fear of abuse and moved to urban areas where they believed they were safer. Individuals attacked persons with albinism for their body parts that some believed would confer magical powers and that could be sold for significant sums. On June 13, persons with albinism marched in Nairobi to mark International Albinism Awareness Day.

The National Council of Persons with Disabilities and the Kenya Albino Child Support Program, in partnership with the government, continued an awareness campaign to combat discrimination. Employment discrimination against persons with albinism also occurred.

## **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. Any seven or more workers in an enterprise have the right to form a union by registering with the trade union registrar. If the registrar denies registration, a

union may appeal to the courts. Members of the armed forces, prisons service, and police are exempted from the provisions of the Labor Relations Act (2007) and 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. The Ministry of Labor and East African Community Affairs typically referred disputes to mediation, fact finding, or binding arbitration at the Employment and Labor Relations Court, a body of up to 12 judges which has exclusive jurisdiction to handle employment and labor matters and which operates in urban areas, including Nairobi, Mombasa, Nyeri, Nakuru, Kisumu, and Kericho. During mediation it is illegal for the parties involved to strike. Additionally, a Ministry of Labor and East African Community Affairs referral of a dispute to the conciliation process nullifies the right to strike.

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

The law permits workers in collective bargaining disputes to strike if they have exhausted formal conciliation procedures and have given seven days’ notice to both 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 as well as to advocate for better working conditions and representation in the Employment and Labor 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 Labor 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.



Due to human and material resource constraints, the government did not always effectively enforce labor laws. The government encouraged a strengthened labor dispute system, but it did not enforce the decisions of the Employment and Labor Relations Court consistently. 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 Labor Relations Court's decisions to the High Court. The enforcement mechanisms of the Employment and Labor Relations Court remained weak, and its case backlog raised concerns regarding the efficacy of the court.

The Employment and Labor Relations Court received many cases arising from the implementation of new labor laws. The parties filed the majority of cases directly without referral to the Ministry of Labor and East African Community Affairs for conciliation. There were 3,651 cases filed with the Industrial Court during 2015, up from 3,540 in 2014. In 2015 the court announced a total of 1,086 awards and rulings. The court also received 231 appeal cases, and 241 cases transferred from other courts. The court received 263 Collective Bargaining Agreements with 128 registered within 2015. The government established the court to provide for quick resolution of labor disputes, but backlog cases dated to 2007.

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.

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.

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. The Ministry of Labor and East African Community Affairs, however, claimed all employees are covered by the existing labor laws, and the ministry continued to handle cases of domestic workers, especially when their terms and conditions of work are violated.

NGOs and trade unionists reported increased 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 cited, 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 the three years. During the year the ministry reviewed misuse of term contract employment.

The Supreme Court ruled in August 2015 that government teachers should get a pay raise of between 50 to 60 percent, in line with the demands made by the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post-Primary Education Teachers (KUPPET). When the government refused to pay, arguing it did not have the funds, 280,000 teachers went on strike in September 2015. After the Employment and Labor Relations Court directed the teachers' unions to suspend their strike, the issue was finally resolved in June 2016, when President Kenyatta committed to implement a new pay deal for teachers, and the teachers service commission signed a collective bargaining agreement to form the basis for talks on new pay to be held later in the year. In October, KNUT and KUPPET signed a collective bargaining agreement that addressed salaries and allowances to be paid for those working outside of their normal duty station. The existing agreement states that the highest-paid teacher will continue to earn a basic salary of 109,089 shillings (\$1,090), while the lowest-paid will receive 16,692 shillings (\$167) a month. This collective bargaining agreement was meant to resolve perennial disputes over allowances and basic pay, which have disrupted the educational system due to teachers' strikes in recent years. KNUT announced that there would be no strikes at least for the next four years following the signing of this pay agreement with the TSC.

The New National Hospital Insurance Fund (NHIF) had more than six million beneficiaries, covering 288,000 elderly, but 2015 rate increases significantly raised worker contributions, which the government claimed was necessary to meet its goal of providing universal health care. Those earning less than 6,000 shillings a month (\$60) will make monthly contributions of 150 shillings (\$1.50) into the NHIF, while those earning more than 100,000 shillings (\$10,000) a month will pay 1,700 shillings (\$17) a month for NHIF coverage. Employers continued to raise concerns about the NHIF's failure to provide adequate information regarding health institutions in the NHIF plan and services provided.

## **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 during the year to prevent or eliminate forced labor. The government continued to implement the National Safety Net Program for Results, a 2013-18 project seeking to establish an effective national safety net program for poor and vulnerable households, and the Decent Work Country Program, a 2013-15 project designed to advance economic opportunities.

The Chief's Authority Act provides that able-bodied men between ages 18 and 50 may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. Additionally, certain 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. Penalties ranged from 50,000 to 200,000 shillings (\$500 to \$2,000) or three to 12 months' imprisonment. Violations included debt bondage, trafficking of workers, and even family members compelled to work as domestic servants for family, friends of the family, or strangers.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

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

The constitution gives children legal protection from hazardous or exploitative labor. 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 law sets the minimum age for employment at 16 and the minimum age for hazardous work at 18. It prohibits employment of a child (defined as a person under age 18) in any activity that constitutes a worst form of child labor or that would prevent children younger than age 16 from attending school. 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 the list for children includes 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. An individual convicted of violating the law is liable to a fine not exceeding 200,000 shillings (\$2,000), imprisonment for not more than one year, or both. The fines were generally enough to deter violations. Employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Child labor in the informal sector was difficult to monitor and control.

The Ministry of Labor and East African Community Affairs has responsibility for enforcing child labor laws, but implementation remained problematic due to resource constraints. Alternatives such as the International Labor Organization (ILO)-initiated Community Child Labor monitoring program helped provide additional resources to combat child labor. These monitoring communities complemented law enforcement efforts by identifying children who were working illegally, removing them from hazardous work conditions, and referring them to the appropriate service providers. The ministry, in collaboration with the ILO, the international donor community, and NGOs, completed a list of specific jobs considered hazardous that would constitute the worst forms of child labor and published the list in the *Kenya Gazette* in 2014.

The government worked closely with the Central Organization of Trade Unions, the Federation of Kenyan Employers, and the ILO to eliminate child labor. The government continued to use its practical guide to labor inspection, a policy document developed previously at the labor ministry. The National Steering Committee on the Elimination of Child Labor, which included the attorney general, eight ministries, representatives of child welfare organizations, other NGOs, unions, and employers, continued to operate and meet quarterly. An interministerial coordination committee on child labor is responsible for setting general policy. Additionally, a network of organizations consisting of government ministry departments, social partners, and NGOs working on child labor met regularly under the supervision of the labor ministry. This collaboration facilitated greater coordination of efforts to combat child labor and placed children in schools, vocational training institutions, and apprenticeships. Partners also provided support to schools for income-generating activities to help keep children from poor families in school.

Child labor awareness was also included in the primary school curriculum and in different government policies, such as the Alternative Education Policy, again with ILO support. The ILO also promoted child participation through its program, Support Children's Rights through Education Arts and Media. In this program

experts trained teachers to identify and reduce child labor, with children's rights clubs formed in schools implementing the project. The success of the program depended on children being actively involved in identifying and reporting cases of child labor within their communities.

According to the 2009 National Census, almost three million children between ages five and 14 (33 percent of all children in that age group) engaged in child labor. 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 miraa (khat). Children worked in mining, including in abandoned gold mines and small quarries, and to harvest sand. Children also worked in the fishing industry. In urban areas businesses employed children in hawking, scavenging, carrying loads, fetching and selling water, and selling food. 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 labor by children, such as agricultural labor, prostitution, and domestic servitude.

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 [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

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

The law prohibits discrimination in employment and occupation based on grounds of race, color, sex, age, religion, political or other opinion, nationality, ethnic or social origin, disability, language, pregnancy, mental status, or HIV status. The law did not prohibit discrimination based on sexual orientation or gender identity. 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, had 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 that demands for bribes by police amounting to 3 to 8 percent of a vendor's income as well as sexual abuse were common.

Devolution of fiscal and administrative responsibility to county governments led to an increase in interethnic conflict in some areas. In an audit of hiring practices released in 2014, 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. Some counties, notably 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. Some neighborhoods, particularly in informal settlement areas of the capital, tended to ethnic segregation, although interethnic marriage was common in other urban areas.

Due to societal discrimination, there were limited employment opportunities for persons with albinism.

Discrimination against migrant workers also occurred. Migrant workers enjoy the same legal protections with regard to wages and working conditions as citizens.

#### **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 a general laborer was 10,954 shillings (\$110) per month. The average minimum wage for skilled workers was 17,404 shillings (\$170) per month. The government increased the lowest agricultural minimum wage for unskilled employees to 6,780 shillings (\$68) per month, excluding housing allowance. Agricultural workers were underpaid compared with other sectors. The ministry established a wages order for the horticulture industry to address problems affecting the floriculture sector. In May there was a new increase for the minimum

wage of 12 percent for general/artisan employees in the formal and informal sectors.

The ministry implemented various social protection programs under the Social Safety Net Program, such as a cash transfer for orphaned and vulnerable children, a cash transfer program for the elderly, and a cash transfer program for persons with disabilities. These programs cost the government 21 trillion shillings (\$210 million) and reached 832,408 households.

The New National Hospital Insurance Fund (NHIF) had more than six million beneficiaries, covering 288,000 elderly, but 2015 rate increases significantly raised worker contributions, which the government claimed was necessary to meet its goal of providing universal health care. Those earning less than 6,000 shillings (\$60) a month paid 150 shillings (\$1.50) a month, with earners of more than 100,000 shillings (\$10,000) a month paying 1,700 shillings (\$17) a month, for coverage. Employers continued to raise concerns about the NHIF's failure to provide adequate information regarding health institutions in the NHIF plan and services provided.

The law provides for equal pay for equal work.

The constitution establishes the Salaries and Remuneration Commission to set and review regularly the remuneration and benefits of all state officers and to advise the national and county governments on the remuneration and benefits of all other public officers. The law also tasks the commission with assuring that the total public compensation bill is fiscally sustainable, promotes retention and recruitment, recognizes productivity and performance, and is transparent and fair.

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 that 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.

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. Fines generally were insufficient to deter unsafe practices.

The labor ministry's Directorate of Occupational Health and Safety Services has the authority to inspect factories and work sites, except in the EPZs, which the law excludes from the Factory Act's provisions. 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 that factories employing 20 or more persons have an internal health and safety committee with representation from workers.

The law intends required labor inspections to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring compliance with labor laws. Low salaries and the lack of vehicles, fuel, and other resources made it very difficult for labor inspectors to do their work effectively and left them vulnerable to bribes and other forms of corruption. The labor inspection form includes a provision for reporting on persons with disabilities. This form and the inspection process, however, need to be enhanced to serve persons with different disabilities. The Employment Act of 2007 prohibits discrimination against an employee on the basis of disability.

The Ministry of Labor and East African Community Affairs employed 82 labor officers in the Labor Inspectorate. The proposed optimal staff establishment for the inspectorate staff, however, was 467 officers. Insufficient funds caused many labor inspection positions to remain vacant, which resulted in several county labor offices having only one, or no, labor officer.

The government did not provide social protections for workers employed in the informal sector, but informal workers organized into associations, cooperatives, and, in some cases, unions.

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 Labor and East African Community Affairs 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.

Inspectors routinely found violations of health and safety conditions in the EPZs and other sectors, such as small horticultural producers. According to the government, many of the largest factories had health and safety committees. The Kenya Federation of Employers provided training and auditing of workplaces for health and safety practices.

According to a June 2015 report, the UN Economic Commission for Africa estimated the country's informal-sector employment at 77.9 percent of the total workforce, increasing to more than 80 percent among women. According to the 2015 *Kenya Economic Survey*, the informal sector employed 11.8 million persons in 2014, compared with 2.4 million in the formal sector.

On August 22, the KNCHR launched investigations into claims of abuse of mineworkers and communities in three subcounties in Taita Taveta. Among the issues raised by the aggrieved parties were allegations of exploitation of the community by mining companies, irregular and unlawful acquisition of community land by private investors, threats of forced evictions and demolition of houses, widespread poor labor practices, and environmental concerns. No report on the investigations had been published as of October 25.