

# **KENYA 2018 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 a judiciary. In the 2017 general elections, the second under the 2010 constitution, citizens cast ballots for president and deputy president, parliamentarians, and county governors and legislators. International and domestic observers judged the elections generally credible, although some civil society groups and the opposition alleged there were irregularities. The Independent Electoral and Boundaries Commission (IEBC) declared Jubilee Coalition Party candidate Uhuru Kenyatta had won reelection as president over opposition candidate Raila Odinga. The Supreme Court subsequently annulled the results for president and deputy president, citing irregularities in the transmission and verification of the poll tabulations. The court ordered a new vote for president and deputy president, which the opposition boycotted. The IEBC declared President Kenyatta the winner of the new vote, and the Supreme Court upheld the results on November 20, 2017.

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

Human rights issues included: unlawful and politically motivated killings; forced disappearances; torture; harsh and life-threatening prison conditions; arbitrary arrest and detention; an inefficient judiciary; arbitrary infringement of citizens' privacy rights; censorship; lack of accountability in many cases involving violence against women, including rape and female genital mutilation/cutting (FGM/C); and criminalization of same-sex sexual conduct.

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 addressing the issue 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 the 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. President Kenyatta intensified his anticorruption campaign launched in

2015, and the inspector general of police continued his strong public stance against corruption among police officers.

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, including extrajudicial killings, while conducting counterterror operations.

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

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

There were numerous reports the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. In September eight nongovernmental organizations (NGO) based in the northern region jointly issued a statement listing extrajudicial killings and enforced disappearances at top of their list of human rights concerns. In September the NGO HAKI Africa provided the ODPP a list of 34 youth whom police allegedly executed over nine months since the beginning of the year. The ODPP committed to pursue investigations and requested additional evidence and assistance from HAKI. The NGO Independent Medico Legal Unit alleged that police in Nairobi summarily executed 58 individuals, mostly in informal settlements, between January to June. In March 2017 video footage surfaced on the internet of an alleged plainclothes police officer shooting two subdued suspects in the Nairobi neighborhood of Eastleigh. According to the newspaper *Daily Nation*, the Nairobi police commander defended the shooting, calling the victims “gangsters.” The Inspector General’s investigation continued as of year’s end.

In August IPOA reported a summary execution of a suspected carjacker. The police, who had allegedly shot the victim twice, hauled him from a church where he had sought refuge. IPOA’s investigation continued as of the year’s end.

Some groups alleged authorities significantly underestimated the number of extrajudicial killings by security forces due to underreporting of such killings in informal settlements, including those in dense urban areas. The NGO Mathare Social Justice Center estimated police killed at least one young male every week in the Mathare neighborhood of Nairobi. During the year IPOA received 461 complaints regarding deaths resulting from police actions, including 15 fatal shootings involving police and 446 deaths due to other actions by police.

NGOs and the autonomous governmental entity Kenyan National Commission on Human Rights (KNCHR) reported in 2017 that authorities killed between 35 and 100 persons and injured many others in opposition strongholds following the August 2017 elections. A KNCHR report released in November documented 201 cases of sexual assault in nine counties emanating from the post-election violence, primarily during periods of increased civil unrest. The study found that police and other security officers committed 55 percent of the documented sexual assaults (see section 6). The report indicated that KNCHR turned over its findings to IPOA for official inquiry. IPOA's investigations stemming from election violence continued as of the year's end.

Media reports and NGOs attributed many of the human rights abuses not related to elections to Kenya Defense Forces counterterrorism operations in the northeast counties of Mandera, Garissa, and Wajir bordering Somalia. In September rights groups including Muslims for Human Rights led protests in Mombasa against extrajudicial killings and abductions by security forces. The groups alleged that on September 6, authorities gunned down three youths, ages 17, 17, and 19, absent proof of guilt. Police responded that the three had been caught preparing to commit a crime.

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. For example, in September al-Shabaab fighters reportedly stopped a bus in Lamu County, separated the passengers by religion, and then executed two Christian passengers before setting free the other passengers.

## **b. Disappearance**

Observers and NGOs alleged members of the security forces were culpable of forced disappearances. In June media reported civilian protests in Garissa County over the alleged disappearance of 14 residents. There were accusations of government involvement and use of police officers. On July 26, human rights lobby group HAKI Africa reported that between January and June, the Garissa police abducted or forced the disappearance of 46 civilians.

The media also reported on families on the coast and in northeastern counties searching for relatives who disappeared following arrest and of authorities holding

individuals incommunicado for interrogation for several weeks or longer (see section 1.d.).

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

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

Pretrial detainees accused police of use of torture. In September a shooting suspect filed a formal complaint with IPOA alleging torture by police and continued detention beyond the maximum legal duration. That investigation continued as of year's end.

Police reportedly used torture and violence during interrogations as well as to punish both pretrial detainees and convicted prisoners. According to human rights NGOs, physical battery, bondage in painful positions, and electric shock were the most common methods of torture used by police. A range of human rights organizations and media reported police committed torture and indiscriminate violence with impunity. For example, there were numerous press and NGO reports of police brutality against protestors and unarmed citizens, including in house-to-house operations in the days following the August 2017 elections (see section 3).

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

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

Physical Conditions: According to the Kenya Prisons Service (PS), the prison population as of September was 51,130, held in prisons with a designated capacity

of 26,837. More than 90 percent of prisoners were men. According to the National Council on the Administration of Justice's (NCAJ) January report, the country has 105 prisons--87 for men and 18 for women. While the PS noted that seven prisons have been constructed since 2012, serious overcrowding was the norm, with an average prisoner population of nearly 200 percent capacity and some prisons housing up to 400 percent of capacity. Authorities continued a "decongestion" program that entailed releasing petty offenders and encouraging the judiciary to increase use of the Community Service Orders program in its sentencing.

The PS reported 131 deaths as of September, many attributable to sicknesses caused or exacerbated by overcrowding, lack of access to clean water, poor hygiene, and inadequate medical care. According to a study by the NCAJ released in 2017, sanitary facilities were inadequate, and tuberculosis remained a serious problem at eight prisons.

In January 2017 the NCAJ reported that despite the legal requirement to separate male prisoners from women and children, the mixing of genders and ages remained a problem in some prisons. Between January and June 2017, IPOA observed that authorities separated women from men in detention facilities on average 89 percent of the time in the 29 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. Human rights groups reported that police routinely engaged in non-consensual sex with 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. 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 long distances to serve their sentences, spending nights at police stations under varying conditions along the way. In October 2017 the *Daily Nation* newspaper reported a witness had accused a police officer of raping a 13-year-old victim while she was held overnight at a police station for alleged theft. IPOA investigated the incident. A criminal prosecution was proceeding in the courts.

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

Prisoners generally received three meals a day, but portions were inadequate. The PS stated in August that it no longer served a penal diet for punishment. Water shortages, a problem both inside and outside of prison, continued. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks. 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: Mechanisms for prisoners to report abuse and other concerns improved due to collaboration between the PS and the 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.

#### **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).

In September President Kenyatta announced the reorganization of the NPS, which includes the Kenya Police Service (KPS), the Administration Police Service, and the Directorate of Criminal Investigations (DCI). The KPS remains responsible for general policing and contains specialized subunits, such as the paramilitary General Services Unit, which responds to large-scale incidents of insecurity. The Administration Police Service is now comprised of units dedicated to border security, protection of critical infrastructure, and prevention of livestock theft. The DCI is 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, including post-disaster response, as allowed by the constitution. The defense forces are subordinate to the Ministry of Defense. In 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 throughout the year.

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 and two deputies. The commission's tenure ended in September; the NPSC chief operating officer was managing the NPSC until a new commission is installed. The NPSC is responsible for recruiting, transferring, vetting, promoting, and disciplining NPS. IPOA investigates serious police misconduct, especially cases of death and grave injury at the hands of police officers.

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

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 can file complaints at regional police stations, police headquarters through the Internal Affairs Unit (IAU), and through the IPOA website and hotline. More than half of all allegations of death or bodily harm by the NPS were filed at IPOA in person. 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. The National Coroners Service Act, adopted in 2017, lacked enforcement regulations and funding.

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

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 widespread, and the Supreme Court cited its

weaknesses as a serious judicial shortcoming. It cooperated closely with IPOA and other investigative bodies.

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

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

Police accountability mechanisms, including those of IAU and IPOA, increased their capacity to investigate cases of police abuse. The IAU director reports directly to the NPS Inspector General. Fifty-eight officers served in the IAU, mostly investigators with a background in the Kenya Police Service and the Administration Police Service. The IAU conducts investigations into police misconduct, including criminal offenses not covered by IPOA. Between January and September, the IAU received approximately 900 complaints, the number of which had increased year-to-year as police and the public became more familiar with the IAU. The Ethics and Anticorruption Commission (EACC), an independent agency, investigates cases involving police corruption.

In addition to regional offices in Mombasa, Kisumu, and Garissa, during the year IPOA opened six more offices in Nakuru, Eldoret, Kakamega, Nyeri, Meru, and Lodwar and increased its staff by 100 to 212. Through the end of September, IPOA received 1,853 complaints, bringing the total since its inception in 2012 to 10,966. IPOA defines five categories of complaints. Category One complaints comprise the most serious crimes--such as murders, torture, rape, and serious injury--and result in an automatic investigation. Category Two, serious crimes such as assault without serious injury, are investigated on a case-by-case basis. Categories Three to Five, less serious crimes, are generally not investigated. Approximately one-third of IPOA complaints fall under Categories One and Two. If, after investigation, IPOA determines there is criminal liability in a case, it forwards the case to the ODPP. Through the end of September, IPOA launched 717 investigations, of which five were forwarded to the ODPP. As of October IPOA and ODPP had two cases pending in courts. On January 7, IPOA secured the conviction of police officer Titus Musila for killing Kenneth Kimani Mwangi

in 2013. The court sentenced Musila to 15 years in prison. On November 14, a court sentenced two police officers to death for killing their colleague, Joseph Obongo, and two of his relatives in 2014.

The law requires that the NPSC eventually vet all serving police officers. Vetting required an assessment of each officer's fitness to serve based on a review of documentation, including financial records, certificates of good conduct, and a questionnaire, as well public input alleging abuse or misconduct. The NPSC reported it had vetted more than more than 15,000 officers since 2012. A significant portion of the officers vetted during the year were from the traffic department. The NPSC also vetted a higher number of chief inspectors than in the past, of which the NPSC removed 50 for corruption, human rights abuses, and other reasons. 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 requiring persons to be charged, tried, or released within a certain time and provisions requiring the issuance of a writ of habeas corpus to allow a court to determine the lawfulness of detention. In many cases, however, authorities did not follow the prescribed time limits. According to the attorney general in a response to a questionnaire from the Office of the UN High Commissioner for Human Rights in 2013, "an unexplained violation of a constitutional right will normally result in an acquittal." While authorities in many cases released 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. IPOA investigated allegations of excessive force that led to serious injury.

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 arbitrarily arrested and detained persons. Victims of arbitrary arrest were generally poor young men. Human rights organizations complained that security forces made widespread arbitrary arrests and detentions during counterterrorism operations and targeted ethnic Somalis and Kenyan Muslims. In March 2017 AP officers allegedly arrested and assaulted *Standard* newspaper journalist Isaiah Gwengi over his stories on police brutality. The IPOA investigation continued at year's end.

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, but that right was not always protected in practice. In February authorities failed to comply with a court order to produce opposition lawyer Miguna Miguna in court. Authorities instead deported Miguna on February 6, claiming that he had given up his Kenyan citizenship upon obtaining Canadian citizenship. Miguna attempted to re-enter Kenya in March, but was detained at the airport. Authorities ignored two court orders to produce or release Miguna and instead deported the lawyer a second time on March 28.

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

The constitution provides for an independent judiciary, although the government did not always respect judicial impartiality. The government sometimes undermined the independence of the judiciary. In April the minister of interior claimed the judiciary was “captured” by civil society with the intent to stall and embarrass the government.

Reform of the judiciary continued. In August the director of public prosecution directed anticorruption authorities to investigate the judiciary over allegations of misuse and loss of court funds. On August 28, authorities arrested the deputy chief justice for suspected corruption. She faces charges for abuse of office for personal gain, and undermining public integrity in the judiciary. The case against the deputy chief justice was ongoing as of year’s end. Authorities generally respected court orders, and the outcomes of trials did not appear to be predetermined.

In June parliament accused the judiciary of meddling in the legislative process, citing court orders against parliamentary procedures.

The Judicial Service Commission (JSC)--a constitutionally mandated oversight body intended to insulate the judiciary from political pressure--provides the president with a list of nominees for judicial appointment. The president selects one of the nominees for parliamentary approval. The president appoints the chief justice and appellate and High Court judges through this process. The commission publicly reviews judicial appointees. As of October President Kenyatta had not formally installed JSC nominee Judge Mohammed Warsame, whom the JCS nominated in April.

In December 2017 the judiciary issued the State of the Judiciary and the Administration of Justice Report for 2016-17, which cited more than 60,000 cases pending in court for between five and 10 years. The judiciary improved its case clearance rate during the year and substantially reduced case backlog by increasing benches of judges sitting daily.

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

For example, in August 2016 a High Court deadline expired for parliament to enact

legislation to implement the constitutionally mandated two-thirds gender principle (see section 3). In 2017 a second High Court-ordered deadline for implementation expired, despite a promise by the National Assembly majority leader to bring it to a vote. The order remained under parliamentary review at year's end. In May the High Court issued a ruling quashing the privileges of parliament that had insulated against legal redress on any decisions parliamentarians make. In June parliament slashed the judiciary budget allocation for the 2018-19 financial year in a perceived retaliatory move.

The law provides for “kadhi” 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 on the charges against them, with free interpretation if necessary, including during trials; to be tried without undue delay; to have access to government-held evidence; 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. During the year the judiciary completed disseminating *Active Case Management Guidelines* to several courts involved in a management pilot project. The judiciary implemented the pilot project in some high profile and complex cases, but had not done so on a regular basis. In January Chief Justice David Maraga launched the National Committee on Criminal Justice Reforms to coordinate justice sector reform. On September 22, Maraga inaugurated the Criminal Procedure Bench Book as part of ongoing judicial reforms.

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. Defendants generally had adequate time to prepare a defense if they were capable of doing so. The government and courts generally respected these rights. There was no government-sponsored

public defenders service, and courts continued to try the vast majority of defendants without representation because they could not afford legal counsel.

In May, 2,000 inmates at a regional prison declined to appear in court over processing and conclusion of their court cases. The inmates accused the justice system of detaining them without trial. The judiciary resolved the matter after three weeks by rotating additional judges to the court.

The Legal Aid Act enacted in 2016 established the National Legal Aid Service to facilitate access to justice, with the ultimate goal of providing pro-bono services for indigent defendants who cannot afford legal representation. Other pro-bono legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers, an international NGO, provided it. The Law Society of Kenya (LSK) held the annual legal awareness week in September with the theme “Corruption: a crime against justice, democracy, development and prosperity.” During the week, LSK provided free legal aid at all High Courts nation-wide.

The ODPP significantly increased the number of trained prosecutors during the year. According to the ODPP, as of June 29, there were an estimated 627 state prosecutors, compared with 200 in 2013, as well as 402 support staff. The expansion of the prosecution service reduced delays in court proceedings. The ODPP suffered high staff turnover, largely due to the judiciary offering better pay. To fill the gap, the office increased recruiting efforts and brought in more than 90 new prosecutors during the year.

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 a High Court and ultimately to the Court of Appeal and, for some matters, to the Supreme Court.

### **Political Prisoners and Detainees**

While generally not an issue, there was one report of a political prisoner or detainee. Authorities detained opposition lawyer Miguna Miguna for several days

following the January 30 ceremony swearing in Raila Odinga as “the people’s president.” Authorities failed to comply with a court order to produce Miguna and instead deported him, claiming that he had given up his Kenyan citizenship upon obtaining Canadian citizenship (see section 1.d).

### **Civil Judicial Procedures and Remedies**

Individuals may use the civil court system to seek damages for violations of human rights and may appeal decisions to the Supreme Court as well as to the African Court of Justice and Human Rights. In 2016 the judiciary launched a program of *Enhanced Service Delivery Initiatives* to promote more efficient and affordable justice. The program introduced Performance Management Understandings as a method for measuring the performance of judicial staff, judges, and magistrates by work delivery. In 2017 Supreme Court Chief Justice Maraga launched a strategic blueprint for judicial reform, which included an Implementation and Monitoring Committee. In September the ODPP set up a task force to review the national prosecution policy and other guidelines. The task force was expected to develop guidelines on alternatives to prosecution, formulate ODPP charge sheet formats and information, develop standard guidelines on preparation of case files, and develop rules on the operationalization of a central intake of cases.

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 in 2016 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. In June the government launched its first National Land Use Policy, calling for the issuance of titles based on approved physical development plans.

A report by the Truth, Justice, and Reconciliation Commission (TJRC) established in the aftermath of the 2007-08 postelection violence identified land reform, including titling, as a key issue, and issued recommendations, which were largely not implemented. NGOs and media reported progress had been uneven. For example, according to the daily *Standard* newspaper, in January 2017 a branch of the High Court ruled that more than three million land title deeds issued by the government since 2013 had been irregularly processed and were therefore invalid, but could be corrected. The judgment was based on the parliament's failure to approve regulations required to implement the Land Registration Act.

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. For example, in July authorities demolished buildings in the Nairobi informal settlement Kibera, including seven schools, and the residences of more than 10,000 persons. Despite promises to complete a resettlement plan and restitution manifest prior to the demolition, authorities failed to do so.

Evictions also continued in the Mau forest in southwest Kenya. In July authorities forcefully evicted approximately 2,000 persons considered squatters without legal right to live on public land. This led to increased intercommunity clashes in the area in August and September.

In May 2017 the African Union Court on Human and Peoples' Rights found in favor of the indigenous Ogiek community evicted in 2009 from the Mau Forest. The court ruled the government's actions had violated seven articles of the African Charter on Human and People's Rights, to which the country is a signatory. The ruling gave the government until November 2017 to implement the required remedies, but at year's end, the attorney general had taken no action.

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

The constitution and law prohibit such actions, except "to promote public benefit," but authorities sometimes infringed on citizens' privacy rights. The law permits police to enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants in the course of large-scale security sweeps to apprehend suspected criminals or to

seize property believed stolen. For example, in August 2017, according to multiple press and NGO reports, police conducted house-to-house operations in Kisumu County in connection with protests in the wake of the August 2017 election. In one of the homes, police allegedly beat a husband, wife, and their six-month-old daughter (known as “Baby Pendo”). KNCHR confirmed the infant died of her injuries in September 2017. In November 2017 IPOA completed its investigation into the infant’s death and referred the case to the ODPP for potential prosecution. ODPP declined to prosecute due to lack of evidence identifying the culpable officers. IPOA then referred the case to a magistrate for a public inquest, which met several times, most recently on July 11.

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 Expression, Including for the Press**

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

Freedom of Expression: In 2017 a branch of the High Court declared unconstitutional Section 132 of the Penal Code, which criminalized “undermining the authority of a public officer,” ruling the provision violated the fundamental right of freedom of expression. Other provisions of the constitution and the National Cohesion and Integration Act prohibiting hate speech and incitement to violence remained in force. Authorities arrested numerous members of parliament (MPs) on incitement or hate speech charges. In September 2017 authorities arrested MP Paul Ongili (aka Babu Owino) on charges of subversion and incitement and later charged him with causing grievous harm to a voter. These charges remained pending. In March the Nairobi High Court nullified Ongili’s election as an MP on charges of electoral malpractice and related violence. In June the Appeals Court overturned the High Court decision, reinstating Ongili’s election.

Press and Media Freedom: The government occasionally interpreted laws to

restrict press freedom, and officials occasionally accused the international media of publishing stories and engaging in activities that could incite violence. Two laws give the government oversight of media by creating a complaints tribunal with expansive authority, including the power to revoke journalists' credentials and levy debilitating fines. The government was the media's largest source of advertising revenue, and regularly used this as a lever to influence media owners.

Sixteen other laws restrict media operations and place restrictions on freedom of the press. In 2016 the president signed into law the Access to Information bill, which media freedom advocates lauded as progress in government transparency.

In March eight prominent columnists collectively resigned from the National Media Group, the country's largest media group, via a joint statement citing a "loss in editorial independence," including as an example the firing of managing editor Denis Galaya over an editorial critical of President Kenyatta.

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

In March, according to multiple reports, police physically assaulted television and print journalists at Nairobi's international airport covering the return of opposition lawyer Miguna Miguna from abroad. Reporters from KTN, NTV and Citizen TV alleged injuries from the altercation.

Numerous news outlets and NGOs reported that intimidation of journalists following the 2017 elections continued into the year. On September 9, police in Nyeri County arrested Irene Mugo of *Daily Nation* and Lydia Nyawira of *Standard media* for interviewing relatives of a man arrested for wearing a T-shirt carrying a message presumed to be against Deputy President William Ruto. Authorities released the journalists without charges the next day.

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 30, the government blocked KTN, NTV, and Citizen TV over plans to broadcast a public ceremony held by elements of the opposition coalition to symbolically swear in Raila Odinga as “the people’s president.” On January 31, the High Court ordered the ban suspended for 14 days while the court examined the case. The government refused to comply with the court order, calling the matter a security issue. On February 5, the government permitted NTV and KTN to resume broadcasting, and Citizen TV returned to the air on February 8.

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

Libel/Slander Laws: In 2017 a branch of the High Court declared unconstitutional Section 194 of the Penal Code, which defined the offense of criminal defamation. Libel and slander remain civil offenses.

National Security: The government cited national or public security as grounds to suppress views that it considered politically embarrassing. The government cited security grounds for preventing media houses from covering the January 30 symbolic swearing in of Raila Odinga.

### **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. On May 16, President Kenyatta signed into law the Computer Misuse and Cybercrime Act, which was to come into force on May 30. On May 29, the High Court suspended enforcement of 25 sections of the new law pending further hearings. The court based the suspension on complaints that the law was overly vague and subject to misuse, that it criminalized defamation, and that it failed to include intent requirements in key provisions and exceptions for public use and whistleblowers. The hearings remained pending as of the year’s end.

By law, mobile telephone service providers may block mass messages they judge would incite violence. The National Cohesion and Integration Commission (NCIC) tracked bloggers and social media users accused of spreading hate speech.

Leading up to the 2017 election season, hate speech, disinformation, and surveillance were reported, and the Communications Authority of Kenya issued regulations that could limit disinformation online.

According to the International Telecommunication Union, 17.8 percent of the population used the internet in 2017.

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

There were no government restrictions on academic freedom or cultural events. In 2016 the president signed into law the Protection of Traditional Knowledge and Cultural Expressions Bill.

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

### **Freedom of Peaceful Assembly**

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

Police used excessive force at times to disperse demonstrators. The local press reported on multiple occasions that police used tear gas to disperse demonstrators or crowds of various types, including looters at the demolition of a shopping mall in September. On August 6, police tear-gassed Kenyatta National Hospital staff staging a peaceful protest over nonpayment of their health service allowances. IPOA's investigation of resulting complaints continued as of year's end.

### **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. A statement by the UN Office of the High Commissioner for Human Rights dated July 11 noted reprisals faced by numerous human rights defenders and communities that raised human rights

concerns. Reprisals reportedly took the form of intimidation, termination of employment, beatings, and arrests and threats of malicious prosecution. There were reports of restrictions on workers' freedom of association, including in the agribusiness and public sectors. Trade unionists reported workers dismissed for joining trade unions or for demanding respect for their labor rights.

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 February the High Court ordered the NGO Coordination Board to pay the Kenya Human Rights Commission KSH two million (\$20,000) compensation for illegally freezing its accounts and attempting to deregister it in 2017. The NGO Coordination Board had also attempted to deregister the Africa Centre for Open Governance, but a court overturned that decision in December 2017.

The NGO Coordination Act of 1990 requires organizations employing foreign staff to seek authorization from the NGO Coordination Board before applying for a work permit.

In 2016 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. Despite two court rulings ordering the government to operationalize the PBO Act. In September the interior cabinet secretary pledged to operationalize the PBO Act by the end of the year but the government failed to do so.

### **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**

The constitution and legal framework provide for freedom of internal movement, foreign travel, emigration, and repatriation for citizens. Refugees and asylum seekers require registration with the National Registration Bureau, and the Security Law Act of 2014 reiterates strict implementation of the encampment policy.

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. In October 2017 the country pledged to apply the Comprehensive Refugee Response Framework to enhance refugee self-reliance, increase access to solutions, and improve conditions in countries of origin for safe and voluntary returns.

In 2017 the High Court blocked the government's plan to close the Dadaab refugee complex, ruling the plan violated the principle of nonrefoulement and refugees' constitutional rights to fair administrative action. The court's decision eased pressure on Somalis who feared the camp would close by the government-imposed deadline. As of the end of the year, the government had taken no new steps to close Dadaab, but reportedly planned to close it in 2019.

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

In April the Interior Ministry issued a 60-day ultimatum calling on foreign workers to regularize their work permits. Following the announcement, authorities reportedly arrested 375 refugees and asylum seekers, and 16 remained in detention as of the end of the year. UNHCR and some NGOs advocated that refugees and asylum seekers not be affected by the directive.

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

The security situation in Dadaab improved during the year, but remained precarious. There were no attacks on humanitarian workers and no detonations of improvised explosive devices within 15 miles of the refugee complex during the year. The security partnership between UNHCR and the local police remained strong and led to improvements in camp security through community policing and neighborhood watch initiatives. In January members of the host community held protests in response to UNHCR's planned closure of the IFO 2 camp in Dadaab, which closed in March.

Sexual and gender-based violence (SGBV) against refugees and asylum seekers remained a problem, 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, early and forced marriage, particularly of young Sudanese, South Sudanese, and Somali girls. Despite strong awareness programs in the camps, under-reporting persisted due to community preference for “maslaha,” a traditional form of jurisprudence prevalent in the region, as an alternative dispute resolution mechanisms; shortages of female law-enforcement officers; limited knowledge of SGBV, and the medical forensic requirements for trying alleged rape cases.

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 hosts an estimated 469,700 refugees and asylum seekers. 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, and the Democratic Republic of the Congo (DRC). The government actively enforced an encampment policy for refugees. Refugees needing to move outside the designated areas (Kakuma camp, Kalobeyei settlement, and the Dadaab refugee complex) must obtain a temporary movement pass issued by the Refugee Affairs Secretariat (RAS). Stringent vetting requirements and long processing times have delayed the issuance of temporary movement passes in the camps.

The Kenyan Refugee Act of 2006 allows exemption categories for specific groups to live outside designated camp areas, including in protection and medical cases. The government granted limited travel permission to refugees to receive specialized medical care outside the camps, 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. Between January and September, RAS issued 4,393 temporary movement passes.

### **Internally Displaced Persons (IDPs)**

The National Consultative Coordination Committee on IDPs (the committee) operates under the Ministry of Interior and Coordination of National Government. According to the committee, in 2016 it compensated 44,577 IDPs who remained in camps after the 2007-08 postelection violence with approximately \$500 to aid their reintegration into society. The committee planned to compensate the remaining 39,314 by the end of the year.

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 assistance to the IDPs continued.

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 violence or involved in clashes over resources.

### **Protection of Refugees**

Refoulement: There were no confirmed cases of refoulement.

During the year, UNHCR assisted 7,130 persons to return voluntarily to their places of origin, of whom 6,939 returned to Somalia and 191 returned to Burundi. UNHCR organized “go and see” visits to Somalia for Somali refugees as well as visits from Somali government officials to Dadaab refugee complex to provide information to refugees about current conditions in Somalia. UNHCR reported that fewer Somali refugees opt to repatriate voluntarily as compared with previous years due to: concerns of forced recruitment by terrorist and militia organizations in Somalia, general insecurity, and lack of access to education and livelihoods.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has a system for providing protection to camp-based refugees. While the government generally coordinated with UNHCR to provide assistance

and protection to refugees in the Dadaab and Kakuma refugee camps, cooperation was limited in urban areas. The government had yet to register nearly 10,119 refugees and asylum seekers in Dadaab, the majority of whom are Somali. Pressure from UNHCR and the international community has resulted in the government's registration of a number of extremely vulnerable individuals. South Sudanese refugees maintain prima facie refugee status.

According to UNHCR, as of September the country hosted 469,769 registered refugees and asylum seekers, including 208,891 in the Dadaab refugee complex, 186,205 in Kakuma camp, and 74,673 in the Nairobi area. The majority of refugees and asylum seekers were from Somalia (256,326), with others coming from South Sudan (114,765), the DRC (39,757), Ethiopia (29,509), Burundi (13,161), and other countries (16,245). Most refugees arriving in Kakuma were from South Sudan and the refugee population in Dadaab was primarily Somali. New arrivals also included individuals from Burundi, the DRC, Ethiopia, and Uganda. The Somali refugee influx was lower than in previous years. An agreement on voluntary repatriation between Kenya, Somalia, and UNHCR expired in November, although is still de facto in place. Since 2014, 82,339 Somali refugees have voluntarily returned to Somalia from Kenya under the agreement.

In May 2016 the government disbanded the Department of Refugee Affairs and replaced it with a Refugee Affairs Secretariat to carry out the department's previous work. The Refugee Affairs Secretariat, within the Interior Ministry, maintained a cooperative working relationship with UNHCR.

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

### **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. UNHCR estimated that 18,500 stateless persons were registered in the country; the actual number, however, was unknown.

Communities known to UNHCR as stateless include the Pemba in Kwale (approximately 5,000) and the Shona (an estimated 4,000). The 9,500 remaining include: persons of Rwandan, Burundian, or Congolese descent; some descendants of slaves from Zambia and Malawi; the Galjeel, who were stripped of their nationality in 1989; and smaller groups at risk of statelessness due to their

proximity to Kenya's border with Somali and Ethiopia, including the Daasanach and returnees' from Somalia residing in Isiolo. Children born in Kenya to British overseas citizens are stateless due to conflicting nationality laws in Kenya and the United Kingdom.

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.

In collaboration with the Department of Immigration Services and the Kenya Human Rights Commission, UNHCR was collecting data on the Shona in the country. The Kwale County government was in dialogue with the Pemba community to petition the president to grant nationality to them, according to UNHCR.

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 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.

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

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

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

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

On October 10, 2017, Odinga announced his withdrawal from the new election, saying the IEBC had not taken sufficient steps to ensure a free and fair election. The October 26 vote was marred by low voter turnout in some areas and protests in some opposition strongholds. Human Rights Watch documented more than 100 persons badly injured and at least 33 killed by police using excessive force in response to protests following the August election, and the Independent Medico-Legal Unit reported another 13 deaths before, during, and after the October vote. On October 30, 2017, the IEBC declared Kenyatta the winner of the new election. On November 20, 2017, the Supreme Court rejected petitions challenging the October 26 elections and upheld Kenyatta's victory. Odinga refused to accept Kenyatta's re-election and repeated his call for people's assemblies across the country to discuss constitutional revisions to restructure the government and the elections process. On January 30, elements of the opposition publicly swore Odinga in as "the People's President," and the government shut down major public media houses for several days to prevent them from covering the event. Kenyatta and Odinga publicly reconciled on March 9 and pledged to work together towards national unity.

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

authorities sometimes asked them to produce documentation proving their parents were citizens.

Participation of Women and Minorities: Voting rates and measures of other types of participation in the political process by women and members of minorities remained lower than those of men.

The constitution provides for parliamentary representation by women, youth, persons with disabilities, ethnic minorities, and marginalized communities. The constitution specifically states no gender should encumber more than two-thirds of elective and appointed offices (the Two-Third Gender Rule). The Supreme Court set an initial August 2016 deadline for implementation of this provision, but that passed without action and the National Assembly failed to meet a second deadline in May 2017. In August 2017 two NGOs filed a petition for the High Court to declare the composition of the National Assembly and Senate unconstitutional for failure to meet the Two-Third Gender rule. The petition had not been heard as of November. During the year men composed the entirety of the leadership of the National Assembly, unlike the previous parliament, in which both the deputy speaker and deputy majority leader were women. The cabinet also did not conform to the two-thirds rule; President Kenyatta appointed six women to the cabinet, representing 21 percent of the seats.

A September 2017 forum on Violence Against Women in Elections (VAWIE) that included the Elections Observation Group and the Federation of Women Lawyers in Kenya (FIDA) identified significant barriers to women's participation in the political process. The chief concerns were violence and insecurity stemming from economic and financial intimidation, harassment based on perceived levels of sexual or moral purity, threats of divorce, and other familial or social sanctions. The 2013 study by FIDA and the National Democratic Institute, *A Gender Audit of Kenya's 2013 Election Process*, highlighted challenges particular to female candidates, including irregularities in political party primaries that prevented women from competing in elections and the consistent failure of political parties to adhere to their own stated procedures for choosing candidates. FIDA reported a drop in verifiable VAWIE cases from 5,000 in 2013 to 300 in 2017, but identified serious political backlash for reporting abuses, harassment, or discrimination within the political parties.

The overall success rate of women candidates who ran for positions in the 2017 national elections was 16 percent, with 47 women elected to the National Assembly and three to the Senate. Women were elected to three of the 47

governorships. The constitution provides for the representation in government of ethnic minorities, but implementation was incomplete. The constitution also calls for persons with disabilities to hold a minimum of 5 percent of seats in the Senate and National Assembly. According to an October report by the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW), persons with disabilities comprised only 2.8 percent of the Senate and National Assembly.

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

The law provides criminal penalties for official corruption. Despite public progress in fighting corruption during the year, the government did not implement relevant laws effectively, and officials frequently engaged in alleged corrupt practices with impunity. By mid year, there were almost daily press reports of government corruption, 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), an independent agency; the ODPP; and the judiciary were sometimes the subjects of corruption allegations.

During the year President Kenyatta took a much more visible role in combating corruption, appointing a new director of public prosecutions, who initiated corruption investigations and prosecutions of dozens of government and parastatal officials with ties to both the ruling party and to the opposition, including some top-level officials such as the deputy chief justice of the Supreme Court. The national media closely covered the Director of Public Prosecution's investigations into and arrests of officials stemming from multimillion dollar scandals at the National Youth Service, the Kenya Power and Lighting Company, the National Cereals and Produce Board, and the Standard Gauge Railway. These investigations and prosecutions remained active at year's end.

The public continued to perceive corruption as a severe problem at all levels of government. According to an EACC national survey conducted in March 2016 but released during the year, 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.

According to the 2018 Ernst and Young Fraud Survey, 88 percent of senior business executives agreed that corruption was widespread in business in Kenya. Corruption reportedly often influenced the outcomes of government tenders. Foreign firms reported having limited success bidding on public procurements, and asset misappropriation, bribery, and procurement fraud were serious challenges. The law provides penalties for corruption.

The EACC has the legal mandate to investigate official corruption allegations, develop and enforce a code of ethics for public officials, and engage in public outreach on corruption. The EACC, however, lacks prosecutorial authority and must refer cases to the ODPP to initiate prosecutions. Both agencies lacked the technical and financial capacity to execute their mandates fully, and the government decreased the EACC's budget to 2.9 billion shillings (\$29 million) in 2018/19 from 4.3 billion shillings (\$43 million) in 2017/18. At the end of 2017, the EACC reported having more than 319 corruption cases pending in court, and assets valued at approximately 256 million shillings (\$2.6 million) were recovered. The EACC had secured 31 convictions over the 12 months prior to August, some of which included several individuals, making the past year the most successful year in the commission's history.

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

Corruption: While police and government corruption was widely viewed as endemic, authorities rarely arrested and prosecuted public officers (see section 1.d.). A 2016 survey conducted by the EACC cited police as the government department perceived as most corrupt by the public.

Police corruption remained a significant problem. Human rights NGOs reported that police often stopped and arrested citizens to extort bribes. Police sometimes jailed on trumped-up charges or beat those who could not pay the bribes. During police vetting conducted by the NPSC in recent years, numerous 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.

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. Despite the progress noted above, no senior police official was convicted or jailed for corruption-related offenses during the year.

Financial Disclosure: The law requires all public officers to declare their income, assets, and liabilities to their “responsible commission” (for example, the Parliamentary Service Commission in the case of members of parliament) every two years. Public officers must also include the income, assets, and liabilities of their spouses and dependent children younger than 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.

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. 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.

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

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases, although some groups reported experiencing 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 (see section 2.b.). Less-established NGOs, particularly in rural areas, reported harassment and threats by county-level officials as well as security forces. Human rights activists claimed security forces conducted surveillance of their activities, and some reported threats and intimidation.

The TJRC issued its final, multivolume report about human rights violations and injustices from the colonial period through the 2007-2008 postelection violence to President Kenyatta in May 2013. The government largely failed to implement the TJRC's recommendations, despite calls from religious leaders and NGOs such as the International Center for Transitional Justice (see section 1.e, Property Restitution).

In 2013 a group of civil society organizations filed a High Court petition accusing the government of having failed to address properly sexual and gender based violence that occurred during the 2007-2008 postelection violence. According to the petition, the government failed to protect victims' rights and did not investigate allegations or provide medical and legal assistance to survivors. The government had not made efforts to reach a timely resolution in the case, which continued as of the year's end.

There were reports that officials and police officers threatened activists who sought justice for police killings and other serious abuses during the 2017 elections.

Human Rights Watch reported that, between August 2017 and March, police and other officials directly intimidated at least 15 activists and victims in Nairobi and in the western county of Kisumu. The intimidation included threats of arrest, warnings not to post information about police brutality, home and office raids, and confiscation of laptops and other equipment.

Government and security officials promptly investigated the 2016 triple homicide case of International Justice Mission (IJM) lawyer and investigator Willie Kimani, IJM client Josphat Mwenda, and their driver Joseph Muiruri and charged four police officers accused in the case. That trial continued as of the year's end.

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

The United Nations or Other International Bodies: The government 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 in 2011. Its mandate is to promote and protect human rights in the country. Citing budget restrictions, the administration reduced KNCHR's budget for the fourth straight year after reaching a high in 2014-2015.

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

### **Women**

Rape and Domestic Violence: The law criminalizes rape, defilement, sexual violence within marriage, and sex tourism, but enforcement remained limited. The law criminalizes abuses that include early and forced marriage, FGM/C, forced wife "inheritance," and sexual violence within marriage. The law'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 law, insulting the modesty of another person by intruding upon that person's privacy or stripping them of clothing are criminal offenses punishable by imprisonment for up to 20 years.

The law provides a maximum penalty of life imprisonment for rape, 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, commonly known as *maslaha*, to address sexual offenses in rural areas, with village elders assessing financial compensation for the victims or their families. They also used such mechanisms occasionally in urban areas. In February however, the interior cabinet secretary announced that the government would not permit local

government officials and community leaders to use *maslaha* to resolve the gang rape of a 15-year-old girl in rural Wajir County, and that the investigation must proceed through official channels.

The National Police Service recorded 2,557 reports of sexual gender based violence (SGBV) between January and June on the National Sexual Gender Based Violence Information System. Authorities investigated 2,393 cases, leading to 454 prosecutions, with six convictions as of June.

The governmental KNCHR's November report on sexual violence during and after the 2017 election found that sexual and gender-based violations accounted for 25 percent of human rights violations, and 71 percent of the sexual assaults were categorized as rape. Ninety-six percent of the victims were female. The same report found that security officers committed an estimated 55 percent of the documented sexual assaults. More than half the victims lived in informal settlements in urban areas, primarily in Nairobi, and 80 percent were either unable to access or did not seek proper medical care within 72 hours. Only 22 percent of the documented victims reported the assault to police, and police reportedly acted indifferently to some accusations of sexual assault against authorities. KNCHR's report included a raft of official recommendations to the Presidency, the National Police Service Commission, the Ministries of Interior and Health, IPOA, ODPP, the Judiciary, county governments, and other state bodies.

Although police no longer required physicians to examine victims, physicians still had to complete official forms reporting rape. Rural areas generally had no police physician, and in Nairobi there were only three. NGOs reported police stations often but inconsistently accepted the examination report of clinical physicians who initially treated rape victims.

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

Female Genital Mutilation/Cutting (FGM/C): The law makes it illegal to practice FGM/C, procure the services of someone who practices FGM/C, or send a person out of the country to undergo the procedure. The law also makes it illegal to make derogatory remarks about a woman who has not undergone FGM/C. Government officials often participated in public awareness programs to prevent the practice. Nevertheless, individuals practiced FGM/C widely, particularly in some rural

areas. According to a study by ActionAid Kenya published in October, despite the legal prohibition on FGM/C, myths supporting the practice remained deep-rooted in some local cultures. The study concluded approximately 21 percent of adult women had undergone the procedure some time in their lives, but the practice was heavily concentrated in a minority of communities, including the Maasai (78 percent) and Samburu (86 percent).

Media reported growing numbers of female students refused to participate in FGM/C ceremonies, traditionally performed during the August and December school holidays. 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.

For more information, see Appendix C.

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

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

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

The constitution prohibits gender discrimination in relation to land and property ownership and gives women equal rights to inheritance and access to land. The constitution also provides for the enactment of legislation for the protection of

wives' rights to matrimonial property during and upon the termination of a marriage, and it affirms that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution. For example, according to a 2018 World Bank report, it was difficult in much of the country for widows to access a deceased husband's bank account.

According to an October report by CEDAW, despite the laws, much of the country held to the traditions that married women are not entitled to their fathers' property and that upon remarriage, a woman loses her claim to her deceased husband's property. In May the High Court dismissed a case by FIDA challenging the constitutionality of the provision of the Matrimonial Property Act stating that parties to a marriage are entitled to marital property proportional to their contribution towards acquiring it. FIDA had argued that the provision indirectly discriminates against women, who often contribute less directly to marital income.

## **Children**

Birth Registration: A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Birth registration is compulsory. An estimated 63 percent of births were officially registered. Lack of official birth certificates resulted in discrimination in delivery of public services. The Department of Civil Registration Services began implementing the Maternal Child Health Registration Strategy requiring nurses administering immunizations to register the births of unregistered children.

For additional information, see Appendix C.

Education: Education is tuition free and compulsory through age 13. Authorities did not enforce the mandatory attendance law uniformly.

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

Child Abuse: The law criminalizes several forms of violence that affect children, including early and forced marriage, FGM/C, incest, and physical, verbal, and sexual abuse. Violence against children, particularly in poor and rural communities, was common, and child abuse, including sexual abuse, occurred frequently.

The minimum sentence for conviction of defilement is life imprisonment if the victim is younger 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. Although exact numbers were unavailable, media reported several defilement convictions during the year. In September a court sentenced an 82-year-old man to life imprisonment for defiling a minor.

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

Early and Forced Marriage: The minimum age for marriage is 18 years for women and men. Media occasionally highlighted the problem of early and forced marriage, which some ethnic groups commonly practiced. Under the constitution, the kadhi courts retained jurisdiction over Muslim marriage and family law in cases where all parties profess the Muslim religion and agree to submit to the jurisdiction of the courts. According to media reports, in August, six men in Baringo County killed a 13-year-old girl for refusing to become a 60-year-old man's fifth wife. For additional information, see Appendix C.

Sexual Exploitation of Children: The law criminalizes sexual exploitation of children, including prohibiting procurement of a child younger than age 18 for unlawful sexual relations. The law also prohibits domestic and international trafficking, or the recruitment, harboring, transportation, transfer, or receipt of children up to the age of 18 for the production of pornography or for pornographic performances. Provisions apply equally to girls and boys. The Sexual Offenses Act has specific sections on child trafficking, child sex tourism, child prostitution, and child pornography. Nevertheless, according to human rights organizations, children were sexually exploited and victims of trafficking.

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

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

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

### **Anti-Semitism**

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

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [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 disabilities, but the government did not effectively enforce these provisions. A number of laws limit the rights of persons with disabilities. For example, the Marriage Act limits the rights of persons with mental disabilities to get married and the Law of Succession limits the rights of persons with disabilities to inheritance. The constitution provides for legal representation of persons with disabilities in legislative and appointive bodies. The law provides that persons with disabilities should have access to public buildings, and some buildings in major cities had wheelchair ramps and modified elevators and restrooms. The government did not enforce the law, however, and new construction often did not include accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible to persons with disabilities. According to NGOs, police stations remained largely inaccessible to persons with mobility disabilities.

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 by school officials and parents to devoting resources to students with disabilities.

Authorities received reports of killings of persons with disabilities as well as torture and abuse, and the government took action in some cases. In June the government reported a rise in defilement and confinement of persons living with

albinism. According to an official, a majority of cases went unreported, while others were handled informally at the village level.

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. 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 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.

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

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

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

Many factors contributed to interethnic conflicts: longstanding 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. According to the Office of the United Nations High Commissioner for Human Rights, between December 2016 and April 2017, in defiance of a court order, Kenya Forest Service guards burned multiple dwellings of the minority Sengwer tribe in order to evict them from Embobut Forest.

There was frequent conflict, including banditry, fights over land, and cattle rustling, among the Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and Pokot ethnic groups in arid northern, eastern, and Rift Valley areas that at times resulted in deaths. Disputes over county borders were also a source of ethnic tensions. In August and September, there were a number of deadly inter-community clashes over government proposals to resume the evictions from the Mau forest in the southern Rift Valley region. As part of a dispute dating back to the colonial period, the government claims many of the communities were illegally living on and damaging forest land in a crucial conservation zone and drainage basin.

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 2016 the National Gay and Lesbian Human Rights Commission filed Petition 150 of 2016 challenging the constitutionality of these penal codes. As of year’s end the two cases remained in progress. On March 22, the Court of Appeals in Mombasa ruled

that the use of forced anal examinations by the state to determine participation in homosexual acts is unconstitutional. During the year the Kenya Film and Classification Board banned showings of the Kenyan film *Rafiki* over its presentation of LGBTI themes. After the film debuted at the Cannes Film Festival in France, a Kenyan court ordered the ban suspended for one week in October so that the film could qualify to be nominated for a U.S. Academy Award.

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

Authorities permitted LGBTI advocacy organizations to register and conduct activities.

Violence and discrimination against LGBTI individuals was widespread. In June LGBTI activists reported receiving death threats following the first pride event held at Kakuma refugee camp.

In May 2017 the government gazetted a taskforce in order to implement a High Court's judgment in the 2014 Baby 'A' case recognizing the existence of intersex persons. The taskforce was seen as a step to reduce violence and discrimination targeting intersex persons. In July 2017 the taskforce launched a nationwide program to record the number of intersex citizens. That information was not publicly available as of October.

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

The government, along with international and NGO partners, made progress in creating an enabling environment to combat the social stigma of HIV and AIDS and to address the gap in access to HIV information and services. 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 more than 5,000 counseling and testing centers providing free HIV/AIDS diagnosis. Diagnosis of other sexually transmitted infections was available through hospitals and clinics throughout the country. In 2016, according to its website, the First Lady's Beyond Zero Campaign to stop HIV infections led to the opening of 46 mobile clinics across the country.

Stigma nonetheless continued to hinder efforts to educate the public about

HIV/AIDS and to provide testing and treatment services. In July a court sentenced a woman to death for murdering her boyfriend when she discovered that he had hidden his HIV positive status from her.

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

Mob violence and vigilante action were common in areas where the populace lacks confidence in the criminal justice system. In September a mob protesting the police killing of a civilian attacked a police station in Kisii County (western region) and killed three persons, including one officer. The social acceptability of mob violence also provided cover for acts of personal vengeance. Police frequently failed to act to stop mob violence.

Land owners formed groups in some parts of the country to protect their interests from rival groups or thieves. In March the National Cohesion and Integration Commission reported more than 100 such organized groups nationwide. Reports indicated that politicians often fund these groups or provide them weapons, particularly around election periods. Mombasa County reported 20 land invasions between March and July in parts of Mombasa and neighboring Kilifi counties.

In 2016 the Senate and the National Assembly established a joint parliamentary select committee to investigate police brutality and mob violence. The committee's activities ceased, however, in the run up to the 2017 election.

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, which some believed could confer magical powers and which could be sold for significant sums.

## **Section 7. Worker Rights**

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

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

The law permits the government to deny workers the right to strike under certain conditions. For example, the government prohibits members of the military, police, prison guards, and the National Youth Service from striking. Civil servants are permitted to strike following a seven-day notice period. A bureau of the Ministry of Labor, Social Security, and Services (Ministry of Labor) then 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. In 2016 the Judiciary granted High Court status to the Employment and Labor Relations Court. It is illegal for parties involved in mediation to strike. Additionally, the ministry's referral of a dispute to the conciliation process nullifies the right to strike.

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

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

The law permits workers in collective bargaining disputes to strike if they have exhausted formal conciliation procedures and have given seven days' notice to the government and the employer. Conciliation is not compulsory in individual employment matters. Security forces may not bargain collectively but have an internal board that reviews salaries. Informal workers may establish associations, or even unions, to negotiate wages and conditions matching the government's minimum wage guidelines 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.

The government enforced the decisions of the Employment and Labor Relations Court inconsistently. Many employers did not comply with reinstatement orders, and some workers accepted payment in lieu of reinstatement. In several cases, employers successfully appealed the Employment and Labor Relations Court's decisions to a branch of the High Court. The enforcement mechanisms of the Employment and Labor Relations Court remained weak, and its case backlog raised concerns about the long delays and lack of 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 Ministry of Labor for conciliation. In 2016-17, the number of filed cases increased to 6,082, while the number of cases settled more than doubled to 3,668. As of June 2017, 13,723 cases were pending in up from 11,309 cases at the end of 2015-16. The total Collective Bargaining Agreements registered in 2017 were 411, compared with 268 in 2016. 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. In 2016 the Judiciary finalized the Employment and Labor Relations (Procedure) Rules. The significant changes introduced in the new Court procedure rules provide parties access to file pleadings directly in electronic form, new pretrial procedures, and alternative dispute resolution. The rules also set a 30-day time limit for the court to submit a report on disagreements over Collective Bargaining Agreements filed.

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

Migrant workers often lacked formal organization and consequently missed the benefits of collective bargaining. Similarly, domestic workers and others who operated in private settings were vulnerable to exclusion from legal protections, although domestic workers unions exist in the country to protect their interests. The Ministry of East African Community and Northern Corridor claimed all employees are covered by the existing labor laws, and the ministry continued to advise domestic workers on the terms of their contracts, especially when their terms and conditions of work are violated.

In 2016 the government deployed labor attaches to Qatar, Saudi Arabia, and the United Arab Emirates (UAE) to regulate and coordinate contracts of Kenyan migrant workers and promote overseas job opportunities. The Ministry of East African Community and Northern Corridor also helped Kenyan domestic workers understand the terms and conditions of their work agreements. The government signed two bilateral agreements for employment opportunities with Saudi Arabia and Qatar, and the ministry's negotiations continued with UAE. The ministry also established a directorate to regulate the conduct of labor agents for Kenyan migrant workers, including requiring the posting of a 500,000 shilling (\$5,000) performance guarantee bond for each worker.

The survival of trade unions was threatened by the misuse of internships and other forms of transitional employment, with employers often not hiring employees after an internship ends. State agencies increasingly outsourced jobs to the private sector, and in the private sector, casual workers were employed on short-term contracts. This shift contributed to declining numbers in trade unions. NGOs and trade unionists reported replacement of permanent positions by casual or contract labor, especially in the EPZs, the Port of Mombasa, and in the agricultural and manufacturing sectors. In some cases 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.

Workers exercised the right to strike. The health sector witnessed industrial strikes that began in the fourth quarter of 2016 and lasted well into 2017. The doctors' strike lasted until March 2017, leading to disruption of public health care service delivery and temporary detention of seven union officials. Strikes involving Kenya National Union of Nurses in various counties continued until November 2017. The government agreed to pay withheld back salaries; authorized a collective bargaining agreement; agreed to pay for nurses' uniforms and to provide a risk allowance; and announced it would drop all pending disciplinary cases against nurses resulting from the strikes. Clinical Officers supporting the health sector also went on a short-lived strike lasting three weeks before a court heard their grievances in October. University lecturers went on strike three times during the academic year, demanding full implementation of the 2013-2017 Collective Bargaining Agreement, which was resolved in December 2017.

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

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

The government did not effectively enforce the law and some forced labor occurred. Certain legal provisions, including the penal code and the Public Order Act, impose compulsory prison labor. Resources, inspections, and remediation were not adequate to prevent forced labor, and penalties were not sufficient to deter violations. Violations included debt bondage, trafficking of workers, and compulsion of persons, even family members, to work as domestic servants. The government prosecuted 59 cases of forced labor, primarily in cattle herding, street vending, begging, and agriculture in 2017. Domestic workers from Uganda, herders from Ethiopia, and others from Somalia, South Sudan, and Burundi were subjected to forced labor.

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 minimum age for work (other than apprenticeships) is 16, and the minimum age for hazardous work is 18. These protections, however, only extend to children engaged under formal employment agreements, and do not extend to those children working informally. The ministry, in collaboration with the International Labor Organization (ILO), the international donor community, and NGOs, published a list of specific jobs considered hazardous that would constitute the worst forms of child labor in 2014. This list includes but is not limited to scavenging, carrying stones and rocks, metalwork, working with machinery, mining and stone crushing. The law explicitly prohibits forced labor, trafficking, and other practices similar to slavery; child soldiering; prostitution; the use, procuring, or offering of a child for the production of pornography or for pornographic performances; and the use by an adult for illegal activities (such as drug trafficking) of any child up to age 18. The law applies equally to girls and boys.

The 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. Fines in the formal sector were generally enough to deter violations. Employment of children in the formal industrial wage sector in violation of the Employment Act was rare. The law does not prohibit child labor for children employed outside the scope of a contractual agreement. Child labor in the informal sector was widespread but difficult to monitor and control.

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

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

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

According to a 2016 UNICEF study, 26 percent of children between ages 14 and under (almost 5 million children) 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, small quarries, and sand mines. Children also worked in the fishing industry. In urban areas businesses employed children in hawking, scavenging, carrying loads, fetching and selling water, 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 child labor, such as in agricultural labor and domestic service, but also including prostitution.

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

The government did not effectively enforce the law. Gender-based discrimination in employment and occupation occurred, although the law mandates nondiscrimination based on gender in hiring. The average monthly income of women was approximately two-thirds that of men. Women had difficulty working in nontraditional fields, 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 three to 8 percent of a vendor's income as well as sexual abuse were common.

In an audit of hiring practices released in 2016, the NCIC accused many county governors of appointing and employing disproportionate numbers of the dominant tribe in their county. According to the commission, 15 of the 47 counties failed to

include a single person from a minority tribe either on the county's public service board or as county executive committee members. For example, all 10 of West Pokot's committee members were Pokots. These problems were aggravated by the devolution of fiscal and administrative responsibility to county governments. Some counties, for example Nairobi City County, were notable for apportioning roles inclusively. Observers also noted patterns of preferential hiring during police recruitment exercises (see section 1.d.).

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

Due to societal discrimination, there were limited employment opportunities for persons with albinism. The law provides protection for persons with disabilities against employment discrimination, although in practice many persons with disabilities faced challenges in finding and obtaining employment. There are no legal employment protections for LGBTI persons, who remained vulnerable to discrimination in the workplace. Discrimination against migrant workers also occurred.

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

Regulation of wages is part of the Labor Institutions Act, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category. The minimum wage for a general laborer was 12,926 shillings (\$128) per month. The average minimum wage for skilled workers was 18,274 shillings (\$181) per month. The government increased the lowest agricultural minimum wage for unskilled employees to 7,323 shillings (\$73) per month, excluding housing allowance. Agricultural workers were underpaid compared with other sectors. Minimum wages exceeded the World Bank poverty rate of \$1.90 per day.

The Ministry of Labor 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 reached 874,806 households.

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.

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

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

The directorate's health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Employers may appeal such notices to the Factories Appeals Court, a body of four members, one of whom must be a High Court judge. The law stipulates that factories employing 20 or more persons have an internal health and safety committee with representation from workers. According to the government, many of the largest factories had health and safety committees.

The law provides for labor inspections to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring compliance with labor laws. 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. Labor inspections include a provision for reporting on persons with disabilities. The Employment Act of 2007 prohibits discrimination against an employee on the basis of disability.

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

According to the 2015-2017 *Kenya Economic Survey*, the informal sector employed 11.81 million persons in 2016, compared with 2.42 million in the formal sector.

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 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. The Kenya Federation of Employers provided training and auditing of workplaces for health and safety practices.