

# KENYA 2014 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Kenya is a republic with three branches of government, a president, a bicameral legislature, and judiciary. The country was transferring significant elements of fiscal and administrative authority from the central government to 47 recently created county governments, in accordance with the 2010 constitution. The constitution also created an independent judiciary and a Supreme Court. In the March 2013 general election, the first under the new constitution, citizens elected a president and deputy president, parliamentarians including members of the new senate, and county governors and legislators. International and domestic observers judged the elections generally free and credible, although some civil society groups pointed to irregularities and questioned the results. In a closely contested election, Jubilee Coalition candidate Uhuru Kenyatta won the presidency. The Supreme Court unanimously upheld the election results. During the year several free and credible by-elections were held. There were instances in which elements of the security forces acted independently of civilian control.

Somalia-based terrorist organization al-Shabaab conducted attacks in Nairobi and Mombasa and guerilla-style raids on isolated communities along the coast and the border with Somalia. In response the government mounted a security operation against irregular migrants, terrorists, and criminals called Operation Usalama Watch (“usalama” is Swahili for “security”). Beginning in April with mass roundups in Nairobi’s mainly Somali Eastleigh neighborhood, the operation expanded to other locations in Nairobi and other cities. Police held detainees in overcrowded cells. The Independent Policing Oversight Authority (IPOA) investigated numerous cases of police misconduct. Journalists and human rights organizations alleged the government undertook extrajudicial killings and disappearances targeting those suspected of having connections with al-Shabaab.

The most serious human rights problems were security force abuses, including alleged unlawful killings, forced disappearances, torture, and use of excessive force; interethnic violence; and widespread corruption and impunity throughout the government.

Other human rights problems included: harsh and life-threatening prison conditions; arbitrary arrest and detention; prolonged pretrial detention; arbitrary interference with the home and infringement on citizens’ privacy; restrictions on press freedom and freedom of assembly; abuse and forced resettlement of

internally displaced persons (IDPs); abuse of refugees, including rape by police; violence and discrimination against women; violence against children, including female genital mutilation/cutting (FGM/C); child marriage and forced marriage; child prostitution; trafficking in persons; discrimination against persons with disabilities and albinism; discrimination based on ethnicity, sexual orientation, and HIV/AIDS status; violence against persons with HIV/AIDS; mob violence; lack of enforcement of workers' rights; forced and bonded labor, including of children; and child labor.

Widespread impunity at all levels of government was a serious problem, despite public statements by the president and deputy president and police and judicial reforms. The government took only limited steps to address cases of unlawful killings by security force members. In at least one instance, police impeded efforts to investigate and prosecute police misconduct. Impunity in cases of corruption was also common, although the government took action in some cases to prosecute officials who committed abuses.

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

### **a. Arbitrary or Unlawful Deprivation of Life**

There were numerous allegations the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. Human rights groups reported more than 313 extrajudicial killings between January and October. Nongovernmental organization (NGO) research suggested police were responsible for the majority of deaths by gun violence. Some groups alleged the number of extrajudicial killings was significantly underestimated due to underreporting of security force killings in informal settlements. During the year the IPOA completed 10 investigations into fatal police shootings with a view to forwarding the cases to the Office of the Director of Public Prosecution (ODDP). The government, however, took only limited action to hold security force members suspected of unlawfully killing accountable.

Several organizations documented alleged extrajudicial killings or disappearances committed by security force members. In August, Human Rights Watch (HRW) reported on killings and disappearances, alleging a pattern of extrajudicial killings by elements of police. It documented 10 killings and 10 enforced disappearances (see section 1.b.). In addition a number of NGOs in March started a habeas corpus action on behalf of the family of Hemed Salim, who disappeared after his February

2 arrest during a police raid on Mombasa's Masjid Musa mosque. The case continued at year's end.

On April 1, according to the BBC, *The Daily Beast*, and prominent human rights activists, government agents allegedly shot and killed Abubakar Sharif and a colleague outside Shimo la Tewa Prison in Mombasa. Sharif, also known as "Makaburi," was publicly linked to terrorist activities. The BBC alleged in an April 9 report that security officials had said Makaburi's "days are numbered" and that the same officials confirmed government involvement in his death. Cabinet Secretary for the Interior Joseph Ole Lenku, however, denied government involvement and appealed to witnesses to come forward with evidence. Authorities had made no arrests by year's end.

On July 11, unknown gunmen shot and killed Shahid Butt and seriously injured his two-year-old nephew in his car. Butt was facing trial over allegations he had funded the radicalization of youth at the Sakina Mosque in Mombasa. According to *The Star* newspaper on July 14, police officers confirmed Butt was under surveillance. Several human rights activists alleged the government carried out the attack. The Mombasa county police commander denied the allegations and pledged police would locate Butt's assailants, but no arrests were made by year's end.

On December 7, al-Jazeera broadcast a documentary in which individuals identified as members of Kenya's Anti-Terrorism Police Unit, General Services Unit's Recce Team and Radiation Team, and intelligence services described an alleged government program of extrajudicial killings.

As in the previous year, prominent human rights activists and journalists alleged the police maintained a "hit list" of Muslims suspected of terrorist ties and claimed police and government failed to respond to or investigate their allegations.

There were numerous reports of police killings from the use of live bullets for crowd control (see section 2.b.). On June 17, police gunfire killed a secondary school student in Kajiado. Police had fired on students protesting the lack of teachers, school textbooks, and a school bus. According to the media, police arrested the officer involved in the incident but had not charged him by year's end.

Police killed numerous criminal suspects rather than take them into custody, often claiming the suspects violently resisted arrest or were armed. On August 27, *The Standard* newspaper alleged that officers of the Special Crimes Prevention Unit

shot three suspects at a gas station in Nairobi as they lay on the ground. Police had stopped the three on suspicion they intended to hijack a truck. According to *The Standard*, the men complied with police orders that they exit the car and lie down. Police claimed there was a shootout and they recovered weapons and ammunition from the suspects. As of year's end, there had been no investigation or other action taken against the officers.

Leading security figures made several public announcements threatening or encouraging the use of lethal force by police officers. For example, the Mombasa county commissioner, the highest-ranking national government official in Mombasa County, told the media in March that terrorists "are not people to be arrested since they have also killed others. If we find any of them, we will finish them on the spot." The IPOA condemned the order as illegal and issued a press release clarifying the circumstances under which police can legally use lethal force. Deputy President William Ruto told the press in March that terrorists "who shoot innocent people should expect to be met with similar force." On September 7, the press reported that Nairobi County Police Commandant Benson Kibue declared his officers would shoot suspected criminals to curb insecurity in Nairobi; NGOs condemned his statement as another shoot-to-kill order.

In July the government adopted amendments to the National Police Service Act permitting the use of "justifiable" force to protect "life and property." The measures allow police officers to shoot a felony suspect who attempts escape, as well as alleged accomplices. International observers and human rights activists argued that protecting property with lethal force was unconstitutional and contrary to international human rights law standards.

Security forces claimed police must shoot to defend themselves when confronted by dangerous suspects. In April Inspector General Kimaiyo told the media that in most cases police use firearms "to disable the person with the purpose of arresting him and not to kill him." NGOs, however, reported that more than 80 percent of individuals shot by the police died. In August the press reported that Police Commandant Kibue instructed his officers not to spare anyone found with an illicit weapon.

There were reports persons died while in police custody or shortly thereafter, some due to torture and abuse.

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

There were developments in police abuse cases from previous years. In 2013 a police officer shot and killed a well known local athlete waiting at a bus stop in the Mathare informal settlement in Nairobi while she was breastfeeding. Police had fired live bullets to scare away rowdy youths in the area. The IPOA was not able to conclude its investigation because the chief of Pangani Police Station refused to cooperate. As of year's end, a court proceeding for withholding information was underway against the chief.

On July 8, the High Court ordered the government to pay four million shillings (\$44,800) for violating of the right to life of a man and his son killed in Kawangware, Nairobi, in 2011, describing the killings as an "execution."

In 2012 six Administration Police officers were sentenced to death for the 2010 murder of seven taxi drivers in Nairobi's Kawangware district, the first known conviction of police officers for killings. On June 27, the court of appeal overturned the conviction, ruling the officers had "acted in self-defense." NGOs condemned the ruling as an abuse of judicial discretion and noted that police fired all of the 61 bullets during the incident.

The International Criminal Court (ICC) investigation into the 2007-08 postelection violence suffered further setbacks during the year. In 2011 the ICC issued summonses on charges of crimes against humanity against Uhuru Kenyatta, now president; William Ruto, now deputy president; Henry Kosgey, former minister of industrialization; Joshua Arap Sang, former head of operations for KASS FM radio station; Francis Muthaura, former head of the public service and secretary to the cabinet; and Mohamed Hussein Ali, police commissioner at the time of the violence. In 2012 the ICC ruled the prosecutor had not reached the threshold for charges to be confirmed against Kosgey and Ali and dropped the charges against Francis Muthaura. In September 2013 the ICC opened the trial against Ruto and Joshua Sang. Kenyatta's trial, initially scheduled to begin in November 2013, was repeatedly delayed. On December 5, shortly after her request for an indefinite adjournment pending Kenyan government response to her requests for information was rejected, the ICC prosecutor withdrew the charges against Kenyatta. The court separately concluded that Kenya had not met a standard of good faith cooperation but rejected the prosecutor's request to have the matter referred to the ICC's Assembly of States Parties.

The ICC prosecutor cited unprecedented levels of witness tampering and formally charged one Kenyan with influencing witnesses in the case against Ruto and Sang. Some prosecution witnesses recanted their testimony, alleging they had received

bribes and been coached to provide testimony. The ICC sought the extradition of journalist Walter Barasa for witness tampering. Barasa lodged a case against his extradition in the Kenyan High Court, which upheld the extradition. Barasa's appeal of that ruling continued at year's end.

### **b. Disappearances**

Observers suspected members of the security forces of a number of forced disappearances. For example, the NGO Muslims for Human Rights (Muhuri), with Haki Africa, the Open Society Justice Initiative, Amnesty International (AI), and HRW, released an open letter on May 29 protesting disappearances occurring throughout the year in security operations in the coastal region. One human rights advocate claimed in the Swahili newspaper *Sabahi* in August that there were at least 21 disappearances resulting from security operations on the coast. There were also media reports of families on the coast searching for relatives who had disappeared following arrest and of individuals being held incommunicado for interrogation for several weeks or longer (see section 1.d.). The most notable disappearance was of Hemed Salim, last seen in police custody in February. Several NGOs brought a habeas corpus case against the police, but officials failed to provide any record of his release or whereabouts.

In August, HRW released a report documenting a possible pattern in 10 disappearances between 2011 and 2013. HRW alleged that in each case the individual concerned had faced terrorism-related charges, was under investigation for terrorism-related offenses or had been acquitted, or the individuals had expressed fear for their lives and reported being threatened by police. For instance, in May 2013 *The Kenyan Daily Post* newspaper reported that two men, Abdulaziz Muchiri and Ali Kipkoech Musa, were "rearrested" by police in a courtroom immediately after the court had declared them free to go; they were last seen in the custody of police officers on May 6, 2013. Officials later informed relatives of the two men they had dropped the charges against the two men. According to HRW police rejected family efforts to file complaints at numerous police stations and provided no further information to the families as to the whereabouts of the two men. Officials denied the two men were in police custody.

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

The constitution and law prohibit such practices; however, the legal code does not define torture and provides no sentencing guidelines, which functionally bars

prosecution for torture. Police reportedly used torture and violence frequently during interrogations as well as to punish pretrial detainees and convicted prisoners. According to AI and other NGOs, physical battery, tying up in painful positions, and suspension from the ceiling were the most common methods of torture used by police.

Human rights organizations and the media reported cases of torture and indiscriminate police beatings with impunity. There were numerous reports of beating, whipping, sexual abuse, and torture during the Usalama Watch operation, according to AI, HRW, Haki Africa, and the Open Society Initiative. There were media reports of police beatings at checkpoints set up in coastal regions following the June terrorist attack in Mpeketoni.

In 2013 the Independent Medico-Legal Unit (IMLU) reported that it had received 589 individual allegations of torture by security forces and that approximately 300 of these cases had sufficient information for the group to take legal action, including civil suits. The victims' relatives brought some of these cases after the victim died in police custody. AI documented 41 cases of police torture during the first five months of the year and in May released a survey showing that 58 percent of citizens feared being tortured by the police.

There were allegations security forces raped female inmates, IDPs, refugees, and asylum seekers crossing into the country from Somalia. In September the National Police Service Commission dismissed the head of police operations at Dadaab Refugee Camp for, among other things, evidence of rape, smuggling, and human trafficking.

Prison staff beat, assaulted, and raped inmates (see section 1.c., Prison and Detention Center Conditions).

There were reports security forces deployed to quell ethnic violence committed abuses (see section 6, National/Racial/Ethnic Minorities).

Police harassed and physically and sexually abused street children (see section 6). Victims of torture pursued legal remedies through civil courts, and in several cases won judgments, including compensation. The government, however, failed to provide compensation in line with court judgments. In February the then principal secretary of the interior, Mutea Iringo, declared in court that the government lacked funds to compensate a Tanzanian citizen 31.5 million shillings (\$352,800) for his arrest and torture. In another case the Commission on Administrative

Justice sued the attorney general and the Ministry of Interior for failing to honor a court judgment to compensate a woman eight million shillings (\$89,600) after she was wrongfully arrested, tortured, sexually assaulted by police officers, and imprisoned for a year on false charges. The Attorney General's Office failed to attend the July 7 hearing.

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

Prison and detention center conditions were harsh and life threatening. Similarly, pretrial detention in police stations continued to be harsh and life threatening.

Physical Conditions: The Supreme Court reported a prison population of 54,579 as of July. Approximately 36.5 percent of the inmates were in pretrial detention. More than 90 percent of the prison population was male. The country's 108 prisons had a designated capacity of 26,687 inmates; serious overcrowding was the norm.

Prisoners generally received three meals a day, but portions were inadequate and sometimes cut in half as punishment. Water shortages, a problem both inside and outside of prison, continued. Sanitary facilities were inadequate. A local NGO, Coalition for Constitution Implementation (CCI), reported inmates were often unable to access water for washing. Medical care was poor, particularly for those with tuberculosis or HIV/AIDS. Supplies of antiretroviral drugs and other medications were inadequate, and insufficient food lessened the effectiveness of available medicine. Prison hospitals could not meet the needs of prisoners. Many inmates petitioned the courts for transfer to outside hospitals, but administrative problems, such as lack of transportation, often delayed court-ordered hospital attention. 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 prisoners awaiting trial, as they were not engaged in any work programs that would allow them to leave their cells regularly.

According to the government, 187 prisoners died in 2011, the majority from infections or other generally preventable causes. Statistics were unavailable for subsequent years. Overcrowding, unhygienic conditions, and inadequate medical treatment contributed to prisoner deaths. In 2013 the IMLU began investigating several cases of wrongful deaths in custody.

Authorities often subjected prisoners to forced labor and failed to compensate them for work, according to the Commission on Administration of Justice. A report

issued by the commission in March noted initially that prisoners were to be paid 36.50 shillings (\$0.41) per year for their work but that payment of prisoners for their work had stopped because the Treasury did not regularly fund the prisoner earning program. The commission recommended that prisoners be paid more for their labor and that the government fund payments to working prisoners.

In smaller jails female prisoners were not always separated from men. There were no separate facilities during pretrial detention, and sexual abuse of female prisoners was a problem. Conditions for female inmates in small, particularly rural, facilities were worse than for men. Human rights groups reported police officers routinely solicited sexual favors from female prisoners and many female inmates resorted to prostitution to obtain basic necessities, such as sanitary towels and underwear, which were not provided by the Department of Prisons. Civil society activists witnessed young children, women, and men sharing the same cells. The Legal Resources Foundation (LRF) reported in 2012 that prisons did not have facilities, lessons, beds, or special food for children, nor did children have access to medical care. Women who bore children in custody had difficulty obtaining birth certificates.

Prison authorities generally separated minors from the adult population, except during the initial detention period at police stations, when adults and minors of both sexes often were held in a single cell. Minors often mixed with the general prison population during lunch and exercise periods, according to the CCI. Prison officials reported that limited detention facilities for minors meant that minors were often transported very long distances to serve their sentence, spending nights at police stations under varying conditions along the way.

An estimated 50 children under the age of four lived with their mothers at the Langata Prison, a maximum-security facility for women convicted of crimes ranging from drug dealing to homicide. Once children reach the age of four, they were either transferred to the custody of a relative or sent to a children's home until the mother's release.

Administration: The Department of Prisons took steps to improve recordkeeping, including engaging with prison reform NGOs and the IPOA, to conduct training and improve practices. Police, however, frequently failed to enter detainees into police custody records, resulting in excessive pretrial detention. For example, according to a report by *The Standard* newspaper, in July a woman was discovered in the Gamba Police Station after it was attacked by militants linked to al-Shabaab; she had been held pending trial for drug trafficking for six months without her

relatives' knowledge.

Noncustodial community service programs served to alleviate prison overcrowding. The total prison population did not decrease, however, as most inmates were petty offenders whose pretrial detention frequently exceeded the punishment prescribed for their crimes. There were no other known alternatives to incarceration for nonviolent offenders. Legal rights NGOs and prison officials reported overuse of the charge of "robbery with violence," which can carry a life sentence, without sufficient evidence. 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. In 2011 the government instituted remote parenting and open family days at prisons to increase prisoners' access to family, although the program was suspended in some prisons in 2012 after media reports indicated some prisoners had abused the program. According to the LRF, prisoners had reasonable access to legal counsel and other official visitors, although there was insufficient space to meet with visitors in private and conduct confidential conversations.

The constitution stipulates that the Commission on Administration of Justice serve as ombudsman on government administration of prisons. It is to receive and treat as confidential correspondence from inmates and recommend remedies to concerns raised, including those pertaining to prison living conditions and administration. Government-established special committees, which include paralegals and prison officials, also exist to increase prisoners' access to the judicial system. A 2013 report by the Legal Aid Center of Eldoret, however, 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. It recommended the government designate human rights officers to serve in all prisons. Many, however, lacked necessary training, and some prisons did not have a functioning human rights officer. Authorities expected human rights officers to continue their existing full-time prison work in addition to carrying out human rights responsibilities. In Nairobi prison officials initiated a training program for newly designated human rights officers and provided printed materials on prisoner rights in several prisons, but inadequate mechanisms for prisoners to report abuse and other concerns remained a problem.

Independent Monitoring: The government permitted prison visits by local human

rights groups and international diplomatic representatives.

Improvements: Authorities built new prison facilities during the year, for instance erecting a new juvenile detention facility next to Kamiti prison in Nairobi. They also refurbished mental health facilities, and provided bedding and improved meals for inmates. Prison officials acquired livestock and developed farming facilities at some juvenile detention centers to expand work opportunities for prisoners. A study during the year by Egerton University noted the relatively widespread adoption of prison rehabilitative programs, including agricultural and educational programs.

#### **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; however, police frequently arrested and detained citizens arbitrarily or arbitrarily accused them of more severe crimes than they had committed.

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

The National Police Service (NPS) was subordinate to the Ministry of Interior and Coordination of National Government. Following multiple al-Shabaab attacks, Cabinet Secretary for Interior and Coordination of National Government Joseph Ole Lenku and Inspector General of Police David Kimaiyo (IGP, head of the NPS) left office in December.

The NPS included the Kenya Police Service (KPS) and the Administration Police Service (APS). The KPS is responsible for general policing and maintains specialized subunits such as the paramilitary General Services Unit, which is responsible for responding to significant and large-scale incidents of insecurity and guarding high-security facilities. The APS has the mandate for border security and has begun to take on more traditional policing duties. The Directorate of Criminal Investigation is an autonomous department responsible for all criminal investigations and includes specialized investigative units such as the Anti-Narcotics Unit, the Anti-Terrorism Police Unit, and the Forensics Unit.

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

Military forces, including the army, navy, and air force, are responsible for the external defense of the country and support civilian organizations in the maintenance of order. Following the June Mpeketoni terrorist attack, the government deployed the military in the northeastern and coast regions, as well as in Turkana.

The National Police Service Commission (NPSC) and IPOA, both government bodies, report to parliament. The NPSC consists of six civilians, including two retired police officers, and the IGP's two deputies. The NPSC is responsible for recruiting, transferring, vetting, promoting, and removing police officers in the NPS. The IPOA, a civilian body, investigates police misconduct, especially cases of death and serious injury at the hands of police. During the year the IPOA investigated 200 incidents, of which 69 involved death at the hands of police. Only one IPOA investigation led to a prosecution, which was underway at year's end. The government created both agencies to improve police accountability and transparency, but they faced major challenges.

The NPSC also faced several challenges in vetting all serving police officers. While Cabinet Secretary for the Interior Joseph Ole Lenku announced that all 77,500 domestic police officers would be vetted by June, the NPSC itself reported that it intended to complete the vetting exercise in 2015. Vetting required an assessment of each officer's fitness to serve based on a review of documentation, including financial records, certificates of good conduct, and a questionnaire, as well as consideration of public input regarding allegations of abuse or misconduct. Between December 2013 and June 2014, only 198 senior police officers had been vetted. Of these, 17 officers were removed, 10 officers opted for early retirement rather than undergo the vetting process, and one officer was reinstated after challenging his removal. The vetting process was subject to numerous court challenges by individuals who failed their vetting.

Police were largely ineffective, and there was a public perception that police often were complicit in criminal activity. Police incompetence and complicity in criminal activity contributed to an increase in crime, especially in Nairobi.

Poor casework, police incompetence, and corruption undermined successful prosecutions; the conviction rate was between 13 and 16 percent. According to a September study by the NGO Usalama Reform Forum, less than 40 percent of crime victims made a report to the police due to lack of confidence in the police and the criminal justice system, lack of support for witnesses and victims, and fear of retribution. Usalama estimated that only 20 percent of crimes were reported.

According to the Usalama Reform Forum, the NPS at all levels lacked a coherent framework for understanding or responding to crime, lacked a model for coordination, and possessed limited capacity for data analysis. Police also frequently failed to enter detainees into police custody records, making it difficult to locate them. A significant number of crimes were resolved through dispute resolution at the police station level but were not reported or recorded, according to human rights organizations.

Police corruption remained a significant problem. The NPSC oversaw a national police recruitment exercise in July that was marred by widespread allegations of bribery, ethnic favoritism, and political influence. As of August the NPSC had annulled recruitment results in 36 recruitment centers based on irregularities identified in 1,215 cases. A lawsuit filed in August by the IPOA to annul the results of the entire recruitment exercise continued at year's end.

Police often stopped and arrested citizens to extort bribes; those who could not pay were jailed on trumped-up charges and sometimes beaten. Refugees and ethnic Somalis were especially frequent targets of extortion by police (see section 2.d.). Transparency International's 2014 Global Corruption Perceptions Index indicated the police and the judiciary were among the most corrupt institutions in the country (see section 4). The study concluded police were extremely corrupt, noting that more than 70 percent of respondents reported being forced to pay a bribe over the prior 12 months and that 31 percent of those who came into contact with police paid a bribe. The media and civil society groups reported that police used illegal confinement, extortion, physical abuse, and fabrication of charges to accomplish law enforcement objectives as well as to facilitate illegal activities. Police regularly demanded motorists pay bribes to avoid fines or the inconvenience of proceeding to a police station. Police also reportedly accepted bribes to fabricate charges against individuals as a means of settling personal vendettas.

Police failed to prevent vigilante violence in numerous instances. For example, on April 10, police failed to prevent a mob from breaking into a police station, seizing a murder suspect, and killing him in the village of Yangalasyu.

There were some reports police successfully prevented mob killings. On August 27, police reportedly saved a family in the village of Kitengela from lynching by area residents who suspected them of practicing witchcraft to improve the health of one of their children.

Witness harassment and fear of retaliation severely inhibited the investigation and

prosecution of major crimes. The Witness Protection Agency was underfunded, doubts about its independence were common (see section 4), and the Supreme Court cited its weaknesses as a serious judicial shortcoming. The agency's capacity, however, had grown and it cooperated closely with the IPOA and other investigative bodies.

Impunity, as noted, was a major problem. Authorities sometimes attributed the failure to investigate a case of police corruption or unlawful killing to the failure of victims to file official complaints. Victims could file complaints at regional police stations, police headquarters through the Internal Affairs Unit, and the IPOA website and hotline. NGOs documented threats against police officers who attempted to investigate criminal allegations against other police officers.

Police accountability mechanisms, including the IPOA (see below) and the NPS's Internal Affairs Unit (IAU), increased their capacity to investigate cases of police abuse. The IAU acting director reports directly to the inspector general of police. Thirty-five officers served in the unit, mostly investigators with a background in the KPS and the APS. The IAU handles allegations of bribery, harassment, and indiscipline.

As of September the IPOA had received an estimated 1,500 complaints since its September 2013 launch, some from inside the police service, and indicated that processing all complaints would take months if not longer. Of the 1,500 complaints the IPOA received, 200 were cases of death and serious injury. As of August the IPOA was investigating 69 of them, according to its investigations department. By year's end the IPOA had concluded at least 10 investigations and referred at least one recommendation for discipline to the NPSC and at least one for prosecution to the Office of the Director of Public Prosecution (ODPP). As a result of an IPOA referral, the ODPP had initiated one prosecution of a police officer for wrongful killing. The trial continued at year's end. A second prosecution began during the year against a police officer for failure to cooperate with a murder investigation. The IPOA did not receive full compliance by police, who are legally required to report to them all deaths and serious injuries with police involvement.

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

Human rights activists reported that at times police officers in charge of taking

complaints at the local level were the same ones who had committed abuses. Police officials resisted investigations and jailed some human rights activists for going to a police station to make a complaint. In another case, the chief of Pangani Police Station in Nairobi, Boniface Kavoo, was charged with withholding physical evidence relevant to the IPOA's investigation into the 2013 police shooting death of a woman in the Mathare neighborhood of Nairobi (see section 1.a.). On April 7, the IGP announced the government would provide Kavoo with a lawyer; the IPOA protested the decision.

Research by a leading legal advocacy and human rights NGO found that police frequently used disciplinary transfers of police officers to hide the officers' identities and frustrate investigations into their alleged crimes. Many media and civil society investigations into police abuse ended after officers were transferred and police failed to provide any information about their identities or new whereabouts. A NGO, noting that magistrates transferred on average every three years, claimed police deliberately impeded trials in the expectation that a mistrial would be declared when the magistrate was transferred.

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

The law provides police with broad powers of arrest. Police may make arrests without a warrant if they suspect a crime occurred, is happening, or is imminent. Victims' rights NGOs reported in some cases individuals were required to pay bribes and provide transportation of police to a suspect's location to secure the execution of legal arrest warrants.

Authorities must bring a detainee before a judge within 24 hours, but frequently did not respect detainees' rights. The courts dealt with this shortcoming by considering whether the extent of the denial of constitutional rights of the accused warranted dismissal of pending charges. In many cases authorities released the accused because they had been held longer than the prescribed period.

Police frequently used excessive force when making arrests. For example, in a case reported by every major domestic newspaper, on August 22, police officers in Kwale shot and killed a 14-year-old girl while searching for a suspect in his residence. Police claimed she confronted them with a machete. According to press reports, an eyewitness, who subsequently went into hiding, claimed police shot her without provocation. The director of public prosecutions demanded an inquiry; however, as of year's end there was no prosecution in the case.

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

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. NGOs that worked with victims of sexual assault complained suspects were granted bail even in cases in which there was evidence they posed a threat to victims.

Arbitrary Arrest: Police frequently arrested and detained persons arbitrarily. Overwhelmingly, victims of arbitrary arrest were poor young men.

According to a 2013 study by the IPOA, 64 percent of felony cases reviewed did not meet the minimum evidentiary standards required for charging. Approximately 62 percent of charges of “robbery with violence” failed to ascertain basic evidentiary details (e.g., proof the suspect actually used or threatened violence). The report noted more than 80 percent of cases of “robbery with violence” were returned to police for further investigation. The IPOA documented separate reports from government officials that police in certain districts were under pressure from superiors to increase felony arrests in response to reports of rising crime, which resulted in more frequent misuse of the “robbery with violence” charge. The conviction rate for felony cases reviewed by the IPOA was 25 percent.

In July the IPOA released a report on the Usalama Watch operation that documented widespread complaints of ethnic profiling, arbitrary arrest, bribery, and detention without charge exceeding the legal limit of 24 hours. During the Usalama Watch operation, security forces routinely arrested Somali citizens and other foreigners of Somali descent. Even when those arrested produced valid passports or other documents identifying themselves as foreign citizens, police failed to provide consular notification consistently. Diplomatic staff were able to visit some of those detained, including in Kasarani Stadium, and provide consular services.

In a July 6 police raid in downtown Nairobi, more than 90 persons, including all the patrons of one nightclub, were arrested on charges of drunk and disorderly conduct and then released upon payment of fines ranging from 500 to 2,000 shillings (\$5.60 to \$22.40). Human rights organizations alleged police in coastal resort towns such as Mombasa or Diani routinely arrested persons to extort bribes for their release.

Police conducted mass arrests in Lamu and Tana River counties in response to significant unrest. Between July 8 and 9, police arrested 70 individuals following the deputy president's July 7 call on security officials to locate terrorists responsible for attacks in Lamu County. Human rights activists alleged the arrests were the result of ethnic and religious profiling.

Individuals arrested during the security sweeps in Lamu County complained of being held incommunicado for extended periods. In one case reported by the newspaper *The Nation*, a man complained of being held in a forest for 11 days alongside other suspects and said he witnessed beatings and psychological torture as suspects were pressed to confess to participation in terrorist activities. The individual was released without charge, while residents and NGOs in Lamu County claimed such extended detentions without notice had become a common occurrence.

Human rights organizations complained police engaged in widespread arbitrary arrest and detention during the Usalama Watch operation and targeted ethnic Somalis.

Pretrial Detention: Lengthy pretrial detention was a serious problem and contributed to overcrowding in prisons. Some defendants served more than the statutory term for the charged offense in pretrial detention. 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 because of labor and resource shortages, police often failed to do so, forcing detainees to wait for the next hearing of their cases (see section 1.e.).

Amnesty: The Advisory Committee on the Power of Mercy interviews inmates and recommends cases for presidential pardon. Human rights groups noted, however, that the committee lacked capacity and was ineffective. The committee took no action during the year.

The president released petty offenders periodically. In December 2013 the president pardoned 6,700 persons, including 2,586 first offenders.

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

The law provides for an independent judiciary. Per the new constitution, the judiciary underwent significant reform and transformation during the year.

The president has extensive powers over appointments, including of the attorney general, chief justice, and appellate and High Court judges, based on recommendations from the Judicial Services Commission (JSC), a constitutionally mandated oversight body intended to insulate the judiciary from political pressure. The JSC, through the Judges and Magistrates Vetting Board, also publicly reviews judicial appointees. Twenty-one judges deemed unfit were dismissed in the year. Many, however, contested their dismissals through civil litigation and continued to sit on the bench.

The JSC also receives and investigates complaints about judicial misconduct, disciplines or removes judicial officers, and implements programs for the education of judges. Observers accused the JSC of attempting to influence judicial decision making, to the detriment of the judicial independence.

Some observers charged the JSC with financial improprieties and procedural irregularities. In 2013 the National Assembly's Justice and Legal Affairs Committee recommended that President Kenyatta begin proceedings to remove six JSC members for financial impropriety despite a court injunction barring committee action. On April 15, the High Court unanimously ruled the president could not proceed in the matter and that parliament's constitutional powers of oversight did not allow it to control or direct the JSC, halting all proceedings against the JSC.

In October 2013 the JSC terminated Chief Registrar of the Judiciary Gladys Shollei for financial improprieties. Shollei filed suit to overturn the decision and seek compensation for wrongful dismissal. In March a labor court ruled that the JSC had violated its own procedures and the JSC Act and overturned Shollei's dismissal.

There were several allegations of judicial corruption. For example, on April 4, the chief justice suspended four senior officials pending an investigation into alleged

financial misconduct. The investigation continued at year's end. In August the National Assembly's Public Accounts Committee summoned the chief registrar of the judiciary for questioning in relation to the judiciary's failure to present records or answer queries about 561 million shillings (\$6.28 million) spent on automobiles, 97 million shillings (\$1.09 million) spent on training, and 262 million shillings (\$2.93 million) of miscellaneous expenses. A poll by Ipsos Synovate in March showed that due to corruption scandals, public confidence in the judiciary had fallen by approximately a third since 2013, with only 16 percent of respondents answering they had a lot of confidence in the chief justice or the Supreme Court. The chief registrar pursued internal investigations into allegations of impropriety and accounting irregularities while pledging to battle corruption at all levels of the judiciary.

The constitution gives the judiciary authority to review appointments and decisions by other branches of government. For example, court decisions invalidating 2013 election results in certain districts were respected by the central government and resulted in a series of by-elections that observers judged free and fair (see section 3).

The legislature sometimes ignored judicial decisions. For example, in February the Senate voted to create a committee to investigate allegations of misappropriation of public funds by the governor of Embu County, despite a court order barring a Senate investigation until the courts had ruled on appropriate procedures. On May 3, the National Assembly speaker said the assembly was not obligated to honor unreasonable or unconstitutional court orders and on May 13, the Senate voted to remove the governor of Embu. A court challenge on the vote was in progress.

The law provides for qadi courts, which adjudicate Muslim personal 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**

Trials are public, although some testimony may be given in closed session. 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 with the right to be informed promptly and in detail of the charges, to a fair and public trial without undue delay, to access government-held evidence, and not to be compelled to testify or confess guilt.

These rights were generally respected, although authorities did not always inform persons of the charges against them promptly. Trial delays sometimes resulted because of witnesses failing to present themselves, judges cancelling trial dates without notice, the lack of witness protection, and legal counsel failing to appear. Authorities generally respected a defendant's right to consult with an attorney in a timely manner. The vast majority of defendants could not afford representation and were tried without legal counsel. Indigent defendants do not have the right to government-provided legal counsel except in capital cases. The lack of a formal legal aid system seriously hampered the ability of many poor defendants to mount an adequate defense. Legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers (FIDA), provided it.

The Office of the Director of Public Prosecutions significantly increased the number of trained prosecutors. As of year's end, there were an estimated 1,000 state prosecutors, compared with 200 in 2013. This reduced the central government's reliance on "police prosecutors," who are effectively police officers empowered to present cases to the court. The government initiated plans to phase out police prosecutors entirely. The expansion of the prosecution service also reduced delays in court proceedings.

Discovery laws are not clearly defined, further handicapping defense lawyers. Implementation of a High Court ruling that written statements be provided to the defense before trial remained inconsistent. Often defense lawyers 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. The lack of established rules and practice for presenting many kinds of evidence (e.g., evidence from electronic sources) also resulted in case dismissals for lack of evidence.

Cumbersome evidentiary procedures created serious impediments to the efforts of victims of violent crime to seek justice. For instance, photographs may be entered into a case as evidence only if they were taken by an official police photographer. Similarly, police practice of requiring an exam and testimony by a police physician in cases of victims of sexual assault resulted in substantial barriers to the investigation and prosecution of such cases (see section 6, Women).

Defendants may appeal a verdict to the High Court and ultimately to the Court of Appeals and, for some matters, to the Supreme Court. The legal system does not provide for trial by jury; judges try all cases.

## **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

The civil court system can be used to seek damages for violations of human rights, and decisions can be appealed to the Supreme Court as well as the African Court of Justice and Human Rights. Corruption, political influence over the civil court system, and chronic backlogs of cases limited access to this remedy. The government in some cases failed to honor civil damage awards. In a press interview in May, a prominent anticorruption activist alleged the government was arbitrary and selective in determining which court orders it chooses to honor. HRW reported that as of 2011, at least 19 victims of police shootings had won civil suits, but the government had not paid the court-ordered compensation.

Widespread corruption existed at all levels of the civil legal system. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases.

Court fees for filing and hearing civil cases effectively barred many from access to the courts.

In February 2013 a consortium of NGOs filed suit against the government on behalf of eight victims of sexual and gender-based violence during the 2007-08 postelection violence. The Attorney General's Office did not respond to the suit until a social media campaign organized by an NGO generated more than 275,000 responses. The case was first heard on January 22 and continued at year's end.

## **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 and the Ministry of Lands.

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

According to a 2014 study by the Pamoja Trust, approximately 2.7 million citizens were in danger of eviction because they lacked title to the land on which they lived. Eighty percent of those in danger of eviction dwelled in urban informal settlements in Nairobi, Mombasa, Kisumu, and Eldoret. The NGO Usalama Reform Forum estimated that 35 percent of all land transactions in the country since 2008, or 220,000 transactions, involved land that was illegally obtained, leaving these transactions open to future dispute and annulment. For example, in September the NLC annulled the titles of 12 of 22 parcels of land in Lamu County, covering 500,000 acres, due to irregularities in the title issuance process.

There is no established system for restitution or compensation for those who are declared squatters and ordered to vacate land, nor is there is a system for determining what constitutes “community” land. Both private and communal clashes were common as a result of land disputes. The government frequently resorted to forced eviction and demolition to restore public land that it claimed had been occupied illegally. Restitution or relocation efforts were usually arranged ad hoc as a result of media or NGO pressure. In February the government informed an estimated 3,000 residents of the Deep Sea informal settlement in Nairobi’s Westlands neighborhood that they needed to vacate the area within two months to make way for a planned bypass road. In 2013 Amnesty International expressed concern regarding a lack of consultations in regards to evictions in Deep Sea.

#### **f. Arbitrary 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.

During the Usalama Watch operation, police conducted regular day and nighttime raids without warrants on apartment buildings and housing estates in targeted neighborhoods. According to media reports, human rights organizations, and an investigation by the IPOA, police deliberately conducted raids late at night, regularly failed to identify themselves, conducted searches without warrants, visited the same apartments and housing estates multiple times, and in numerous instances seized household goods and solicited bribes not to take residents to detention centers (see section 1.d.). According to the IGP, police did not receive

any complaints about the operation (see section 1.d.). The IPOA indicated, however, it was investigating 29 complaints against police arising from the operation and intended to forward many of those complaints to the National Police Services Commission for disciplinary action. The IPOA called on the IGP to respond within 90 days to the recommendations in its July report on Usalama Watch. By year's end the IGP had not publicly responded to the recommendations.

During the year police raided dozens of homes in informal settlements in Nairobi and the coast region in search of suspected terrorists and weapons. In several instances police raids uncovered arms caches and explosives. Police conducted door-to-door searches for individuals believed to be sympathizers of the al-Shabaab extremist group. There were reports that police officers used excessive force during these raids.

Police officers frequently raided, evicted, or destroyed the homes and businesses of citizens in informal settlements or other areas where residents did not hold proper legal title. Residents complained that authorities often planned these actions to extort bribes.

Human rights organizations documented numerous cases in which plainclothes police officers searched residences without warrant and in which household goods were "confiscated" when residents were unable to provide receipts on demand. Such officer also set up roadblocks to solicit bribes from those who were not in possession of identification documents. According to the IPOA, bribes solicited ranged from 2,000 to 20,000 shillings (\$22.40 to \$224) on a sliding scale depending upon individuals' ethnicity, whether they were carrying identification, and whether they were refugees.

The government continued to clear settlers out of the Mau Forest on the basis that the settlers were occupying public land and any title deeds to the land were acquired illegally (see section 1.e.). The media reported that on February 22-23, administration police officers raided the settlement of Ororwet in the Mau Forest, dismantling housing and setting more than 30 buildings on fire. Residents complained they had been given no prior notice of the eviction and claimed they had purchased their land legally. The government insisted notice had been given to squatters residing illegally on the land. In August the Maasai Council of Elders called on the government to continue evicting settlers from the Mau Forest to protect its vital watersheds as well as the ecosystem of the Maasai Mara, a major conservation area.

During the year the Ministry of Energy announced it had set aside funds to provide between 250,000 and 500,000 shillings (\$2,800 to \$5,600) to each of the approximately 60 families evicted in 2013 from farmland in Naivasha to make way for a geothermal power plant.

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

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

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

Freedom of Speech: The government occasionally interpreted laws to restrict freedom of expression. Observers believed the government monitored various civil society meetings, and sometimes took reprisals against critics of the government. The National Cohesion and Integration Commission (NCIC) worked with police to monitor political rallies, media reports, parliamentary debate, and individual speech for instances of hate speech. For instance, on June 19, *The Star* newspaper reported the ODPP had ordered the arrest of Mombasa County Women's Representative Mishi Mboko on charges of hate speech after she allegedly stated publicly that only two tribes ruled the country and called this situation unacceptable. Mboko, who posted bail on June 30, alleged the charges were politically motivated. Her case continued at year's end.

Press Freedoms: The government occasionally interpreted laws to restrict press freedom, and officials occasionally accused the international media of publishing stories and engaging in activities that could incite violence. Two 2013 laws--the Media Council Act and the Kenya Information and Communications (Amendment) Act (KICA)--greatly increased government oversight of the media by creating a complaints tribunal with expansive authority, including the power to remove journalists' credentials and levy debilitating fines if they violate broadly conceived ethics codes. In January media owners, the Kenya Union of Journalists, and the Kenya Editors' Guild challenged the constitutionality of the laws in court. The case continued at year's end. The NGO Reporters Without Borders strongly criticized the government for its "authoritarian response" following negative coverage of the 2013 Westgate terrorist attack, a charge that Cabinet Secretary for Information, Communications, and Technology Fred Matiang'i publicly denied. Of the 15 other laws in place that restrict media operations, the Defamation Act,

the Official Secrets Act, and the Preservation of Public Security Act placed the most severe restrictions on freedom of the press.

The mainstream media were generally independent, but there were reports by journalists that government officials pressured them to avoid certain topics and stories and/or intimidated them if officials deemed that already published/broadcast stories were 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. In a study of journalists working on corruption and governance stories published in May, the Media Council of Kenya reported that 68 percent of respondents believed KICA prevented adequate investigation and reporting on governance, 58 percent of respondents indicated their organization had been warned or reprimanded for publishing “wrong” information on corruption and governance, and 31 percent of respondents stated possible intimidation from investigated government agencies was their greatest threat while conducting research. Despite these reports most news media continued to report on a wide variety of political and social issues, and most newspapers published opinion pieces criticizing the government.

On May 3, the then editors’ guild chairman made a statement claiming media managers and directors were succumbing to government threats and intimidation and were in turn applying pressure on editors and journalists. He said that editors had been summoned to the president’s office for the purpose of intimidating and harassing them.

In March the State House demanded the resignation of two senior journalists at *The Standard* following the publication of an investigative report claiming President Kenyatta’s government spent more than 100 million shillings (\$1.12 million) during a four-day retreat for cabinet secretaries at the exclusive Mount Kenya Safari Club. The Standard Group’s top executives were summoned to State House on March 14 for a meeting with the comptroller (the accounting officer at the Presidency) and presidential spokesperson, according to media reports. The executives were reportedly warned against criticizing the Jubilee government and asked to retract the story and apologize. On March 22, the newspaper carried a page one apology written by the chief executive officer. Subsequently, the group editorial director was terminated, but the journalist who investigated and wrote the story was retained.

In June the National Assembly clerk ordered journalists to vacate the assembly’s media center, claiming that the space was required to accommodate the demand for

office space after an increase in the number of assembly members. The clerk also allegedly said journalists could cover parliament only when invited. The National Assembly speaker denied that report and said the government would locate an alternative space in the building. Journalists charged that the closure was intended to intimidate them. The government did not identify new accommodation by year's end, but journalists continued to attend parliament sessions.

There were reports that the government pressured broadcast media to avoid live broadcast of opposition party Coalition for Reforms and Democracy (CORD's) rally on July 7 at Nairobi's Uhuru Park. Editors explained that doing so would provoke violence and that CORD had not requested media coverage of their event, although in the past television and radio had covered CORD's rallies live.

Violence and Harassment: Journalists alleged in a number of cases that security forces harassed and physically intimidated them. For instance, on March 3, Tobias Chanji, a reporter for *The Standard*, was arrested and threatened while attempting to cover security operations in Kwale County. The Kenya Correspondent's Association condemned the arrest.

In April al-Jazeera reporter Malkhadir Muhumed claimed he had been arrested for entering a detention facility with a video camera during the Usalama Watch operation. He claimed authorities held him incommunicado for three days and subjected him to humiliating searches; his equipment was impounded and returned only after the video on his camera was deleted.

In April, two Belgian journalists were arrested and forced to pay a bribe of 35,000 shillings (\$392) to recover their passports and equipment police had confiscated. Police authorities offered to investigate the complaint, but no further information on the case was available.

In May, Lydia Ngoolo, a journalist for *The Star* newspaper, was threatened by police after she attempted to bring to police attention a report she had compiled on a suspected safe house used by criminals.

The government frequently failed to investigate allegations of harassment, threats, and physical attacks on members of the media.

Journalists also reported harassment by politicians, business executives, and communities, including in relation to the ICC cases. Threats from members of some communities, who believed journalists did not represent local interests, led

journalists to avoid reporting from some areas. In September the Media Council of Kenya expressed concern that journalists working in many counties faced harassment, intimidation, and violence, sometimes at the hands of local political leaders.

Censorship or Content Restrictions: Government harassment of journalists resulted in self-censorship, particularly with respect to stories associated with the ICC cases, government corruption, and crimes in which government officials applied pressure to protect implicated individuals.

Libel Laws/National Security: The government cited national or public security as grounds to suppress views that it considered politically embarrassing. According to the government-led Kenya National Dialogue and Reconciliation Monitoring Project 2013 report, government officials often intimidated journalists reporting on the security sector and requested that they reveal sources.

Government officials and politicians threatened and brought defamation cases against the media. Journalists may be imprisoned for criminal libel. A report by an NGO highlighted the use of libel and defamation laws to silence the media; according to the report, in the first half of the year a single Nairobi newspaper had 10 separate pending libel cases brought by politicians against it. In an August meeting of the Kisumu County Development Board, *The Standard* reported that Senator Anyang Nyong'o threatened to take a *People Daily* reporter to court and "fleece him to death for telling lies." In July, National Assembly Member Jamleck Kamau brought a case in the Media Council against Royal Media Services, owner of Citizen TV, for showing video footage of a vehicle registered to Kamau driving on the wrong side of the road. Kamau claimed the video clip would be understood to mean he was a reckless driver without respect for traffic laws, "particularly in view of his societal standing as a legislator." The Media Council held that Royal Media Services had breached Kamau's rights by not taking appropriate note of his dignity and reputation, by not providing him with a right of response, and by not positively establishing that he was driving the vehicle at the time of the offense, and it ordered Royal Media Services to publish an apology.

## **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. The director of public

prosecutions ordered the prosecution of The National Alliance political activist Moses Kuria for incitement and hate speech on Facebook. This followed a recommendation by the NCIC.

Mobile phone service providers have the ability to block mass messages they judge would incite violence. The NCIC tracked bloggers and social media practitioners accused of spreading hate speech.

According to the Communications Authority of Kenya, as of September there were 21,273,738 internet users, representing 47.3 percent of the population. A lack of infrastructure inhibited internet access in some underdeveloped parts of the country.

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

There were no government restrictions on academic freedom or cultural events.

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

#### **Freedom of Assembly**

Although the constitution and law provide for freedom of assembly, the government sometimes restricted this right. Organizers must notify local police in advance of public meetings, which may proceed unless police notify organizers that the meeting is prohibited. According to the law, authorities may prohibit gatherings only if there are simultaneous meetings previously scheduled for the same venue or if there is a perceived, specific security threat. Police routinely denied requests for meetings filed by human rights activists and dispersed meetings for which no prohibition had been issued.

On February 17, police in the Mathare neighborhood of Nairobi broke up a meeting of the human rights advocacy group “Highway Self-Help Group” on the grounds the meeting required a permit. When attendees protested they did not require a permit, police arrested seven of them on charges of resisting arrest, obstructing police, and incitement to violence.

Authorities used the threat of charges for incitement as a means of discouraging demonstrations. In July the High Court dismissed an attempt by a politician to obtain a court judgment barring the leader of CORD, Raila Odinga, from calling for “mass action” prior to CORD’s “Saba Saba” rally on July 7. Separately, in

response to the possibility that CORD and the ruling Jubilee Coalition might hold competing rallies on July 7, the IGP declared no political demonstrations would be allowed that day on the grounds of limited security support but quickly withdrew the order after public criticism.

Police used excessive force to disperse demonstrators. On February 13, police used tear gas and batons to break up a “state of the nation” protest organized by a coalition of civil society organizations. The demonstrators had proceeded with the protest after police withdrew their permit, citing security concerns.

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

### **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected this right, but there were reports that this right in some cases was arbitrarily denied. In at least one case, however, courts affirmed the right to freedom of association. In July the High Court ruled gender was irrelevant to the registration of NGOs and that the NGO Board’s failure to register the Transgender Education and Advocacy NGO was an abuse of power.

The Societies Act requires that every public association be registered or exempted from registration by the Registrar of Societies, while the NGO Coordination Act requires that organizations dedicated to advocacy, public benefit, or the promotion of charity or research must be registered with the NGO Board.

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

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

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

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights but increasingly enforced restrictions on refugees’ movements.

The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to IDPs, refugees, asylum seekers, stateless persons, and other persons of concern.

In-country Movement: The government's appeal of a 2013 High Court ruling that blocked a plan to relocate all urban refugees to camps was pending before the courts. In the interim the Department of Refugee Affairs stopped registering refugees; restrictions on refugees' movements remained in effect. In March, moreover, the government issued another directive relocating all urban refugees to camps and closing all refugee registration centers in urban areas. Authorities afterwards subjected refugees residing in urban areas to increased harassment, extortion, arbitrary arrest, and detention. Authorities forcibly moved many from Nairobi to the Kakuma and Dadaab refugee camps; however, most have since returned to Nairobi of their own volition and in defiance of the directive. Police routinely stopped individuals and vehicles throughout the country ostensibly to enforce the directive, particularly in urban areas, and often solicited bribes. Police frequently required ethnic Somalis to provide additional identification beyond normal requirements.

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, and it made exceptions to the encampment policy for extremely vulnerable groups in need of protection.

The government reported that 80 percent of refugees who were granted passes did not return to the camps. During the year 3,348 individuals were detained either for being undocumented or for unauthorized movement outside designated refugee camps, of whom 335 were charged in court, 1,131 were returned to the camps, and 618 were deported.

Foreign Travel: Civil servants and members of parliament must obtain government permission for international travel, which generally was granted.

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

According to a January 2013 UNHCR cited in a report by the Internal Displacement Monitoring Center (IDMC), as of December 2013 there were 412,000 IDPs in the country. An unknown number, however, were believed to have resettled elsewhere or returned home. This estimate included approximately

250,000 IDPs displaced by ethnic, political, and land-related violence since the 1990s; an estimated 50,000 IDPs who fled as a result of the 2007-08 postelection violence who had not been resettled; and 112,000 IDPs reported as newly displaced between August and December 2012 as a result of intercommunal clashes prior to the 2013 general election, particularly in the Tana River delta and northern regions.

The IDMC estimated that 300,000 persons displaced as a result of the 2007-08 postelection violence were never formally counted as IDPs and that these individuals had either returned home or settled in new areas, particularly in informal urban settlements. In addition an unknown number of citizens were displaced as a result of natural disasters and other local crises in 2013, for instance flash flooding.

The government's eviction of persons and destruction of homes in low-income areas during the year resulted in hundreds of new IDPs.

Intercommunal and resource-based violence in the Moyale and Marsabit areas of the northern part of the country displaced as many as 55,000 persons in 2013, according to a January 2013 statistic cited by a June 2014 IDMC report. Many thousands more were reportedly displaced in other similar conflicts throughout the country (see section 6).

Violence in Mandera County between the communities of Mandera North district and Banisa district, and on the border between Mandera and Wajir counties, resulted in the displacement of an estimated 32,000 households. Water scarcity exacerbated communal conflict and left an unknown number of citizens internally displaced. With drought leaving an estimated 60,000 families in need of relief assistance in Wajir County, NGOs reported a population movement towards the River Dawa.

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. There were reports some IDPs in camps died of preventable diseases due to squalid conditions and limited access to health care. 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 composed of recently displaced ethnic Ethiopians and Somalis were targets of clan and resource-based violence. In Lamu and the coast region in July, intercommunal threats and

violence between IDPs fleeing attacks by militants linked to al-Shabaab and host communities prompted 5,000 persons, primarily members of the Kikuyu, Luhya, and Kisii tribes, to seek nightly refuge on the premises of Hindi Prison.

Rapes allegedly perpetrated by IDPs, local residents, and sometimes police personnel occurred in IDP camps.

In September 2013 the government announced that it would close all IDP camps for those who fled postelection violence as well as who had been evicted from the Mau forest within the month and would offer cash, rather than land for resettlement, to remaining IDPs. The cabinet secretary for the Ministry of Devolution and Planning, the ministry responsible for IDPs, stated the government would offer 400,000 Kenya shillings (\$4,480) per person for them to purchase land. The media reported mixed reactions to the decision. IDPs at Vumilia Eldoret IDP camp in the Rift Valley told journalists the cash-for-resettlement plan violated the government's commitment to resettle IDPs and complained that the proposed monetary compensation was insufficient to secure land.

The government continued to pressure IDPs to return to their homes. NGOs reported supplies of food and medicine were sometimes withheld in order to place pressure on residents. Media reports indicated some resettled residents were exposed to sexual violence and harassment. There were reports the government abandoned some IDPs after moving them to temporary resettlement locations. In July IDPs in Lamu accused the government of failing to provide them with shelter and security after repeated raids by militants linked to al-Shabaab.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has a system for providing protection to camp-based refugees. The government generally coordinated with the UNHCR to provide assistance and protection to refugees in the Dadaab and Kakuma refugee camps in Kenya; however, cooperation was limited in urban areas. Security threats emanating from Somalia severely strained the government's ability to provide security to those seeking asylum, especially in Dadaab, thereby impeding the efforts of the UNHCR and other humanitarian organizations to assist and protect refugees and asylum seekers.

According to the UNHCR, as of September the country hosted 583,261 registered refugees and asylum seekers in Dadaab (355,406) and Kakuma (177,670) refugee

camps and Nairobi (50,185). The unofficial estimate of urban refugees exceeded 100,000. The majority of refugees were from Somalia (426,500), with others coming from South Sudan (88,000), Sudan (9,300), the Democratic Republic of the Congo (DRC) (15,780), Ethiopia (30,400), and other countries (10,600). Most refugees arriving at Kakuma were from South Sudan, and their numbers were much greater than in 2013. New arrivals also included individuals from Burundi, the DRC, Ethiopia, Somalia, and Uganda. The Somali refugee influx was less than in previous years. In 2013 the governments of Kenya and Somalia and the UNHCR signed a tripartite agreement establishing a legal framework and process for the voluntary repatriation of Somali refugees when conditions permitted such returns.

An accurate refugee count remained unknown, since the government stopped registering refugees in urban areas in December 2012 and in the Dadaab camp from October 2011 to April 2014 (registration continued uninterrupted in the Kakuma refugee camp).

The government officially took responsibility for refugee registration, moving to implement a new government-issued identity card as the sole proof of refugee status in the country. A lack of government capacity hampered distribution of the cards. The government recognized as refugees all arrivals from South Sudan and from south and central Somalia on a prima facie basis and therefore did not require an individual refugee status determination for them.

Refoulement: According to the UNHCR, six individuals who had been granted refugee status by the government were among those forcibly deported to Somalia by authorities during Usalama Watch. The government deported more than 365 undocumented aliens during Usalama Watch.

Refugee Abuse: Police abuse of asylum seekers and refugees increased significantly after the government's March 25 directive restricting all urban refugees to designated camps and as a result of the Usalama Watch operation. As more than 5,000 urban refugees were being forcibly relocated to refugee camps, multiple NGOs reported brutal treatment of refugees from April to July while the directive was implemented.

Police officers reportedly beat scores of refugees, including women and children, during day and night raids on homes and detained many for extended periods without charge in poor prison conditions, according to rights organizations. In one instance police reportedly arrested a Somali refugee woman in Eastleigh for failure

to carry identifying documentation, forcing her to leave a newborn baby unattended, leading to the child's death. HRW interviewed 21 refugees who had been detained in various police stations in Nairobi and found that security forces had perpetrated sexual and physical attacks against women and men, looted stores and houses, and practiced extortion. Witnesses alleged security forces routinely confiscated or destroyed both expired and valid UN refugee documents and frequently demanded bribes in exchange for release or to prevent arrest. The UNHCR-supported Urban Refugee Protection Network in Nairobi reported that newly arrived refugees from South Sudan, including women and children, were detained despite pending asylum claims.

In Mombasa, Malindi, Isiolo, Nakuru, and Eldoret, police routinely and arbitrarily stopped refugees and demanded bribes, and they threatened to deport those who were unable to pay.

Somali refugees, particularly in Nairobi and in northeastern areas such as the Dadaab refugee camp, experienced frequent harassment. Police and military personnel retaliated for attacks on security personnel by subjecting these refugees to abuse.

The security situation in Dadaab remained precarious, although improvised explosive device explosions and kidnapping had been reduced to mainly sporadic events. Increased police presence in the camps led to some improvements and cooperation with refugees through community policing and neighborhood watch initiatives. On April 23, however, gunmen ambushed a vehicle and attempted to kidnap an international humanitarian staff member from the Dadaab complex. While the kidnapping failed, one Kenyan staff member was injured in the attack. Violence also occasionally flared over Dadaab host community protests about employment and priority contract rights related to the camp.

Sexual and gender-based violence remained problems in both the Dadaab and Kakuma refugee camps. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, FGM/C, and forced marriage, particularly of young Sudanese and Somali girls. Refugee communities sometimes targeted opponents of FGM/C. Health and social workers in Kakuma refugee camp reported that due to strong rape awareness programs in the camp, survivors increasingly reported such incidents, resulting in improved access to counseling. In the Dadaab refugee camp, however, the government's limited ability and the UNHCR's restricted access and limited ability to provide services or protection

resulted in numerous cases of sexual and gender-based violence and underreporting of crimes and abuse.

Mobile courts continued to serve the camp populations; however, most crimes went unreported. Mobile court officials associated with the camps reportedly directed imams not to officiate at weddings of girls under age 18 in an effort to reduce the occurrence of coerced, underage marriages. 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 banditry, ethnic violence, and the harassment of Muslim converts to Christianity, according to the UNHCR.

### **Stateless Persons**

The constitution and the Citizen and Immigration Act of 2011 provide for the protection of stateless persons. They provide legal avenues for eligible stateless persons to apply for citizenship. During the year the UNHCR reported 21,120 stateless persons registered in the country; however, the actual number was unknown. According to the UNHCR, stateless persons accounted for 3.5 percent of all registered refugees and asylum seekers in the country. Communities known to the UNHCR as stateless included Sudanese Nubians in Nairobi, the Somali Galjeel in the Tana River area, and the Mozambican Makonde in Mombasa. There were also a number of stateless persons of mixed Eritrean-Ethiopian heritage.

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 residency 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 displacements, and other abuses. The UNHCR reported stateless persons faced limited access to basic services; property ownership; registration of birth, marriage, or death; and restrictions on free movement. Inadequate documentation reportedly 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 years or over to register and obtain national identification with 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, and security concerns also created obstacles. For example, the Nubians, along with the Somalis of Kenya (such as the Galjeel community) and Muslims on the coast, all experienced discriminatory registration policies that led to statelessness, according to the UNHCR and domestic legal aid organizations (see section 3).

The government set a timeline until 2016 for stateless persons to apply for citizenship and provided the cabinet secretary responsible for immigration with the authority to extend this period by three years. The law requires individuals to have lived in the country for a continuous period since December 12, 1963. It also includes provisions for registration of children of stateless parents. The government, however, lacked a strategy to identify and register stateless persons, limiting the ability of stateless persons to take advantage of the law.

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.

Despite a 2011 finding by the African Committee of Experts on the Rights and Welfare of the Child, the government had taken no action to grant citizenship to children of Nubian descent.

In July 2013 Cabinet Secretary for Land Charity Ngilu announced the allocation of 300 acres of public land to a private group representing the Nubian Council of Elders. The council had asserted an ancestral claim to approximately 700 acres of land, including the Kibera informal settlement of Nairobi. The National Land Commission, vested with powers of land adjudication through the constitution and 2012 implementing legislation, protested that it had not approved the allocation. The case continued at year's end.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens the ability to change their government through free and fair elections, which they exercised through elections based on universal suffrage. International observers found the 2013 elections generally credible, and the Independent Electoral and Boundaries Commission (IEBC) subsequently oversaw numerous successful by-elections in 2013 and 2014.

In a peaceful 2010 referendum, 67 percent of voters approved a new constitution,

which provides for a bill of rights and reforms the electoral system, administration of land, and judiciary. The new constitution provides parliamentary representation for women, youth, persons with disabilities, ethnic minorities, and marginalized communities. Implementation of constitutional reforms continued during the year but was uneven at times. On February 24, the Commission for the Implementation of the Constitution (CIC), an official body, called on the president, senior leaders in the legislature, and the judiciary to consult more closely on constitutional implementation and to avoid making statements prejudicial to the separation of powers under the constitution. On August 19, the National Assembly extended the deadline to implement six constitutionally mandated pieces of legislation, including the Public Services Bill and the Persons Deprived of Liberty Bill, which were published, and bills on administrative action, fair hearing and procurement law, which had not been published at year's end.

Full implementation of constitutional reforms was expected to take years. Implementation of the constitution, particularly the devolution of authority to the county level, was complicated by struggles between different branches and levels of government. The CIC publicly warned parliament against regularly amending draft legislation to arrogate more authority to itself and against threatening the rule of law by pushing for power over the other branches of government, particularly county governors and the judiciary. At the county level, implementation of the constitution was hampered by struggles between governors and the local representatives of the executive branch; county commissioners; and between governors and members of the county assemblies. Fundamental differences in opinion between branches and layers of government over responsibility for the allocation and distribution of resources created persistent service delivery shortfalls.

## **Elections and Political Participation**

Recent Elections: In 2013 citizens voted in the first general election under the 2010 constitution, electing executive leadership, parliamentarians including members of the newly established senate, governors, and members of the new county assemblies. International and domestic observers, such as the Kenya Elections Observation Group, the Africa Union Observer Mission, and the Carter Center, judged the elections to be generally free and credible, although some civil society groups raised concerns about irregularities and questioned the results. In the presidential election Jubilee Coalition candidate Uhuru Kenyatta was proclaimed the winner with a moderate margin over runner-up candidate Raila Odinga of CORD. Kenyatta received a simple majority at 50.07 percent of votes

cast as well as over 25 percent of votes in more than half of the country's 47 counties, without which the constitution mandates a subsequent run-off election. Odinga challenged the results in a petition to the Supreme Court, citing irregularities in voter registration and technical problems with vote tallying. The Supreme Court ruled unanimously in March 2013 to uphold the results. Odinga shortly thereafter accepted the ruling and urged his supporters to do the same. Odinga, however, continued to allege that the election was stolen and accused the IEBC of bungling the election. KTN, a respected news broadcaster, in April transmitted excerpts of recordings allegedly of an IEBC official admitting the 2013 election was fatally flawed. The IEBC denied the authenticity of the recording. The political opposition, led by Odinga, vowed to make the disbandment of the IEBC one of the articles of a move to amend the constitution via a referendum.

To reduce voter fraud the government instituted biometric voter registration of all citizens ahead of the 2013 elections. Voter registration began in 2012 and proceeded for 30 days; the electoral commission registered 14.3 million citizens. Possession of a national identity card or a Kenyan passport was a prerequisite for voter registration. The IEBC, census bureau, and Ministry of Immigration estimated that at least three million citizens, primarily youths, did not have national identity cards, while civil society organizations estimates put the number closer to five million. Civil society organizations, international NGOs, and the donor community estimated that two to three million youths would not be able to obtain national identity cards in time to register to vote in the 2013 national elections. The electoral commission did not provide the breakdown of registered voters by age. Ethnic Somali and Muslim populations on the coast and the ethnic Nubian population in Nairobi complained of discriminatory treatment in the issuance of registration cards, noting they were sometimes asked to produce documentation proving their parents were Kenyan citizens. The government was ill prepared to issue the large number of documents required for registration in a timely fashion, and many citizens lived too far from collection points to pick up national identity cards once they had been issued.

In order to improve voter registration, the IEBC launched a voter registration drive in April. Observers criticized the IEBC, however, for conducting a "silent launch" and working primarily at the ward level, without national publicity. Members of parliament alleged this left the IEBC open to claims of selective registration but did not directly accuse the IEBC of bias. Political parties also launched early voter registration drives in an effort to mobilize voters who may have been bypassed during the 2013 elections.

Following the 2013 national election, the IEBC conducted numerous by-elections, which observers and participants deemed free and fair. The IEBC oversaw two by-elections in December 2013, one in Bungoma County and the other in Kisii County. Despite concerns over bribery and violence, observers described both polls as orderly and calm, and each party certified the winner. Another by-election, on August 7, 2014, in Nairobi County was also peaceful and judged to be fair.

Political Parties: The latest data released by the IEBC, in February 2013, showed that 59 political parties were formally registered. Eight parties nominated presidential candidates. The Political Parties Act, which came into effect in 2010, sets stringent conditions for registration of political parties but does not discriminate against any particular party.

On February 28, organizers postponed indefinitely leadership elections of the largest opposition party, the Orange Democratic Movement, after men dressed as party-provided security officials disrupted the vote by destroying ballot boxes as voting by delegates had begun. Media reports alleged that the attack was orchestrated within the movement to disrupt challenges to party leadership.

Participation of Women and Minorities: Women's participation in electoral politics remained low. A comprehensive study by FIDA and the National Democratic Institute, titled *A Gender Audit of Kenya's 2013 Election Process*, identified significant barriers to women's participation in the political process, including irregularities in political party primaries that lock women out of elections; consistent lack of political party support for female candidates; the consistent failure of political parties to adhere to their own stated procedures for choosing candidates; and harassment, intimidation, and outright violence against women. As a result many women chose to contest seats set aside for women, such as county women's representative seats in the National Assembly. During the campaign women who chose to campaign for open seats reported opposition from traditional community leaders and elders, opposition from religious leaders, and campaign tactics such as condoms with the name of female candidates printed on the side distributed on election day.

Despite these obstacles the overall success rate of women who vied for elected positions was 12 percent, compared with the 14 percent success rate of men, but significantly fewer women than men were able to run for office in the 2013 election. Women won only 16 of the 290 open seats in the National Assembly and failed to win any open race for senate or governor. Women campaigned for the 47

county women representative seats in the National Assembly, for five seats in the National Assembly reserved for open nomination, for 16 reserved seats in the Senate, and for a further two Senate seats reserved for young persons and persons with disabilities.

Women candidates reported that male politicians used the existence of “reserved” seats as grounds for discouraging female candidates from contesting other positions. With 86 total members, women in parliament made up 19 percent of the National Assembly and 27 percent of the Senate, compared with the 9.5 percent in the (unicameral) 10th parliament (2007-12). The new constitution provides that no more than two-thirds of any elected or appointed government body can be of one gender. The Supreme Court ruled in December 2012 that the gender requirement can be applied progressively, noting the practical impediments to electing enough women to meet the quota in the 2013 elections. The court set a new deadline of August 2015 for parliament to institute a mechanism to comply with the gender requirement.

County assemblies came significantly closer to meeting the one-third gender threshold in the elections. While only 82 women were elected as county assembly ward representatives (out of 1,450 seats), another 680 women were appointed to seats reserved for women nominees, for a total of 762 women representatives, or approximately 34 percent of the nationwide total. At the county level, women and men both had a success rate of 15 percent. A constitutional provision allows county assemblies to continue adding women from party lists progressively until the one-third threshold is met.

Following the 2013 election, women occupied more leadership roles in government but remained underrepresented, especially in parliamentary committees. President Kenyatta nominated women to key positions within the cabinet, including foreign affairs, defense, and devolution and planning. In total, six of 18 cabinet secretaries were women. In parliament only a few women held influential positions, and their underrepresentation in committees was a particular obstacle to the ability of women to influence legislative agenda or debate. Within the National Assembly, women chaired seven of 27 committees, and a further eight women served as vice chairs. Within the Senate there was only one female chair among 11 committees, and a further six women served as vice chairs. Women constituted 20 percent of the membership of all National Assembly committees and 28 percent of the membership of all Senate committees.

The constitution provides for the representation in government of ethnic minorities,

but implementation was incomplete.

Minorities, particularly the Nubian population of Nairobi, the Makonde population of Mombasa, and the Galjeel population of the Tana River region, reported significant difficulty acquiring national identity cards or passports and were thus effectively denied the ability to vote or participate in politics. Kenyans of Somali ethnicity and Kenyan Muslims faced similar difficulties. While the 2011 Citizen and Immigration Act provides a legislative framework for addressing this challenge, the government made little progress registering these minorities.

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

The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials engaged in corrupt practices with impunity. Despite public scandals the government did not prosecute any top official successfully for corruption. The World Bank's Worldwide Governance Indicators for 2013 indicated that corruption was a severe problem. Official-level corruption often came in the form of land seizures and conflict of interest in government procurement.

Corruption: The Ethics and Anticorruption Commission (EACC), an independent agency, investigated corruption and worked to develop and enforce a code of ethics for public officials, but it lacked prosecutorial authority, which remained with the ODPP, to bring senior officials to justice. The EACC and ODPP lacked the capacity to carry out their mandates effectively.

The law allows candidates with pending criminal court cases to run for government office and strips the EACC of its authority to gather information from government bodies on political candidates.

In March the EACC unveiled its 13.5 billion shilling (\$151.2 million) five-year strategic plan to increase the commission's capacity with new staff, improved relations with the judiciary and ODPP, and stronger anticorruption laws. The commission, however, announced there was a significant funding gap to execute the strategic plan.

According to the government's *Economic Survey for 2014*, the number of cases the EACC handled declined by 8.7 percent, from 2,978 in 2012 to 2,719 in 2013. Of the 2,719 cases, the EACC forwarded 55 to the director of public prosecutions and

obtained 11 convictions. The number of cases the EACC referred to the ODPP dropped by 19 percent between 2012 and 2013.

Transparency International's 2014 report noted that the country possesses a strong legal framework to combat corruption but that corruption permeates all sectors of public life. The financial crimes watchdog Global Financial Integrity assessed the country's transfer pricing-related losses due to corruption since 2003 to be 115 billion shillings (\$1.29 billion). In March, PricewaterhouseCoopers (PwC) reported that tender fraud had surpassed bribery and corruption as the largest economic crime in the country. According to PwC one in three business leaders reported suffering procurement-related fraud in the last two years. Thirty-six percent of chief executive officers reported being asked to pay a bribe to win a tender or get business, and 77 percent of businesses had been affected by embezzlement.

Transparency International's Global Corruption Barometer 2013 found police, the judicial system, the registry and permit service, and the land service to be the country's most corrupt institutions. Despite the implementation of significant judicial reforms, corruption persisted throughout all levels of the legal system, and bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases.

Although police corruption was endemic, authorities rarely arrested and prosecuted officers for corruption (see section 1.d.).

In February the National Taxpayers Association released results of a sample audit it conducted in 2013 of 134 constituencies (out of 290) that received money from the national Constituency Development Fund. The association reported the disappearance of 1.78 billion shillings (\$19.94 million) in the last five years, a high prevalence of ghost, abandoned, and inflated project costs. The association blamed the National Assembly, the overseer of the fund, of mismanagement.

There were no further developments in the case of Nairobi parliamentarian John Njoroge, who was charged in July 2013 for soliciting a bribe of 150,000 shillings (\$1,680) from a contractor for the construction of a secondary school. Similarly, there were no further developments in the case of Ministry of Foreign Affairs officials Thuita Mwangi, Allan Mburu, and Anthony Mwaniki Muchiri, who were indicted in 2013 on allegations of corruption in the 2010 procurement of the chancery and ambassador's residence in Tokyo.

The ODPP recommended in March the prosecution of Central Bank of Kenya Governor Njuguna Ndung'u for his alleged complicity in awarding a local company a 1.2 billion shillings (\$13.44 million) security system tender in violation of proper tendering procedures. The investigation continued at year's end.

The trial of IEBC Chief Executive Officer James Oswago for fraud related to the procurement of electronic polling books began in February and continued at year's end. In August the IEBC's director of finance, director of information and communication technology, deputy chief executive officer, and procurement manager were terminated for their involvement in procurement fraud and financial irregularities.

The media reported irregularities, discovered by a parliamentary committee, in the judiciary's spending on the presidential inauguration ceremony and construction of court buildings and the chief justice's residence amounting to 178 million shillings (\$2 million) in misappropriated public funds. Corruption investigations were in progress at the Ministries of Education, Roads, Energy, and Land. Officials at the National Social Security Fund, National Health Insurance Fund, National Housing Corporation, Teachers Service Commission, and National Bureau of Statistics also faced corruption allegations.

The establishment of 47 new county governments created concerns about budgeting and financial management, opening up additional opportunities for graft. A February auditor general report indicated that many governors could not account for the use of hundreds of millions of shillings allocated to their counties, with a significant amount of funds going to questionable spending. Many county executive committees struggled with budgeting fundamentals and financial accountability.

The government launched several electronic services in an effort to increase fiscal transparency. In January it introduced an automated tax-paying system to reduce interaction between government employees and taxpayers in an attempt to cut down on bribery. In July it launched a system to conduct online tenders to alleviate interference in tender procedures. The government also established Huduma Centers, a one-stop office for citizens to access and pay for government services electronically to reduce corruption and bureaucracy. President Kenyatta launched a website where citizens could anonymously upload videos, photographs, and other material to report corruption and bribery by government departments directly to the President's Office.

Financial Disclosure: The law requires all public officers declare publicly their income, assets, and liabilities every two years. Public officers must also include income, assets, and liabilities of their spouses and dependent children under age 18. Officers must declare this information to their responsible commission (e.g., the Parliamentary Service Commission in the case of members of parliament). Information contained in these declarations was not readily available to the public, and requests to obtain and publish this information must be approved by the relevant commission. Any person who publishes or otherwise makes public information contained in public officer declarations without such permission may be subject to five years in prison, a fine of up to 500,000 shillings (\$5,600), or both. Police officers being vetted were also required to file financial disclosure reports for themselves and for immediate family members. These reports were publicly available (see section 1.d.).

The Leadership and Integrity Act of 2012 requires public officers to register potential conflicts of interest with the relevant commissions. The law identifies what must be registered, 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 public office (nonelective) 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. The requirement was generally implemented.

There were no challenges to any declarations of wealth or conflicts of interest filed by public officials.

Public Access to Information: The constitution provides citizens with access to information held by the state and requires the state to publish and publicize important information affecting the nation; however, there is no freedom of information law to operationalize this right, and the government frequently did not respond to requests for information. Some government information was made available on the internet.

In 2011 the government signed up to the Open Government Partnership and also launched Kenya Open Data, a website containing selected data from the most recent national census and on government expenditures, parliamentary proceedings, and public service delivery locations. The government did not update regularly information on its Open Data.

Of the four Open Government Partnership goals, citizen engagement, fiscal transparency, access to information, and income and asset disclosure, the country made progress in fiscal transparency and income and asset disclosure. The online tender system and automated tax payment systems were examples.

The government spokesperson's briefings were televised, and parliamentary debates were broadcast live on television and radio. Important reports on major corruption scandals from the last decade were not released to the public.

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

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases, although some groups reported experiencing increased government harassment. 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 officials intimidated NGOs and threatened to disrupt their activities. Less-established NGOs, particularly in rural areas, reported harassment and threats by county-level officials and security forces. Human rights activists claimed security forces conducted surveillance of their activities, and some reported threats and intimidation.

On February 12, police raided human rights advocate Muchangi Nyaga's home and seized records and minutes related to his work as coordinator of the Ghetto Green Foundation, a youth empowerment NGO. Police detained him for longer than 24 hours but released him later without charge. According to eyewitnesses, when he emerged from detention, Nyaga's face was swollen, his lip was split, and there was blood on his clothing. When Nyaga attempted to record a statement alleging unlawful detention, police officers refused to take his statement. Police rearrested Nyaga on five more occasions during the year, beat him, and then released him without charge. For example, on March 22, police arrested Nyaga on the charge of stealing a mobile phone that belonged to the arresting police officer, beat him when he sought to speak with a lawyer, and accused him of being "unpatriotic." NGOs alleged police targeted Nyaga for harassment because of his NGO work.

Local rights groups alleged that human rights defenders faced worsening threats and attacks. They noted that human rights defenders, especially those fighting for land rights, were at highest risk. For instance, in May, Joel Ogada, a farmer and

member of the Malindi Rights Forum working to protect community land rights against salt extraction factories, was sentenced to seven years' imprisonment on charges of arson. Human rights organizations alleged that he was targeted for prosecution due to his activism and noted that Ogada did not have legal representation until the East Africa Law Society was able to provide counsel late in his case and that he was prevented from cross examining key witnesses.

A 2013 report by Rift Valley NGO, the National Association for Human Rights Activists, titled *A Cry for Justice: The State of Human Rights Defenders in Kenya*, contained testimony from 23 human rights defenders who described a range of intimidating or threatening action allegedly undertaken by government officials. The most common form of harassment activists reported was arrest on fabricated charges. Others reported being assaulted by police, being placed under surveillance, frequent office break-ins, and direct threats from police officers and others allegedly hired by local politicians. Many reported that they relocated their residences for safety.

In 2013 Maina Kiai, a long-time human rights activist and current UN special rapporteur on the right to freedoms of peaceful assembly and association, described threats against him by unidentified militia groups. Kiai maintained politicians, including staff of President Kenyatta's office and the president himself, were behind "vicious attacks" against civil society and creating an "extremely intimidating environment" for activists, witnesses, and others.

Several NGOs, including Human Rights Watch, Article 19, and the National Coalition of Human Rights Defenders, maintained comprehensive files on local human rights abuses. A number of attorneys represented human rights advocates without compensation, although they were concentrated in urban areas and could handle the cases of only a small percentage of those who needed assistance. The government sometimes allowed human rights organizations to witness autopsies of persons who died in police custody. The government also permitted NGOs to provide paralegal services to prisoners. The Kenya National Commission on Human Rights (KNCHR) noted that reports of human rights abuses decreased in prisons with resident paralegals and because of human rights training for prison staff.

The United Nations or Other International Bodies: The government generally ignored recommendations by UN or other international human rights groups if such recommendations were contrary to government policies.

Government Human Rights Bodies: In 2011 the government passed legislation to transform the KNCHR from an autonomous human rights institution to a constitutional commission, thereby stripping the KNCHR of its juridical powers, including its powers to issue summonses, order the release of prisoners, and order compensation for human rights abuses. In 2012 and 2013, the terms of all KNCHR commissioners, including the chairperson and subsequent acting chairpersons, expired. Commissioner seats remained vacant until May when new leadership of the KNCHR was appointed and took office. Human rights organizations alleged the government continued to restrict funding to the KNCHR to prevent it from carrying out investigations or issuing reports, although it issued a statement critical of the Usalama Watch operation.

A Truth, Justice, and Reconciliation Commission (TJRC) was established in 2009 to investigate gross human rights violations and other historical injustices between 1963 and 2008. The TJRC's final report in 2013 concluded that government institutions and office holders committed gross violations of human rights, including massacres, torture, political assassinations, arbitrary detention of political opponents, sexual violence, and violations of children's rights. The report's recommendations included calls for public apologies from multiple former presidents and former heads of security institutions and for further investigation of 38 named current and former members of parliament and 22 named current and former police officials.

The TJRC Act required the government to begin implementing the recommendations within six months of the report. The National Assembly and individuals named in the report sought to change the TJRC Act to allow for changes to the report or expunge portions of it. No implementing actions had begun by year's end. In May civil society organizations condemned the government for failing to implement the recommendations the report

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

The constitution and law prohibit discrimination based on race, gender, disability, language, or social status. Government authorities did not effectively enforce many of these provisions, and discrimination against women; lesbian, gay, bisexual, and transgender (LGBT) persons; individuals with HIV/AIDS; persons with disabilities; persons suspected of witchcraft; and certain ethnic groups was a problem. There was also evidence that some national and local government officials tolerated, and in some instances instigated, ethnic violence. The law criminalizes homosexual activity.

## Women

Rape and Domestic Violence: The law criminalizes rape, defilement, and sex tourism; however, enforcement remained limited, and civil society groups indicated that victims did not report as much as 92 percent of sexual offenses to police. The law does not specifically prohibit spousal rape. In July the “Protection Against Domestic Violence” bill was tabled in parliament.

In November women were publicly assaulted and stripped in Nairobi and Mombasa by gangs of men claiming they were “indecently” dressed. Seven men, including one police officer, were arraigned in court on assault charges for the incidents. The cases continued at year’s end. A public campaign, “My Dress My Choice,” was launched to protest the assaults, and a public demonstration against assaults was staged on November 17 in Nairobi, receiving widespread media coverage and support from political leaders. On November 26, President Kenyatta issued a statement condemning the assaults against women and reminding Kenyans of their responsibility not to tolerate such behavior.

A 2013 report by the then minister for gender, children, and social development indicated that one in five women experience sexual violence in their lifetime. Furthermore, an estimated 45 percent of girls and women ages 15 to 49 experienced physical or sexual violence.

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. In October 2013 citizens gathered more than one million international signatures for a petition protesting government mishandling of a gang rape of a 16-year-old girl in Busia, for which police officers reportedly ordered several perpetrators to cut grass as punishment. Following sustained NGO-led public pressure, authorities arrested one suspect; his trial for rape began in June and continued at year’s end, as did investigations into the other five suspects. The IPOA also announced that it would conduct an investigation into police handling of the initial complaint. Following the attention garnered by the Busia case, NGOs submitted 70 other unresolved rape cases to the ODPP and reported that it had reopened many of the cases at year’s end. NGOs provided the majority of support to survivors, seeking medical documentation and pursuing arrest orders against suspected offenders.

Citizens frequently used traditional dispute mechanisms to address sexual offenses

in rural areas, with village elders assessing financial compensation for the survivors' families. They also used traditional dispute mechanisms occasionally in urban areas. NGOs reported difficulties in obtaining evidence and the unwillingness of witnesses to testify in sexual assault cases in areas where traditional dispute mechanisms were employed. Domestic staff were at particular risk. For example, in another case in Busia, an underage girl employed as domestic staff was raped, infected with HIV, and impregnated twice, allegedly by a prominent local teacher. The teacher was transferred but not investigated.

Police statistics for 2011 indicated 4,517 reported cases of gender-based violence, including 934 rapes, compared with 4,551 cases of gender-based violence, including 922 rapes, in 2010. Human rights groups, however, estimated the actual number of rapes and other cases of gender-based violence was much higher. A study released during the year by the Usalama Reform Forum estimated that victims reported only 40 percent of rape cases to police. A study by the NGO Peace Initiative Kenya identified 383 cases of rape reported in the media between January and May, noting a 15 percent increase from that same period in 2012. The study stated that Nairobi's women's hospital reported receiving an average of 18 cases of rape and incest daily. The Coalition on Violence Against Women estimated 16,500 rapes occurred per year. Several NGOs working to end gender-based violence stated in November that unofficial reports of rape during the year had already exceeded that number.

The rate of reporting and prosecution of rape remained low in part because a police physician was required to examine victims. Rural areas generally had no police physician, but even in Nairobi there were only two police physicians. Human rights groups reported the addition of one police physician during the year significantly improved the speed and frequency of investigations into sexual crimes, but they also noted the physicians sometimes were unavailable to conduct exams, failed to appear in court, or issued examination reports that conflicted with the findings of other medical professionals.

Other factors for the low reporting and prosecution rates included a cultural inhibition against publicly discussing sex, particularly sexual violence; stigma attached to rape survivors; survivors' fear of retribution; police reluctance to intervene, especially in cases where the victim accused family members, friends, or acquaintances of committing the rape; and poor training of prosecutors. Reporting also remained low due to traditional attitudes toward sexual violence. A 2010 baseline survey by the National Commission on Gender and Development reported that 72 percent of respondents did not consider gender-based physical violence,

including rape, to be “serious” crimes.

Implementation of national guidelines on the management of sexual violence, including the handling of forensic evidence, postrape care, and victim support, remained weak. For example, in 2012 police approved a change in procedure to allow clinical officers, in addition to police physicians, to examine survivors of sexual violence, but NGOs continued to report that police officers would only consider the reports of police physicians as the basis for opening a case.

As a result of this and many other failings in the law enforcement and judicial systems, police did not investigate numerous alleged cases of sexual violence, and numerous cases were dismissed from court due to lack of evidence.

The 2009 report of the Commission of Inquiry on Postelection Violence included a chapter on the widespread sexual and gender-based violence following the disputed election in 2007-08. There was no government effort to prosecute anyone in connection with the reported abuses, and in February the director of public prosecutions announced the ODPP would bring no cases related to the 2007-08 postelection violence. In March, eight victims of 2007-08 sexual and gender-based violence brought a class action lawsuit against the government for failing to discharge its duty to protect them or to investigate criminal complaints. The case continued at year’s end (see section 1.e.).

Domestic violence against women was widespread, but often condoned by society and seldom addressed in the courts. The UN Population Fund’s 2012 annual report indicated 39 percent of women experienced gender-based violence after age 15, primarily perpetrated by husbands. The penal code does not contain specific provisions against domestic violence but treats it as assault. Police generally refrained from investigating domestic violence, which they considered a private family matter. NGOs, including the Law Society of Kenya and FIDA, provided free legal assistance to some survivors of domestic violence. In 2010 FIDA reported that 83 percent of women and girls in the country reported one or more episodes of physical abuse.

Female Genital Mutilation/Cutting (FGM/C): See section 6, Children, Female Genital Mutilation/Cutting.

Other Harmful Traditional Practices: Certain communities commonly practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. Economically disadvantaged women with

limited access to education living outside major cities were more likely to be inherited. Other forced marriages were also common. New legislation codified the right of men to marry multiple women without securing their consent.

Sexual Harassment: The law prohibits sexual harassment; however, it was a problem. It was often not reported and rarely resulted in charges being filed. The IPOA reported in 2013 that police officers frequently solicited sexual favors from junior officers to influence transfers and promotions; the IPOA pledged to investigate cases that had been brought to the oversight body.

Reproductive Rights: The constitution recognizes the right of couples and individuals to decide freely and responsibly the number, spacing, and timing of their children; to have the information and means to do so; and to attain the highest standard of reproductive health, free from discrimination, coercion, and violence. Subsidized contraception options, including condoms, birth control pills, and long-acting or permanent methods, were widely available to both men and women throughout the country, although access was more difficult in rural areas. An estimated 39 percent of girls and women between the ages of 15 and 49 used a modern method of contraception. Skilled obstetric, prenatal, and postpartum care was available in major hospitals, but many women were unable to access or afford these services. In 2009 skilled health personnel attended an estimated 44 percent of births. Twenty percent of maternal deaths were estimated to be AIDS-related. Access to family planning and reproductive health services was impeded by sociocultural beliefs and practices, lack of female empowerment, lack of male involvement, poverty, and poor health management systems. First Lady Margaret Kenyatta launched “Beyond Zero,” a government campaign to improve maternal health and reduce maternal mortality.

At the 2014 AIDS Conference, FIDA reported police officers in Mombasa and Nairobi routinely followed social workers distributing condoms to sex workers in order to seize the condoms as evidence of immoral intent, with a view to either demanding sex or a bribe. Police and prosecutors regularly cited condom possession as evidence of engagement in sex work. Condom possession is also generally prohibited in secondary schools.

Discrimination: The law provides equal rights to men and women and specifically prohibits discrimination on grounds of gender. Nonetheless, women experienced a wide range of discrimination in marriage, property ownership, inheritance, employment, and access to credit. Women held only 6 percent of land titles, of which the majority were joint titles, and accessed only 7 percent of formal credit.

Under traditional law women in many ethnic groups could not own land. Societal discrimination was most apparent in rural areas. The justice system, particularly customary law, often discriminated against women, limiting their political and economic rights and relegating them to second-class citizenship.

The 2010 constitution eliminates 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 the wife's rights to matrimonial property during and upon the termination of the marriage, and it affirms that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution.

In April the National Assembly adopted a new Marriage Act including provisions to strengthen property rights for wives. The act retains a man's right to enter into multiple marriages and does not require consultation with or the consent of the existing spouse(s). The act contains a proviso protecting the entitlements and interest of the first wife in matrimonial property. The bill received presidential assent and went into force during the year.

Also during the year, a separate Matrimonial Property Act went into force that dictates that ownership of jointly held property depends on how much each spouse could prove he or she had contributed monetarily to that property. Many women's rights groups and female members of parliament argued this provision was discriminatory and regressive.

Under the new government structure, the former Ministry of Gender, Children, and Social Development was subsumed into other ministries. The Ministry for Devolution and Planning is now the lead ministry for implementation of laws protecting the rights of women, although the Ministry of Labor, Social Security, and Services also has a role.

## **Children**

Birth Registration: A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Birth registration is compulsory. Parents in rural areas, where community elders rather than official entities were considered the legitimate authorities in family matters, often did not register births. An estimated 60 percent of births were officially registered. Lack of official birth certificates resulted in discrimination in delivery of public services.

The law requires citizens to obtain identity cards when they turn 18 years of age. Identity cards are required to obtain public services and vote. Since identity card applications require tracing lineage through male relatives, children born out of wedlock and children born of married mothers who retained their maiden names had difficulty obtaining identity cards unless they could provide the identity documents of a male relative.

Education: Education is free and compulsory through age 13. Secondary enrollment was limited to students who obtained high scores on standardized primary exams. Authorities did not enforce mandatory attendance law uniformly. Enrollment of girls increased 22.5 percent from 2007 to 2011; enrollment of boys increased 19 percent during the same period. Rural families were more reluctant to invest in educating girls than boys at higher levels. The priority they gave to boys' attendance at primary school, however, lessened with 4.9 million girls enrolled in 2011, compared with five million boys. Between the ages of 12 and 14, girls generally dropped out of school at a higher rate than boys due to the lack of sanitary facilities at schools and the general family preference to focus limited resources on the education of sons.

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

In 2008 the Ministry of Education estimated that 80,000 children dropped out of school annually due to forced marriages and child labor. The Center for the Study of Adolescence reported the same year that between 10,000 and 13,000 girls dropped out of school annually due to pregnancy. Schoolmasters sometimes expelled pregnant girls or transferred them to other schools. 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. During the year The Cradle, a children's NGO, estimated that 41 percent of children between the ages of 10 and 14 were working. According to government data, university enrollment increased by 35 percent between 2013 and 2014, but the proportion of women enrolled in university remained relatively constant at 40 percent of total enrollment.

Child Abuse: Violence against children, particularly in poor and rural communities, was a common occurrence, and child abuse, including sexual abuse, occurred frequently. A government survey in 2010 found that 32 percent of female respondents and 18 percent of male respondents between the ages of 18 and 24 had experienced sexual violence before age 18. One in 10 female respondents and one

in 20 male respondents between the ages of 13 and 17 reported they had experienced sexual violence during the previous year. According to the survey, 66 percent of female respondents and 73 percent of male respondents experienced physical violence of varying types during childhood. Perpetrators of physical, sexual, and emotional violence were rarely strangers to the child. Romantic partners were the most common perpetrators of sexual violence, followed by neighbors, while parents and teachers were the most common perpetrators of physical and emotional violence. According to NGOs lack of awareness of how to report child abuse and aversion to being caught up in a lengthy legal process were major obstacles to doctors, teachers, and other authority figures reporting child abuse.

The minimum sentence for defilement is life imprisonment if the child is less than 11 years old, 20 years in prison if the child is between ages of 11 and 16, and 10 years if the child is between 16 and 18. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy.

In a landmark case, the High Court ruled in 2013 that in 160 cases police had failed to conduct effective investigations into complaints of child sexual abuse, causing grave harm to victims and creating a climate of impunity for perpetrators. The High Court ordered cases reopened and reexamined. NGOs reported this ruling had resulted in several arrests and at least two convictions.

The Teachers Service Commission reported in 2011 that more than 160 cases of sexual misconduct were filed against teachers across the country; however, cases prosecuted were considered a fraction of actual abuses. On January 22, more than 60 female students at a secondary school in Naivasha staged a protest and closed a road over allegations of sexual harassment and abuse suffered at the hands of teachers at the school. In 2011 the commission established a code of conduct that addresses sexual relations with students and stipulates stiff penalties for violations of the new code.

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

Early and Forced Marriage: The media frequently highlighted the problem of child marriage, which was commonly practiced among some ethnic groups. During the year the UN Children's Fund (UNICEF) released a study showing that 6 percent of children were married by age 15, and 26 percent by 18. Girls were more likely than boys to be married below age 18. Forty-three percent of girls and 11.6

percent of boys below age 18 were married. Regionally, Kilifi had the highest prevalence of child marriage at 47.4 percent, followed by Homa Bay at 38 percent, Kwale at 37.9 percent, Bondo at 29.5 percent, and Tharaka at 25.3 percent. There was a strong correlation between poverty and child marriage. A report by the UN Population Fund indicated that child marriage increased during conflicts or after natural disasters, as families sought to benefit economically from or offer alternative financial security for young daughters. During the year the National Assembly passed a new Marriage Act that outlaws engagement, betrothal, or marriage by or to any person under 18 years of age. Under the constitution, however, the qadi courts retains jurisdiction over Muslim marriage and family law.

Female Genital Mutilation/Cutting (FGM/C): The law makes it illegal to practice FGM/C, procure the services of someone who practices FGM/C, or send a person out of the country to undergo the procedure. The law also makes it illegal to make derogatory remarks about a woman who has not undergone FGM/C. Nevertheless, FGM/C was practiced widely, particularly in rural areas, and was usually performed at an early age. According to UNICEF, one-third of girls and women between the ages of 15 and 49 had undergone FGM/C. Of the 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana, who together constituted approximately 25 percent of the population) did not traditionally practice FGM/C. In 2008 the Ministry of Gender and Children's Affairs reported that 90 percent of girls in the Somali, Kisii, Kuria, and Maasai communities had undergone the procedure. The rates among other communities included Taita Taveta (62 percent), Kalenjin (48 percent), Embu (44 percent), Meru (42 percent), Kamba (37 percent), and Kikuyu (34 percent). Government officials often participated in public awareness programs to prevent the practice.

The media reported arrests of perpetrators and parents who agreed to FGM/C. For example, on April 14, police arrested a chief in Maji Moto for aiding the FGM/C of four girls, including two of his own daughters. County officials attempted to intervene but were unsuccessful in preventing the procedure. The media also reported, however, that parents in regions with a high prevalence of FGM/C frequently bribed police to allow the practice to continue.

The media reported that growing numbers of female students were refusing to participate in FGM/C ceremonies, traditionally performed during the August school holiday. On September 1, *The Standard* newspaper reported that 600 girls between the ages of five and 15 took shelter at a church in Ntimaru to protest FGM/C. Some churches and NGOs provided shelter to girls who fled their homes to avoid FGM/C, but community elders frequently interfered with attempts to stop

the practice. Various communities and NGOs instituted “no cut” initiation rites for girls as an alternative to FGM/C, but in some communities this effort was unsuccessful. There were reports during the year that the practice of FGM/C increasingly occurred underground to avoid prosecution by authorities.

Other Harmful Traditional Practices: Media reports indicated that discrimination against uncircumcised boys continued.

Sexual Exploitation of Children: The law criminalizes sexual exploitation of children, including prohibiting procurement of a girl under age 21 for unlawful sexual relations. The law also prohibits domestic and international trafficking, or the recruitment, harboring, transportation, transfer, or receipt of children up to age 18 for the production of pornography or for pornographic performances. Provisions apply equally for girls and boys. The Sexual Offences Act has specific sections on child trafficking, child sex tourism, child prostitution, and child pornography. Nevertheless, children were sexually exploited and were victims of trafficking.

In 2012 the Ministry of Gender, Children’s Affairs, and Social Development and the NGO Eradicate Child Prostitution in Kenya estimated that 30,000 children were exploited in the sex industry every day. UNICEF estimated in 2012 that between 10,000 and 15,000 girls were engaged in prostitution in the coastal areas alone. Parents sometimes initiated prostitution. NGOs reported Somali children who had been sent by their parents to escape recruitment by al-Shabaab frequently were employed in prostitution in the coast region.

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

oversees hotels, villas, and cottages to monitor their adherence to the code of conduct.

Child Soldiers: Although there were no reports the government recruited child soldiers, there were reports that the al-Shabaab terrorist group recruited children. UNICEF reported that from 2009 to 2012, 16 children of Somali nationality--14 boys ages 12-17 and two girls ages 15 and 17--were identified and registered by NGO partners as formerly being “Children Associated with Armed Forces and Armed Groups.” Most of the cases were reported in Ifo and Hagadera refugee camps.

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 girls and street children who were abused and exploited in the commercial sex industry.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For country-specific information, see the Department of State’s report at <http://travel.state.gov/content/childabduction/english/country/kenya.html>.

### **Anti-Semitism**

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

### **Trafficking in Persons**

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

### **Persons with Disabilities**

The law prohibits discrimination against persons with physical or mental disabilities in employment, education, access to health care, or the provision of other state services; however, the government did not effectively enforce these provisions. The constitution safeguards the representation of persons with

disabilities in legislative and appointive bodies. The law provides that persons with disabilities should have access to public buildings, and some buildings in major cities had wheelchair ramps and modified elevators and restrooms; however, the government did not enforce the law, and new construction often did not include accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible for persons with disabilities. According to NGOs police stations remained largely inaccessible to those with movement disabilities. Persons with disability were sometimes forced to crawl in order to enter a police station, and the desks where such persons submit reports were frequently raised and difficult to access.

In a report to the UN Human Rights Council during the year, the KNCHR estimated there were seven million persons with a disability in the country. There was limited societal awareness of persons with disabilities and significant stigma attached to disability. Learning and other disabilities not readily apparent were not widely recognized. NGOs reported that persons with disabilities had limited opportunities to obtain education and job training at all levels due to lack of accessibility to facilities and resistance on the part of school officials and parents to devoting resources to students with disabilities. For instance, in January parents in Nyeri protested the transfer of the only special needs teacher from Mathathe primary school. The KNCHR estimated that 67 percent of persons with disabilities had a primary education, 19 percent attained secondary education, and 2 percent reached university level, while 7 percent of persons with disabilities reported being denied access to education as a result of their disability.

According to a Handicap International survey during the year of the rights of disabled persons in the country, 85 percent of persons with disabilities had experienced verbal abuse as a result of their disability and 17 percent experienced gender-based violence. Of those who were abused, 47 percent neither reported the incident to police or other authorities, nor sought medical help or counseling. They cited fear of reprisal or of being misunderstood as their reason; of those who reported abuse, the majority reported the incident to community elders rather than the police.

In 2013 the IMLU issued a survey on discrimination against and torture of persons with mental disabilities. The survey found the highest rates of physical assault on such persons occurred in schools, with more than 60 percent of respondents reporting they had experienced caning and other violence, often due to failure to perform adequately on academic tests rather than bad behavior. Torture, degrading treatment, brutal conditions, and sexual abuse of persons with mental disabilities

were common at police stations and in prisons. More than 58 percent of persons surveyed had experienced torture or inhumane treatment in their homes. There was also a high rate of abuse of mentally disabled patients in hospitals, including assault by both hospital staff and fellow patients and denial of adequate facilities for bathing and sleeping.

Killings of persons with disabilities were reported, as well as torture and abuse, and the government took action in some cases. According to a report by *The Standard* newspaper, disabled children living in pastoralist communities were often tied up during the day or abandoned. In August a police officer was arrested after he was found sexually abusing a mentally handicapped child. In September 2013 a Nairobi court sentenced a woman to six years in jail for pushing her deaf five-year-old son into a pit where he was later found dead.

In 2012 the KNCHR carried out a survey on the status of the rights of persons with disabilities in Uasin Gishu and Elgeyo Marakwet counties. The report found most government buildings in these counties inaccessible to persons with disabilities and that the lack of sign language interpretation or braille texts at public places, police stations, and the courts created significant barriers and prevented persons with disabilities from meaningful public participation. Negative societal attitudes also posed significant challenges to persons with disabilities. Most families tended to abandon relatives with disabilities in hospitals or in special schools for children with disabilities, which lacked the funds to educate or care for them. The report noted a cash-transfer program from the Disability Fund was being implemented in Elgeyo Marakwet, but it targeted few households, and the amount of 1,500 shillings (\$16.80) distributed monthly was inadequate.

Persons with disabilities faced significant barriers to accessing health care. They had difficulty obtaining HIV testing and contraceptive services due to the perception that they did not or 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 the health facility, and physical barriers were the main problems cited.

Few facilities provided interpreters or other accommodations to the deaf or those with other hearing disabilities. The government assigned each region a sign language interpreter for court proceedings. Nevertheless, cases involving persons who were deaf or had hearing disabilities often were delayed or forced to adjourn due to the lack of standby interpreters, according to an official with the Deaf Outreach Program. According to the KNCHR 10 secondary schools in the country

were able to accommodate the needs of deaf or hard of hearing persons.

Not all polling stations were equipped with accommodations for persons with disabilities. During by-elections in 2012, however, the Kenya Society for the Mentally Handicapped and the Disabled Voters of Kenya Alliance worked closely with the IEBC to try to assure that all persons were able to cast their votes in the March 2013 elections. The Carter Center noted that during the 2013 elections, persons with disabilities were permitted to vote with the assistance of an attendant.

Under the new government structure, the former Ministry of Gender, Children, and Social Development was subsumed into other ministries, and the Ministry for Devolution and Planning became 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 issues related to persons with disabilities. The Association for the Physically Disabled of Kenya carried out advocacy campaigns on behalf of persons with disabilities, distributed wheelchairs, and worked with public institutions to promote the rights of persons with disabilities. The KNCHR noted that awareness of the rights of persons with disabilities had increased as a result in some counties, but it faulted the government for not ensuring equal protection of the rights of persons with disabilities throughout the country.

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

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

There are over 40 ethnic groups in the country; none holds a majority. The 2009 census identified eight major ethnic communities: Kikuyu, 6.6 million; Luhya, 5.3 million; Kalenjin, five million; Luo, four million; Kamba, 3.9 million; Kenyan Somali, 2.3 million; Kisii, 2.2 million; and Mijikenda, 1.9 million. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups, especially on the coast.

Many factors contributed to interethnic conflicts: long-standing grievances over

land tenure policies and competition for scarce agricultural land, the proliferation of guns, the commercialization of traditional 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 inability of security forces to quell violence. Conflict between landowners and squatters was particularly severe in the Rift Valley and the coast region, while competition for water and pasturage was especially serious in the north and northeast. In May the Kenya Defense Forces were deployed to support the police patrolling roads, operating checkpoints, and attempting to disarm area residents. In Marsabit County cattle raiding and hostage taking between members of the Borana and Gabra communities displaced 1,500 persons. In addition to resource scarcity, a major driver of that conflict was the political alliance of the Rendille, Gabra, and Burjis communities and the resulting political exclusion of the Borana community.

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, which at times resulted in deaths. For example, in July Pokot raiders killed six and injured eight in a series of cattle raids in Turkana County. Cattle rustling was rampant, and several persons were killed in Isiolo and Turkana in connection with cattle raids and counterattacks.

On November 1, unknown assailants killed 21 police officers in what media have reported was a continuation of conflict between the Pokot and Turkana tribes. The Kenya Defense Force was deployed to Baringo on November 2 in order to assist the Kenya Police Service with restoring order and removing arms from the civilian population.

In February the Public Service Commission released a report indicating that as of June 2013, half of civil servants belonged to one of the three largest ethnic groups: Kikuyu (22.3 percent), Kalenjin (15.3 percent), and Luhya (11.3 percent). The ethnic groups with the lowest representation were the Hawiyah, a clan of Somali ethnicity, with one technician employed by the government, the South Asian Community (104 officers), Sakuye (76), Murulle (72), and El Molo (27). The pattern in the civil service was also observed in political appointments, with the Kikuyu, Kalenjin, and Luhya dominant.

Devolution of fiscal and administrative responsibility to county governments led to an increase in interethnic conflict in some areas. In an audit of hiring practices

released in June, the NCIC accused many county governors of appointing and employing disproportionate numbers of the dominant tribe in their county. According to the NCIC, 15 of 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. However, some counties, notably Nairobi City County, were notable for apportioning roles inclusively. Patterns of preferential hiring were also observed during the police recruitment exercise (see section 1.d., Role of the Police and Security Apparatus).

Throughout the year ethnic and intercommunal conflict flared in several parts of the country. Violence between the ethnically Ethiopian but primarily Kenya-based Gare and Degodia clans continued in Mandera and Wajir counties. Dozens were killed and thousands displaced in the region as a result of attacks by militia groups from the two clans, who sought control over land, other resources, and political power (see section 2.d., Internally Displaced Persons). Intercommunal and resource-based violence also occurred in Baringo, Meru, Wajir, and Moyale.

The government initially blamed deadly al-Shabaab raids on coastal towns in June on ethnic tension between the local community and relatively recent settlers of Kikuyu and Kamba ethnicity. The government arrested Lamu County Governor and ethnic Bajuni Issa Timamy, but his case was dismissed in September for lack of evidence. The attacks resulted in increased ethnic and religious tension.

In private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of other members of the same group. Some neighborhoods, particularly in informal settlement areas of the capital, tended to be segregated ethnically, although interethnic marriage was common in urban areas.

Disputes over county borders were also a source of ethnic tensions. For example, the borders between Isiolo and Meru and between Wajir and Mandera were the subject of clashes during the year. In some cases county governments took steps to prevent cross-county ethnic violence. For example, in March county governments and religious leaders assisted in brokering a peace agreement between elders of the Turkana and Pokot communities to reduce ethnic tension and prevent cattle rustling.

In August police were deployed to a border region between Isiolo and Samburu counties where three persons were killed and 6,000 households displaced as a result of clashes over pastureland on the border.

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

The constitution does not explicitly protect LGBT persons from discrimination on the basis of sexual orientation or gender identity. The penal code criminalizes “carnal knowledge against the order of nature,” which is interpreted to prohibit consensual same-sex sexual activity and specifies a maximum penalty of 14 years’ imprisonment. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years’ imprisonment. Police detained persons under these laws, particularly suspected sex workers, but released them shortly afterward. Statistics presented in the National Assembly in March indicated police had opened files on 595 “unnatural offenses” cases since 2010, including 49 in 2014. According to a 2014 report issued by the Gay and Lesbian Coalition of Kenya and the National Gay and Lesbian Human Rights Commission, between 2012 and 2014 there were eight prosecutions of gay men on indecency charges.

LGBT organizations reported police more frequently used public order laws (e.g., disturbing the peace) than same-sex legislation to arrest LGBT individuals. Police frequently harassed, intimidated, or physically abused LGBT individuals in custody.

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

Legal efforts by Mbugua, born Andrew Mbugua, to change her legal name and gender identity continued.

Violence and discrimination against LGBT individuals was widespread. According to a report by journalist Denis Nzioka during the year, LGBT individuals were especially vulnerable to blackmail and rape by police officers and individuals who used LGBT websites to locate victims. LGBT individuals were especially vulnerable to harassment, intimidation, and discrimination in employment, occupation, education, and housing. Human rights and LGBT rights organizations noted that victims were extremely reluctant to report abuse or seek redress. According to a 2011 study, *The Outlawed Amongst Us*, by the Kenya Human Rights Commission, 89 percent of LGBT individuals who revealed their sexual orientation were disowned by family and friends. There were reports of forced “medical examination” of LGBT individuals by the police and of forced

medical treatment or exorcism to “treat” LGBT individuals.

During the year an “antigay” caucus was formed in parliament, although its only action was to inquire why the government had not taken stronger action against LGBT individuals and organizations. The National Assembly majority leader stated that homosexuality was as serious an issue as terrorism but resisted calls for new anti-LGBT legislation. Several NGOs conducted anti-LGBT political campaigns, including one that announced a drive to collect one million signatures on a petition against homosexuality. While these campaigns resulted in scattered demonstrations, they did not attract widespread support.

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

In the most recent Demographic and Health Survey for the country (2009), 32 percent of women and 21 percent of men reported discriminatory attitudes towards those with HIV.

The government and private organizations supported a network of more than 8,000 counseling and testing centers providing free HIV/AIDS diagnosis. Diagnosis of other sexually transmitted infections was available through hospitals and clinics throughout the country. Because of the social stigma, many citizens avoided testing for HIV/AIDS. A study conducted in Kisumu indicated that 57 percent of HIV-positive adolescents eventually discontinued follow-up treatment, in part due to social stigma and fear of social stigma.

In a landmark 2013 ruling, the labor court ruled an employee or prospective employee may not be considered medically unfit merely by virtue of being infected by HIV. It ruled that refusing permanent employment on the basis of HIV status was a gross error, that the employee’s right to equal treatment had been breached, and that a “gross violation” of the employee’s human dignity had taken place. The court awarded the employee 6.97 million shillings (\$78,060).

The government promoted programs to reduce stigmatization of those with HIV and AIDS and to encourage HIV and AIDS testing, counseling, and the prevention of mother-to-child transmission. First Lady Margaret Kenyatta launched the “Beyond Zero” campaign to stop new HIV infections among children and to improve maternal health. On March 9, she sponsored a half marathon for the Beyond Zero campaign in which 30,000 persons participated, including senior political leaders.

## Other Societal Violence or Discrimination

Mob violence and vigilante action were common and resulted in numerous deaths. A private security company reported an average of 25 to 31 incidents of mob violence and vigilante action resulting in death or serious injury every month, with the majority occurring outside of Nairobi. Many incidents of mob violence in informal settlements went unreported, however. Many victims were persons suspected of criminal activities, including theft, robbery, killings, cattle rustling, and membership in criminal or terrorist gangs. For example, on June 26, a man who claimed to have been led to his colleague's body in a dream was burned to death by residents who believed he instigated the killing.

Local police warnings against lynching suspected criminals were ineffective or ignored. On August 16, an angry mob lynched five suspected thieves in Kericho. Local police chief claimed the suspects had refused to surrender, thereby forcing area residents and police to lynch them. Human rights observers attributed widespread vigilante violence to a lack of public confidence in police and the criminal justice system. Some local NGOs reported they had informal "cells" they used to hold suspects to prevent vigilante attacks before police arrive. The social acceptability of mob violence also provided cover for acts of personal vengeance. Police frequently failed to act to stop mob violence.

Mobs also attacked persons suspected of witchcraft or participation in ritual killings, particularly in Kisii, Nyanza, and other western counties. For example, on July 12, *The Daily Nation* newspaper reported a man in Kilifi hanged himself after local residents accused him of witchcraft and threatened to lynch him. On September 5, two brothers were hacked to death in Kinango, Kwale County, on suspicion of engaging in witchcraft. Although local officials spoke out against witch burning and increased police patrols to discourage the practice, human rights NGOs noted public reluctance to report such cases due to fear of retribution.

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. According to disability rights advocates, there were 12 attacks on persons with albinism documented during the year, although many attacks and killings were unreported. Persons with albinism were attacked for their body parts, which were believed by some to confer magical powers and which could be sold for significant sums. In July criminals in Kisumu demanded an albino as ransom for a two-year-old child they had kidnapped.

Due to societal discrimination, employment opportunities for persons with albinism were limited. The National Council of Persons with Disabilities and the Kenya Albino Child Support Program, in partnership with the government, continued an awareness campaign to combat discrimination. In 2013 Isaac Mwaura became the first person with albinism to serve in parliament when his party nominated him for a seat in the National Assembly designated for marginalized persons.

## **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. Any seven or more workers in an enterprise have the right to form a union by registering with the trade union registrar. If the registrar denies registration, a union may appeal to the courts. The law does not explicitly prohibit members of the armed forces, prisons service, and the administration police from forming or joining unions.

The law permits workers in collective bargaining disputes to strike but requires the exhaustion of formal conciliation procedures and seven days' notice to both the government and the employer. The law permits the government to deny workers the right to strike under certain conditions. For example, members of the military, police, prison guards, and the National Youth Service are prohibited from striking. Other civil servants are allowed to strike following the seven-day notice period. The Ministry of Labor, Social Security, and Services typically referred disputes to mediation, fact finding, or binding arbitration at the industrial court, a body of up to 12 judges appointed by the JSC. During mediation any strike is illegal, thus removing legal prohibitions on employer retaliation against strikers. Additionally, a Ministry of Labor, Social Security, and Services referral of a dispute to the conciliation process nullifies the right to strike.

By law those who provide essential services, defined as “a service the interruption of which would probably endanger the life of a person or health of the population” are not allowed to strike. Any trade dispute in a service that is listed as essential or is declared an essential service may be adjudicated by the industrial court.

The law provides that collective labor disputes must first undergo conciliation, although conciliation is not compulsory in individual employment matters. Security forces cannot bargain collectively but have an internal board that reviews

salaries. Informal workers may establish associations, or even unions, that negotiate wages and conditions matching the government's minimum wage guidelines as well as advocate for better working conditions and representation in the industrial court. The law allows employers in some industries to dismiss workers regardless of the provisions of their collective bargaining agreements. 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 for workers dismissed for union activity. The industrial court can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities. Labor laws apply to all groups of workers. Due to human and material resource constraints, the government did not always effectively protect union rights.

The government encouraged a strengthened labor dispute system, but the decisions of the industrial court were not enforced consistently. Many employers did not comply with reinstatement orders, and some workers accepted payment in lieu of reinstatement. In several cases employers successfully appealed the industrial court's decisions to the High Court. The enforcement mechanisms of the industrial court remained weak, and its case backlog raised concerns regarding the efficacy of the court.

The industrial court received many cases arising from the implementation of new labor laws. The majority of cases were filed directly by the parties without referral to the Ministry of Labor, Social Security, and Services for conciliation. There were 2,072 cases filed with the industrial court during 2013, up from 1,858 in 2012. In 2013 the 12 judges on the industrial court announced a total of 1,784 awards and rulings, more than double those processed in 2012. The industrial court was established to provide for quick resolution of labor disputes, yet cases in the backlog dated to 2007.

The chief justice designated all county courts presided over by senior resident magistrates or higher ranking judges as special courts to hear employment and labor cases. Providing adequate facilities outside of Nairobi was challenging, but observers noted the ability of workers to bring cases to the industrial court throughout the country was a positive step.

The government generally respected freedom of association and the right to collective bargaining. The government expressed its support for union rights as mandated in the constitution. However, the Transition Authority, the government entity responsible for implementing the constitutionally mandated devolution of government, embarked on a large-scale deployment of civil servants across the country without consulting public sector trade unions.

Worker organizations were independent of both the government and political parties. Civil servants were active members of worker organizations and exercised their labor rights. Workers in the essential services, such as police, often showed their displeasure with wages and working conditions through a “go slow” period and service delays.

In 2012 the Federation of Kenyan Employers alone negotiated 216 collective bargaining agreements and registered them with the industrial court. Employers, including the government, did not always honor the collective agreements.

Migrant workers often lacked formal organization and consequently missed the benefits of collective bargaining. Similarly, domestic workers, commercial sex workers, and others who operated in private spaces were vulnerable to exclusion from legal protections.

NGOs and trade unionists reported an increase in the elimination of permanent positions in favor of casual or contract labor, especially in EPZs, the Port of Mombasa, and in the agricultural and manufacturing sectors. In many cases the job was permanent but an employer staffed it with rotating contract workers. This practice occurred at the management level as well, where employers hired individuals as management trainees and kept them in this position for the maximum permitted period of three years. Instead of converting such trainees to permanent staff, employers replaced them with new trainees. The ministry was reviewing widespread misuse of term contract employment.

The Ministry of Labor, Social Security, and Services reported that in 2013 there were 13 strikes. The issues causing the strikes ranged from non-implementation of collective bargaining agreements, resistance by doctors and other health workers to having their salaries devolved to the counties, demand for the registration of the nurses’ union, and demand for revision of wages and other terms and conditions of service.

In December 2013 public health-care workers went on strike to stop the devolution of the health service to the counties, citing inadequate arrangements for the transfer of medical services to counties. Health-care worker unions petitioned the High Court to halt their transfer from the national government's payroll to counties but lost. The CIC explained that demands made by the health workers to stop the devolution process must be achieved through a referendum. The CIC added that threats made by county governors to fire striking health-care workers were unconstitutional and served only to aggravate the stalemate. President Kenyatta called the strike 'unacceptable' and said the actions of striking health-care workers contravened the Hippocratic Oath and basic principles of humane consideration for fellow citizens. The strike reportedly resulted in a number of deaths. The strike was eventually resolved, but many dissatisfied doctors left public health facilities and began working in private clinics or practices, leaving a gap in health-care provision in the counties.

In January, 500 workers at the Olkaria IV geothermal power plant project in Naivasha, citing low wages and poor working conditions, demanded a 50 percent pay increase from their employer, the privately held Hadish Company.

In June, workers at the Olkaria Geothermal Plant went on strike. Work on the Olkaria (I) power plant stalled following a strike by more than 600 construction workers, accusing the company of failing to provide proper protection against poisonous gasses or to pay their risk allowance for the work. The workers alleged the gases were affecting their health, with many workers complaining of chest congestion and pain in their body joints.

Both strikes were resolved peacefully.

In May more than 2,000 Kenya Ports Authority (KPA) workers went on strike to demand higher wages. The workers wanted KPA's management to honor a collective bargaining agreement on their allowances. The workers, led by Dock Workers Union secretary general Simon Sang, camped at KPA headquarters and demanded their transport allowances be harmonized and increased. Dockworkers went back to work the next day when the strike was resolved peacefully.

The Nairobi County council deployed security personnel to expel hawkers from the Globe Cinema roundabout in a violent campaign throughout the year. County law enforcers operated while armed with machetes, knives, pangas, clubs, tear gas, and broken bottles to attack the hawkers. The KNCHR received 20 complaints involving brutalizing of hawkers by the security forces in the first six months of

the year. The chairperson of the Nairobi Hawkers Association said county government security staff resorted to meting out justice unilaterally by turning inspectorate department vans into courts where a guilty verdict was readily passed for all victims accused of operating illegally. The chairperson claimed that after an arrest, the security forces would rob the accused of all personal valuables and then stab the accused with a knife. Security forces used the same knives on different victims, exposing them to infections including HIV/AIDS, among others. The fact that this occurs in full view of police officers dissuaded some victims from reporting assaults. Reportedly, more than 30 hawkers came forward to display the wounds inflicted on them by county security forces, with several fatalities occurring as well. The security personnel collected all the clothes, shoes, handbags, and other items the hawkers left behind. At year's end the hawkers were preparing lawsuits against the Nairobi County Council to contest their expulsion.

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

The law prohibits most forms of forced or compulsory labor, including by children; however, the Chief's Authority Act provides that able-bodied male persons between 18 and 50 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. Additionally, certain provisions, including the penal code and the Public Order Act, impose compulsory prison labor.

The government did not effectively enforce the law. Resources, inspections, and remediation were not adequate to address the issue. The government did not make efforts to prevent and eliminate forced labor in the country during the year. Forced labor, including forced child labor, occurred. Violations included debt bondage, trafficked workers, and even family members sent to work as domestic servants for family, friends of family, or strangers. These domestic servants, many of them girls under age 18, were prevented from going to school and at times not paid directly, their wages being sent to family members.

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

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

The constitution gives children the right to be protected from hazardous or exploitative labor. The law explicitly prohibits forced labor, trafficking, and other

practices similar to slavery; child soldiering; prostitution; the use, procuring, or offering of a child for the production of pornography or for pornographic performances; and the use by an adult for illegal activities (such as drug trafficking) of all children up to age 18. The law applies equally to girls and boys.

The law sets the minimum age for employment at 16 and the minimum age for hazardous work at 18. The law prohibits the employment of a child (defined as a person under age 18) in any activity that constitutes a worst form of child labor or that would prevent children younger than age 16 from attending school. The law allows children ages 13 to 16 years to engage in industrial undertakings when participating in apprenticeships. The law defines industrial undertakings to include work in mines, quarries, factories, construction, demolition, and transportation, although these types of work are on the draft hazardous work list for children. The list had not been adopted by year's end. It is a criminal offense for anyone to employ a child of up to age 18 in any labor or occupation that prevents a child from attending school. According to the 2009 National Census, almost three million children between the ages of five and 14 (32.5 percent) engaged in child labor. Many children worked on family plots or in family units on tea, coffee, sugar, sisal, tobacco, and rice plantations. Children also were used in the production of flowers and miraa (khat). Children worked in mining, including abandoned gold mines and small quarries. In urban areas children were employed in hawking, scavenging, carrying loads, fetching/selling water, and selling food. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestic servants. Parents sometimes initiated forced or compulsory labor by children, such as agricultural labor, prostitution, and domestic servitude.

Some children were subjected to debt bondage or prostitution, and trafficked for commercial sexual exploitation and labor. Most of the trafficking of children within the country appeared to be related to domestic labor, with migrant children trafficked from rural to urban areas. Studies indicated that often children were trafficked for domestic labor through the complicity of the parents or other relatives.

The employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Child labor in the informal sector was difficult to monitor and control.

There were reports of forced child labor in domestic service, street vending, prostitution, subsistence and commercial agriculture, scavenging, begging, and mining. Forced child labor primarily occurred in the informal sector.

The law provides for penalties for any person who employs, engages, or uses a child in an industrial undertaking in violation of the law. Persons younger than age 18 may not be employed in any industrial undertaking at night; employment should not cause children to reside away from home without parental approval; and permission to work in a bar, hotel, or restaurant requires renewed annual consent from the labor commissioner. An individual convicted of violating the law is liable to a fine not exceeding 200,000 shillings (\$2,240), imprisonment for not more than one year, or both.

The Ministry of Labor, Social Security, and Services was nominally committed to enforcing child labor laws, but implementation remained problematic due to resource constraints. With support from the International Labor Organization (ILO), alternatives such as Community Child Labor monitoring helped provide additional resources to combat child labor. These monitoring communities complemented law enforcement efforts by identifying children who were working illegally, removing them from hazardous work conditions, and referring them to the appropriate service providers. The ministry, in collaboration with the ILO, the international donor community, and NGOs, started preparing a list of specific jobs that are considered hazardous and would constitute the worst forms of child labor.

The government worked closely with the Central Organization of Trade Unions, the Federation of Kenyan Employers, and the ILO to eliminate child labor. The government continued to use its practical guide to labor inspection and trained labor inspectors and occupational health and safety officers to report on child labor. The National Steering Committee on the Elimination of Child Labor, which includes the attorney general, eight ministries, representatives of child welfare organizations, other NGOs, unions, and employers, continued to operate and meet quarterly. The Interministerial Coordination Committee on Child Labor is responsible for setting general policy. Additionally, a network of organizations consisting of government ministry departments, social partners, and NGOs working on child labor met regularly under the supervision of the Ministry of Labor, Social Security, and Services' Child Labor Division. This collaboration facilitated greater coordination of efforts to combat child labor.

The government continued to implement many programs for the elimination of child labor with dozens of partner agencies. The partners placed children in

schools, vocational training institutions, and apprenticeships. Partners also provided support to schools for income-generating activities to help keep children from poor families in school.

Child labor awareness was also included in the primary school curriculum and in different policies such as the Alternative Education Policy, again with ILO support. The ILO also promoted child participation through its program Support Children's Rights through Education Arts and Media. In this program teachers were trained on identifying and reducing child labor, with children's rights clubs formed in schools where the project was implemented. The success of the program depended on children being actively involved in identifying and reporting cases of child labor within their communities.

The government's cash transfer program for orphans and vulnerable children covered 47 districts and reached an estimated 100,000 beneficiaries. The government and development partners cofunded the program. The beneficiaries each received 3,000 shillings (\$33.60) per month. There were an average of three orphans and vulnerable children in each beneficiary household who directly benefitted from the program.

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 or Occupation**

The law prohibits discrimination in employment and occupation based on grounds of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status, or HIV status. The government did not effectively enforce the law. The World Bank's December 2012 Kenya Economic Update, *Kenya at Work: Energizing the Economy and Creating Jobs*, stated that "pervasive discrimination stacks the deck against the poor and women, threatening to exacerbate inequalities over time." According to the report, modern sector wage jobs were increasing by an estimated 50,000 per year, while the working age population was increasing by approximately 800,000 per year. The report asserted that many job seekers found "nepotism, tribalism, demands for bribes, and sexual harassment are major barriers to obtaining a job."

Gender-based discrimination in employment and occupation occurred. The average monthly income of women was approximately two-thirds that of men. Women had difficulty moving into nontraditional fields, were promoted more

slowly, and were more likely to be dismissed. According to a World Bank report, both men and women reported sexual harassment in job recruitment, but it was more commonly reported by women. A number of women said they had given up looking for a job because of repeated experiences with sexual harassment. Even if women tried to establish their own informal business, they were still subject to discrimination and harassment. One study of women street vendors in Nairobi found that harassment was the main mode of interaction between street vendors and authorities. The study noted that demands for bribes by police--amounting to 3-8 percent of income--as well as sexual abuse were common.

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

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

Regulation of wages is part of the Labor Institutions Act, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category. The minimum for a general laborer was 9,780 shillings (\$109.50) per month, for machine operators between 11,085 shillings (\$124.15) and 15,064 shillings (\$168.70) per month. The average minimum wage for skilled workers was 13,674 shillings (\$153.15) per month. The lowest agricultural minimum wage for unskilled employees was increased to 4,854 shillings (\$54.35) per month, excluding housing allowance. Agricultural workers were underpaid compared with other sectors. The ministry established a horticulture wages industry order to address issues affecting the floriculture sector. Employers frequently underpaid security guards and protective staff.

In many cases the increasing cost of living often far outpaced wage growth.

The law provides for equal pay for equal work.

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

The law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. The law specifically excludes agricultural workers from such limitations. An employee in the nonagricultural sector is entitled 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 law requires two weeks' paternity leave, three months' maternity leave with full pay, and compensation for both public and private employees for work-related injuries and diseases.

While employees in the public sector enjoyed the benefits of paternity/maternity leave and workplace compensation, those in the private sector did not fully enjoy such benefits. Many employers did not allow paternity leave, but most respected the maternity leave provisions of the law.

Workweek and overtime violations were also reported. Workers in some enterprises, particularly in EPZs and 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 wages, but employees worked long hours without compensation. Additionally, employers often did not provide nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment.

The law details environmental, health, and safety standards. Fines generally were too low to deter unsafe practices.

The labor ministry's Directorate of Occupational Health and Safety Services has the authority to inspect factories and work sites, except in the EPZs. (The law excludes EPZs from the Factory Act's provisions.) The directorate's health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Such notices can be appealed 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.

Labor inspections are required by law and are meant to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring compliance with labor laws. The low salaries and the lack of vehicles, fuel, and other resources made it very difficult for labor inspectors to do their work and left them vulnerable to bribes and other forms of corruption.

Inspection forms do not include persons with disabilities, and the ministry was addressing how to capture data affecting such workers. Employers in all sectors routinely bribed labor inspectors to prevent them from reporting infractions, especially in the area of child labor.

There continued to be widespread hazards, such as lack of basic safety equipment and emergency escape routes, in many companies. Violations of health and safety conditions were found routinely in EPZs and other sectors, such as small horticultural producers. According to the government, many of the largest factories had instituted health and safety committees by year's end. The Kenya Federation of Employers provided training and auditing of workplaces for health and safety practices.

There were no accurate government statistics on the number of persons employed in the informal economy. The government did not provide social protections for workers employed in the sector, but informal workers were organized into associations, cooperatives, and, in some cases, unions.

By law workers, including foreigners and immigrants, have the right to remove themselves from situations that endanger health or safety without jeopardy to their employment. The Ministry of Labor, Social Security, and Services 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.