

# KENYA 2021 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

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

The National Police Service maintains internal security and reports to the Ministry of Interior and Coordination of National Government. The National Intelligence Service collects intelligence both internally and externally and reports directly to the president. The Kenya Defense Forces report to the Ministry of Defense and are responsible for external security but have some domestic security responsibilities, including border security and supporting civilian organizations in the maintenance of order, including post disaster response. Civilian authorities at times did not maintain effective control over the security forces. There were credible reports that members of the security forces committed numerous abuses.

Significant human rights issues included credible reports of: unlawful or arbitrary killings, including extrajudicial killings by the government or on behalf of the government and by the terrorist group al-Shabaab; forced disappearances by the government or on behalf of the government and by al-Shabaab; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary

interference with privacy; restrictions on free expression and media, including violence or threats of violence against journalists and censorship; substantial interference with the freedom of peaceful assembly and freedom of association, including harassment of nongovernmental organizations and activists; serious government corruption; lack of investigation of and accountability for gender-based violence; and the existence and use of laws criminalizing consensual same-sex sexual conduct between adults.

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

Al-Shabaab staged deadly attacks on isolated communities along the border with Somalia, targeting both security forces and civilians. The government continued to prioritize investigations and prosecutions of terrorist activities. Human rights groups alleged security forces committed abuses, including extrajudicial killings, while conducting counterterrorism operations.

## **Section 1. Respect for the Integrity of the Person**

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

There were numerous reports that the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. Between July 2020 and June 30, the Independent Policing Oversight Authority (IPOA) received 188 complaints regarding deaths resulting from police actions or inactions, compared with 161 in the prior year (see section 5). The Missing Voices website, founded by a group of nongovernmental organizations (NGOs) to track police killings and disappearances, documented 168 cases of

killings and 33 suspected enforced disappearances during the year.

Some groups alleged authorities significantly underestimated the number of extrajudicial killings by security forces, including due to underreporting of such killings in informal settlements, particularly in dense urban areas. Media reports and NGOs attributed many human rights abuses to counterterrorism operations in Nairobi and the northeast counties of Mandera, Garissa, and Wajir bordering Somalia, as well as along the coast. Human rights groups reported these abuses targeted Muslims, especially ethnic Somalis. During the year the NGO HAKI Africa and its partners alleged suspected security force members killed 18 persons, including many ethnic Somalis, in the coastal region. HAKI reported extremists and criminal groups killed six individuals in the six coastal counties. In the Nairobi metropolitan area, HAKI alleged police killed 19 persons.

The Police Reforms Working Group, a collection of NGOs, called on the government to investigate the April 29 killing of a young man known as Collins, who lived in Nairobi's Marathe informal settlement. NGOs claimed a police officer killed Collins because he was a witness to a separate extrajudicial killing.

The Kenya National Commission on Human Rights investigated a May incident in which prison guards beat to death a prisoner. Police investigated the killing, and prison officials involved were charged with murder. Other prisoners who witnessed the killing claimed they were intimidated not to testify. The commission also investigated these allegations and successfully advocated for the witnesses' transfer to another prison. As of November the original murder case was pending in court.

Media reported police killed 38-year-old John Kiiru, who was out past curfew on August 18 in Nairobi's Kayole neighborhood. Police reportedly shot teargas to disperse protests that broke out the next day in response to the killing. IPOA was investigating Kiiru's death.

In March 2020 the government began enforcing a nationwide dusk-to-dawn curfew and other measures to curb the spread of COVID-19. The government lifted the curfew in October. Media and human rights groups reported police used excessive and arbitrary force to enforce these measures, which led to deaths and injuries. As

of October 4, IPOA stated it received 103 complaints of police misconduct while enforcing the curfew, involving 23 deaths and 80 injuries from shootings, assaults, and inhuman treatment since the start of the pandemic. Through September 23, the NGO Independent Medico-Legal Unit reported 17 cases of police brutality related to alleged violations of pandemic mitigation protocols. For example, on August 1, police officers in Embu County allegedly killed two brothers for reportedly violating curfew. IPOA launched an investigation on August 4 and recommended murder charges against six police officers. As of year's end, the case remained in court. Separately, police officer Duncan Ndiema Ndie continued to face a murder charge in the death of 13-year-old Yassin Moyo, who was shot and killed on the balcony of his family's home in March 2020. As of year's end, this case also was still in court. Between January and August, the Social Justice Centres Working Group recorded 20 deaths in informal settlements from shootings, beatings, and other violence related to enforcement of COVID-19 measures.

Al-Shabaab terrorists continued to conduct deadly attacks in areas close to the border with Somalia, targeting both security forces and civilians. On May 3, two government contractors working on a border security project died when their vehicle hit an improvised explosive device planted by al-Shabaab extremists in Lamu County. Al-Shabaab militants attacked two cell phone towers on May 12 in Mandera and Wajir Counties, killing three police reservists.

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

## **b. Disappearance**

Observers and NGOs alleged members of the security forces and extremist groups were culpable of forced disappearances. Human rights groups noted many unlawful killings first materialized as enforced disappearances. The Social Justice Centres Working Group reported that in early April 2020 an activist from Kiamaiko Social Justice Centre and two companions disappeared. Their car was later found abandoned, but authorities found no trace of the men, and a criminal investigation remained pending. HAKI alleged security forces conducted 13 enforced disappearances in the coastal region and four in the Nairobi metropolitan area from January to August. In September four unidentified men reportedly

abducted Abdiwahab Sheikh Abdusamad, a well-known ethnic Somali scholar, in downtown Nairobi during daylight hours. NGOs expressed concern he had been taken by security forces. Abdiwahab was reunited with his family two weeks later.

In August, NGOs again commemorated the International Day of Victims of Enforced Disappearances and called on the government to enact a comprehensive law on enforced disappearances and investigate disappearances allegedly committed by security force members.

Media also reported on families on the coast and in northeastern counties searching for relatives who disappeared following arrest and of authorities holding individuals incommunicado for interrogation for several weeks or longer (see section 1.d.). HAKI reported authorities in Garissa County found 11 unidentified bodies in the Tana River from June to September. HAKI confirmed that some of the bodies had signs of torture, including hands tied with rope and large stones tied to the bodies.

Al-Shabaab and other extremist groups reportedly continued to abduct civilians in areas bordering Somalia. In August al-Shabaab militants abducted a local government official in Mandera County, whose whereabouts were unknown.

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

The law includes provisions to apply articles of the constitution, including freedom from torture and cruel, inhuman, or degrading treatment or punishment; respect and protection of human dignity; and freedom and security of the person. The law brings all state agencies and officials under one rather than multiple legislative mandates. Additionally, the law provides protections to vulnerable witnesses and officials who refuse to obey illegal orders that would lead to torture. The law also provides a basis to prosecute torture but was rarely used. The government had not instituted the regulations required to implement fully the law's provisions.

NGOs continued to receive reports of torture and other inhuman or degrading treatment by government forces. As of December 21, the Independent Medico-Legal Unit documented 109 cases of torture and other inhuman treatment allegedly

perpetrated by police during the year.

Police and prison officials reportedly used torture and violence during interrogations as well as to punish pretrial detainees and convicted prisoners. According to human rights NGOs, physical battery, bondage in painful positions, and electric shock were the most common methods used by police. A range of human rights organizations and media reported police committed indiscriminate violence with impunity.

Police used excessive force in some cases when making arrests. For example, there were numerous press and NGO reports of police brutality against protesters and unarmed citizens (see sections 2 and 5), particularly related to the enforcement of COVID-19 public health measures.

The Social Justice Centres Working Group reported police violence was especially prevalent in informal settlements. The most prevalent form of violence was beatings to disperse traders and other persons in markets after curfew. Monitors also documented incidents involving use of live ammunition, tear gas, sexual violence, and property damage.

In July 2020 four police officers assaulted Nairobi Member of County Assembly Patricia Mutheu at Nairobi's City Hall. Video of the incident received significant coverage in traditional and social media. IPOA investigated the incident and forwarded recommendations to the Office of the Director of Public Prosecution (ODPP), which by year's end had not announced whether it would charge the officers involved.

Impunity remained a serious problem. Authorities investigated and prosecuted several police officers for committing killings, which resulted in one new murder conviction during the year. Four additional police officers were convicted of manslaughter and sexual assault. In February the Gatundu Law Courts sentenced Constable Paul Kipkoech Rotich to 40 years in prison for sexual offenses against a minor. In February the Busia Law Courts sentenced Constable James Kinyua to 10 years' imprisonment for raping a high school student. In June the Garissa High Court convicted Officers Dennis Langat and Kennedy Okuli of manslaughter in the death of a woman whose son was accused of possessing and selling marijuana. As

of November, Langat and Okuli were awaiting sentencing. In July the Naivasha High Court sentenced Constable Evans Maliachi to 20 years in prison for the 2016 murder of a fisherman in Naivasha.

Since its inception in 2012, IPOA has investigated 887 deaths allegedly caused by police. These investigations have led to nine murder convictions. Additionally, IPOA conducted investigations that led to four additional convictions for crimes such as attempted murder and rape, for a total of 13 police officer convictions since 2012.

Human rights groups also noted the government failed to provide compensation and redress to families of victims. In September 2020 several human rights groups filed a suit against the government on behalf of victims of police brutality, including Yassin Moyo, to seek compensation for deaths and injuries resulting from police abuses during the enforcement of COVID-19 measures. The petition, which remained pending in court, also called on the government to implement laws intended to address human rights violations and protect victims.

Victims of police abuse may file complaints at regional police stations, police headquarters through the Internal Affairs Unit and its hotline, and through the IPOA website and hotline (see section 5). IPOA investigated allegations of excessive force that led to serious injuries, but few led to prosecutions. Police officials at times resisted investigations and detained some human rights activists who publicly registered complaints against government abuses. Authorities sometimes attributed the failure to investigate a case of police corruption or violence, including unlawful killings, to the failure of victims to file official complaints. Human rights activists reported that at times police officers in charge of taking complaints at the local level were the same ones who committed abuses. Sometimes police turned away victims who sought to file complaints at police stations where alleged police misconduct originated, directing them instead to other area stations. This created a deterrent effect on reporting complaints against police. Human rights NGOs reported police used disciplinary transfers of officers to hide their identities and frustrate investigations into their alleged crimes. Many media and civil society investigations into police abuse ended after authorities transferred officers, and police failed to provide any information about their

identities or whereabouts.

The National Police Service continued efforts launched in August 2020 to digitize records held at police stations on incidents and complaints. Government officials stated one of the aims of the program was to reduce opportunities for police to alter or delete records and increase accountability.

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

Human rights organizations reported prison, detention center, and police station conditions were harsh due to overcrowding, food and water shortages, and inadequate sanitary conditions and medical care.

**Physical Conditions:** In February the National Council on the Administration of Justice (NCAJ) reported the average daily prisoner population for 2019-20 was 41,500, of which more than 15,000 were pretrial detainees. The NCAJ reported authorities had released approximately 14,000 prisoners since the beginning of the COVID-19 pandemic to reduce overcrowding. Authorities also continued a prison decongestion program that entailed releasing petty offenders and encouraging the judiciary to increase use of a community service program in its sentencing. Although several new prisons were constructed since 2012, the average prisoner population remained nearly 200 percent of capacity, including a large population of pretrial detainees; some prisons held up to 400 percent of capacity. Six new women's prisons were added since 2018 to ease congestion in facilities for women.

During the year the judiciary took steps to address overcrowding by developing alternatives to pretrial detention and promoting sentence reduction, including through the expanded use of plea bargaining.

Authorities generally separated minors from adults except during the initial detention period at police stations, when authorities often held male and female adults and minors in a single cell. Several counties lacked adequate facilities to hold minors and women apart from men in courts and police stations. According to IPOA, 73 percent of police facilities had separate cells for women, 18 percent had separate cells for female juveniles, and 41 percent had separate cells for male juveniles. IPOA reported some police facilities used offices and corridors as



holding places for minors and that some facilities had converted cells into storage and office space due to space constraints. According to the prison commissioner, the Prisons Service included four correction facilities for minors. Prison officials reported that, because there were few correction facilities for minors, authorities often had to transport them long distances to serve their sentences, spending nights at police stations under varying conditions along the way.

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

Prisoners generally received three meals a day, but portions were inadequate. Access to water improved slightly overall, although provision of drinking water declined at some facilities. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks.

In September the Ministry of Interior began mass COVID-19 vaccination of the prison population and staff to facilitate resumption of family visitations and in-person trials for pretrial detainees. The prison commissioner reported, however, the prison system continued to face serious health and welfare problems due to communicable diseases such as tuberculosis. NGOs reported that women inmates sometimes performed unpaid labor, including cooking, laundry, and cleaning.

**Administration:** The Kenya National Commission on Human Rights reported improved access to prisons and detention facilities to monitor human rights standards. The Commission on the Administration of Justice serves as ombudsman over government administration of prisons. It receives confidential correspondence from inmates and recommends remedies to address their concerns, including those pertaining to prison living conditions and administration. Many government-designated human rights officers lacked necessary training, and some prisons did not have a human rights officer.

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. NGOs reported prisoners had reasonable access to legal counsel and other official visitors,

although there was insufficient space in many prisons and jails to meet with visitors in private and conduct confidential conversations.

**Independent Monitoring:** The government permitted prison visits by independent nongovernmental observers and foreign diplomats.

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

The law prohibits arrest or detention without a court order unless there are reasonable grounds for believing a suspect has committed or is about to commit a criminal offense. Police, however, arrested and detained persons arbitrarily, accused them of a crime to mask underlying police abuses, or accused them of more severe crimes than they had committed. For example, legal rights NGOs and prison officials reported overuse of the charge of “robbery with violence” that may carry a life sentence, even when violence or threats of violence were insignificant. Some petty offenders consequently received disproportionately heavy sentences.

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

NGOs reported arbitrary arrests and detention of activists, journalists, and bloggers during the year. The Defenders Coalition said it had provided support, including legal representation and bail, to 79 activists who had been arrested or detained through September. Most activists were released within short periods, usually less than 24 hours, and in most cases prosecutors either declined to press charges or courts dismissed the cases. The NGO Article 19 recorded 51 attacks against journalists, including online communicators, between May 2020 and April.

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

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

to execute a legal arrest warrant.

The constitution's bill of rights provides significant legal protections, including provisions requiring arrested persons to be arraigned, charged, informed of the reason for continuing their detention, or released within 24 hours of their arrest as well as provisions requiring the issuance of a writ of habeas corpus to allow a court to determine the lawfulness of detention. In many cases, however, authorities did not follow the prescribed time limits. While authorities in many cases released detainees held longer than the prescribed period, some cases did not result in an acquittal, and authorities provided no compensation for time served in pretrial detention.

The constitution establishes the right of suspects to bail unless there are compelling reasons militating against release. There is a functioning bail system, and all suspects, including those accused of capital offenses, are eligible for bail. Many suspects remained in jail for months pending trial because of their inability to post bail. Due to overcrowding in prisons, courts rarely denied bail to individuals who could pay it, even when the circumstances warranted denial. For example, NGOs that worked with survivors of sexual assault complained authorities granted bail to suspects even in cases in which there was evidence they posed a continuing threat to survivors.

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

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

The Social Justice Centres Working Group reported arrests continued in informal settlements during the pandemic for noncompliance with the curfew or failure to

wear masks. Individuals were asked to pay cash bail or a bribe to be released. The NCAJ directed that, during the COVID-19 period, petty offenders should not be held at police stations for more than 24 hours and should be released either on cash bail or on free police bond.

**Pretrial Detention:** Lengthy pretrial detention was a serious problem and contributed significantly to prison overcrowding. In 2020 approximately 40 percent of total inmates were pretrial detainees. Authorities held some defendants in pretrial detention longer than the statutory maximum term of imprisonment for the crime for which they were charged. The government claimed the average time spent in pretrial detention was 14 days, but there were reports many detainees spent two to three years in prison before their trials were completed. Police from the arresting locale were responsible for bringing detainees from prison to court when hearings are scheduled but often failed to do so, forcing detainees to wait for the next hearing of their case (see section 1.e.).

During the year courts procured new equipment to increase access to virtual proceedings. In-person hearings and trials resumed partially, despite many court facilities having limited capacity to fully comply with the government's COVID-19 restrictions. In March, for example, Milimani Court's Family Division closed temporarily following an outbreak of COVID-19 among staff members.

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

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

The constitution provides for an independent judiciary, although the government did not always respect judicial impartiality. The government sometimes undermined the independence of the judiciary and at times did not respect court orders, but the outcomes of trials did not appear to be predetermined.

The Judicial Service Commission, a constitutionally mandated oversight body intended to insulate the judiciary from political pressure, provides the president with a list of nominees for judicial appointment. The president selects one of the

nominees for parliamentary approval. The president appoints the chief justice and appellate and High Court judges through this process. The commission publicly reviews judicial appointees. In May the president appointed 34 judges but declined to appoint six of the commission's nominees. The chief justice called on the president to appoint the remaining six nominees.

In November the judiciary issued the *State of the Judiciary and the Administration of Justice Report for 2020-2021*, which noted that the number of pending cases continued to grow, expanding by 5 percent compared with the prior year to more than 649,000 cases, primarily due to the adverse effects of the pandemic on court operations. The number of severely backlogged cases pending for more than five years fell from 35,359 to 34,648, continuing a downward trend.

The constitution gives the judiciary authority to review appointments and decisions made by other branches of government. Parliament generally adhered to judicial decisions, with some exceptions. In September 2020 the chief justice advised the president to dissolve parliament for its failure to adhere to four prior court orders directing the legislature to implement constitutional provisions mandating that no more than two-thirds of elected and appointed positions be persons of the same gender. A court suspended the chief justice's advice pending a hearing by a judicial panel, and the hearing remained pending at year's end.

Witness harassment and fear of retaliation severely inhibited the investigation and prosecution of major crimes. For example, in March an official from the National Land Commission was killed days before she was scheduled to testify in a fraud case involving 18 government officials, including a member of parliament and a former principal secretary. In May authorities charged one person not directly connected to the fraud case with murder. The Witness Protection Agency was underfunded, and doubts about its independence were widespread. Nevertheless, the Witness Protection Agency continued to work closely with IPOA and other investigative bodies to provide security for witnesses and victims.

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

## **Trial Procedures**

The law provides for the right to a fair and public trial, although vulnerable individuals may give some testimony in closed session; the independent judiciary generally enforced this right. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence in their defense. The law also provides defendants the right to receive prompt and detailed information on the charges against them, with free interpretation if necessary, including during trials; to be tried without undue delay; to have access to government-held evidence; to be represented by an attorney of their choice or to have one appointed at the state's expense if substantial injustice would otherwise result; and not to be compelled to testify or confess guilt, and if convicted, to appeal to or apply for review by a higher court. Authorities generally respected these rights, although they did not always promptly inform persons of the charges against them.

The NCAJ and the ODPP continued efforts to disseminate speedy case resolution techniques to reduce case backlog and ease prison congestion. In July 2020 the ODPP published decision to charge guidelines, which encourage use of plea bargaining and diversion to resolve cases. It also continued to educate prosecutors, judges, court user committees, civil society members, and others on the role of speedy resolution mechanisms in enhancing efficiency. In July the ODPP conducted decision to charge training for 54 prosecutors in the Coast region.

Authorities generally respected a defendant's right to consult with an attorney in a timely manner. Defendants generally had adequate time to prepare a defense. The government and courts generally respected these rights. There was no government-sponsored public defenders service, and courts continued to try most defendants without representation because they could not afford legal counsel.

By government order the judiciary continued to suspend all but urgent operations during the COVID-19 pandemic. In June 2020 the judiciary commenced virtual court sessions. NGOs, including the Legal Resources Foundation and Federation of Women Lawyers-Kenya, provided computers and internet connectivity to enable remandees to connect with courts virtually. Most litigants, however, did not have the ability to participate in the virtual court sessions, and many cases could

not proceed to trial because witnesses lacked the ability to connect with the courts virtually.

The National Legal Aid Service facilitates access to justice, with the goal of providing pro bono services for indigent defendants who cannot afford legal representation. Other pro bono legal aid was available only in major cities where some human rights organizations, notably the NGO Federation of Women Lawyers-Kenya provided services. The Prisons Service collaborated with various paralegal organizations such as Kituo Cha Sheria and Legal Resources Foundation Trust to establish justice centers within prisons to facilitate delivery of legal aid. Pretrial detainees also received instructions on how to self-represent in court. Government-established special committees, which included paralegals and prison officials, also served to increase prisoners' access to the judicial system. NGOs noted no single system provides "primary justice" to prisoners and detainees, who instead relied on a patchwork of services largely provided by NGOs.

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

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

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

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

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

According to human rights NGOs, bribes, extortion, and political considerations

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

### **Property Seizure and Restitution**

There is no established system for restitution or compensation for those declared to be squatters and ordered to vacate land. Both private and communal clashes were common because of land disputes. The government used forced eviction and demolition to regain what it claimed was illegally occupied public land. Reports of evictions continued despite a May 2020 government declaration of a moratorium on forced evictions during the COVID-19 pandemic.

In February the governmental Kenya Railways Corporation forcefully evicted 3,500 members of the Nubian community in Kisumu. One child reportedly died after being trapped under the rubble of razed homes. Human rights organizations claimed the evictions were carried out in violation of a presidential moratorium on evictions during the COVID-19 pandemic. In August the Environment and Land Court ruled the eviction was illegal and that victims could file civil suit against the Kenya Railways Corporation for compensation.

In April approximately 5,000 persons in Embu were forcefully evicted from a piece of land allegedly owned by the governmental Tana and Athi Rivers Development Authority. Police arrested one member of parliament, who was protesting the evictions, and nine journalists covering the incident.

In August the Environment and Land Court barred the National Land Commission from evicting 1,000 squatters from Nairobi's Mathare Mabatini informal settlement. The court ruled the commission's commercial development plan was unlawful and violated the government's policy of upgrading informal settlements.

In 2017 the African Union Court on Human and Peoples' Rights ruled in favor of the indigenous Ogiek community evicted in 2009 from the Mau Forest. The court ruled government actions had violated seven articles of the African Charter on



Human and Peoples' Rights, to which the country is a signatory. The government-appointed task force established to implement the decision provided its final report to the cabinet secretary of the Ministry of the Environment and Forestry in January 2020 but did not release the report publicly. The government task force appointed in 2020 to review the Mau Forest boundaries did not make substantive progress during the year.

In March the Sengwer community appealed a 2020 ruling that dismissed petitions filed in 2013 and 2018 protesting evictions from Embobut Forest in Elgeyo Marakwet County. The court halted further evictions. In October the East African Court of Justice began hearing a case filed in 2018 against the government by victims of unlawful evictions from the Mau Forest seeking compensation.

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

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

Human rights organizations reported police officers raided homes in informal settlements in Nairobi and communities in the coast region in search of suspected terrorists and weapons. The organizations documented numerous cases in which plainclothes police officers searched residences without a warrant, and household goods were confiscated when residents were unable to provide receipts of purchase on demand. Rights groups reported police in numerous locations broke into homes and businesses and extorted money from residents while enforcing measures to control the pandemic. The government continued efforts to implement the law that requires citizens to register their personal details, including biometrics, to receive a card with a unique identifier number required to access public services, widely known as a Huduma Namba card. By September the government had created 10.5

million cards, but only 7.3 million had been collected by citizens. In October the High Court declared the Huduma Namba system invalid because the government failed to conduct a data impact assessment prior to rolling out the new cards. Legal activists had challenged the Huduma Namba system on the grounds it lacked sufficient data protection safeguards.

## **Section 2. Respect for Civil Liberties**

### **a. Freedom of Expression, Including for Members of the Press and Other Media**

The law provides for freedom of expression, including for members of the press and other media, but the government sometimes restricted this right. Government failure to investigate or prosecute attacks on human rights defenders and peaceful protesters led to de facto restrictions on freedom of assembly and association.

**Freedom of Expression:** In 2017 a branch of the High Court declared unconstitutional the section of the penal code that criminalized “undermining the authority of a public officer,” ruling the provision violated the fundamental right of freedom of expression. Other provisions of the constitution and the law prohibiting hate speech and incitement to violence remained in force. The Judicial Service Commission, however, reported many cases were withdrawn due to failure of witnesses to appear in court or to facilitate mediation. Cases that did proceed often failed to meet evidentiary requirements.

**Freedom of Expression for Members of the Press and Other Media, Including Online Media:** The government occasionally interpreted laws to restrict freedom of expression for members of the press, and officials occasionally accused international media of publishing stories and engaging in activities that could incite violence. Two laws give the government oversight of media by creating a complaints tribunal with expansive authority, including the power to revoke journalists’ credentials and levy debilitating fines. The government was media’s largest source of advertising revenue and regularly used this as a lever to influence media owners. Most news media continued to cover a wide variety of political and social issues, and most newspapers were free to publish opinion pieces criticizing

the government.

Sixteen other laws restrict media operations and place restrictions on freedom of expression for members of the press. As of year's end, the government had not issued regulations required to implement fully the 2016 Access to Information Act, which promotes government transparency, and civil society organizations reported government departments failed in some instances to disclose information.

**Violence and Harassment:** Journalists alleged security forces or supporters of politicians at the national and county levels sometimes harassed and physically intimidated or assaulted them. The government at times failed to investigate allegations of harassment, threats, and physical attacks on members of media or failed to provide victims access to information about their cases. The NGO Article 19 Eastern Africa reported there were 51 attacks against journalists between May 2020 and April, including nine female journalists, compared with 59 such incidents during the prior year. Attacks included threats, intimidation, online and offline harassment, invasion of media houses, and physical assaults resulting in some journalists seeking self-exile or engaging in self-censorship.

In March journalists Regina Wangui, Kigotho John Mwangi, Evans Asiba, and Elijah Cherutich sustained serious injuries from attacks by supporters of the United Democratic Alliance party while covering voting in a by-election at Milimani Primary School in Nakuru County. One of the victims of the incident told Article 19 Eastern Africa that despite filing a report at the Nakuru central police station, there was no evidence of an investigation into the attacks, and that police were unable to provide information on the status of the case.

In April police assaulted nine journalists in Embu County who were covering a story regarding the forceful eviction by police officers of families from contested land allegedly belonging to the Tana and Athi River Development Authority (TARDA). In May police again beat and arrested three journalists reporting on a demonstration by residents who opposed a land demarcation claimed by TARDA.

In April police officers beat and arrested Milele FM journalist David Omurunga for violating the COVID-19 curfew while walking home after work, although he presented his national identification card and official press card.

**Censorship or Content Restrictions:** Mainstream media were generally independent, but there were reports by journalists that government officials pressured them to avoid certain topics and stories and intimidated them if officials judged they had already published or broadcast stories too critical of the government. There were also reports journalists were fired due to pressure from government officials seeking to sway editorial content. This caused some journalists to avoid covering issues or writing stories they believed their editors would reject due to direct or indirect government pressure. Journalists practiced self-censorship to avoid conflict with the government on sensitive subjects, such as the first family or assets owned by the Kenyatta family.

In April the director of criminal investigations (DCI) issued a summons to Royal Media Services journalists in response to the broadcast of a television expose on the sale and rental of firearms and other equipment from police officers. The DCI accused Royal Media Services of “abuse of media freedom” and called the program, which was shown on April 18, “a malicious attempt to discredit the National Police Service.”

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

In August the cabinet secretary for the Ministry of Interior and Coordination of National Government threatened to sue political strategist Dennis Itumbi for libel stemming from a series of tweets in which Itumbi accused the cabinet secretary of stealing land. The cabinet secretary threatened legal action if Itumbi did not issue an unconditional apology and retract the tweets.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. Authorities, however, monitored websites for violations of hate speech laws. According to the Freedom on the Net report, authorities used laws on hate speech and defamation to prosecute online critics of the government. In May lawmakers in the National Assembly

debated proposed amendments to the Computer Misuse and Cybercrime Act, which aimed to ban online pornography by allowing the government to render specific websites inaccessible. NGOs, including the Bloggers Association of Kenya, worried the proposed amendments could limit the rights to freedom of expression and access to information under the constitution and asked the bill's sponsor to withdraw it. The amendment bill was still under consideration in parliament as of year's end.

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

Privacy International reported the National Intelligence Service had direct access to the country's telecommunications networks that allows for the interception of communications data. Furthermore, Privacy International reported the National Police Service also had surveillance powers. Freedom House additionally reported authorities used various types of surveillance technologies to monitor citizens.

The government sought to protect personal information by regulating data processing, strengthening the right to privacy of individuals, establishing an Office of the Data Commissioner, and codifying data processors and controllers' legal responsibilities.

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

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

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

Although the constitution and law provide for the freedoms of assembly and association, the government sometimes restricted these rights.

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

The constitution and law provide for freedom of assembly, but the government sometimes restricted this right. Police routinely denied requests for meetings filed by human rights activists, and authorities dispersed persons attending meetings that

had not been prohibited beforehand. Organizers must notify local police in advance of public meetings, which may proceed unless police notify organizers otherwise. By law authorities may prohibit gatherings only if there is another previously scheduled meeting at the same time and venue or if there is a perceived specific security threat. In March 2020 the government began enforcing government directives to stem the spread of COVID-19, including a curfew and restrictions on public gatherings.

Police used excessive force at times to disperse demonstrators. The local press reported on multiple occasions that police used tear gas to disperse demonstrators or crowds of various types. In May police used tear gas against protesters demonstrating against police brutality and COVID-19 lockdown measures. Police arrested at least one protester and reportedly shot a journalist twice with teargas cannisters.

The NGO Defenders Coalition recorded 31 arrests of human rights defenders through September, mostly for alleged violations of COVID-19 restrictions.

### **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected this right, but there were reports authorities arbitrarily denied this right in some cases. NGOs continued to express concerns regarding reprisals faced by numerous human rights defenders and communities. Reprisals reportedly took the form of intimidation, termination of employment, beatings, and arrests and threats of malicious prosecution. Human rights groups noted activists continued to face increased attacks in a climate of impunity (see section 5).

There were reports of restrictions on workers' freedom of association, including in the agribusiness and public sectors. Trade unionists reported workers were dismissed for joining trade unions or for demanding respect for their labor rights (see section 7.a.).

The law requires every public association be either registered or exempted from registration by the registrar of societies. The law requires NGOs dedicated to advocacy, public benefit, or the promotion of charity or research to register with

the NGO Coordination Board. It also requires organizations employing foreign staff to seek authorization from the NGO Coordination Board before applying for a work permit.

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

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

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

### **d. Freedom of Movement and the Right to Leave the Country**

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

**In-country Movement:** Refugees and asylum seekers were required to register with the Interior Ministry's Refugee Affairs Secretariat (RAS), and the law reiterates strict implementation of the encampment policy. The RAS is responsible for refugee management in the country and continued to enforce the encampment policy requiring all refugees and asylum seekers to reside in the designated refugee camps, despite a 2017 Court of Appeal decision to the contrary.

Typically, the RAS issued newly arrived asylum seekers registration documents and movement passes requiring them to report to the camps. The government, however, declined to provide registration services to asylum seekers from Somalia, leaving an estimated 19,000 Somali asylum seekers vulnerable to harassment from law enforcement officials due to irregular immigration status in the country.

Refugees needing to move outside the designated areas (Kakuma camp, Kalobeyei settlement, and the Dadaab refugee camp complex) had to obtain a temporary movement pass issued by the RAS. Stringent vetting requirements and long processing times delayed the issuance of temporary movement passes in the

camps.

Given the government's COVID-19 prevention protocols for staff, the RAS continued significantly reduced client-facing activity in its Nairobi office, including reducing the registration of new arrivals, which further influenced refugee movement. The Nairobi RAS office also moved locations and underwent a period of closure for several weeks during the transition, further restricting refugees' access to government officials responsible for providing documents and other services to refugees.

The law allows exemption categories for specific groups to live outside designated camp areas, including in protection and medical cases. The government granted limited travel permission to refugees to receive specialized medical care outside the camps, and to refugees enrolled in public schools. It made exceptions to the encampment policy for extremely vulnerable groups in need of protection. The government continued to provide in-country movement and exit permits for refugee interviews and departures for third-country resettlement, including during the COVID-19 pandemic.

Although there were no restrictions on movements of internally displaced persons (IDPs), stateless persons in the country faced restrictions on their movement (see section 2.g.).

### **e. Status and Treatment of Internally Displaced Persons**

The NGO Internal Displacement Monitoring Centre estimated there were 394,000 IDPs in the country and 3,900 new displacements at the end of 2020.

Communities were sometimes displaced due to interethnic violence and conflict, as well as natural disasters such as flooding.

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

Water and pasture scarcity exacerbated communal conflict and left an unknown



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

## **f. Protection of Refugees**

The national government's relationship with the Office of the UN High Commissioner for Refugees (UNHCR) worsened during the year, making it more difficult for UNHCR and other humanitarian organizations to provide protection and assistance to IDPs, refugees, asylum seekers, and other persons of concern. In March the government called on UNHCR to close all refugee camps in the country by June 30, 2022, citing national security concerns. The government requested UNHCR develop a plan of action to promote large-scale refugee repatriation within 114 days of its call to close all camps. The government previously called for the closure of Dadaab camp, but the High Court blocked the plan, determining it violated the principle of nonrefoulement and refugees' constitutional right to fair administration action.

In April the High Court issued a temporary stay against the government's call for camp closures but did not rule on the legality of the plan. The plan put into jeopardy the protection of approximately 440,000 camp-based refugees living in the country. In May the government and UNHCR launched a National Joint Commission to discuss the future of camp-based refugees in the country. The government said it would respect its international obligations but declined to commit to providing protections for refugees in the country or future new asylum seekers after the government-declared deadline of June 30, 2022.

The government issued a plan to implement the Comprehensive Refugee Response Framework (CRRF) in February, which would enhance refugee self-reliance, but the March announcement about camp closures stalled CRRF implementation indefinitely. In August President Kenyatta declined to assent to the National

Assembly-approved Refugee Bill, sending it back to parliament for further revision. President Kenyatta subsequently signed the bill into law on November 17 following amendments by the National Assembly, which could help some refugees gain greater access to employment opportunities and improved freedom of movement.

**Access to Asylum:** The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to camp-based refugees. The government generally coordinated with UNHCR to assist and protect refugees in the Dadaab and Kakuma refugee camps and urban areas. The government had yet to register nearly 19,000 refugees and asylum seekers estimated to reside in Dadaab. South Sudanese refugees received prima facie refugee status.

According to UNHCR, as of September 30, the country hosted 534,622 registered refugees and asylum seekers, including 230,137 in the Dadaab refugee camp complex, 177,126 in Kakuma camp, 43,787 in Kalobeyei settlement, and 83,572 in urban areas. Most refugees and asylum seekers were from Somalia (274,499), with others coming from South Sudan (135,771), the Democratic Republic of the Congo (30,576), Ethiopia (20,668), and Burundi (7,160). Most refugees arriving in Kakuma were from South Sudan, and the refugee population in Dadaab was 96 percent Somali. New arrivals also included individuals from Burundi, the Democratic Republic of the Congo, Ethiopia, and Uganda. The tripartite agreement on voluntary repatriation between Kenya, Somalia, and UNHCR expired in 2018, although the spirit of the agreement and coordination remained.

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

**Abuse of Migrants and Refugees:** Police abuse, including detention of asylum seekers and refugees, continued, often due to a lack of awareness and understanding of the rights afforded to those holding refugee or asylum-seeker documentation or those who entered the country and were apprehended before obtaining asylum seeker documents. Most detainees were released after a court appearance or intervention by local legal aid organizations such as the Refugee

Consortium of Kenya or Kituo Cha Sheria.

During the year the security situation in Dadaab remained precarious. There were no attacks on humanitarian workers and no detonations of improvised explosive devices within 15 miles of the refugee complex during the year. The security partnership between UNHCR and local police remained strong and led to improvements in camp security through community policing and neighborhood watch initiatives. UN security teams reported unspecified kidnapping threats against humanitarian workers during the year, but no humanitarians were attacked or abducted.

Gender-based violence against refugees and asylum seekers remained a problem, particularly for vulnerable populations, including women, children, and lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) refugees and asylum seekers. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, female genital mutilation/cutting (FGM/C), and early and forced marriage, particularly of Sudanese, South Sudanese, and Somali girls (see section 6, Women). Most urban refugees resided in informal settlements, where insecurity and gender-based violence were rampant. Although there was increased community engagement to reduce gender-based violence and strengthened partnerships, including with the local authorities, women in female-headed households, young girls separated from families due to conflict, and women and girls of lower social and economic status were most at risk. Girls and boys out of school were at risk of abuse, survival sex, and early marriage. Despite awareness programs in the camps, underreporting persisted due to community preference for *maslaha*, a traditional form of jurisprudence prevalent in the region, as an alternative dispute resolution mechanism; shortages of female law enforcement officers; limited awareness of what constitutes gender-based violence among vulnerable populations; and barriers to meeting the medical forensic requirements for trying alleged rape cases.

Refugees have equal access to justice and the courts under the law, although following the start of the COVID-19 pandemic, courts scaled down operations, prioritizing urgent cases and deferring nonurgent cases. Refugees were often unable to obtain legal services because of the prohibitive cost and their lack of

information on their rights and obligations, even prior to the COVID-19 pandemic. UNHCR, through its partners, continued to provide legal assistance and representation to refugees to increase their access to justice. The law specifically provides that refugees are eligible to receive legal aid services. The law, however, had not been fully operationalized.

Many refugees dealt with criminality in accordance with their own customary law and traditional practices, although some opted to go through the country's justice system. Other security problems in refugee camps included petty theft, banditry, and ethnic violence, according to UNHCR.

**Freedom of Movement:** Refugees' freedom of movement was significantly restricted due to the country's strict encampment policies as well as COVID-19 (see section 2.d.).

**Employment:** By law refugees are generally not permitted to work in the country. While the law allows recognized refugees to engage in any occupation, trade, business, or profession upon approval of applications for a Class M work permit, many barriers and red tape hindered refugees' ability to secure work permits. Only refugees with specialized skills or those who could invest were successful in obtaining a work permit from the Immigration Department.

**Access to Basic Services:** Despite the encampment policy, many refugees resided in urban areas, even though they lacked documentation authorizing them to do so. This affected their access to basic government services, including the National Hospital Insurance Fund, education, employment, business licenses, financial institutions, mobile phones, and related services. Additionally, they were vulnerable to arrest, police harassment, and extortion.

**Durable Solutions:** During the year UNHCR assisted 1,461 refugees with voluntary repatriation to their places of origin, including Ethiopia, Somalia, and Burundi. Insecurity and unfavorable conditions in countries of origin such as South Sudan and Somalia limited the desire among refugees for voluntary repatriation assistance.

## **g. Stateless Persons**

The constitution and law provide for the protection of stateless persons and for legal avenues for eligible stateless persons to apply for citizenship. UNHCR estimated 15,500 stateless persons were registered in the country; the actual number was unknown.

In July the government formally granted citizenship to 1,670 Shona and 1,300 individuals of Rwandan descent who were previously stateless.

Communities known to UNHCR as stateless include the Pemba in Kwale (approximately 7,000 persons) and persons of Burundian or Congolese descent; some descendants of slaves from Zambia and Malawi; the Galjeel, who were stripped of their nationality in 1989; and smaller groups at risk of statelessness due to their proximity to the country's border with Somalia and Ethiopia, including the Daasanach and returnees from Somalia (the Sakuye) residing in Isiolo. The Pare are a group who intermarried with Kenyans for many years who reside at the border with Tanzania but are at risk of statelessness since they do not hold marriage certificates or other identity documents. Children born in the country to British overseas citizens are stateless due to conflicting nationality laws in the country and in the United Kingdom, although the estimated affected population size was unknown.

The country's legislation provides protection, limited access to some basic services, and documentation to stateless persons and those at risk of statelessness. The constitution contains a progressive bill of rights and a revised chapter on citizenship, yet it does not include any safeguards to prevent statelessness at birth. The law provides a definition of a stateless person and opportunities for such a person as well as his or her descendants to be registered as citizens so long as the individual was a resident in the country at the time of its independence.

Stateless persons had limited legal protection, and many faced social exclusion. Others encountered travel restrictions and heightened vulnerability to sexual and gender-based violence, exploitation, forced displacement, and other abuses. UNHCR reported stateless persons faced restrictions on internal movement and limited access to basic services, property ownership, and registration of births

under the late birth registration procedures, marriages, and deaths. Inadequate documentation sometimes resulted in targeted harassment and extortion by officials and exploitation in the informal labor sector.

National registration policies require citizens age 18 and older to obtain national identification documents from the National Registration Bureau (NRB). Failure to do so is a crime. Groups with historical or ethnic ties to other countries faced higher burdens of proof in the registration process. During the participatory assessments UNHCR conducted in 2018 and 2019, stateless persons said they could not easily register their children at birth or access birth certificates because they lacked supporting documents. The lack of permanent NRB offices near refugee camps also made it more difficult for refugees to register births, leading to an increased risk of statelessness. UNHCR and NGO partners worked with the government during the year to facilitate regular missions to the camps by NRB officials to conduct birth registrations. A backlog of older cases remained, but all refugees became able to register births within six months.

Formal employment opportunities, access to financial services, and freedom of movement continued to be out of reach for stateless persons due to lack of national identity cards. Stateless persons without identity cards cannot access the National Hospital Insurance Fund, locking them out of access to subsidized health services, including maternity coverage.

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

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

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

**Recent Elections:** In August 2017 citizens voted in the second general election under the 2010 constitution, electing executive leadership and parliamentarians, county governors, and members of county assemblies. International and domestic observers, such as the Kenya Elections Observation Group, African Union Observer Mission, and Carter Center, judged the elections generally credible,

although some civil society groups raised concerns regarding irregularities. In the presidential election, Jubilee Party candidate Uhuru Kenyatta won with a margin significantly above that of runner-up candidate Raila Odinga of the National Super Alliance. The National Super Alliance challenged the results in a petition to the Supreme Court. In September 2017 the court ruled in the National Super Alliance's favor, annulling the presidential elections and citing the Independent Electoral and Boundaries Commission (IEBC) for irregularities in voter registration and technical problems with vote tallying and transmission. The court ordered a new election for president and deputy president, which was held on October 26, 2017.

On October 10, 2017, Odinga announced his withdrawal from the new election, asserting the IEBC had not taken sufficient steps to ensure a free and fair election. The October 26 vote was marred by low voter turnout in some areas and protests in some opposition strongholds. Human Rights Watch documented more than 100 persons badly injured and at least 33 killed by police using excessive force in response to protests following the August election, and the Independent Medico-Legal Unit reported another 13 deaths before, during, and after the October vote.

On October 30, 2017, the IEBC declared Kenyatta the winner of the new election. On November 20, 2017, the Supreme Court rejected petitions challenging the October 26 elections and upheld Kenyatta's victory. Odinga refused to accept Kenyatta's re-election and repeated his call for citizens' assemblies across the country to discuss constitutional revisions to restructure the government and the elections process. On January 30, 2018, elements of the opposition publicly swore Odinga in as "the People's President," and the government shut down major public media houses for several days to prevent them from covering the event.

Kenyatta and Odinga publicly reconciled in March 2018 and pledged to work together towards national unity. In May 2018 the president established the Building Bridges to Unity Advisory Taskforce as part of this pledge. The task force issued a report with proposed constitutional, legislative, and policy reforms, which led to passage of the Constitution of Kenya (Amendment) Bill 2020. Civil society organizations challenged the bill and the so-called Building Bridges Initiative's constitutionality in court. In August the Court of Appeal ruled the bill

and overall initiative were unconstitutional, in part because the court found the president lacks authority to initiate a popular initiative to amend the constitution.

**Political Parties and Political Participation:** To reduce voter fraud, the government used a biometric voter registration system, first employed in 2013. Possession of a national identity card or passport was a prerequisite for voter registration. In June some voters found their names on the membership lists of parties for which they had not registered, sparking concerns about voters' data privacy. In October the IEBC reduced a three-month-long voter registration drive to one month, reportedly due to a lack of funding. The IEBC aimed to register more than six million new voters, but at the conclusion of the drive on November 2 had registered approximately 1.4 million new voters.

The country's five largest ethnic groups, the Kikuyu, Kalenjin, Luhya, Luo, and Kamba, continued to hold most political positions. Civil society groups raised concerns regarding the underrepresentation of minority ethnic groups, including indigenous communities and women.

**Participation of Women and Members of Minority Groups:** No law limits participation of women or members of minority groups in the political process, and they did participate. Voting rates and measures of other types of participation in the political process by women and members of minority groups remained lower than those of nonminority men.

The constitution provides for parliamentary representation by women, youth, persons with disabilities, ethnic minorities, and marginalized communities. The constitution specifically states no gender should encumber more than two-thirds of elective and appointed offices. Parliament had not enacted legislation to implement this provision, despite four court orders to do so (see section 1.e.). As of year's end, men made up nearly the entire leadership of the National Assembly and the Senate, except for a female deputy speaker of the Senate. President Kenyatta appointed one additional woman to the cabinet in January, for a total of seven women in the cabinet.

Female leaders and advocacy groups continued to cite inadequate political support from their parties, particularly in the primaries; a lack of financial resources;



gender-based violence, including rape and sexual harassment; gender stereotyping; and patriarchal structures across society as significant barriers to women's participation in political processes.

The overall success rate of female candidates who ran for positions in the 2017 national elections was 16 percent, with 23 women elected and 52 women nominated to the 349-member National Assembly, and three women elected and 18 women nominated to the 67-member Senate. Women were elected to three of the 47 governorships, although there were only two female governors during the year. Compared with 2013, the number of women elected to office increased by almost 19 percent. The constitution provides for the representation in government of ethnic minorities, but civil society groups noted minorities remained underrepresented in local and national government. The constitution also calls for persons with disabilities to hold a minimum of 5 percent of seats in the Senate and National Assembly, but persons with disabilities composed only 3 percent of Senate and National Assembly members.

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

The law provides criminal penalties for official corruption. There were numerous reports of government corruption during the year. Officials frequently engaged in allegedly corrupt practices with impunity. Despite public progress in fighting corruption, the government continued to face hurdles in implementing relevant laws effectively. The slow processing of corruption cases was exacerbated by COVID-19 containment measures, with courts lacking sufficient technological capacity to hear cases remotely.

**Corruption:** The director of public prosecutions continued prosecutions of high-level cases involving six sitting county governors and dozens of national government and parastatal officials with ties to the ruling party and to the political opposition. A landmark ruling in 2019 bars county governors from accessing their offices until their corruption cases are concluded. Two governors were indicted and impeached by their county assemblies while their cases continued in the courts. The Ethics and Anti-Corruption Commission (EACC) also investigated

high-level procurement irregularities at the Kenya Medical Supplies Agency, a state agency with the sole mandate of procuring medications and equipment for government health centers. The investigations involved procurement of personal protective equipment at inflated costs and probed the alleged disappearance of personal protective equipment and other equipment donated to the country. These investigations and prosecutions continued at year's end. In September the Anti-Corruption Court convicted two high-profile defendants, a former cabinet secretary and a former director of the Kenya Medical Research Institute.

The public continued to perceive corruption as a severe problem at all levels of government. Transparency International's 2019 *Global Corruption Barometer – Africa* found 45 percent of respondents had paid a bribe, compared with 37 percent in the previous 2015 survey. Police and authorities issuing identification documents were cited the most for taking bribes. Corruption had increased according to 67 percent of respondents, and 71 percent believed the government was doing a poor job of combating corruption, unchanged from the results of Transparency's 2015 Corruption Barometer.

In 2019 President Kenyatta appointed a new chief executive officer of the EACC, who introduced a new approach to tackling corruption that prioritized high-impact cases, systems reviews, assets recovery, and public communication. Officials from agencies tasked with fighting corruption, including the EACC, the ODPP, and judiciary, were also subjects of corruption allegations.

The EACC has the legal mandate to investigate official corruption allegations, develop and enforce a code of ethics for public officials, and engage in public outreach on corruption. The EACC, however, lacks prosecutorial authority and must refer cases to the ODPP to initiate prosecutions. Disagreements between the ODPP and Directorate of Criminal Investigations (DCI) regarding which office can initiate investigations and deliver files to court resulted in the delayed prosecution of the Kenya Ports Authority managing director on corruption allegations. In June 2020 the Kenyan Constitutional Court declared the DCI did not have power or authority to institute criminal proceedings before a court of law without consent from the ODPP. Following that ruling, the ODPP issued decision to charge guidelines to assist prosecutors in charging decisions.

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

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

The judiciary and the National Police Service continued measures to reform the handling of traffic cases by police and courts, streamlining the management of traffic offenses to curb corruption. Despite this progress, no senior police official was convicted or jailed for corruption-related offenses during the year.

## **Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

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

their activities, and some reported threats and intimidation.

There were also reports that officials and police officers threatened activists who sought justice for police killings and other serious abuses. The intimidation included threats of arrest, warnings not to post information about police brutality, home and office raids, and confiscation of laptops and other equipment.

In July the government began the process of reviewing host country agreements for 115 international governmental organizations and nongovernmental organizations. Civil society activists expressed concern this process could be used to target organizations carrying out activities unaligned with government policy.

The Civil Society Reference Group condemned the July 15 killing of environmentalist Joanna Stutchbury at her home in Kiambu. According to the group's statement, Stutchbury was killed because of her efforts to prevent individuals from excising parts of the Kiambu forest and wetlands. The group described her killing as evidence of a hostile and shrinking environment for human rights defenders. The Senate launched an inquiry into her killing, and a law enforcement investigation continued at year's end.

In September the High Court ruled that four police officers and one civilian must stand trial for the 2016 triple homicide of International Justice Mission lawyer and investigator Willie Kimani, client Josphat Mwenda, and their driver Joseph Muiruri. The trial was underway at year's end.

The Kenya National Commission on Human Rights reported security agencies continued to deny it full access to case-specific information and facilities to conduct investigations of human rights abuses as the constitution permits. The commission, however, noted improved access to detention facilities during the year.

**Government Human Rights Bodies:** The Kenya National Commission on Human Rights is an independent institution created by the constitution and established in 2011. Its mandate is to promote and protect human rights in the country. The body's commissioners completed their terms in March 2020. In August the president officially announced the vacancies, and in September the

government appointed a selection panel to interview and recommend nominees for formal appointment. The president nominated a new chairperson and four commissioners on December 29, but at year's end they were awaiting parliamentary approval. The commission continued to function under the management of the CEO. Citing budget restrictions, the government again reduced the commission's operating budget. The commission stated the budget was not sufficient to cover its expenses and fulfill its mandate. Its programmatic budget was entirely unfunded by the government, forcing the commission to secure funding from development partners.

The NPSC and IPOA, both government bodies, report to the National Assembly. The NPSC consists of six civilian commissioners, including two retired police officers, as well as the National Police Service inspector general and two deputies. The NPSC is responsible for recruiting, transferring, vetting, promoting, and disciplining National Police Service members.

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

Police accountability mechanisms, including those of the Internal Affairs Unit (IAU) and IPOA, maintained their capacity to investigate cases of police abuse. The IAU director reports directly to the National Police Service inspector general. The IAU did not hire any new officers or support staff during the year. It maintained 127 officers and 14 civilian support staff. Most investigators previously served in the Kenya Police Service and the Administration Police Service. The IAU conducts investigations into police misconduct, including criminal offenses not covered by IPOA. Between January and September, the IAU received approximately 715 complaints, down from 1,400 during the prior year. The EACC, an independent agency, investigates cases involving police corruption. IPOA also helps to train police officers on preventing abuses and other human rights issues but reported it did not conduct any human rights training during the year.

Between July 2020 and June 30, IPOA received 2,881 complaints, bringing the total since its inception in 2012 to 139,490 complaints. IPOA defines five

categories of complaints. Category one complaints comprise the most serious crimes, such as murder, torture, rape, and serious injury, and result in an automatic investigation. In category two, serious crimes, such as assault without serious injury, are investigated on a case-by-case basis. Categories three to five, for less serious crimes, are generally not investigated, although during the year IPOA and the IAU entered regular dialogue about referring cases deemed less serious offenses for disciplinary action. If, after investigation, IPOA determines there is criminal liability in a case, it forwards the case to the ODPP. IPOA hired two new staff members between July 2020 and October and was in the process of replacing its CEO, who retired in August. IPOA's budget for the financial year starting July 1 was reduced by approximately 1.6 percent due to economic challenges caused by the COVID-19 pandemic, and IPOA anticipated further budget reductions.

Although the law requires the NPSC to vet all serving police officers, it had not vetted any officers since the new commission took office in January 2019. Vetting required an assessment of each officer's fitness to serve based on a review of documentation, including financial records, certificates of good conduct, and a questionnaire, as well as public input alleging abuse or misconduct. The NPSC reported it had vetted more than 15,000 officers since 2012.

## **Section 6. Discrimination and Societal Abuses**

### **Women**

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

The law provides a maximum penalty of life imprisonment for rape when the survivor is older than 18, although sentences were at the discretion of the judge and usually no longer than the minimum of 10 years (see section 6, Children). Citizens frequently used traditional dispute-resolution mechanisms, including *maslaha* in Muslim communities, to address sexual offenses in rural areas, with village elders assessing financial compensation for the survivors or their families. They also used such mechanisms occasionally in urban areas.

The judiciary recorded 17,272 cases of gender-based violence filed in court between July 2019 and June 2020. The NGO Federation of Women Lawyers-Kenya reported arrests and prosecutions of sexual violence cases remained low, even in cases in which survivors identified perpetrators, due to limited police resources to conduct investigations, insufficient evidence collection and handling mechanisms, and lengthy court proceedings, which made it difficult and expensive for survivors to pursue cases.

Although police no longer required physicians to examine survivors, physicians still had to complete official forms reporting rape. Rural areas generally had no police physician, and in Nairobi there were only three. NGOs reported police stations often but inconsistently accepted the examination report of clinical physicians who initially treated rape survivors. In October the National Police Service launched its “Policare” program, which sought to establish one-stop shops in every county to address and prevent gender-based violence. Police also launched an updated *Integrated Response to Gender-Based Violence* document, which standardized procedures and standards of care in these cases.

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

NGOs expressed concerns regarding a rise in incidents of sexual assault, rape, domestic violence, and forced evictions during the COVID-19 pandemic. In September Human Rights Watch released a report on the rise of gender-based violence during the COVID-19 pandemic. The report blamed the government for failing to protect and providing inadequate assistance to survivors.

A national helpline established by the Department of Gender Affairs received a total of 5,009 cases in 2020, an increase of 36 percent compared with the prior year. Survivors of sexual violence were unable to report crimes or seek medical treatment during curfew hours. The government established rescue centers for gender-based violence in West Pokot, Bungoma, Vihiga, Meru, and Mirgori Counties.

**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. In September the court dismissed a petition filed in 2017 to strike down the law banning FGM/C. The court ruled revoking the anti-FGM/C law would expose women to this harmful practice without sufficient legal protection. Government officials often participated in public-awareness programs to prevent the practice. Nevertheless, individuals practiced FGM/C widely, particularly in some rural areas. According to UNICEF, despite the legal prohibition of FGM/C and progress made by the government in eliminating the practice, myths supporting the practice remained deep rooted in some local cultures. UNICEF estimated 21 percent of adult women ages 15 to 49 had undergone the procedure some time in their lives, but the practice was heavily concentrated in a few communities, including the Maasai (78 percent), Samburu (86 percent), and Somali (94 percent).

As part of the government's initiative to end FGM/C by 2022, the Ministry of Public Service, Gender, Senior Citizens Affairs, and Special Programs continued work with county officials and nonstate actors to improve enforcement of the FGM/C law. This included education and advocacy efforts as well as prosecutions of those violating the law. NGOs and government officials reported a significant increase of FGM/C cases during the COVID-19 pandemic, noting school closures left girls more at risk. Many FGM/C rescue centers were closed partially or even totally due to the pandemic. Media reported arrests of perpetrators and parents who agreed to FGM/C, but parents in regions with a high prevalence of FGM/C frequently bribed police to allow the practice to continue. There were also reports FGM/C increasingly occurred in secret to avoid prosecution. County officials in areas with a high prevalence of FGM/C noted many cases targeted infants, with



one recent government study finding an estimated 61 percent of girls younger than five in one county had undergone the procedure.

**Other Harmful Traditional Practices:** Certain communities practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. The practice was more likely in cases of poor women with limited access to education and living outside of major cities.

**Sexual Harassment:** The law prohibits sexual harassment and prescribes prison time of at least three years or a fine of at least \$880 or both for anyone found guilty of committing such crimes. Sexual harassment was often not reported, and survivors rarely filed charges.

**Reproductive Rights:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities. Nonetheless, families of girls with disabilities sometimes colluded with medical professionals to sterilize them as a means of protecting them from sexual violence, according to a disability rights activist. See the Female Genital Mutilation/Cutting (FGM/C) subsection for additional information.

The constitution recognizes the right of couples and individuals to decide the number, spacing, and timing of their children and to have the information and means to do so free from discrimination, coercion, and violence. Exercising this right, however, remained difficult due to the prohibitive costs of contraception for some persons, the limited information and services that were available, and cultural and religious norms in some areas that discouraged the use of modern contraceptives and gave men decision-making authority over women. Subsidized contraception options, including condoms, birth control pills, and long acting or permanent methods, were widely available to both men and women, although access was more difficult in rural areas.

A 2019 study by the Guttmacher Institute found that more than half of sexually active adolescent women between the ages of 15 and 19 who did not want to become pregnant had an unmet need for modern contraception and that almost two-thirds of pregnancies among this age group were unintended. The adolescent birth rate was 96 per 1,000 girls between the ages of 15 and 19, according to the

UN Population Fund (UNFPA). Access to sexual and reproductive health information by adolescents remained a problem due to lack of comprehensive sexuality education in schools, low coverage of youth-friendly services, and a lack of adequate stocks of contraceptives in public hospitals.

According to UNFPA, 56 percent of women between the ages of 15 and 49 made their own decisions regarding health care, contraception, and sex with their husbands or partners. NGOs reported that it was more difficult for marginalized groups, including LGBTQI+ persons, women with disabilities, displaced persons, and persons with HIV, to access reproductive health information and services.

Skilled obstetric, prenatal, and postpartum care was available in major hospitals, but many women could not access or afford these services. Skilled health-care personnel attended an estimated 62 percent of births, according to the 2014 *Kenya Demographic Health Survey*. The government provided access to sexual and reproductive health services for survivors of sexual violence.

Maternity services were free of charge in all public health institutions in the country. The government's Linda Mama program, a free health insurance plan that covers the pregnancy period and up to three months postdelivery, targeted women in rural and low-income areas and continued to operate during the year. NGOs reported that government measures to stem the spread of the COVID-19 pandemic, including a nationwide curfew and movement restrictions, led to an increase in maternal morbidity, a decrease in births attended by skilled health-care personnel, and a decrease in women receiving prenatal and postpartum care during the year.

Maternal deaths accounted for 51 percent of all deaths of women between the ages of 15 and 49, and the maternal mortality rate was 342 per 100,000 live births, according to the World Health Organization. Unsafe abortion, pregnancy, and birth complications limited access to health services, and harmful cultural practices were cited as among the main causes of maternal death and morbidity. UNFPA reported that maternal mortality in Mandera County was 3,795 deaths per 100,000 live births – the highest in the country – partially due to harmful cultural rites such as FGM/C and limited access to health services. In 2019 the High Court ruled that the director of medical services and the Ministry of Health had violated the rights of the country's women by arbitrarily withdrawing standards and guidelines on

reducing morbidity and mortality from unsafe abortions.

The law provides pregnant girls the right to continue their education until and after giving birth, but NGOs reported schools often did not always respect this right (see section 6, Children). Human rights organizations reported teenage pregnancy often led girls to drop out of school without a safety net or plan for continued education after birth.

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

The constitution prohibits gender discrimination in relation to land and property ownership and gives women equal rights to inheritance and access to land. The constitution also provides for the enactment of legislation for the protection of wives' rights to matrimonial property during and upon the termination of a marriage, and it affirms parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution. In September a judge presiding over a matrimonial property dispute ruled being a housewife should be considered a full-time job. The judge ruled it was unfair for courts to rule that housewives do not contribute to household financial wellbeing. According to civil society groups, women continued to face institutional and legal barriers that hindered their access to justice and a fair share of matrimonial property upon the dissolution of marriage. Additionally, the components of the law that stipulate how to apply for succession were little known, and thus many inheritances continued to pass from fathers to sons only.

## **Systemic Racial or Ethnic Violence and Discrimination**

Although the constitution declares the state shall not discriminate against any person based on race, societal discrimination against persons of different racial and ethnic groups was common. Enforcement of laws prohibiting discrimination was inadequate, according to human rights groups. The 2019 census recognized 45

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

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

Media reported at least 18 persons died in July during tribal clashes regarding resources in Marsabit County along the border with Ethiopia. The government deployed security forces to stop the fighting, which had plagued the region for many years.

In September media reported at least eight persons died, and dozens of homes were burned in Laikipia County, as armed herders invaded privately run nature conservancies in search of water and grazing land for their livestock. In October the government deployed an interagency team to quell the violence after fighting broke out again.

Ethnic differences also caused several discriminatory employment practices (see section 7.d.).

## **Children**

**Birth Registration:** A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Birth on the country's territory does not convey citizenship. Birth registration is compulsory. An estimated 82 percent of births were officially registered in 2020, according to the Interior Ministry's Civil Registration Services. Authorities attributed the increase in registered births to a rise in the number of women delivering in health centers. Lack of official birth certificates resulted in discrimination in delivery of public

services. The Department of Civil Registration Services implements the Maternal Child Health Registration Strategy, which requires nurses administering immunizations to register the births of unregistered children.

**Education:** By law education is tuition free and compulsory until age 18, although public schools may impose fees for boarding, uniforms, and other expenses. The law also allows schools to charge tuition and other fees on children who are noncitizens of the country. Authorities did not enforce the mandatory attendance law uniformly. The government closed all schools in March 2020 due to the onset of the COVID-19 pandemic but fully reopened all grades and schools in January 2021. Media reported widely on the negative impact of long-term school closures on students. In April a study found that 53 percent of students exhibited a decline in math proficiency. Civil society organizations highlighted a rise in teen pregnancy and drug use during the pandemic.

While the law provides pregnant girls the right to continue their education until and after giving birth, NGOs reported schools did not always respect this right (see section 6, Women). School executives sometimes expelled pregnant girls or transferred them to other schools. In recent years media outlets reported a significant number of girls failed to take their final secondary school examinations due to pregnancy. Final examinations were not held during the year due to the pandemic.

**Child Abuse:** The law criminalizes several forms of violence that affect children, including early and forced marriage, FGM/C, incest, and physical, verbal, and sexual abuse. Violence against children, particularly in poor and rural communities, was common, and child abuse, including sexual abuse, occurred frequently. A recent Ministry of Labour report found nearly half of female children and more than half of male children experienced childhood violence. The study found emotional violence was also common.

According to IPOA, most police facilities did not have designated child protection units, and police usually requested the Department of Children Services to take custody of child survivors. Although all the police facilities that IPOA inspected during the year had at least one officer designated to handle children's cases, only some of the officers had received training on handling these cases, and the police

stations did not have sufficient resources to process the large number of cases involving child survivors. IPOA found the shortage of designated child protective units made it difficult for officers to record statements from child survivors due to the lack of privacy. According to IPOA, police also reported difficulties investigating cases such as child rape, since some communities defended the perpetrators and preferred to settle cases through traditional mechanisms.

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

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

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

**Child, Early, and Forced Marriage:** The minimum age for marriage is 18 years for women and men. According to UNICEF, 25 percent of girls are married by 18. Media occasionally highlighted the problem of early and forced marriage common among some ethnic groups. Under the constitution the qadi courts retain jurisdiction over Muslim marriage and family law in cases where all parties profess the Muslim religion and agree to submit to the jurisdiction of the courts. NGOs reported an increase in child, early, and forced marriages during the COVID-19 pandemic, noting school closures left girls more vulnerable to the practice.

**Sexual Exploitation of Children:** The law criminalizes sexual exploitation of children, including prohibiting procurement of a child younger than age 18 for unlawful sexual relations. The law also prohibits domestic and international trafficking or the recruitment, harboring, transportation, transfer, or receipt of children up to age 18 to produce pornography or for pornographic performances. Provisions apply equally to girls and boys. The law has provisions regarding child trafficking, child sex tourism, child sexual exploitation, and child pornography.

The minimum age for consensual sex is 18. Nevertheless, according to human rights organizations, children were sexually exploited and victims of trafficking.

The DCI continued to expand its Anti-Human Trafficking and Child Protection Unit, which is responsible for investigating cases of child sexual exploitation and abuse, providing guidance to police officers across the country on cases involving children, and liaising with the Ministry of Labour and Social Protection's Department of Children Services to identify and protect abused children.

NGOs, international organizations, and local officials expressed concerns with reports of rising number of pregnancies among teenage girls, resulting in part from increased sexual abuse and exploitation during the COVID-19 pandemic.

**Displaced Children:** Poverty and the spread of HIV and 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 (see section 1.c.). The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to street children whom the commercial sex industry abused and exploited. According to UNHCR, 52 percent of refugees were younger than age 18 (see section 2.d.).

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

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

## **Anti-Semitism**

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

## **Trafficking in Persons**

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

## **Persons with Disabilities**

Persons with disabilities cannot access education, health services, public buildings, and transportation on an equal basis with others. The law prohibits discrimination against persons with disabilities, but the government did not effectively enforce these provisions. Several laws limit the rights of persons with disabilities. For example, the Marriage Act limits the rights of persons with mental disabilities to marry, and the Law of Succession limits the rights of persons with disabilities to inheritance. The constitution provides for legal representation of persons with disabilities in legislative and appointive bodies.

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

The constitution states every person has the right to education, yet NGOs reported persons with disabilities had limited opportunities to obtain education and job training at any level due to lack of accessibility of facilities and resistance by school officials and parents to devoting resources to students with disabilities. Obtaining employment was also difficult.

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



physical barriers were the main reasons cited.

The law provides that persons with disabilities should have access to public buildings, and some buildings in major cities had wheelchair ramps and modified elevators and restrooms. The government did not enforce the law, however, and new construction often did not include specific accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible to persons with disabilities. According to NGOs, police stations remained largely inaccessible to persons with mobility and other physical disabilities. Most common forms of public transportation, all of which are privately operated, were difficult for persons with physical disabilities to use due accessibility challenges and crowding.

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

According to a report by a coalition of disability advocate groups, persons with disabilities often did not receive the procedural or other accommodations they needed to participate equally in criminal justice processes as victims of crime.

Authorities received reports of killings of persons with disabilities as well as torture and abuse, and the government acted in some cases.

Persons with albinism have historically been targets of discrimination and human rights abuses. Human rights groups successfully lobbied to include a question on albinism in the 2019 national census, the first time that persons with albinism were counted. An NGO reported some persons with albinism experienced increased discrimination during the year due to unfounded fears they were more likely to carry the COVID-19 virus.

NGOs reported the COVID-19 pandemic disproportionately impacted persons with disabilities. One survey found 92 percent of respondents said their daily lives had been affected by the pandemic, pinpointing factors such as limited transport;

restricted movement; a lack of available necessities; lack of contact with others at school, church, and social functions; reduced income; and job or income loss. Of respondents, 39 percent reported experiencing discrimination due to their disability, including exclusion from vital services.

According to a 2017 NGO report to the Committee on the Elimination of all Forms of Discrimination against Women, persons with disabilities made up only 2.8 percent of the Senate and National Assembly, less than the 5 percent mandated by the constitution (see section 3, Elections and Political Participation).

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

The government, along with international and NGO partners, made progress in creating an enabling environment to combat the social stigma of HIV and AIDS and to address the gap in access to HIV information and services. The government and NGOs expanded their staffing support at county levels for counseling and testing centers to ensure provision of free HIV and AIDS diagnosis. The government continued inclusion of diverse populations in provision of HIV services through 47 mobile clinics and medical camp safaris across the country. The government also supported programs to ensure nondiscrimination and undertook a community-led stigma index study.

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

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

The penal code criminalizes “carnal knowledge against the order of nature,” which was interpreted to prohibit consensual same-sex sexual conduct and specifies a maximum penalty of 14 years’ imprisonment if convicted, and seven years for “attempting” said conduct. The law also criminalizes acts of “gross indecency” between men, whether in public or in private, with five years’ imprisonment.

Police detained persons under these laws, particularly persons suspected of prostitution, but released them shortly afterward.

In 2016 LGBTQI+ activists filed two petitions challenging the constitutionality of these penal codes. In 2019 the High Court issued a unanimous ruling upholding the laws criminalizing homosexuality, citing insufficient evidence they violate LGBTQI+ rights and claiming repealing the law would contradict the constitution that stipulates marriage is between a man and woman. The LGBTQI+ community filed an appeal against this ruling and received favorable decisions on a handful of procedural matters but was awaiting a substantive hearing at year's end. After filing this case, the LGBTQI+ community experienced increased ostracism and harassment, according to activist groups.

LGBTQI+ organizations reported police more frequently used public-order laws (for example, disturbing the peace) than same-sex legislation to arrest LGBTQI+ individuals. NGOs reported police frequently harassed, intimidated, or physically abused LGBTQI+ individuals in custody. They also reported police threatened homosexual men with forced anal examinations while in custody, which were outlawed in 2018.

Authorities permitted LGBTQI+ advocacy organizations to register and conduct activities.

The constitution does not explicitly protect LGBTQI+ persons from discrimination based on sexual orientation or gender identity. Violence and discrimination against LGBTQI+ individuals were widespread. LGBTQI+ rights organizations reported an increase in conversion therapy and practices. It attributed this increase to the fact many LGBTQI+ persons had returned to hostile home and community environments after losing their jobs because of the economic downturn caused by the COVID-19 pandemic. Some LGBTQI+ groups also reported an increase in abuses cases against LGBTQI+ persons during the pandemic. They attributed this rise to increased scrutiny of LGBTQI+ persons' lifestyles because of COVID-19-related lockdown and curfew orders. In May human rights defender and HAPA Kenya paralegal Joash Mosoti was allegedly tortured and killed at his home in Mombasa.

In September the Kenya Film Classification Board banned the film *I am Samuel* for attempting to “promote same-sex marriage agenda as an acceptable way of life.” The board claimed the film violated Article 165 of the penal code, which outlaws homosexuality, as well as provisions of the Films and Stage Plays Act.

Although the country grants refugee status to persons whose persecution is due to sexual orientation or gender expression, some LGBTQI+ refugees continued to face stigma and discrimination. They were often compelled to hide their sexual orientation or gender identity to protect themselves, especially among Somali refugee communities in Dadaab. National organizations working with LGBTQI+ persons offered support to refugees who were LGBTQI+, including access to safety networks and specialized health facilities.

There were approximately 1,000 LGBTQI+ refugees in the country, including approximately 300 in Kakuma, where there were reports of violence and intimidation against LGBTQI+ refugees during the year. An arson attack by unknown perpetrators in March led to the death of one LGBTQI+ refugee in April. UNHCR and NGO partners provided medical and other assistance for LGBTQI+ refugees when necessary, but legal accountability for perpetrators was lacking. In March UNHCR released a statement outlining efforts in collaboration with police and the Refugee Affairs Secretariat to enhance security for LGBTQI+ refugees, including the relocation of some particularly vulnerable individuals.

## **Other Societal Violence or Discrimination**

Mob violence and vigilante action were common in areas where the populace lacked confidence in the criminal justice system. The social acceptability of mob violence also provided cover for acts of personal vengeance. During the year HAKI reported civilian mobs killed 10 persons in the six coastal counties. Through the end of August, HAKI reported civilian mobs killed six persons in the Nairobi metropolitan area. Police frequently failed to act to stop mob violence. In August four men, who had stopped on the side of a road to repair their motorcycles, were killed by a mob in Kitengela. The mob mistakenly identified the four men as cattle thieves.

Landowners formed groups in some parts of the country to protect their interests

from rival groups or thieves. Reports indicated politicians often funded these groups or provided them with weapons, particularly around election periods.

## **Section 7. Worker Rights**

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

The law provides for the right of workers, including those in export processing zones, to form and join unions of their choice and to bargain collectively. The law prohibits antiunion discrimination and provides for reinstatement of workers dismissed for union activity. The Labour Relations Court can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities.

Legal restrictions limit worker rights to establish a union, bargain collectively, and conduct legal strikes. For example, the Registrar of Trade Unions may refuse to register a union if a similar union already exists, and union membership is granted only to persons employed in the sector for which the trade union is registered. For a union to be recognized as a bargaining agent, it must represent a simple majority of the employees in a firm eligible to join the union. This provision extends to public- and private-sector employees. Members of the armed forces, prisons service, and police are not allowed to form or join trade unions.

The law permits the government to deny workers the right to strike under certain conditions. For example, the government prohibits members of the military, police, prison guards, and the National Youth Service from striking. Civil servants are permitted to strike following a seven-day notice period. A bureau of the Ministry of Labour and Social Protection typically referred disputes to mediation, fact finding, or binding arbitration at the Employment and Labour Relations Court, a body of up to 21 judges that has exclusive jurisdiction to handle employment and labor matters and that operates in urban areas, including Nairobi, Mombasa, Nyeri, Nakuru, Kisumu, and Kericho. The Employment and Labour Relations Court also has subregistries in Meru, Bungoma, Eldoret, Malindi, Machakos, and Garissa.

By law workers who provide essential services, interpreted as “a service the interruption of which would probably endanger the life of a person or health of the

population,” may not strike. Any trade dispute in a service listed as essential or declared an essential service may be adjudicated by the Employment and Labour Relations Court.

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

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

Labor laws apply to all groups of workers. Penalties for labor law violations were not commensurate with those for similar offenses.

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

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

The chief justice designated all county courts presided over by senior resident magistrates and higher-ranking judges as special courts to hear employment and labor cases. Providing adequate facilities outside of Nairobi was difficult, but

observers cited the ability of workers to submit labor-related cases throughout the country as a positive step. The 2016 employment and labor relations (procedure) rules provide parties access to file pleadings directly in electronic form, pretrial procedures, and alternative dispute resolution. The rules also set a 30-day time limit for the court to submit a report on disagreements over collective bargaining agreements filed.

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

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

The government had labor attaches in Qatar, Saudi Arabia, and the United Arab Emirates to regulate and coordinate contracts of migrant workers from the country and promote overseas job opportunities. The National Employment Authority managed a website that provided information to prospective migrant workers on the procedures of becoming a migrant worker in the Gulf. The Ministry of East African Community and Regional Development also helped domestic workers understand the terms and conditions of their work agreements. The government had additional bilateral agreements with Qatar and United Arab Emirates. The ministry has a directorate to regulate the conduct of labor agents for local migrant workers, including requiring the posting of a performance-guarantee bond for each worker. Civil society organizations and trade unions, however, criticized the government for not doing enough to protect migrant workers' rights and failing to repatriate citizens working overseas under what they described as abusive conditions.

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

This shift contributed to declining numbers in trade unions. NGOs and trade unionists reported replacement of permanent positions by casual or contract labor, especially in the export-processing zones, the Port of Mombasa, and in the agricultural and manufacturing sectors. In some cases employers staffed permanent jobs with rotating contract workers. This practice occurred at the management level as well, where employers hired individuals as management trainees and kept them in these positions for the maximum permitted period of three years. Instead of converting such trainees to permanent staff, employers replaced them with new trainees at the end of three years.

The governmental Teachers Service Commission (TSC) reportedly contributed to weakening teacher trade unions through its dispute with the Kenya National Union of Teachers (KNUT) regarding alleged TSC delays in remitting members' fees to KNUT, which crippled the capacity of the union to provide member services and reduced union membership. The University Academic Staff Union also expressed frustration over continued Ministry of Labour delays in implementing a collective bargaining agreement, pending since 2017, that would improve pay and terms of service of its 30,000 members.

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

The law prohibits most forms of forced or compulsory labor, including by children. The law allows, in some situations, up to 60 days of compulsory labor per year for the preservation of natural resources. The country made moderate advances to prevent or eliminate forced labor.

The government did not effectively enforce the law, and forced labor occurred, including forced child labor (see section 7.c.). Certain legal provisions, including the penal code and the Public Order Act, impose compulsory prison labor, including for political offenses. Resources, inspections, and remediation were not adequate to prevent forced labor, and penalties were not commensurate with those for comparable offenses. Forms of forced labor included debt bondage, exploitation of migrant workers, and compulsion of persons, including family members, to work as domestic servants. Traffickers exploited children through forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging (see section 7.c.). Nairobi-based labor recruiters maintained networks



in Uganda and Ethiopia that recruited Burundian, Ethiopian, Rwandan, and Ugandan workers through fraudulent offers of employment in the Middle East and Asia. The country continued to serve as a transit point for migrants seeking work in South Africa, leaving these populations vulnerable to exploitation; traffickers exploited transient Ethiopians in forced labor and Burundian and Rwandan women in domestic servitude.

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

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

The government prohibits most, but not all, of the worst forms of child labor. The minimum age for work (other than apprenticeships) is 16, and the minimum age for hazardous work is 18. The ministry published a list of specific jobs considered hazardous that constitute the worst forms of child labor. This list included but was not limited to scavenging, carrying stones and rocks, metalwork, working with machinery, mining, and stone crushing. The law explicitly prohibits forced labor, trafficking, and other practices like slavery; child soldiering (see section 6, Children); prostitution; the use, procuring, or offering of a child for the production of pornography or for pornographic performances; and the use by an adult for illegal activities (such as drug trafficking) of any child up to age 18. The law applies equally to girls and boys. The International Labor Organization (ILO) identified gaps in the law with regards to children working as cadets at sea.

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

The law provides for penalties for any person who employs, engages, or uses a child in an industrial undertaking in violation of the law. Penalties were not commensurate with those for comparable offenses. Employment of children in the formal industrial wage sector in violation of the Employment Act was rare. The law does not prohibit child labor for children employed outside the scope of a contractual agreement. Child labor in the informal sector was widespread, but the

government did not effectively monitor or control it.

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

The government also worked closely with the Central Organization of Trade Unions and the Federation of Kenyan Employers to eliminate child labor.

In support of child protection, the Ministry of Labour and Social Protection operated a national online database system. The Child Protection Information Management System collects, aggregates, and reports on child protection data that informs policy decisions and budgeting for orphans and vulnerable children. The web-based system allows for an aggregate format of data to be made available to all the child protection stakeholders. The government had seven child protection centers, which remove child laborers from the workplace, rehabilitate them, and provide counseling and life-skills training.

The government continued to implement the National Safety Net Program, which managed four cash transfer programs, including Cash Transfer for Orphans and Vulnerable Children. The cash transfer programs encountered irregularities in disbursement and corruption allegations.

Many children worked on family plots or in family units on tea, coffee, sugar, sisal, tobacco, and rice plantations, as well as in the production of khat. Children worked in mining, including in artisanal gold mines, small quarries, and sand mines. Children also worked in the fishing industry. In urban areas businesses employed children in hawking, scavenging, carrying loads, gathering and selling water, selling food, and forced begging. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestic servants. Parents sometimes initiated forced or compulsory child labor, such as in agricultural labor and domestic service, but also including commercial sexual exploitation (see section 6,

Children).

Traffickers exploited children through forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging (see section 7.b.).

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/>.

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

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

The government did not effectively enforce the law. Penalties for discrimination were not commensurate with those for comparable offenses. Gender-based discrimination in employment and occupation occurred, although the law mandates nondiscrimination based on gender in hiring. The average monthly income of women was approximately two-thirds that of men. Women had difficulty working in nontraditional fields, received slower promotions, and were more likely to be dismissed. According to a World Bank report, both men and women experienced sexual harassment in job recruitment, but it was more frequently experienced by women. Both men and women who tried to establish their own informal businesses were subjected to discrimination and harassment.

Many county governors continued to appoint and employ disproportionate numbers of the dominant tribe in their county, bypassing minority groups. These problems were aggravated by the devolution of fiscal and administrative responsibility to county governments. Observers also noted patterns of preferential hiring during police recruitment exercises.

In both private business and in the public sector, members of nearly all ethnic

groups commonly discriminated in favor of other members of the same group.

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

Discrimination against migrant workers also occurred.

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

**Wage and Hour Laws:** The law provides for a national minimum wage for all sectors of the economy, and the minimum wage for all occupations exceeded the World Bank poverty rate. 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 law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. It specifically excludes agricultural workers from such limitations. It entitles an employee in the nonagricultural sector to one rest day per week and 21 days of combined annual and sick leave. The law also requires total hours worked (regular time plus overtime) in any two-week period not exceed 120 hours (144 hours for night workers) and provides premium pay for overtime.

The Ministry of Labour is responsible for enforcement of wage and hour laws. The government did not employ enough inspectors to surveil and enforce wage and hour laws. The same inspectors were responsible for occupational safety and health enforcement and have the authority to make unannounced inspections and initiate sanctions. The government did not effectively enforce wage and hour laws, and penalties were not commensurate with those for comparable offenses. Authorities reported some workweek and overtime violations, but workers in some enterprises, particularly in the export-processing zones and those in road construction, claimed employers were not penalized for forcing them to work extra

hours without overtime pay to meet production targets. Hotel industry workers were usually paid the minimum statutory wage, but employees worked long hours without compensation. Additionally, employers often did not provide required nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment.

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

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

Workers, including foreigners and immigrants, have the legal right to remove themselves from situations that endanger health or safety without jeopardy to their employment. The Ministry of Labour did not effectively enforce these regulations, and workers were reluctant to remove themselves from working conditions that endangered their health or safety due to the risk of losing their jobs. The Kenya Federation of Employers provided training and auditing of workplaces for health and safety practices.

The law provides for labor inspections to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring compliance with labor laws. The government paid low salaries to labor inspectors and did not provide vehicles, fuel, or other resources, making it very difficult for labor inspectors to do their work effectively and leaving them vulnerable to bribes and other forms of corruption. The State Department for Labor had yet to hire new inspectors after a large number retired in the previous two years.

**Informal Sector:** More than 80 percent of citizens worked in the informal sector, according to World Bank data. The Kenyan National Bureau of Statistics reported in 2020 that informal-sector operations cut across all sectors of the economy and sustain a majority of households, with predominant work sectors in order of prevalence including agriculture and livestock, wholesale and retail trade, repair of vehicles and motorcycles, small-scale and home-based manufacturing and production, and accommodation and food service activities.

The law provides social protections for workers employed in the formal and informal sectors. Informal workers organized into associations, cooperatives, and, in some cases, unions. All local employers, including those in the informal sector, are required to contribute to the National Hospital Insurance Fund and the National Social Security Fund; these provide health insurance and pensions, respectively. Most informal workers were not covered because they did not make the required contributions, either because they were self-employed, or their employers did not contribute. Informal workers worked long hours, with high mean weekly working hours of 60 hours. Although informal-sector workers are covered by wage and hour laws and occupational safety and health law, the government did not inspect or enforce violations in the informal sector. Local authorities often harassed home-based and microenterprises, which often operated without licenses due to a lack of business premises. Workers in these enterprises were unable or unlikely to receive help from local authorities to enforce workplace protections and were inhibited from making complaints due to fear of losing their sole livelihood.