

# **KENYA 2017 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Kenya is a republic with three branches of government: an executive branch, led by a directly elected president; a bicameral parliament consisting of the Senate and the National Assembly; and a judiciary. On August 8, the country held its second general election under the 2010 constitution. Citizens cast ballots for president and deputy president, parliamentarians, and county governors and legislators. International and domestic observers judged the elections generally credible, although some civil society groups and the opposition pointed to irregularities. On August 11, the Independent Electoral and Boundaries Commission (IEBC) declared Jubilee Coalition Party candidate Uhuru Kenyatta had won reelection as president. Opposition presidential candidate Raila Odinga challenged the presidential election result in court. On September 1, the Supreme Court annulled the results for president and deputy president, citing chiefly irregularities in the transmission and verification of the poll tabulations. The court ordered a new vote for president and deputy president for October 26. Odinga withdrew from the new election on October 10 and called for his supporters to boycott the vote. Low voter turnout in many areas and episodic violence in opposition strongholds characterized the October 26 vote. The IEBC declared President Kenyatta the winner of the October 26 vote, and the Supreme Court upheld the results on November 20.

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

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

The governmental Independent Policing Oversight Authority (IPOA) established to provide civilian oversight over the work of police, investigated numerous cases of misconduct. Impunity at all levels of government continued to be a serious problem, despite public statements by the president and deputy president and police and judicial reforms. The government took only limited and uneven steps to

address cases of alleged unlawful killings by security force members, although the IPOA continued to increase its capacity and referred cases of police misconduct to the Office of the Director of Public Prosecution (ODPP) for prosecution. Impunity in cases of alleged corruption was also common. President Kenyatta continued his anticorruption campaign launched in March 2015, and the inspector general of police continued his strong public stance against corruption among police officers.

Al-Shabaab terrorists conducted deadly attacks and guerilla-style raids on isolated communities along the border with Somalia, targeting both security forces and civilians. Human rights groups alleged that security forces committed abuses while conducting counterterror operations.

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

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

There were numerous reports the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. In July the nongovernmental organization (NGO) International Federation for Human Rights reported 80 cases of individuals killed by police since January, and according to the NGO Independent Medico Legal Unit, at least 33 of these were summary executions. On March 31, video footage surfaced on the internet of an alleged plainclothes police officer shooting two subdued suspects in the Nairobi neighborhood of Eastleigh. According to the daily newspaper *Daily Nation*, the Nairobi police commander defended the shooting, calling the victims “gangsters.” The inspector general of police then ordered an investigation, which had not concluded as of year’s end.

Some groups alleged authorities significantly underestimated the number of extrajudicial killings by security forces due to underreporting of such killings in informal settlements, including those in dense urban areas. The NGO Mathare Social Justice Center estimated police killed at least one young male every week in the Mathare neighborhood of Nairobi. From April 1 to September 22, IPOA received 147 complaints regarding deaths resulting from police actions, including 44 fatal shootings involving police and 20 deaths due to other actions by police.

In October, Human Rights Watch (HRW) released a report documenting more than 100 persons badly injured and at least 33 killed by police, including a six-month old child, in response to protests following the August election. The report

documented that police and other security forces, namely the General Services Unit and Administrative Police (AP), used excessive force, including unlawful killings and beatings. The autonomous governmental entity Kenyan National Commission on Human Rights (KNCHR) reported police killed at least 35 persons in opposition strongholds following the August 8 elections. Both reports urged law enforcement authorities to investigate these deaths.

Media reports and NGOs attributed many of the human rights abuses not related to elections to Kenya Defense Forces counterterrorism operations in the northeast counties of Mandera, Garissa, and Wajir bordering Somalia. For example, the daily newspaper *The Standard* reported on July 4 some locals accused security forces of killing four men and one woman whose bodies were found in a shallow grave in Mandera County.

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

Al-Shabaab terrorists conducted deadly attacks and guerilla-style raids on isolated communities along the border with Somalia. For example, in July al-Shabaab terrorists hijacked at gunpoint Public Works Principal Secretary Miriam El-Maawy and six others traveling in her motorcade in Lamu County. On September 26, El-Maawy died from injuries she sustained in the attack.

## **b. Disappearance**

Observers and NGOs alleged members of the security forces were culpable of forced disappearances. On January 27, the UN Office of the High Commissioner for Human Rights (OHCHR) called on the governments of Kenya and South Sudan to reveal what happened to Sudanese human rights activists Dong Samuel Luak and Aggrey Idri Ezibon, who were allegedly abducted in Kenya on January 23 and 24, respectively, by members of Kenyan and South Sudanese security forces. On February 24, a branch of the high court ruled there was no evidence to support the allegation that the Kenyan government held the two men. Their whereabouts remained unknown as of year's end (see section 1.a.).

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

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

## **Punishment**

On April 13, President Kenyatta approved the Prevention of Torture Act, which provides a basis to prosecute torture. The law provides a platform to apply articles of the 2010 constitution, including: Article 25 on freedom from torture and cruel, inhuman, or degrading treatment or punishment; Article 28 on respect and protection of human dignity; and Article 29 on freedom and security of the person. The law brings all state agencies and officials under one, rather than multiple pieces of legislation. Additionally, the law provides protections to vulnerable witnesses and law enforcement officials who refuse to obey illegal orders that would lead to torture.

Police reportedly used torture and violence during interrogations as well as to punish both pretrial detainees and convicted prisoners. According to human rights NGOs, physical battery, bondage in painful positions, and electric shock were the most common methods of torture used by police. A range of human rights organizations and media reported police committed torture and indiscriminate violence with impunity. For example, there were numerous press and NGO reports on police brutality against protestors and unarmed citizens, including in house-to-house operations in the days following the August 8 election (see section 3). According to reports, the postelection violence largely targeted ethnic areas where support for the opposition parties was the strongest (see section 6).

In July the International Federation for Human Rights reported KNCHR had collected multiple, credible narratives of security forces rounding up and torturing suspects while in extended detention.

There were numerous reports of police using excessive force in a cruel, inhuman, or degrading fashion during postelection violence (see section 2.b). For example, on October 2, AP forces teargassed a nursery school in Kisumu during election-related protests happening nearby, injuring three children.

## **Prison and Detention Center Conditions**

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

Physical Conditions: According to the Kenya Prisons Service (PS), the prison

population as of October 2 was 50,572, held in prisons with a designated capacity of 26,837. More than 90 percent of prisoners were men. According to the National Council on the Administration of Justice's (NCAJ) January report, the country has 105 prisons--87 for men and 18 for women. While the PS noted that seven prisons have been constructed since 2012, serious overcrowding was the norm, with an average prisoner population of nearly 200 percent capacity and some prisons housing up to 400 percent of capacity. Authorities continued a "decongestion" program that entailed releasing petty offenders and encouraging the judiciary to increase use of the Community Service Orders program in its sentencing.

The PS reported 50 deaths as of August 2016, mostly from natural causes, representing a dramatic reduction from previous years, which the service attributed to improvements in prison health services. According to a study by the NCAJ released in January, sanitary facilities were inadequate, and tuberculosis remained a serious problem at eight prisons.

In January the NCAJ reported that despite the legal requirement to separate male prisoners from women and children, the mixing of genders and ages remained a problem in some prisons. Between January and June IPOA observed that authorities separated women from men in detention facilities on average 89 percent of the time in the 29 detention facilities its representatives visited. In smaller jails, female prisoners were not always separated from men. There were no separate facilities during pretrial detention, and sexual abuse of female prisoners was a problem. Human rights groups reported that police routinely solicited sex from female prisoners and that many female inmates resorted to prostitution to obtain necessities, such as sanitary items and underwear, which the Prisons Service did not provide.

Authorities generally separated minors from adults except during the initial detention period at police stations, when authorities often held adults and minors of both sexes in a single cell. Minors often mixed with the general prison population during lunch and exercise periods, according to the Coalition for Constitutional Interpretation, a domestic NGO. Prison officials reported that because there were few detention facilities for minors, authorities often had to transport them very long distances to serve their sentences, spending nights at police stations under varying conditions along the way. On October 6, the *Daily Nation* newspaper reported a witness had accused a police officer of raping a 13-year-old victim while she was held overnight at a police station for alleged theft. IPOA investigated the incident, and a criminal prosecution was pending in the courts.

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

Prisoners generally received three meals a day, but portions were inadequate. The PS stated in August that it no longer served a penal diet for punishment. Water shortages, a problem both inside and outside of prison, continued. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks. This was especially true for the more than one-third of inmates awaiting trial, as they were not engaged in any work programs that would allow them to leave their cells regularly.

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

Mechanisms for prisoners to report abuse and other concerns improved due to collaboration between the PS and the KNCHR to monitor human rights standards in prison and detention facilities. By law, the Commission on the Administration of Justice serves as ombudsman on government administration of prisons. It is to receive and treat as confidential correspondence from inmates and recommend remedies to address their concerns, including those pertaining to prison living conditions and administration. Government-established special committees, which included paralegals and prison officials, also served to increase prisoners' access to the judicial system. The Legal Aid Center of Eldoret noted there was no single system providing "primary justice" to prisoners and detainees, who instead relied on a patchwork of services largely provided by NGOs. Many government-designated human rights officers lacked necessary training, and some prisons did not have a human rights officer.

Noncustodial community service programs and the release of some petty offenders alleviated somewhat prison overcrowding. The total prison population did not decrease substantially, however, because of unaffordable bail and bond terms for pretrial detainees, high national crime rates, overuse of custodial sentencing, and a high number of death row and life-imprisoned inmates. Legal rights NGOs and prison officials reported overuse of the charge of "robbery with violence," which may carry a life sentence, without sufficient evidence to support it. Some petty

offenders consequently received disproportionately heavy sentences.

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

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

Improvements: On August 8, a total of 167 inmates at four prisons voted in the presidential election, the first time prisoners have been permitted to participate in an election.

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

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

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

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

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

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

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

The National Police Service Commission (NPSC) and IPOA, both government bodies, report to the National Assembly. The NPSC consists of six civilian commissioners, including two retired police officers, as well as the NPS inspector general's two deputies. Two commissioner positions remained vacant despite requests from the NPSC and public pressure to fill those positions. The NPSC is responsible for recruiting, transferring, vetting, promoting, and removing police officers in the National Police Service. IPOA investigates serious police misconduct, especially cases of death and grave injury at the hands of police.

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

Impunity was a major problem. Authorities sometimes attributed the failure to investigate a case of police corruption or unlawful killing to the failure of victims to file official complaints. Victims could file complaints at regional police stations, police headquarters through the Internal Affairs Unit (IAU), and through the IPOA website and hotline. Sometimes police turned away victims who sought to file complaints at police stations where alleged police misconduct originated, and instead directed them to other area stations. This created a deterrent effect on reporting complaints against police. NGOs documented threats against police officers who attempted to investigate criminal allegations against other police officers. The Observatory for the Protection of Human Rights Defenders lauded the adoption on March 21 of the National Coroners Service Act, which established an agency to investigate suspicious deaths and to create a coroner position in each county with the authority to collect related forensic evidence.

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



Poor casework, incompetence, and corruption undermined successful prosecutions; the overall conviction rate for criminal prosecutions was between 13 and 16 percent. Police also frequently failed to enter detainees into custody records, making it difficult to locate them. Dispute resolution at police stations resolved a significant number of crimes, but authorities did not report or record them, according to human rights organizations.

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

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

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

Police accountability mechanisms, including those of IAU and IPOA, increased their capacity to investigate cases of police abuse. The IAU acting director reported directly to the inspector general of police. Fifty-eight officers served in the unit, mostly investigators with a background in the Kenya Police Service and the Administration Police Service. The IAU handles allegations of bribery, harassment, and indiscipline. Between January and June, the IAU generated approximately 650 complaints, the number of which has increased year-to-year as police and the public became more familiar with the IAU.

IPOA opened three regional offices, in Mombasa, Kisumu, and Garissa, and increased its staff by 30 to approximately 120. Between January and June IPOA received 1,013 complaints, bringing the total since its inception in 2012 to 8,042. IPOA defines five categories of complaints. Category One complaints comprise the most serious crimes--such as murders, torture, rape, and serious injury--and result in an automatic investigation. Category Two, serious crimes such as assault

without serious injury, are investigated on a case-by-case basis. Categories Three to Five, less serious crimes, are generally not investigated. Approximately one-third of IPOA complaints fall under Categories One and Two. If, after investigation, IPOA determines there is criminal liability in a case, it forwards the case to the ODPP. Between January and June IPOA conducted 137 investigations, of which 48 were forwarded to the ODPP. As of September, IPOA and ODPP had 50 cases pending in courts. In April 2016, IPOA secured its first and only manslaughter conviction against two police officers who killed a 14-year-old girl in Kwale County in 2014.

The NPSC continued vetting all serving police officers. Vetting required an assessment of each officer's fitness to serve based on a review of documentation, including financial records, certificates of good conduct, and a questionnaire, as well public input alleging abuse or misconduct. The NPSC reported it had vetted approximately 1,000 officers between January and July, bringing the total number vetted to 4,116. More than half of the officers vetted during the year were from the traffic department, which had a reputation for extensive corruption. The NPSC has removed 21 senior officers and 127 traffic officers from the service since 2015. Some legal challenges brought by officers vetted out of the service continued in court.

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

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

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

Police used excessive force in some cases when making arrests. In 2016, two officers were charged and convicted of using of excessive force in the shooting death of a 14-year-old girl in Kwale. A High Court judge found both officers guilty of manslaughter for their actions during the search of the girl's home and sentenced each to prison for seven years.

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

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

Arbitrary Arrest: Police arbitrarily arrested and detained persons. Victims of arbitrary arrest were generally poor young men. Human rights organizations complained that security forces made widespread arbitrary arrests and detentions during counterterrorism operations and targeted ethnic Somalis and Kenyan Muslims. On March 22, AP officers allegedly arrested and assaulted Standard newspaper journalist, Isaiah Gwengi, presumably because of his stories on police brutality. The IPOA investigation continued at the end of the reporting year.

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

Detainee's Ability to Challenge Lawfulness of Detention before a Court: The law

entitles persons arrested or detained to challenge in court the legal basis or arbitrary nature of their detention, but that right was not always protected in practice.

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

The constitution provides for an independent judiciary. Reform of the judiciary continued. The judiciary demonstrated independence and impartiality. Despite widespread belief in judicial corruption, there were no credible allegations of, or investigations into, significant corruption among judges, prosecutors, or defense attorneys. Authorities generally respected court orders, and the outcomes of trials did not appear to be predetermined.

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

The Judges and Magistrates Vetting Board, established in 2011 to determine the suitability of judges and magistrates to hold office, completed its vetting and submitted its final report to the president in September 2016. The judiciary adopted some of the recommendations in that report. For example, the JSC made the deputy chief justice the judicial ombudsman, rather than a magistrate, clarifying questions of rank. The JSC also adopted a code of conduct applicable to all judicial staff, including magistrates and judges, and employed additional audit staff to ensure compliance with the Public Finance Management Act.

The constitution gives the judiciary authority to review appointments and decisions by other branches of government. Parliament sometimes ignored judicial decisions. For example, in August 2016 a High Court deadline expired for parliament to enact legislation to implement the constitutionally mandated two-thirds gender principle (see section 3). In May a second High Court-ordered deadline expired for implementation, despite a promise by the National Assembly majority leader to bring it to a vote.

The law provides for “kadhi” courts, which adjudicate Muslim law on marriage, divorce, and inheritance among Muslims. There were no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in

personal matters as long as it did not conflict with statutory law.

### **Trial Procedures**

The law provides for the right to a fair public trial, although individuals may give some testimony in closed session; the independent judiciary generally enforced this right. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence in their defense. The law also provides defendants the right to receive prompt and detailed information on the charges against them, with free interpretation if necessary, including during trials; to be tried without undue delay; to have access to government-held evidence; and not to be compelled to testify or confess guilt. Authorities generally respected these rights, although they did not always promptly inform persons of the charges against them. A pilot project implementing the *Active Case Management Guidelines*, developed to improve prosecution procedures, continued in four courts as of November. A randomized bench selection system was partially implemented within the Court of Appeal to avoid the public perception that parties with vested interests could influence the composition of a bench of judges.

Trial delays sometimes resulted because witnesses failed to present themselves, judges cancelled trial dates without notice, witnesses were not protected, or legal counsel failed to appear. Authorities generally respected a defendant's right to consult with an attorney in a timely manner. Defendants generally had adequate time to prepare a defense if they were capable of doing so. The government and courts generally respected these rights. There was no government-sponsored public defenders service, and courts continued to try the vast majority of defendants without representation because they could not afford legal counsel. The Legal Aid Act enacted in June 2016 established the National Legal Aid Service to facilitate access to justice, with the ultimate goal of providing pro-bono services for indigent defendants who cannot afford legal representation. On April 25, the attorney general launched the National Legal Aid Service Board to offer free legal assistance to vulnerable litigants, including children, some women, and persons with disabilities, although the assistance was largely available only in Nairobi. Other pro-bono legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers, an international NGO, provided it. The government declared September 25-29 Legal Awareness Week, with the theme "Safeguarding Human Rights and Fundamental Freedoms through Improved Law Enforcement," and offered free legal services at the Milimani law courts in Nairobi.

The ODPP significantly increased the number of trained prosecutors. According to the ODPP, as of June 29, there were an estimated 627 state prosecutors, compared with 200 in 2013, as well as 402 support staff. The ODPP phased out police prosecutors entirely in 2016. The expansion of the prosecution service also reduced delays in court proceedings. The judiciary improved its case clearance rate and substantially reduced case backlog by increasing benches of judges sitting daily.

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

Defendants may appeal a verdict to a 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. In May 2016 the judiciary launched a program of *Enhanced Service Delivery Initiatives* to promote more efficient and affordable justice. The program introduced Performance Management Understandings as a method for measuring the performance of judicial staff, judges, and magistrates by work delivery. In January the Supreme Court's chief justice launched a strategic blueprint for judicial reform, which included an Implementation and Monitoring Committee.

According to human rights NGOs, bribes, extortion, and political considerations influenced the outcomes in some civil cases. Court fees for filing and hearing civil cases effectively barred some from access to the courts.

### **Property Restitution**

There is no single established system of land tenure in the country: private titles compete with customary land rights and community land, while public land is vulnerable to squatters or to unscrupulous developers. There is no clear legal framework for issuing title deeds or for adjudicating land disputes because of legal disputes between the National Land Commission, vested with powers of land adjudication through the constitution and 2012 implementing legislation, and the Ministry of Lands. Plots of land were sometimes allocated twice. The Community Land Act signed into law in August 2016 allows communities to apply for land registrations as a single entity and put in train the adjudication process in which their applications will be considered alongside any competing claims.

A report by the Truth, Justice, and Reconciliation Commission (TJRC) established in the aftermath of the 2007-08 postelection violence identified land reform, including titling, as a key issue, and issued recommendations, which were largely not implemented. NGOs and media reported progress had been uneven. For example, according to the daily *Standard* newspaper, on January 17, a branch of the High Court ruled that more than three million land title deeds issued by the government since 2013 had been irregularly processed and were therefore invalid. The judgment was based on the parliament's failure to approve regulations required to implement the Land Registration Act. The High Court suspended its ruling for one year to give the Ministry of Lands time to issue the deeds in accordance with title regulations already in force.

There is no established system for restitution or compensation for those declared to be squatters and ordered to vacate land. Both private and communal clashes were common because of land disputes. The government used forced eviction and demolition to restore what it claimed was illegally occupied public land. For example, according to two OHCHR communications, in December 2016 authorities gave 1,200 indigenous Sengwer families seven days' notice to depart ancestral lands in Embobut Forest, following previous cycles of evictions. Subsequently, Kenya Forest Service (KFS) guards reportedly burned down several Sengwer dwellings. On December 8, the High Court in Eldoret stayed the evictions, but KFS resumed evictions in March, allegedly firing live ammunition and burning additional homes. In some cases, authorities arranged ad hoc restitution or relocation of residents under NGO pressure. On May 26, the African Union Court on Human and Peoples' Rights found in favor of the indigenous Ogiek community evicted in 2009 from the Mau Forest. The court ruled the government's actions had violated seven articles of the African Charter on Human and People's Rights, to which the country is a signatory. The ruling gave the

Kenyan government until November 6 to implement the required remedies, but as of this report, the Attorney General has taken no action.

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

The constitution and law prohibit such actions, except “to promote public benefit,” but authorities sometimes infringed on citizens’ privacy rights. The law permits police to enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants in the course of large-scale security sweeps to apprehend suspected criminals or to seize property believed stolen. For example, on August 11 and 12, according to multiple press and NGO reports, police conducted house-to-house operations in Kisumu County in connection with protests in the wake of the August 8 election. In one of the homes, police allegedly beat a husband, wife, and their six-month-old daughter. KNCHR confirmed the infant died of her injuries on September 15. In November, IPOA completed its investigation into the infant’s death and referred the case to the ODPP for potential prosecution.

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

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

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

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

Freedom of Expression: On April 26, a branch of the High Court declared unconstitutional Section 132 of the Penal Code, which criminalized “undermining the authority of a public officer,” ruling the provision violated the fundamental right of freedom of expression. Other provisions of the constitution and the National Cohesion and Integration Act prohibiting hate speech and incitement to violence remained in force. Authorities arrested numerous members of parliament



(MPs) on incitement or hate speech charges. On September 25, authorities arrested former MP David Manyara for alleged incitement to violence and separately arrested MP Paul Ongili (aka Babu Owino) on charges of subversion and incitement over his September 7 comments comparing President Kenyatta to deposed dictators. Immediately following Ongili's release on bond September 28, police re-arrested him on charges of causing grievous harm to a voter on August 8. On September 11, police arrested MP Moses Kuria and former Senator Johnson Muthama for allegedly making inflammatory statements. Authorities had previously arrested Kuria and Muthama, along with six other politicians from both the ruling and opposition parties, for making inflammatory public comments in June 2016. Courts dismissed those charges against the eight politicians last year.

Press and Media Freedom: The government occasionally interpreted laws to restrict press freedom, and officials occasionally accused the international media of publishing stories and engaging in activities that could incite violence. Two laws give the government oversight of media by creating a complaints tribunal with expansive authority, including the power to revoke journalists' credentials and levy debilitating fines. The government was the media's largest source of advertising revenue, and regularly used this as a lever to influence media owners. Journalists practiced self-censorship to avoid conflict with the government on sensitive subjects, such as the first family.

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

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

In May Human Rights Watch and the NGO Article 19 documented 23 incidents between 2013 and 2017 in which government officials or individuals believed to be aligned with the government assaulted journalists or bloggers. Two of the victims died under circumstances that may have been related to their work. The groups documented an additional 16 incidents of direct death threats against journalists and bloggers and 14 cases of arbitrary arrest or detention of journalists and bloggers who were later released without charge.

Numerous news outlets and NGOs reported intimidation of journalists increased in advance of and following the August 8 elections. In June authorities arrested journalist Walter Menya after he published an article on senior employees at a public service organization who were also registered officials of the ruling Jubilee party's campaign. Authorities released Menya two days later without charge. On August 12, police arrested journalists Duncan Khaemba and Otieno Willis while reporting on postelection violence in the Nairobi informal settlement of Kibera, reportedly for wearing bulletproof gear without a license. Authorities dropped the charges on August 15.

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

Censorship or Content Restrictions: The mainstream media were generally independent, but there were reports by journalists that government officials pressured them to avoid certain topics and stories and intimidated them if officials judged they had already published or broadcast stories too critical of the government. There were also reports journalists avoided covering issues or writing stories they believed their editors would reject due to direct or indirect government pressure. According to media reports, in October 2016 a Ministry of Health official threatened *Business Daily* reporter Stellar Murumba over a story about corruption at the ministry. On a recorded phone call, the official told Murumba the story put Murumba at risk and the government had tapped her computer. The official later apologized; authorities did not deny the reporter's surveillance claims.

Libel/Slander Laws: Government officials and politicians threatened and brought defamation cases against the media. On February 6, a branch of the High Court declared unconstitutional Section 194 of the Penal Code, which defined the offense of criminal defamation, and all criminal libel cases were withdrawn. Libel and slander remain civil offenses.

National Security: The government cited national or public security as grounds to suppress views that it considered politically embarrassing. In February the Communications Authority directed mobile phone service providers to allow a private company contracted by the government to listen to private calls, read text messages, and review mobile money transactions. A judge halted the directive, ruling it violated constitutional privacy protections.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. Authorities, however, monitored websites for violations of hate speech laws.

By law, mobile telephone service providers may block mass messages they judge would incite violence. The National Cohesion and Integration Commission (NCIC) tracked bloggers and social media users accused of spreading hate speech. According to an August 13 article in the *Nairobi News* (a blog run by the daily newspaper *The Daily Nation*), authorities arrested the administrator of a discussion group on the mobile application WhatsApp for spreading inflammatory false information and propaganda via social media.

According to the Kenya National Bureau's 2017 Economic Survey, as of September there were 39.4 million internet users--more than 80 percent of the population. Mobile data expanded internet access to many less-developed parts of the country. Network coverage for 3G and 4G data expanded, as did the number of internet service providers.

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

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

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

### **Freedom of Peaceful Assembly**

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

Police used excessive force at times to disperse demonstrators. At least twice during the year, police used tear gas to disperse striking nurses. IPOA's

investigation of resulting complaints continued as of November. There were widespread media reports of police violence directed at protesters following the August 8 elections, including the use of live ammunition against nonviolent protesters, house-to-house operations, and physical assault of bystanders not participating in protests. Credible reports indicated the number killed was at least 35 persons, with at least 100 injured. There were no reports of police injuries or deaths from the same period. Violence spiked episodically in opposition strongholds surrounding the October 26 fresh election, and unconfirmed reports indicate up to two dozen deaths in October and November from a mix of police action and mob violence. Many human rights and civil society organizations condemned the excessive use of police force against demonstrators. There were multiple press reports throughout the year of police using tear gas to disperse protesters, including against supporters of both the ruling party and opposition coalition following the elections. IPOA's investigation of resulting complaints continued as of November. For example, on September 29, IPOA and IAU both announced investigations into excessive use of force and extortion during a police action against protests at the University of Nairobi on September 28 in which 27 students were injured. The acting interior cabinet secretary announced stern actions would be taken against officers found culpable. A lack of police cooperation frustrated IPOA's investigation into some of the alleged abuses. On October 12, the government banned protests in the central business districts (CBD) of the three largest cities--Nairobi, Mombasa, and Kisumu--until further notice. Protests nonetheless continued in all three CBDs. Police reportedly clashed with protesters in the Kisumu CBD on October 13, but allowed protests to proceed there on October 16.

### **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected this right, but there were an increasing number of reports that authorities arbitrarily denied this right in some cases. A statement by the UN Office of the High Commissioner for Human Rights dated February 14 noted a systematic and deliberate pattern of suppression of civil society groups that challenge government policies and investigate human rights abuses and corruption.

The Societies Act requires that every public association be either registered or exempted from registration by the Registrar of Societies. The NGO Coordination Act requires that NGOs dedicated to advocacy, public benefit, or the promotion of charity or research register with the NGO Coordination Board. Rights groups accused the NGO Coordination Board of using its authority to suppress groups

critical of government action, particularly following the August 8 elections. On August 14, the NGO Coordination Board announced the Ministry of the Interior would cancel the registration of the Kenya Human Rights Commission (KHRC), one of the country's oldest human rights groups, citing alleged tax evasion and other reasons. This was the second such effort since 2015. On August 15, the NGO Coordination Board requested authorities shut down the offices of the Africa Center for Open Governance (AfriCOG), freeze its assets, and arrest its directors. A High Court judge granted a stay in the case, and the acting interior cabinet secretary put a hold on the suspensions of the KHRC and AfriCOG, but directed further investigations into the issues the NGO Board raised.

The NGO Coordination Act of 1990 requires organizations employing foreign staff to seek authorization from the NGO Coordination Board before applying for a work permit. On January 6, the interior principal secretary directed the 47 county commissioners to monitor strictly local NGOs' license status, and whether an NGO's foreign employees possessed valid work permits. Following the August 8 election, the NGO Coordination Board informed NGOs it would not meet for the rest of the year and would stop issuing extensions on certain types of work passes. As a result, NGOs could not hire foreign employees, and the status of many existing NGO employees expired, forcing them to leave the country or cease working and leave NGOs short-handed.

In September 2016, the Ministry of Devolution and Planning announced its intention to implement immediately the 2013 Public Benefits Organization (PBO) Act, an important step in providing a transparent legal framework for NGO activities. As of November the PBO Act was not implemented because it was not gazetted, a step required before implementation.

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

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

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

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights but increasingly enforced restrictions on refugees' movements. The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and

assistance to internally displaced persons (IDPs), refugees, asylum seekers, and other persons of concern. In February a High Court blocked the government's plan to close the Dadaab refugee camp, ruling the plan violated the principle of nonrefoulement, and was discriminatory and unconstitutional for targeting Somali refugees. The government announced its intention to appeal, but had not done so as of year's end.

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

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

At year's end, the security situation in Dadaab remained precarious, although no new attacks on humanitarian workers occurred. In February assailants fired shots in an unsuccessful attempt to kidnap a teacher there. Increased police presence in the camps led to some improvements and cooperation with refugees through community policing and neighborhood watch initiatives. Violence also occasionally flared over Dadaab host community protests about employment and priority contract rights related to the camp.

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

While mobile courts continued to serve the camp populations, most crimes went unreported. Refugees generally dealt with criminality in accordance with customary law and traditional practices rather than through the country's justice system. Other security problems in refugee camps included petty theft, banditry, ethnic violence, and the harassment of Muslim converts to Christianity, according to UNHCR.

In-country Movement: The country hosted a very large refugee population. Prolonged insecurity and conflict in the region forced the country to play a leading role in coping with refugee flows, especially from Somalia, South Sudan, the Democratic Republic of the Congo (DRC), and Ethiopia. In February the government announced its intention to appeal a 2017 Court of Appeal High Court ruling that blocked a plan to relocate all urban refugees to camps, although it had not appealed by the end of the year. The government enforced an encampment policy, with Kakuma and Dadaab refugee camps as the designated areas for refugees.

The government granted limited travel permission to refugees to receive specialized medical care outside the camps, to refugees enrolled in public schools, and to refugees in the resettlement pipeline. It made exceptions to the encampment policy for extremely vulnerable groups in need of protection. The government continued to provide in-country movement and exit permits for refugee interviews and departures for third-country resettlement.

From January through July, the Department of Refugee Affairs issued more than 5,000 temporary movement passes to refugees and asylum seekers. UNHCR reported that approximately 90 percent of the individuals returned to their camps by the time their passes expired. Authorities charged more than 600 refugees and asylum seekers with being unlawfully present in the country (under the Citizenship and Immigration Act) or residing without authority outside designated areas (under the Refugees Act). Of these, authorities discharged 137 and returned them to the camps, 44 were deported to Somalia, and 443 were convicted and ordered to pay fines or serve three to six months in prison.

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

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

reintegration into society. The committee planned to compensate the remaining 39,314 by the end of the year.

Violence in Mandera County in 2014 between the communities of Mandera North District and Banisa District, and on the border between Mandera and Wajir Counties, resulted in displacement of an estimated 32,000 households. According to the Ministry of Devolution and Planning, the committee provided Mandera County with financial assistance for 6,890 IDP households that had not been able to return home, and assistance to the IDPs continued.

Water scarcity exacerbated communal conflict and left an unknown number of citizens internally displaced. IDPs from all locations generally congregated in informal settlements and camps. Living conditions in such settlements and camps remained poor, with rudimentary housing and little public infrastructure or services. Grievances and violence between IDPs and host communities were generally resource based and occurred when IDPs attempted to graze livestock or gather food and fuel locally. In the north, IDP settlements primarily consisted of displaced ethnic Ethiopians and Somalis and were targets of clan violence or involved in clashes over resources.

### **Protection of Refugees**

Refoulement: In November 2016 the government forcibly sent South Sudanese opposition spokesperson James Gatdet Dak to South Sudan, despite the risk of torture. In a statement, UNHCR expressed its deep concern, noting that Dak had previously been granted refugee status by Kenyan authorities. In February a court ruled that Dak had not been held by authorities, and ordered the government to investigate the case as a criminal abduction.

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

In August the NGO Refugees International questioned the continued facilitation of returns in view of the deterioration in conditions in Somalia. In 2016 NGO Human Rights Watch released a report that questioned the voluntariness of Somali refugee returns from Kenya and accused officials of violating international law by intimidating refugees into returning to insecure conditions in Somalia. Also in



2016, Amnesty International issued a report alleging the government was forcing refugees to return to Somalia.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has a system for providing protection to camp-based refugees. While the government generally coordinated with UNHCR to provide assistance and protection to refugees in the Dadaab and Kakuma refugee camps, cooperation was limited in urban areas. Security threats emanating from Somalia strained the government's ability to provide security to those seeking asylum, especially in Dadaab. The government permitted registration of new refugee arrivals only during specific periods. For example, in June and July only one new refugee was registered in Dadaab. Since that time, no registration of arrivals took place, and there were an estimated 4,000 unregistered persons of concern, mostly from Somalia, in need of adjudication. In May 2016 the government revoked prima facie status--a group determination of refugee status--for newly arrived asylum seekers from Somalia and did not provide individual refugee status determination to Somali refugee arrivals.

According to UNHCR, as of September the country hosted approximately 489,000 registered refugees and asylum seekers: in Dadaab refugee camp an estimated 240,000; in Kakuma camp approximately 185,000; and in the Nairobi area an estimated 64,000. The government and UNHCR had not recently verified the number of refugees in other urban areas, which was estimated to be nearly 100,000. The majority of refugees and asylum seekers were from Somalia (287,400), with others coming from South Sudan (110,400), the DRC (34,800), Ethiopia (27,800), Sudan (9,900), and other countries (500). Most refugees arriving in Kakuma were from South Sudan, and the refugee population in Dadaab was primarily Somali. New arrivals also included individuals from Burundi, the DRC, Ethiopia, and Uganda. The Somali refugee influx was lower than in previous years. An agreement on voluntary repatriation between Kenya, Somalia, and UNHCR expired in November. Under the agreement, UNHCR supported the return of more than 73,800 Somali refugees from December 2014 until October.

In February the high court overturned a May 2016 government plan to close the Dadaab camps in November for reasons of security and because of cost. The high court ruled the plan violated the constitution and international obligations. Officially, the country encouraged Somali refugees to return voluntarily to Somalia. UNHCR continued to provide both financial and transportation support to refugees voluntarily returning to Somalia.

In May 2016 the government disbanded the Department of Refugee Affairs and replaced it with a Refugee Affairs Secretariat to carry out the department's previous work.

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

### **Stateless Persons**

The constitution and the 2011 Citizen and Immigration Act provide for the protection of stateless persons and for legal avenues for eligible stateless persons to apply for citizenship. UNHCR estimated that an estimated 18,500 stateless persons were registered in the country; the actual number, however, was unknown. Communities known to UNHCR as stateless included Sudanese Nubians in Nairobi, the Somali Galjeel in the Tana River area, the Mozambican Makonde in Mombasa, and the Pemba in Kwale. There were also a number of stateless persons of mixed Eritrean-Ethiopian heritage. In February the government began issuing identity cards and title deeds for land they own to Makonde applicants after President Kenyatta issued a directive in October 2016 that the government should do so by December 2016.

Although legal safeguards and pathways to citizenship for stateless persons exist, the government lacked a strategy to identify and register them, significantly limiting their ability to acquire legal residence or citizenship. Stateless persons had limited legal protection and encountered travel restrictions, social exclusion, and heightened vulnerability to trafficking, sexual and gender-based violence, exploitation, forced displacement, and other abuses. UNHCR reported that stateless persons faced restrictions on internal movement and limited access to basic services, property ownership, and registration of births, marriages, and deaths. Inadequate documentation sometimes resulted in targeted harassment and extortion by law enforcement officials and exploitation in the informal labor sector.

National registration policies require citizens age 18 and older to obtain national identification documents from the National Registration Bureau. Failure to do so is a crime. Groups with historical or ethnic ties to other countries faced higher burdens of proof in the registration process. For example, Nubians, along with ethnic Somalis (such as the Galjeel community) and Muslims in the coast region, experienced discriminatory registration policies that led to statelessness, according to UNHCR and domestic legal aid organizations.

The deadline for stateless persons to apply to be considered for citizenship expired in August 2016. In accordance with Article 15(2) of the Kenya Citizenship and Immigration Act of 2011, the deadline was extended until August 30, 2019.

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

During the year the government established a vetting committee of Nubian elders to identify children of Nubian descent who are eligible for registration. As of November, the committee had not completed this process.

On June 2, the government issued a land title for 288 acres of public land to a private group representing the Nubian Council of Elders for the settlement of stateless persons. UNHCR reported that the government had completed, but not yet approved, the National Action Plan to eradicate statelessness in Kenya.

### **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 citizens voted in the second general election under the 2010 constitution, electing executive leadership and parliamentarians, county governors, and members of county assemblies. International and domestic observers, such as the Kenya Elections Observation Group, African Union Observer Mission, and the Carter Center, judged the elections generally credible, although some civil society groups raised concerns about irregularities. In the presidential election, Jubilee Party candidate Uhuru Kenyatta won with a margin significantly above that of runner-up candidate Raila Odinga of the National Super Alliance (NASA). NASA challenged the results in a petition to the Supreme Court. On September 1, the court ruled in NASA'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.

On October 10, Odinga announced his withdrawal from the election, saying the IEBC had not taken sufficient steps to ensure a free and fair election. The October 26 vote was marred by low voter turnout in some areas and protests in some opposition strongholds. On October 30, the IEBC declared Kenyatta the winner of the election. On November 20, the Supreme Court rejected petitions challenging the October 26 elections and upheld Kenyatta's victory. Odinga refused to accept Kenyatta's re-election and repeated his call for people's assemblies across the country to discuss constitutional revisions to restructure the government and the elections process.

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

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

The constitution provides for parliamentary representation by women, youth, persons with disabilities, ethnic minorities, and marginalized communities. The constitution specifically states no gender should encumber more than two-thirds of elective and appointed offices (the Two-Third Gender Rule). The Supreme Court set an initial August 2016 deadline for implementation of this provision, but that passed without action and the National Assembly failed to meet a second deadline in May. On August 15, two NGOs filed a petition for the High Court to declare the composition of the National Assembly and Senate unconstitutional for failure to meet the Two-Third Gender rule. The petition had not yet been heard as of November. The cabinet also did not conform to the two-thirds rule.

A September forum on Violence Against Women in Elections (VAWIE) that included the Elections Observation Group and the Federation of Women Lawyers in Kenya (FIDA) identified significant barriers to women's participation in the political process. The chief concerns were violence and insecurity stemming from

economic and financial intimidation, harassment based on perceived levels of sexual or moral purity, threats of divorce, and other familial or social sanctions. The 2013 study by FIDA and the National Democratic Institute, *A Gender Audit of Kenya's 2013 Election Process*, highlighted challenges particular to female candidates, including irregularities in political party primaries that prevented women from competing in elections and the consistent failure of political parties to adhere to their own stated procedures for choosing candidates. FIDA reported a drop in verifiable VAWIE cases from 5,000 in 2013 to 300 during the year, but identified serious political backlash for reporting abuses, harassment, or discrimination within the political parties.

The overall success rate of women candidates who ran for positions in the 2017 national elections was 16 percent, with 47 women elected to the National Assembly and three to the Senate. Women were elected to three of the 47 governorships. The constitution provides for the representation in government of ethnic minorities, but implementation was incomplete. The constitution also calls for persons with disabilities to hold a minimum of 5 percent of seats in the Senate and National Assembly. According to an October report by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), persons with disabilities comprised only 2.8 percent of the Senate and National Assembly.

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

The law provides criminal penalties for official corruption. Despite some progress in fighting corruption during the year, the government did not implement relevant laws effectively, and officials frequently engaged in alleged corrupt practices with impunity. There were numerous reports of government corruption, including land seizures, conflicts of interest in government procurement, favoritism and nepotism, and bribery.

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

The public continued to perceive corruption as a severe problem at all levels of government. According to an EACC national survey released in March 2016, 75 percent of respondents characterized corruption levels as “very high” in the country, and a slight majority said that corruption had increased during the previous year. A slight majority, however, also said the government was committed to the fight against corruption. Bribery was the most commonly

reported type of corruption, with 38 percent of respondents reporting they had paid a bribe in the last year.

According to the 2017 Ernest and Young Fraud Survey, 90 percent of respondents agreed that corruption is widespread in businesses. Corruption reportedly often influences the outcomes of government tenders. Foreign firms reported having limited success bidding on public procurements, and asset misappropriation, bribery, and procurement fraud were serious challenges. The law provides penalties for corruption, but no senior officials were successfully prosecuted for corruption in the last year.

The EACC has the legal mandate to investigate official corruption allegations, develop and enforce a code of ethics for public officials, and engage in public outreach on corruption. The EACC, however, lacks prosecutorial authority and must refer cases to the ODPP to initiate prosecutions. Both agencies lacked the technical and financial capacity to execute their mandates fully, even as the government increased the EACC's budget from 2.8 billion shillings (\$28 million) in 2016 to 4.0 billion shillings (\$40 million). At the end of 2016, the EACC reported having more than 420 corruption cases pending in court, and almost 1,000 active asset forfeiture cases in court in September. The EACC had secured 22 convictions as of September.

The government took modest steps towards combatting corruption, including progress on implementing President Kenyatta's November 2015 anticorruption strategy. The government made limited progress on other commitments, including the adoption of international anticorruption standards and the digitization of government records and processes. Because courts remained subject to significant case backlogs, cases can take years to resolve.

Corruption: While police and government corruption was widely viewed as endemic, authorities rarely arrested and prosecuted public officers (see section 1.d.).

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

Media and civil society groups reported that police used illegal confinement, extortion, physical abuse, and fabricated charges to accomplish law enforcement objectives as well as to facilitate illegal activities.

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

Investigations into corruption allegations against 124 government officials named in a 2014 EACC report--including five former cabinet secretaries and three principal secretaries--were dismissed following a court ruling that the EACC was not properly constituted at the time the names of the accused were submitted to ODPP for prosecution. In July the Court of Appeal permanently quashed the anticorruption court's prosecution of one of the accused, former transport cabinet secretary Michael Kamau. The court ruled the EACC's secretariat had no authority to recommend charges with fewer than three sitting commissioners.

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

The 2012 Leadership and Integrity Act requires public officers to register potential conflicts of interest with the relevant commissions. The law identifies interests that public officials must register, including directorships in public or private companies, remunerated employment, securities holdings, and contracts for supply of goods or services, among others. The law requires candidates seeking appointment to nonelective public offices to declare their wealth, political affiliations, and relationships with other senior public officers. This requirement is in addition to background screening on education, tax compliance, leadership, and

integrity. Many officials met these requirements and reported potential conflicts of interest. Although the government generally did not seek criminal or administrative sanctions for noncompliance, former EACC chairman Philip Kinisu resigned his position after being accused of failing to disclose a conflict of interest properly. Authorities did not strictly enforce ethics rules relating to the receipt of gifts and hospitality by public officials.

There were no reported challenges to any declarations of wealth--which normally are not made public--filed by public officials.

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

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases, although some groups reported experiencing increased government harassment during the year. Officials were sometimes cooperative and responsive to the queries of these groups, but the government generally ignored recommendations by human rights groups if such recommendations were contrary to its policies. There were reports that officials intimidated NGOs and threatened to disrupt their activities (see section 2.b). Less-established NGOs, particularly in rural areas, reported harassment and threats by county-level officials as well as security forces. Human rights activists claimed security forces conducted surveillance of their activities, and some reported threats and intimidation.

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

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



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

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

The United Nations or Other International Bodies: The government generally ignored recommendations of the United Nations or international human rights groups if they were contrary to government policies. Following the Supreme Court's September 1 decision to invalidate the presidential election results, at least one senior government official accused the International Development Law Organization (IDLO) of having interfered with the judicial process. IDLO had helped the judiciary select legal experts to assist with the elections. Unconfirmed social media stories appeared in September and October, stating that the government would suspend the country's membership in IDLO. The newspaper *Daily Nation* reported October 2 that the government was also lobbying 14 other IDLO countries to terminate their membership, although this was not confirmed. As of November IDLO confirmed its status in Kenya remained unchanged.

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

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

### **Women**

Rape and Domestic Violence: The law criminalizes rape, defilement, sexual violence within marriage, and sex tourism, but enforcement remained limited. The law criminalizes abuses that include early and forced marriage, FGM/C, forced wife "inheritance," and sexual violence within marriage. The law's definition of violence also includes damage to property, defilement, economic abuse, emotional or psychological abuse, harassment, incest, intimidation, physical abuse, stalking, verbal abuse, or any other conduct against a person that harms or may cause imminent harm to the safety, health, or well-being of the person. Under law,

insulting the modesty of another person by intruding upon that person's privacy or stripping them of clothing are criminal offenses punishable by imprisonment for up to 20 years.

The law provides a maximum penalty of life imprisonment for rape, although sentences were at the discretion of the judge and usually no longer than the minimum of 10 years.

Citizens frequently used traditional dispute resolution mechanisms to address sexual offenses in rural areas, with village elders assessing financial compensation for the victims or their families. They also used such mechanisms occasionally in urban areas. In October, CEDAW reported the government failed to provide substantial assistance to female victims of gender-based violence as recommended by the Commission of Inquiry into the Post-Election Violence of 2007.

The Coalition on Violence against Women estimated 16,500 rapes occurred per year. IPOA investigated eight reported cases of sexual assault by police officers between April and September.

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

Domestic violence against women was widespread. Police officers generally refrained from investigating domestic violence, which they considered a private family matter.

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

Media reported growing numbers of female students refused to participate in FGM/C ceremonies, traditionally performed during the August and December school holidays. Media reported arrests of perpetrators and parents who agreed to FGM/C, but parents in regions with a high prevalence of FGM/C frequently bribed

police to allow the practice to continue. There were also reports the practice of FGM/C increasingly occurred underground to avoid prosecution.

For more information, see [data.unicef.org/resources/female-genital-mutilation-cutting-country-profiles/](https://data.unicef.org/resources/female-genital-mutilation-cutting-country-profiles/).

Other Harmful Traditional Practices: Certain communities commonly practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. Such inheritance was more likely in cases of economically disadvantaged women with limited access to education living outside of major cities. Other forced marriages were also common. The law codifies the right of men to enter into consensual marriage with additional women without securing the consent of any existing wife.

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

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: [www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/](http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/).

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

The constitution prohibits gender discrimination in relation to land and property ownership and gives women equal rights to inheritance and access to land. The constitution also provides for the enactment of legislation for the protection of wives' rights to matrimonial property during and upon the termination of a marriage, and it affirms that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution.

The law includes provisions to strengthen property rights for wives. According to an October report by CEDAW, despite the law, much of the country held to the traditions that married women are not entitled to their fathers' property and that

upon remarriage, a woman loses her claim to her deceased husband's property.

## **Children**

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

For additional information, see Appendix C.

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

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

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

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

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

Early and Forced Marriage: The minimum age for marriage is 18 years for women and men. Media occasionally highlighted the problem of early and forced marriage, which some ethnic groups commonly practiced. Under the constitution, the kadhi courts retained jurisdiction over Muslim marriage and family law in

cases where all parties profess the Muslim religion and agree to submit to the jurisdiction of the courts. For additional information, see Appendix C.

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

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

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

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at [travel.state.gov/content/childabduction/en/legal/compliance.html](http://travel.state.gov/content/childabduction/en/legal/compliance.html).

## **Anti-Semitism**

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

## **Trafficking in Persons**

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

## **Persons with Disabilities**

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

NGOs reported that persons with disabilities had limited opportunities to obtain education and job training at all levels due to lack of accessibility of facilities and resistance by school officials and parents to devoting resources to students with disabilities.

Authorities received reports of killings of persons with disabilities as well as torture and abuse, and the government took action in some cases. For example, the *Daily Nation* newspaper reported in March 2016 that a woman was arrested and would be prosecuted in Nairobi after 11 disabled children were found in poor living conditions, locked up, and malnourished in her home.

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

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

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

Nominated and elected parliamentarians with disabilities formed the Kenya Disability Parliamentary Caucus in 2013 and issued a strategy statement focusing on improving economic empowerment and physical access for persons with disabilities as well as integrating disability rights into county government policies. According to an October report by CEDAW, persons with disabilities comprised only 2.8 percent of the Senate and National Assembly, less than the 5 percent mandated by the constitution (see section 3).

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

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

Many factors contributed to interethnic conflicts: longstanding grievances regarding land-tenure policies and competition for scarce agricultural land; the proliferation of illegal guns; cattle rustling; the growth of a modern warrior/bandit culture (distinct from traditional culture); ineffective local political leadership; diminished economic prospects for groups affected by regional droughts; political rivalries; and the struggle of security forces to quell violence. Conflict between landowners and squatters was particularly severe in the Rift Valley and coastal regions, while competition for water and pasture was especially serious in the north and northeast. According to the OHCHR, between December 2016 and April, in defiance of a court order, Kenya Forest Service guards burned multiple dwellings of the minority Sengwer tribe in order to evict them from Embobut Forest.

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

Ethnic differences also caused a number of discriminatory employment practices.

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

The constitution does not explicitly protect LGBTI persons from discrimination based on sexual orientation or gender identity. The penal code criminalizes “carnal knowledge against the order of nature,” which was interpreted to prohibit consensual same-sex sexual activity, and specifies a maximum penalty of 14 years’ imprisonment if convicted. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years’ imprisonment if convicted. Police detained persons under these laws, particularly persons suspected of prostitution, but released them shortly afterward. In April 2016 the National Gay and Lesbian Human Rights Commission (NGLHRC) filed Petition 150 of 2016 challenging the constitutionality of these penal codes. As of November, two cases filed by NGOs in early 2016 to test the constitutionality of these laws remained unresolved.

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

Authorities permitted LGBTI advocacy organizations to register and conduct activities.

Violence and discrimination against LGBTI individuals was widespread. According to a 2015 HRW and Persons Marginalized and Aggrieved report, LGBTI individuals were especially vulnerable to blackmail and rape by police officers.

On May 26, the government gazetted a taskforce on policy and institutional reforms toward intersex persons in order to implement a High Court’s judgment in the 2014 Baby ‘A’ case recognizing the existence of intersex persons. Separately, in 2015, a High Court ruled in favor of the NGLHRC in a case challenging the government’s refusal to register LGBTI advocacy and welfare organizations. The court ruled that refusing to register the organization was an infringement on the constitutionally protected freedom of association. The Court of Appeal ruled in May 2016 that the High Court’s judgment stood in the interim. The government’s appeal remained pending as of November.



## **HIV and AIDS Social Stigma**

The government, along with international and NGO partners, made progress in creating an enabling environment to combat the social stigma of HIV and AIDS and to address the gap in access to HIV information and services. For example, the government launched treatment guidelines for sex workers and injected drug users in collaboration with key stakeholders. The government and NGOs supported a network of at least 5,488 counseling and testing centers providing free HIV/AIDS diagnosis. Diagnosis of other sexually transmitted infections was available through hospitals and clinics throughout the country. In 2016, according to its website, the First Lady's Beyond Zero Campaign to stop HIV infections led to the opening of 46 mobile clinics across the country.

## **Other Societal Violence or Discrimination**

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

In 2016 the Senate and the National Assembly established a joint parliamentary select committee to investigate police brutality and mob violence. That committee continued to meet as of November.

Mobs also attacked persons suspected of witchcraft or participation in ritual killings. For example, according to the *Star* newspaper, on June 6 a mob in the coastal city of Kilifi killed three persons accused of using witchcraft to drown a man hours before his wedding ceremony. Police investigated the three murders, but there were no reports of arrests.

Societal discrimination continued against persons with albinism, many of whom left their home villages due to fear of abuse and moved to urban areas where they believed they were safer. Individuals attacked persons with albinism for their body parts, which some believed could confer magical powers and which could be sold for significant sums.

## **Section 7. Worker Rights**

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

The law provides for the right of workers, including those in export processing zones (EPZs), to form and join unions of their choice and to bargain collectively. Any two or more workers in an enterprise have the right to form a union by registering with the trade union registrar. If the registrar denies the registration, a union may appeal to the courts. For the union to be recognized as a bargaining agent, it needs to represent a simple majority of the employees in a firm eligible to join the union. This provision extends to public and private sector employees. Members of the armed forces, prisons service, and police are not allowed to form or join trade unions.

The law permits the government to deny workers the right to strike under certain conditions. For example, the government prohibits members of the military, police, prison guards, and the National Youth Service from striking. Civil servants are permitted to strike following a seven-day notice period. In 2016 the Judiciary granted High Court status to the Employment and Labor Relations Court. A bureau of the Ministry of Labor called the Ministry of Labor, Social Security, and Services (MOLSS) typically referred disputes to mediation, fact-finding, or binding arbitration at the Employment and Labor Relations Court, a body of up to 12 judges which has exclusive jurisdiction to handle employment and labor matters and which operates in urban areas, including Nairobi, Mombasa, Nyeri, Nakuru, Kisumu, and Kericho. It is illegal for parties involved in mediation to strike. Additionally, MOLSS referral of a dispute to the conciliation process nullifies the right to strike.

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

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

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

minimum wage guidelines as well as to advocate for better working conditions and representation in the Employment and Labor Relations Court. The bill of rights in the constitution allows trade unions to undertake their activities without government interference, and the government generally respected this right.

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

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

The Employment and Labor Relations Court received many cases arising from the implementation of new labor laws. The parties filed the majority of cases directly without referral to MOLSS for conciliation. In 2015-16, the number of filed cases increased by 23.5 percent to 4,244, while the number of cases settled more than doubled to 2,403. The total Collective Bargaining Agreements registered in 2016 were 298, compared to 230 in 2015. The government established the court to provide for quick resolution of labor disputes, but backlog cases dated to 2007.

The chief justice designated all county courts presided over by senior resident magistrates and higher-ranking judges as special courts to hear employment and labor cases. Providing adequate facilities outside of Nairobi was challenging, but observers cited the ability of workers to submit labor-related cases throughout the country as a positive step. In 2016 the Judiciary finalized the Employment and Labor Relations (Procedure) Rules. The significant changes introduced in the new Court procedure rules provide parties access to file pleadings directly in electronic form, new pretrial procedures, and alternative dispute resolution. The rules also set a 30-day time limit for the court to submit a report on disagreements over Collective Bargaining Agreements filed.

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

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

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

The survival of trade unions was threatened by the misuse of internships and other forms of transitional employment, with employers often not hiring employees after an internship ends. State agencies increasingly outsourced jobs to the private sector, and in the private sector, casual workers were employed on short-term contracts. This shift contributed to declining numbers in trade unions. NGOs and trade unionists reported increased replacement of permanent positions by casual or contract labor, especially in the EPZs, the Port of Mombasa, and in the agricultural and manufacturing sectors. In some cases cited, employers staffed permanent jobs with rotating contract workers. This practice occurred at the management level as well, where employers hired individuals as management trainees and kept them in these positions for the maximum permitted period of three years. Instead of converting such trainees to permanent staff, employers replaced them with new trainees at the end of the three years. During the year the ministry reviewed misuse of term contract employment.

Workers exercised the right to strike. Nonteaching university staff demonstrated in 2016, seeking better employment terms. They did not report to work for 72 days in

2016 and for 42 days during the year. The matter was resolved in June when the government agreed to implement a new collective bargaining agreement. The health sector witnessed industrial strikes that began in the fourth quarter of 2016 and continued into the year. The doctors' strike lasted for 100 days, leading to disruption of public health care service delivery and temporary detention of seven union officials. Strikes involving Kenya National Union of Nurses in various counties continued for most of the reporting year. The nurses demanded higher wages, prompt payment of salaries, more promotions, better working conditions and sufficient drugs for patients. They also demanded that county governments remit statutory deductions taken from their paychecks to the National Social Security Fund and the National Hospital Insurance Fund. The most recent strike ended November 3, when the government agreed to pay withheld back salaries; authorized a collective bargaining agreement; agreed to pay for nurses uniforms and to provide a risk allowance; and announced it would drop all pending disciplinary cases against nurses resulting from the strikes.

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

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

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

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

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

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

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

The law provides for penalties for any person who employs, engages, or uses a child in an industrial undertaking in violation of the law. The fines were generally enough to deter violations. Employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Child labor in the informal sector was widespread but difficult to monitor and control.

MOLSS enforces child labor laws, but implementation remained problematic due to resource constraints. Supplementary programs, such as the International Labor Organization (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.

In support of child protection, the MOLSS launched a national online database system in May. 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 worked closely with the Central Organization of Trade Unions, the Federation of Kenyan Employers, and the ILO to eliminate child labor.

According to the 2009 National Census, almost three million children between ages five and 14 (33 percent of all children in that age group) engaged in child labor. Many children worked on family plots or in family units on tea, coffee, sugar, sisal, tobacco, and rice plantations, as well as in the production of miraa (khat). Children worked in mining, including in abandoned gold mines, small quarries, and sand mines. Children also worked in the fishing industry. In urban areas businesses employed children in hawking, scavenging, carrying loads, fetching and selling water, and selling food. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestic servants. Parents sometimes initiated forced or compulsory child labor, such as in agricultural labor and domestic service, but also including prostitution.

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

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

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

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

The government did not, however, effectively enforce the law. Gender-based discrimination in employment and occupation occurred, although the law mandates nondiscrimination based on gender in hiring. The average monthly income of women was approximately two-thirds that of men. Women had difficulty working in nontraditional fields, had slower promotions, and were more likely to be dismissed. According to a World Bank report, both men and women experienced

sexual harassment in job recruitment, but women more commonly reported it. Women who tried to establish their own informal businesses were subjected to discrimination and harassment. One study of women street vendors in Nairobi found harassment was the main mode of interaction between street vendors and authorities. The study noted that demands for bribes by police amounting to three to 8 percent of a vendor's income as well as sexual abuse were common.

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

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

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

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

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

Regulation of wages is part of the Labor Institutions Act, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category. The minimum wage for a general laborer was 10,954 shillings (\$110) per month. The average minimum wage for skilled workers was 17,404 shillings (\$170) per month. The government increased the lowest agricultural minimum wage for unskilled



employees to 6,780 shillings (\$68) per month, excluding housing allowance. Agricultural workers were underpaid compared with other sectors.

The MOLSS implemented various social protection programs under the Social Safety Net Program, such as a cash transfer for orphaned and vulnerable children, a cash transfer program for the elderly, and a cash transfer program for persons with disabilities. These programs reached 832,408 households.

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

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

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

The labor ministry's Directorate of Occupational Health and Safety Services has the authority to inspect factories and work sites, but the government employed an insufficient number of labor inspectors to conduct regular inspections. The directorate's health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Employers may appeal such notices to the Factories Appeals Court, a body of four members, one of whom must be a High Court judge. The law stipulates that factories employing 20 or more persons have an internal health and safety committee with representation from workers. According to the government, many of the largest factories had health and safety committees.

The law provides for labor inspections to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring

compliance with labor laws. Low salaries and the lack of vehicles, fuel, and other resources made it very difficult for labor inspectors to do their work effectively and left them vulnerable to bribes and other forms of corruption. The labor inspection form includes a provision for reporting on persons with disabilities. The Employment Act of 2007 prohibits discrimination against an employee on the basis of disability.

The law provides social protections for workers employed in the informal sector, and informal workers organized into associations, cooperatives, and, in some cases, unions. All Kenyan employers, including those in the informal sector, are required to contribute to the National Hospital Insurance Fund and the National Social Security Fund; these provide health insurance and pensions. According to the 2015 2017 *Kenya Economic Survey*, the informal sector employed 11.81 million persons in 2016, compared with 2.42 million in the formal sector.

Workers, including foreigners and immigrants, have the legal right to remove themselves from situations that endanger health or safety without jeopardy to their employment. The MOLSS 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.