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2020 Country Reports on Human Rights Practices: Kenya

TRANSLATIONS

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EXECUTIVE SUMMARY

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

The National Police Service maintains internal security and reports to the Ministry of Inter-Coordination of National Government. The National Intelligence Service co

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internally as well as externally and reports directly to the president. The Kenya Defense Forces report to the Ministry of Defense and are responsible for external security but have some domestic security responsibilities, including border security and supporting civilian organizations in the maintenance of order, including post disaster response. Civilian authorities at times did not maintain effective control over the security forces. Members of the security forces committed numerous abuses.

Significant human rights issues included: unlawful or arbitrary killings, including extrajudicial killings by the government or on behalf of the government and by the terrorist group al-Shabaab; forced disappearances by the government or on behalf of the government and by al-Shabaab; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest and detention by the government; arbitrary interference with privacy; serious interference with the freedom of peaceful assembly and freedom of expression; serious acts of corruption; lack of investigation and accountability for violence against women and girls; and the existence and use of laws criminalizing consensual same-sex sexual conduct between adults.

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

Al-Shabaab staged deadly attacks on isolated communities along the border with Somalia, targeting both security forces and civilians. In January militants carried out five attacks, killing more than a dozen persons, including three teachers and four children. The government continued to prioritize investigations and prosecutions of terrorist activities. Human rights groups alleged security forces committed abuses, including extrajudicial killings, while conducting counterterror operations.

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. Between July 2019 and June 30, the Independent Policing Oversight Authority (IPOA) received 161 complaints regarding deaths resulting from police actions or inactions, compared with 119 in the prior year. The Missing Voices website, founded by a group of nongovernmental organizations (NGOs) to track police killings and disappearances, as of November documented 127 cases of killings and suspected enforced disappearances during the year.

Some groups alleged authorities significantly underestimated the number of extrajudicial killings by security forces, including due to underreporting of such killings in informal settlements, particularly in dense urban areas. Media reports and NGOs attributed many human rights abuses to counterterrorism operations in Nairobi and the northeast counties of Mandera, Garissa, and Wajir bordering Somalia, as well as along the coast. Human rights groups reported these abuses targeted Muslims, especially ethnic Somalis. In a report released in January, NGO HAKI Africa and its partners alleged suspected security force members killed 43 persons, including many ethnic Somalis, in the coastal region in 2019. HAKI reported extremists and criminal groups killed 11 individuals and civilian mobs killed five persons during the same period in the six coastal counties.

On March 27, the government began enforcing a nationwide dusk-to-dawn curfew and other measures to curb the spread of COVID-19. Media and human rights groups reported police used excessive and arbitrary force to enforce these measures, which led to deaths and injuries. As of September 22, IPOA stated it received 93 complaints of police misconduct while enforcing the curfew, involving 20 deaths and 73 injuries from shootings, assaults, and inhuman treatment. In October, NGO Independent Medico-Legal Unit reported it documented 26 killings by police during the pandemic. As of June the Social Justice Centres Working Group recorded 18 deaths in informal settlements from shootings, beatings, and other violence related to enforcement of COVID-19 measures. For example, on March 31, police reportedly shot 13-year-old Yassin Moyo while he was standing on the balcony of his family's home in Mathare, an informal settlement in

Nairobi. Police officer Duncan Ndiema Ndie was charged with murder, and the case remained pending at the end of the year. On April 1, President Uhuru Kenyatta publicly apologized for police violence related to the curfew; nonetheless, reports of abuses continued.

Impunity remained a serious problem. Authorities investigated and prosecuted a number of police officers for committing killings, but there were no convictions during the year. Since its inception in 2012, IPOA investigations had led to six convictions of police officers for killings. As of November, IPOA reported it had 62 pending court cases involving police killings, with 12 cases involving police killings awaiting registration in court and 35 cases awaiting legal review by the Office of the Director of Public Prosecutions.

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

Al-Shabaab terrorists continued to conduct deadly attacks in areas close to the border with Somalia, targeting both security forces and civilians. In the first two weeks of January, militants carried out five attacks killing more than a dozen persons, including three teachers and four children. In April suspected al-Shabaab militants killed six police reservists during an exchange of gunfire. In October a Nairobi court convicted two men for supporting the 2013 al-Shabaab attack on Westgate Mall in Nairobi, which killed 67 persons. The court sentenced the two men to 33 years and 18 years in prison, respectively, with reductions for pretrial detention bringing the terms to 26 years and 11 years, respectively.

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

B. DISAPPEARANCE

Observers and NGOs alleged members of the security forces and extremist groups were culpable of forced disappearances. Human rights groups noted many unlawful killings first materialized as enforced disappearances. The Social Justice Centres Working Group reported that in early April,

two men and two women disappeared from the Nairobi informal settlement of Kiamaiiko. Their bodies were later found in a mortuary bearing signs of torture. Later in April an activist from Kiamaiiko Social Justice Centre and two companions disappeared. Their car was later found abandoned, but authorities found no trace of the men. In January, HAKI Africa released a report alleging security forces conducted 11 enforced disappearances in the coastal region in 2019.

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

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

Al-Shabaab and other extremist groups reportedly continued to abduct civilians in areas bordering Somalia. In September suspected extremists abducted three bus passengers in Mandera County. In May al-Shabaab militants freed an Italian aid worker kidnapped in 2018.

C. TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

The law includes provisions 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 legislative mandates. Additionally, the law provides protections to vulnerable witnesses and officials who refuse to obey illegal orders that would lead to torture. The law also provides a basis to prosecute torture; however, the government had not instituted the regulations required to implement fully the provisions.

NGOs continued to receive reports of torture and other inhuman or degrading treatment by government forces. As of October 1, the Independent Medico-Legal Unit documented 43 cases of torture and other inhuman treatment allegedly perpetrated by police during the year.

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

Police used excessive force in some cases when making arrests. For example, there were numerous press and NGO reports of police brutality against protesters and unarmed citizens (see sections 2 and 5), particularly related to the enforcement of COVID-19 public-health measures. Human Rights Watch reported that on March 27, police in Mombasa assaulted and used tear gas against crowds, including persons waiting for a passenger ferry, more than two hours before the start of curfew. Video clips on television and social media showed police kicking and beating individuals, including using batons, and forcing many to lie down on the ground in close quarters. Authorities introduced enhanced crowd control measures and extended ferry service hours following the incidents. On March 30, the government also issued a directive instructing employers to release employees by certain times to allow them to return home prior to curfew. The cabinet secretary for the Ministry of Interior stated authorities identified 14 police officers for disciplinary actions for misconduct during the pandemic. Amnesty International and other groups criticized the government for not releasing details of these actions.

The Social Justice Centres Working Group reported police violence was especially prevalent in informal settlements. From April 15 to May 6, monitors recorded 2,589 incidents of police violence across 182 communities. The most prevalent form of violence was beatings to disperse traders and other persons in markets after curfew. Monitors also documented incidents involving use of live ammunition, tear gas, sexual violence, and property damage.

In July, four police officers assaulted Nairobi Member of County Assembly Patricia Mutheu at Nairobi's City Hall. Video of the incident received significant coverage in traditional and social media. IPOA reported it dispatched its rapid response team to the scene, and the investigation was pending at year's end.

IPOA investigations led to two new convictions of police officers during the year, for a total of eight convictions since IPOA's inception in 2012. In January the Milimani Law Courts sentenced Chief Inspector Zuhura Khan to a fine or three months in prison for neglecting to ensure a female detainee, a sexual assault victim, received appropriate medical care. In March the High Court

convicted police officer Corporal Edward Wanyonyi Makokha to 20 years in prison for the attempted murder of a student in Garissa County in 2014.

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

In July the National Police Service, in cooperation with donors, launched the first online training course for police officers. The mandatory course, which aimed to address public order and enforcement challenges posed by the COVID-19 pandemic, included modules on the use of force and human rights-based approaches to crowd control. In August the National Police Service began to digitize records held at police stations on incidents and complaints. Government officials stated one of the aims of the program was to reduce opportunities for police to alter or delete records and increase accountability.

PRISON AND DETENTION CENTER CONDITIONS

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

Physical Conditions: According to the Prisons Service, as of May there were approximately 48,000 persons held in prisons with a designated capacity of 26,837. Authorities continued a

decongestion program that entailed releasing petty offenders and encouraging the judiciary to increase use of a community service program in its sentencing. In response to the COVID-19 pandemic, the Prisons Service released approximately 5,000 low risk inmates in April to reduce prison crowding. Although several new prisons were constructed since 2012, the average prisoner population remained nearly 200 percent of capacity, including a large population of pretrial detainees; some prisons held up to 400 percent of capacity. Six new women's prisons were added since 2018 to ease congestion in female facilities.

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

In September the prison commissioner reported the prison system continued to face serious health and welfare challenges due to communicable diseases such as tuberculosis, even after the threat from the COVID-19 pandemic had decreased. A 2019 report by the Vance Center and the Faraja Foundation found that women inmates performed unpaid labor, including cooking, laundry, and cleaning.

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. Several counties lacked adequate facilities to hold minors and women apart in courts and police stations. Of the 1,526 police facilities IPOA inspected since 2012, 80 percent had separate cells for women, 13 percent had separate cells for female juveniles, and 23 percent had separate cells for male juveniles. IPOA reported some police facilities used offices and corridors as holding places for minors. According to the prison commissioner, the Prisons Service included four correction facilities for minors. Prison officials reported that, because there were few correction facilities for minors, authorities often had to transport them long distances to serve their sentences, spending nights at police stations under varying conditions along the way.

The law allows children to stay with their 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. 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. IPOA inspected 201 Prisons

Service facilities between July 2019 and June and reported some improvements in sanitary conditions, availability of medical care, and availability of adequate food and water.

Administration: Mechanisms for prisoners to report abuse and other concerns continued due to collaboration between the Prisons Service and the Kenya National Commission on Human Rights to monitor human rights standards in prisons and detention facilities. The Commission on the Administration of Justice serves as ombudsman over government administration of prisons. It receives confidential correspondence from inmates and recommends remedies to address their concerns, including those pertaining to prison living conditions and administration. Many government-designated human rights officers lacked necessary training, and some prisons did not have a human rights officer.

Noncustodial community service programs and the release of some petty offenders alleviated prison overcrowding to a degree, as did the release of roughly 5,000 low risk inmates early in the year. Prison officials sometimes denied prisoners and detainees the right to contact relatives or lawyers. Family members who wanted to visit prisoners commonly reported bureaucratic obstacles that generally required a bribe to resolve. NGOs reported prisoners had reasonable access to legal counsel and other official visitors, although there was insufficient space in many prisons and jails to meet with visitors in private and conduct confidential conversations.

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

D. ARBITRARY ARREST OR DETENTION

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

Poor casework, incompetence, and corruption undermined successful prosecutions. Police also frequently failed to enter detainees into custody records, making it difficult to locate them.

Dispute resolution at police stations resolved a significant number of crimes, but authorities did not report or record them, according to human rights organizations.

Witness harassment and fear of retaliation severely inhibited the investigation and prosecution of major crimes. The Witness Protection Agency was underfunded, and doubts about its independence were widespread. Nevertheless, the Witness Protection Agency continued to work closely with IPOA and other investigative bodies to provide security for witnesses and victims.

NGOs reported an increase of arbitrary arrests and detention of activists, journalists, and bloggers during the year. In October the Defenders Coalition said it had provided support, including legal representation and bail, to 127 activists who had been arrested or detained since March. Most activists were released within short periods, usually less than 24 hours, and in most cases prosecutors either declined to press charges or courts dismissed the cases. In September, NGO Article 19 stated at least 20 journalists, including online communicators, had been arrested or threatened with prosecution since March while reporting on the government's efforts to respond to the COVID-19 pandemic.

ARREST PROCEDURES AND TREATMENT OF DETAINEES

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

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

The constitution establishes the right of suspects to bail unless there are compelling reasons militating against release. There is a functioning bail system, and all suspects, including those accused of capital offenses, are eligible for bail. Many suspects remained in jail for months

pending trial because of their inability to post bail. Due to overcrowding in prisons, courts rarely denied bail to individuals who could pay it, even when the circumstances warranted denial. For example, NGOs that worked with victims of sexual assault complained authorities granted bail to suspects even in cases in which there was evidence 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 authorities permitted access only upon payment of bribes. When detainees could afford counsel, police generally permitted access to attorneys.

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

The Social Justice Centres Working Group reported arrests increased sharply in informal settlements during the pandemic for noncompliance with the curfew or failure to wear masks. Individuals were asked to pay cash bail or a bribe to be released. In April the National Council for the Administration of Justice (NCAJ) directed that, during the COVID-19 period, petty offenders should not be held at police stations for more than 24 hours, and should be released either on cash bail or on free police bond. The NCAJ also directed police to establish centralized records of persons arrested by police stations.

In June the High Court awarded a man 100,000 shillings (\$1,000) after he was wrongly arrested by the Anti-Counterfeit Agency and held at the central police station for 22 hours for allegedly being in possession of counterfeit goods.

Pretrial Detention: Lengthy pretrial detention was a serious problem and contributed significantly to prison overcrowding. In 2019 approximately 44 percent of total inmates were pretrial detainees. Authorities held some defendants in pretrial detention longer than the statutory maximum term of imprisonment for the crime 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 were responsible for bringing detainees from prison to court when hearings are

scheduled but often failed to do so, forcing detainees to wait for the next hearing of their cases (see section 1.e.).

In March the NCAJ announced downscaling of court activities due to the COVID-19 pandemic that significantly delayed the resolution of cases. Virtual court sessions were held to review bail conditions, but very few trials were conducted virtually. Although the judiciary resumed many court activities in June, the number of cases listed for trial remained significantly low.

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

E. DENIAL OF FAIR PUBLIC TRIAL

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

In 2018 the director of public prosecutions directed anticorruption authorities to investigate the judiciary over allegations of misuse and loss of court funds. Authorities arrested Deputy Chief Justice Philomena Mwilu in 2018 for suspected corruption, but the criminal case was dismissed in May 2019. The director of public prosecutions appealed the decision and filed a petition before the Judicial Service Commission in June 2019 to remove Mwilu from office. In August the High Court ordered the commission to suspend proceedings against Mwilu pending the determination of a petition she had filed at the High Court seeking recusal of two commissioners due to alleged bias.

The Judicial Service Commission—a constitutionally mandated oversight body intended to insulate the judiciary from political pressure—provides the president with a list of nominees for judicial appointment. The president selects one of the nominees for parliamentary approval. The president appoints the chief justice and appellate and High Court judges through this process. The commission publicly reviews judicial appointees. Lawyers and civil society groups criticized the president for failing to approve nominations for 41 judges submitted in June 2019.

In January the judiciary issued the *State of the Judiciary and the Administration of Justice Report for 2018-19*, which noted that while the civil case backlog had declined significantly from the prior year, the criminal case backlog continued to grow. As a result, the overall case backlog grew by 3 percent compared with the prior year, to nearly 570,000 cases. Nearly 40,000 cases were pending for more than five years; however, that was a significant decline from the previous year.

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

The law provides for *qadi* courts that adjudicate Muslim law on marriage, divorce, and inheritance among Muslims. There are no other traditional courts. The national courts use the traditional law of an ethnic group as a guide in personal matters, if it does not conflict with statutory law. In August the chief justice launched the Alternative Justice Systems Baseline Policy to allow for resolution of cases by traditional tribunals, while providing the formal justice system a framework to monitor implementation.

TRIAL PROCEDURES

The law provides for the right to a fair public trial, although vulnerable individuals may give some testimony in closed session; the independent judiciary generally enforced this right. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence in their defense. The law also provides defendants the right to receive prompt and detailed information on the charges against them, with free interpretation if necessary, including during trials; to be tried without undue delay; to have access to government-held evidence; to be represented by an attorney of their choice or to have one appointed at the state's expense if substantial injustice would otherwise result; and not to be compelled to testify or confess guilt, and if convicted, to appeal to or apply for review by a higher court. Authorities generally respected these rights, although they did not always promptly inform persons of the charges against them. In 2018 Chief Justice David Maraga launched the National Committee on Criminal Justice Reforms to coordinate justice sector reform. As part of

these reforms, the NCAJ continued efforts to disseminate *Active Case Management Guidelines* to court users committees.

The NCAJ and the Office of the Director of Public Prosecution (ODPP) continued efforts to disseminate speedy case resolution techniques to reduce case backlog and ease prison congestion. In July the ODPP published decision to charge, plea bargaining, and diversion guidelines and continued to educate prosecutors, judges, court user committees, civil society members, and others on the role of speedy resolution mechanisms in enhancing efficiency. The ODPP conducted a two-month virtual training course for prosecutors in September and October on the new guidelines and planned to expand this training to investigators and others.

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

By government order the judiciary suspended all but urgent operations during the COVID-19 pandemic. In March the judiciary commenced virtual court sessions. NGOs, including the Legal Resources Foundation, provided computers and internet connectivity to enable remandees to connect with courts virtually. Most litigants, however, did not have the ability to participate in the virtual court sessions, and many cases could not proceed to trial because witnesses lacked the ability to connect with the courts virtually.

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

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

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

POLITICAL PRISONERS AND DETAINEES

There were no reports of political prisoners or detainees.

CIVIL JUDICIAL PROCEDURES AND REMEDIES

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

According to human rights NGOs, bribes, extortion, and political considerations influenced the outcomes in some civil cases. Court fees for filing and hearing civil cases effectively barred many from access to the courts. NGOs reported the government was slow to comply with court orders requiring compensation for victims of torture and other police abuses in some cases. In September media outlets reported the government owed more than 809 billion shillings (\$8.09 billion) in unpaid court awards, including to the family of the late politician Kenneth Matiba. Matiba was awarded close to one billion shillings (\$10 million) in compensation for unlawful detention and torture in the 1990s. Groups also reported victims relied on civil society organizations for rehabilitative services.

PROPERTY RESTITUTION

There is no established system for restitution or compensation for those declared to be squatters and ordered to vacate land. Both private and communal clashes were common because of land disputes. The government used forced eviction and demolition to regain what it claimed was

illegally occupied public land. In May the government declared a moratorium on forced evictions during the COVID-19 pandemic, but reports of evictions continued.

In 2017 the African Union Court on Human and Peoples' Rights ruled in favor of the indigenous Ogiek community evicted in 2009 from the Mau Forest. The court ruled government actions had violated seven articles of the African Charter on Human and Peoples' Rights, to which the country is a signatory. The government-appointed task force established to implement the decision provided its final report to the cabinet secretary of the Ministry of the Environment and Forestry early in the year, although as of year's end it had not been publicly released. In May the Ogiek community and a local NGO issued a report to mark the third anniversary of the court ruling and criticized the government's failure to implement the recommendations.

Since 2018 Kenyan authorities evicted more than 50,000 persons, mostly non-Ogiek settlers, from Mau Forest lands, according to a July report by Human Rights Watch. The report alleged security forces used excessive force during the 2019 evictions, which led to at least two deaths. The report noted at least 6,000 of recent evictees were living in harsh conditions in makeshift camps. In June and July, government security forces again conducted forced evictions of Ogiek communities but suspended evictions following a court order. In September the government established a new task force to review the Mau Forest boundary, issue title deeds, and settle Ogiek communities in line with the African Union Court ruling.

In May a court dismissed petitions filed in 2013 and 2018 by the Sengwer community protesting evictions from Embobut Forest in Elgeyo Marakwet County. In July authorities reportedly burned down 28 homes belonging to the community.

In May the government conducted forced evictions in two informal settlement areas in Nairobi. On May 4, authorities evicted an estimated 8,000 persons from Kariobangi and destroyed their homes despite a court order to halt the evictions. A person who claimed to be a police officer threatened to "disappear" human rights activist Ruth Mumbi if she did not stop advocating for the evictees. On May 15, more than 1,500 persons were evicted from Ruai during curfew hours. Two UN special rapporteurs called on the government to halt all evictions during the pandemic and safeguard evictees' rights.

F. ARBITRARY OR UNLAWFUL INTERFERENCE WITH PRIVACY, FAMILY, HOME, OR CORRESPONDENCE

The constitution and law prohibit such actions, except “to promote public benefit,” but authorities sometimes infringed on citizens’ privacy rights. The law permits police to enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants in the course of large-scale security sweeps to apprehend suspected criminals or to seize property believed stolen. For example, in 2017, according to multiple press and NGO reports, police conducted house-to-house operations in Kisumu County in connection with protests in the wake of the August 2017 election. In one of the homes, police allegedly beat a husband, wife, and their six-month-old daughter (known as “Baby Pendo”). The Kenya National Commission on Human Rights confirmed the infant died of her injuries. In February 2019 the magistrate found five senior police officers culpable in the death of the infant and forwarded the inquest results to the ODPP to press charges. She also ordered the DPP to investigate 31 other police officers who may have been involved in the infant’s death. IPOA, in coordination with ODPP, launched a new investigation on the case during the year to collect additional evidence.

Human rights organizations reported police officers raided homes in informal settlements in Nairobi and communities in the coast region in search of suspected terrorists and weapons. The organizations documented numerous cases in which plainclothes police officers searched residences without a warrant, and household goods were confiscated when residents were unable to provide receipts of purchase on demand. Rights groups reported police in numerous locations broke into homes and businesses and extorted money from residents while enforcing measures to control the pandemic.

The government continued efforts to roll out the National Integrated Identity Management System through the Statute Law (Miscellaneous Amendments) Act No. 18 of 2018. This act requires citizens to register their personal details, including biometrics, in order to receive a unique identifier number required to access public services. In January the High Court ruled the government could only continue implementation of the program after it put in place “an appropriate and comprehensive regulatory framework,” including on data protection and security. The government issued new data protection rules and regulations in October, but some civil society groups alleged the rules did not fully satisfy the court conditions. The Nubian Rights Council and other human rights organizations expressed concerns the program could exclude minority groups from accessing government services. President Kenyatta presented the first 12 identifier cards, widely known as Huduma Namba cards, in a public ceremony in October. In November the government stated nationwide issuance of cards would begin on December 1 and

existing national identity cards would be phased out by the end of 2021. In November the president appointed the country's first data commissioner to oversee the implementation of the data protection law enacted in late 2019 and the accompanying regulations.

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. Government failure to investigate or prosecute attacks on human rights defenders and peaceful protesters led to de facto restrictions on freedom of assembly and association.

Freedom of Speech: In 2017 a branch of the High Court declared unconstitutional Section 132 of the penal code that criminalized “undermining the authority of a public officer,” ruling the provision violated the fundamental right of freedom of expression. Other provisions of the constitution and the law prohibiting hate speech and incitement to violence remained in force. The Judicial Service Commission, however, reported many cases were withdrawn due to failure of witnesses to appear in court or to facilitate mediation. Cases that did proceed often failed to meet evidentiary requirements. Authorities arrested several members of parliament on incitement or hate speech charges. In September authorities arrested two parliamentarians for hate speech and incitement following remarks made against the president and his family. The court ordered their release after they posted bail, and the cases remained pending at the end of the year.

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

Sixteen other laws restrict media operations and place restrictions on freedom of the press. The government has not issued regulations required to implement fully the 2016 Access to Information Act, which promotes government transparency, and civil society organizations reported government departments failed in some instances to disclose information.

Violence and Harassment: Journalists alleged security forces or supporters of politicians at the national and county levels sometimes harassed and physically intimidated them. The government at times failed to investigate allegations of harassment, threats, and physical attacks on members of media. NGO Article 19 Eastern Africa reported there were at least 48 attacks against Kenyan journalists and restrictions to their work concerning the pandemic between March 12 and August 31, including physical assault, arrest, telephone or verbal threats, online harassment, and lack of access to public information.

In January media reported that police assaulted Nation Media Group journalist Laban Odhiambo Walloga in Mombasa while he was covering protests against a government directive that all cargo from the port of Mombasa be transported via the Standard Gauge Railway.

In March widely disseminated photographs showed a police officer beating NTV journalist Peter Wainana in Mombasa as he reported on excessive use of force by police enforcing the first day of a national curfew during the COVID-19 pandemic. Coast Regional Commander Rashid Yakub publicly apologized for the incident and advised the journalist to record a statement at the central police station in Mombasa. Media reported that as of March disciplinary action was pending.

Censorship or Content Restrictions: The mainstream media were generally independent, but there were reports by journalists 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. Journalists practiced self-censorship to avoid conflict with the government on sensitive subjects, such as the first family or assets owned by the Kenyatta family.

In April the High Court upheld the 2018 ban imposed by the Kenya Film Classification Board on the film *Rafiki*, which portrays a romance between two women. The court held the ban on

distributing or exhibiting the film in the country was constitutional and a valid limitation of freedom of expression.

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

In September the High Court ordered the Nation Media Group to remove from online platforms an August 16 television news report, “COVID-19 Millionaires,” pending the hearing of a libel case brought by Megascopes Ltd. for being accused of involvement in alleged corruption at the Kenya Medical Supplies Authority.

The cabinet secretary for the Ministry of Interior threatened to sue blogger Robert Alai and three others on March 27 for libel stemming from a March 13 article stating the cabinet secretary owned a concrete company that caused death and injury to residents of Bobasi in Kisii County.

INTERNET FREEDOM

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. Authorities, however, monitored websites for violations of hate speech laws. According to the Freedom on the Net report, authorities used laws on hate speech and defamation to prosecute online critics of the government. In 2018 President Kenyatta signed into law the Computer Misuse and Cybercrime Act, but the High Court suspended enforcement of 26 sections of the law pending further hearings. The court based the suspension on complaints that the law was overly vague and subject to misuse, criminalized defamation, and failed to include intent requirements in key provisions and exceptions for public use and whistleblowers. In February the High Court found the provisions constitutional and lifted the suspension. The provisions were applied for the first time in March when a man was arrested for publishing false information on social media related to the COVID-19 pandemic, and authorities arrested numerous bloggers and social media users for allegedly spreading false information online. In October the High Court nullified 23 bills, including the Computer Misuse and Cybercrime Act, that were passed by the National Assembly without involving the Senate. The court suspended the order for nine months, however, and the Computer Misuse and Cybercrime Act remained in effect.

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

Privacy International reported the National Intelligence Service had direct access to the country's telecommunications networks that allows for the interception of communications data. Furthermore, Privacy International reported the National Police Service also had surveillance powers, established in the National Police Service Act and the National Police Service Commission Act of 2011. Freedom House additionally reported authorities used various types of surveillance technologies to monitor citizens.

ACADEMIC FREEDOM AND CULTURAL EVENTS

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

B. FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION

Although the constitution and law provide for freedom of assembly, the government sometimes restricted this right.

FREEDOM OF PEACEFUL ASSEMBLY

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

Police used excessive force at times to disperse demonstrators. The local press reported on multiple occasions that police used tear gas to disperse demonstrators or crowds of various types. In July police used tear gas against protesters demonstrating against police brutality and other social injustices. Authorities arrested more than 50 persons, including prominent human

rights activists, for violating COVID-19 restrictions on public gatherings, although they were released shortly after.

The NGO Defenders Coalition recorded 82 arrests of demonstrators between March and July, twice the total number recorded in 2019. This included the arrest of nine activists who marched to Nairobi City Water and Sewerage Company offices to protest the lack of potable water in the informal settlement of Kayole.

In October the cabinet approved the establishment of a multiagency team to monitor, document, and enforce compliance with new directives related to public meetings. The directives state any person intending to hold a public gathering must notify the relevant police station commander three to 14 days in advance, and the police commander may decline the request. The Law Society of Kenya challenged the constitutionality of the provisions, arguing the government applied the provisions selectively to suppress differing political views. In November the High Court temporarily suspended the directives pending a hearing on the petition.

FREEDOM OF ASSOCIATION

The constitution and law provide for freedom of association, and the government generally respected this right, but there were reports authorities arbitrarily denied this right in some cases. NGOs continued to express concerns regarding reprisals faced by numerous human rights defenders and communities. Reprisals reportedly took the form of intimidation, termination of employment, beatings, and arrests and threats of malicious prosecution. Human rights groups noted activists continued to face increased attacks in a climate of impunity. In June the Mathare Social Justice Centre condemned a visit by police officers, including one allegedly linked to extrajudicial killings, to intimidate and harass its staff.

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

The law requires every public association be either registered or exempted from registration by the Registrar of Societies. The law requires NGOs dedicated to advocacy, public benefit, or the promotion of charity or research to register with the NGO Coordination Board. It also requires

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

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

In 2019 parliament passed an amendment to the Prevention of Terrorism Act that empowered the National Counter Terrorism Center to become an "approving and reporting institution for all civil society organizations and international NGOs engaged in preventing and countering violent extremism and radicalization through counter messaging or public outreach, and disengagement and reintegration of radicalized individuals." Civil society leaders expressed concerns the broad language of the amendment may allow government authorities to exert undue oversight and control over the activities of NGOs. A court case filed by a consortium of civil society leaders against the amendment continued to proceed through legal channels.

C. FREEDOM OF RELIGION

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

D. FREEDOM OF MOVEMENT

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

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

On April 29, the Interior Ministry released a Public Act Order on cessation of movements in and out of refugee camps for 28 days through May 27 to prevent the spread of COVID-19. Since the government had not issued an order to lift the decree, the movement restrictions in and out of the refugee camps remained de facto as of October 23.

Prior to the restriction of movement, the RAS issued newly arrived asylum seekers registration documents and movement passes requiring them to report to the camps. Refugees needing to move outside the designated areas (Kakuma camp, Kalobeyei settlement, and the Dadaab refugee camp complex) had to obtain a temporary movement pass issued by the RAS. Stringent vetting requirements and long processing times delayed the issuance of temporary movement passes in the camps.

Given the government's COVID-19 prevention protocols for staff, the RAS significantly reduced client-facing activity in its Nairobi office, including reducing the registration of new arrivals, which further influenced refugee movement. Its office in Kakuma refugee camp temporarily suspended non-life-saving client services requiring in-person contact. The office in Kakuma, however, continued to register new arrivals and reactivate authorizations for refugees returning to the camp to allow them access to life-saving humanitarian programming. The movement pass requirements for any refugee movement outside the designated areas remained unchanged.

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

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

E. STATUS AND TREATMENT OF INTERNALLY DISPLACED PERSONS

The NGO Internal Displacement Monitoring Centre estimated there were 163,400 IDPs in the country and 75,800 new displacements at the end of 2019. Communities were sometimes displaced due to interethnic violence and conflict.

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

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

F. PROTECTION OF REFUGEES

The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to IDPs, refugees, asylum seekers, and other persons of concern. In 2017 the country pledged to apply the UNHCR Comprehensive Refugee Response Framework to enhance refugee self-reliance, increase access to solutions, and improve conditions in countries of origin for safe and voluntary returns. Implementation, however, was largely lacking.

In 2017 the High Court blocked the government's plan to close the Dadaab refugee camp complex, ruling the plan violated the principle of nonrefoulement and refugees' constitutional rights to fair administrative action. As of year's end, the government had not appealed the High Court's ruling. While the court's 2017 decision eased pressure on Somalis who feared the camp would close by the government-imposed deadline, during the year the government expressed a renewed interest in closing Dadaab, requesting UNHCR to relocate all refugees from Dadaab. The camp closure discussion created uncertainty for the more than 200,000 refugees residing there.

Abuse of Migrants, Refugees, and Stateless Persons: Police abuse, including detention of asylum seekers and refugees, continued, often due to a lack of awareness and understanding of the rights afforded to those holding refugee or asylum-seeker documentation or those who illegally entered the country and were apprehended. Most detainees were released after a court appearance or intervention by organizations such as the Refugee Consortium of Kenya or Kituo Cha Sheria.

During the year the security situation in Dadaab improved but remained precarious. There were no attacks on humanitarian workers and no detonations of improvised explosive devices within 15 miles of the refugee complex during the year. The security partnership between UNHCR and local police remained strong and led to improvements in camp security through community policing and neighborhood watch initiatives.

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

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

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

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

During the year UNHCR assisted 79 persons to return voluntarily to their places of origin, all of whom returned to Ethiopia. Insecurity and unfavorable conditions in countries of origin such as South Sudan, Yemen, and Somalia, as well as border closures and movement restrictions due to COVID-19, hindered returns.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has a system for providing protection to camp-based refugees. The government generally coordinated with UNHCR to provide assistance and protection to refugees in the Dadaab and Kakuma refugee camps and urban areas. The government had yet to register more than 15,000 refugees and asylum seekers estimated to reside in Dadaab, the majority of whom were Somali. Pressure from UNHCR and the international community resulted in the government's registration of a number of extremely vulnerable individuals. South Sudanese refugees received *prima facie* refugee status.

According to UNHCR, as of September 30, the country hosted 499,219 registered refugees and asylum seekers, including 221,102 in the Dadaab refugee camp complex, 197,341 in Kakuma camp and Kalobeyi settlement, and 80,776 in urban areas. Most refugees and asylum seekers were from Somalia (269,541), with others coming from South Sudan (122,610), the Democratic Republic of the Congo (44,763), Ethiopia (28,915), Burundi (16,158), and other countries (17,232). 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 Democratic Republic of the Congo, Ethiopia, and Uganda. The tripartite agreement on voluntary repatriation between Kenya, Somalia, and UNHCR expired in 2018, although the spirit of the agreement and

coordination remained. Since 2014 a total of 84,981 Somali refugees had voluntarily repatriated under the agreement.

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

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

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

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

G. STATELESS PERSONS

The constitution and law provide for the protection of stateless persons and for legal avenues for eligible stateless persons to apply for citizenship. Since 2017 UNHCR estimated 18,500 stateless persons were registered in the country; the actual number was unknown.

Communities known to UNHCR as stateless include the Pemba in Kwale (approximately 7,000) and the Shona (an estimated 3,500). The 8,000 remaining include: persons of Rwandan, Burundian, or Congolese descent; some descendants of slaves from Zambia and Malawi; the Galjeel, who were stripped of their nationality in 1989; and smaller groups at risk of statelessness due to their proximity to the country's border with Somalia and Ethiopia, including the Daasanach and returnees from Somalia (the Sakuye) residing in Isiolo. The Pare are a group of

people intermarried with Kenyans for many years who reside at the border with Tanzania but are at risk of statelessness since they do not hold marriage certificates or other identity documents. Children born in the country to British overseas citizens are stateless due to conflicting nationality laws in the country and in the United Kingdom, although the estimated affected population size is unknown.

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

Stateless persons had limited legal protection, and many faced social exclusion. Others encountered travel restrictions and heightened vulnerability to sexual and gender-based violence, exploitation, forced displacement, and other abuses. UNHCR reported stateless persons faced restrictions on internal movement and limited access to basic services, property ownership, and registration of births under the late birth registration procedures, marriages, and deaths. Inadequate documentation sometimes resulted in targeted harassment and extortion by officials and exploitation in the informal labor sector.

National registration policies require citizens age 18 and older to obtain national identification documents from the National Registration Bureau. Failure to do so is a crime. Groups with historical or ethnic ties to other countries faced higher burdens of proof in the registration process. During the participatory assessments UNHCR conducted in 2018 and 2019, stateless persons said they could not easily register their children at birth or access birth certificates because they lacked supporting documents.

Due to awareness raising among the stateless and capacity building for relevant authorities, towards the end of 2019 the situation improved for stateless persons, who were no longer turned away from registration offices as occurred in prior years. For birth registration within six months of birth, stateless persons were able to obtain a birth certificate but had problems

registering children older than six months. The law does not have a provision to support the registration without supporting documents and instead gives discretion to the registrar general.

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

In October 2019 the government pledged to recognize and register persons in the Shona community who had lived in the country since the 1960s. The Civil Registration Services Department began to issue birth certificates to Shona children and process birth certificates for Shona adults who were born in the country.

Section 3.

Freedom to Participate in the Political Process

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

ELECTIONS AND POLITICAL PARTICIPATION

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

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

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

Kenyatta and Odinga publicly reconciled in March 2018 and pledged to work together towards national unity. In May 2018 the president established the Building Bridges to Unity Advisory Taskforce as part of this pledge. The task force issued an October report with proposed constitutional, legislative, and policy reforms to address nine areas: lack of a national ethos, responsibilities and rights of citizenship; ethnic antagonism and competition; divisive elections; inclusivity; shared prosperity; corruption; devolution; and safety and security. Some politicians, civil society, and religious groups questioned whether the proposed reforms, including significant changes to the country's political structure, would increase inclusivity, prevent electoral violence, and address the country's ethnic divisions.

In April the IEBC postponed five planned by-elections, one for a vacant parliament position and four for county positions, due to the COVID-19 pandemic. The IEBC scheduled six by-elections for December 15, the five that had been postponed and one for a county position that had subsequently become vacant, after developing COVID-19 health protocols.

Political Parties and Political Participation: To reduce voter fraud, the government used a biometric voter registration system, first employed in 2013. Possession of a national identity card or passport was a prerequisite for voter registration. According to media reports, political parties were concerned regarding hundreds of thousands of national identity cards produced but never collected from National Registration Bureau offices around the country, fearing 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 authorities sometimes asked them to produce documentation proving their parents were citizens.

The country's five largest ethnic groups—the Kikuyu, Kalenjin, Luhya, Luo, and Kamba—continued to hold most political positions. Civil society groups raised concerns regarding the underrepresentation of minority ethnic groups, including indigenous communities. For example, one study conducted in Nakuru County found that among the Ogiek community, only two persons were members of the county assembly and one person was a nominated senator.

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

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

Women leaders and advocacy groups continued to cite inadequate political support from their parties, particularly in the primaries; a lack of financial resources; gender-based violence; gender stereotyping; and patriarchal structures across society as significant barriers to women's participation in political processes.

The overall success rate of female candidates who ran for positions in the 2017 national elections was 16 percent, with 23 women elected and 52 women nominated to the 349-member National Assembly, and three women elected and 18 women nominated to the 67-member Senate. Women were elected to three of the 47 governorships, although there were only two female governors during the year. Compared with 2013, the number of women elected to office

increased by 18.6 percent. The constitution provides for the representation in government of ethnic minorities, but civil society groups noted minorities remained underrepresented in local and national government. The constitution also calls for persons with disabilities to hold a minimum of 5 percent of seats in the Senate and National Assembly but persons with disabilities composed only 2.8 percent of Senate and National Assembly members.

Section 4.

Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption. Despite public progress in fighting corruption during the year, the government did not implement relevant laws effectively. Officials frequently engaged in allegedly corrupt practices with impunity.

Corruption: During the year the Ethics and Anti-Corruption Commission (EACC) initiated investigations and prosecutions of high-level cases involving six county governors and dozens of national government and parastatal officials with ties to the ruling party and to the political opposition. A landmark ruling in 2019 bars county governors from accessing their offices until their corruption cases are concluded. One governor was indicted and impeached by the county assembly while his case continued in the courts. The EACC was also investigating high-level procurement irregularities at the Kenya Medical Supplies Agency, a state agency with the sole mandate of procuring medications and equipment for government health centers. The investigations involved procurement of personal protective equipment at inflated costs and probed the alleged disappearance of personal protective equipment and other equipment donated to the country. These investigations and prosecutions continued at year's end.

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

In January 2019 President Kenyatta appointed a new chief executive officer of the EACC, who introduced a new approach to tackling corruption that prioritized high-impact cases, systems

reviews, assets recovery, and public communication. In the commissioner's first year in office, the EACC secured 44 convictions, one of the highest tallies in its 17 years of existence, and recovered assets of more than three billion shillings (\$30 million), exceeding what had been recovered over the previous five years combined. At the end of 2019, the EACC reported 407 criminal corruption cases and 778 civil cases pending in court. Officials from agencies tasked with fighting corruption, including the EACC, the ODPP, and judiciary, were also subjects of corruption allegations.

The EACC has the legal mandate to investigate official corruption allegations, develop and enforce a code of ethics for public officials, and engage in public outreach on corruption. The EACC, however, lacks prosecutorial authority and must refer cases to the ODPP to initiate prosecutions. During the year the ODPP established a multiagency team tasked with collaboration on investigations and prosecution of high-profile organized crimes like corruption. Operational conflict, however, between the ODPP and Directorate of Criminal Investigations with regards to which office can initiate investigations and deliver files to court resulted in the delayed prosecution of the Kenya Ports Authority managing director on corruption allegations.

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

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

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

Financial Disclosure: The law requires all public officers to declare their income, assets, and liabilities to their “responsible commission” (for example, the Parliamentary Service Commission in the case of members of parliament) every two years. Public officers must also include the income, assets, and liabilities of their spouses and dependent children younger than 18. Failure to submit the declaration as required by law or providing false or misleading information is punishable by a substantial fine or imprisonment for a term not exceeding one year or both. 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, 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 law requires public officers to register potential conflicts of interest with the relevant commissions. The law identifies the interests 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 nonelected public offices to declare their wealth, political affiliations, and relationships with other senior public officers. This requirement is in addition to background screening on education, tax compliance, leadership, and integrity. Many officials met these requirements and reported potential conflicts of interest. Authorities did not strictly enforce ethics rules relating to the receipt of gifts and hospitality by public officials.

There were no reported challenges to any declarations of wealth—which normally are not made public—filed by public officials. The requirement for asset and conflict of interest declarations was suspended by a 2018 Public Service Commission memo. The memo was issued after the commission’s engagement with government stakeholders indicated a need for clarity on completing the assets registry. The Public Service Commission’s suspension of the requirement led to inconsistency in the application of the directive, with some institutions requiring declarations while others did not.

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 government harassment during the year. Officials were sometimes cooperative and responsive to the queries of these groups, but the government did not implement recommendations by human rights groups if such recommendations were contrary to its policies. There were reports officials intimidated NGOs and threatened to disrupt their activities (see section 2.b.). Less-established NGOs, particularly in rural areas, reported harassment and threats by county officials as well as security forces. Human rights activists claimed security forces conducted surveillance of their activities, and some reported threats and intimidation.

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

According to HAKI, its deputy executive director, Salma Hemed, was beaten by police during a February protest as she was advocating for an investigation into the death of a 17-year-old pregnant girl while in police custody. Although the police case against her was suspended in August, police arrested her on October 28 after she filed a lawsuit against the Bamba Police Station in Kilifi County. Despite a letter from the Kilifi county prosecutor stating she should be released, police ignored the letter, detained Salma Hemed overnight, and brought her before the Kilifi Magistrate Court the following day. The court subsequently ordered her release.

The 2016 triple homicide case of International Justice Mission lawyer and investigator Willie Kimani, client Josphat Mwenda, and their driver Joseph Muiruri remained pending at year's end. In November the court for the third time denied bail for the five suspects, including four police officers who faced murder charges.

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

Government Human Rights Bodies: The Kenya National Commission on Human Rights 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. The body's commissioners completed their terms in March. In November the commission reported the government had not yet provided information on the commencement of recruitment for replacements. The positions remained vacant as of year's end, although the commission continued to function under the management of the CEO. Citing budget restrictions, the government again reduced the commission's operating budget. The commission stated the budget was not sufficient to cover its expenses and fulfill its mandate.

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

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

Police accountability mechanisms, including those of the IAU and IPOA, maintained their capacity to investigate cases of police abuse. The IAU director reports directly to the National Police Service inspector general. The IAU hired 47 new officers, bringing the total number to 127. Most investigators previously served in the Kenya Police Service and the Administration Police Service. The IAU conducts investigations into police misconduct, including criminal offenses not covered by IPOA. Between January and September, the IAU received approximately 1,400 complaints, the number of which had increased year-to-year as police and the public became more familiar with the IAU. The IAU opened four regional offices during the year. The EACC, an independent agency, investigates cases involving police corruption. IPOA also helps to train police officers on preventing abuses and other human rights issues but reported it did not conduct any human rights training during the year.

Between July 2019 and June 30, IPOA received 2,991 complaints, bringing the total since its inception in 2012 to 136,609. IPOA defines five categories of complaints. Category one complaints comprise the most serious crimes—such as murder, torture, rape, and serious injury—and result in an automatic investigation. In category two, serious crimes, such as assault without serious

injury, are investigated on a case-by-case basis. Categories three to five, for less serious crimes, are generally not investigated, although during the year IPOA and the IAU entered into regular dialogue about referring cases deemed less serious offenses for disciplinary action. If, after investigation, IPOA determines there is criminal liability in a case, it forwards the case to the ODPP. IPOA hired 25 new officers between July 2019 and November. IPOA's budget for the financial year starting July 1 was reduced by approximately 3 percent due to economic challenges caused by the COVID-19 pandemic, and IPOA anticipated further budget reductions.

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

Section 6.

Discrimination, Societal Abuses, and Trafficking in Persons

WOMEN

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

The law provides a maximum penalty of life imprisonment for rape when the victim is older than 18, although sentences were at the discretion of the judge and usually no longer than the minimum of 10 years (see also section 6, Children). Citizens frequently used traditional dispute-resolution mechanisms, including maslaha in Muslim communities, to address sexual offenses in

rural areas, with village elders assessing financial compensation for the victims or their families. They also used such mechanisms occasionally in urban areas.

The judiciary recorded 10,510 cases of sexual and gender-based violence filed in court between July 2018 and June 2019. The NGO Federation of Women Lawyers in Kenya reported arrests and prosecutions of sexual violence cases remained low, even in cases in which victims identified perpetrators, due to limited police resources to conduct investigations, insufficient evidence collection and handling mechanisms, and lengthy court proceedings, which made it difficult and expensive for victims to pursue cases.

Although police no longer required physicians to examine victims, physicians still had to complete official forms reporting rape. Rural areas generally had no police physician, and in Nairobi there were only three. NGOs reported police stations often but inconsistently accepted the examination report of clinical physicians who initially treated rape victims. In 2019 police launched the National Police Service Standard Operating Procedures on addressing gender-based violence. These procedures aim to standardize the varying quality of care that victims receive and provide a guide to police officers who do not have the relevant training.

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

NGOs expressed concerns regarding rising incidents of sexual assault, rape, and domestic violence during the COVID-19 pandemic. In April the chief justice cited a spike in cases involving sexual offenses, noting some perpetrators were family members or close friends of the victims. A national helpline supported by the Department of Gender Affairs reported cases rose from 86 in February to more than 1,100 in June. Cases decreased in July, but the total number of calls was four times higher than during the same period in the previous year. Survivors of sexual violence were unable to report crimes or seek medical treatment during curfew hours.

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

areas. According to a study by UNICEF published in March, despite the legal prohibition of FGM/C and progress made by the government in eliminating the practice, myths supporting the practice remained deep-rooted in some local cultures. The study concluded approximately 21 percent of adult women ages 15 to 49 had undergone the procedure some time in their lives, but the practice was heavily concentrated in a few communities, including the Maasai (78 percent), Samburu (86 percent), and Somali (94 percent).

As part of the government's initiative to end FGM/C by 2022, the Ministry of Public Service, Youth, and Gender Affairs continued work with county officials and nonstate actors to improve enforcement of the FGM/C law. This included education and advocacy efforts as well as prosecutions of those violating the law. NGOs and government officials reported a significant increase of FGM/C cases during the COVID-19 pandemic, noting school closures left girls more vulnerable. Many FGM/C rescue centers were closed partially or even totally due to the pandemic. Media reported arrests of perpetrators and parents who agreed to FGM/C, but parents in regions with a high prevalence of FGM/C frequently bribed police to allow the practice to continue. There were also reports FGM/C increasingly occurred in secret to avoid prosecution. County officials in areas with a high prevalence of FGM/C noted many cases targeted infants, with one recent government study finding an estimated 61 percent of girls younger than five in one county had undergone the procedure.

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

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

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

or permanent methods, were widely available to both men and women, although access was more difficult in rural areas.

The country's 2010 constitution states, "abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law." The penal code criminalizes the provision of abortions (14 years' imprisonment), attempts to obtain or self-administer an abortion (seven years' imprisonment), and supplying drugs or instruments used in an abortion (three years' imprisonment).

According to the UN Population Division, 77 percent of women between the ages of 15 and 49 had their needs for family planning satisfied with modern methods. A 2019 study by the Guttmacher Institute found that more than half of sexually active adolescent women between the ages of 15 and 19 who did not want to become pregnant had an unmet need for modern contraception and that almost two-thirds of pregnancies among this age group were unintended. The adolescent birth rate was 96 per 1,000 girls between the ages of 15 and 19, according to UN Population Fund (UNFPA). Access to sexual and reproductive health information by adolescents remained a problem due to lack of comprehensive sexuality education in schools, low coverage of youth-friendly services, and a lack of adequate stocks of contraceptives in public hospitals.

According to the UNFPA, 56 percent of women between the ages of 15 and 49 made their own decisions regarding health care, contraception, and sex with their husbands or partners. NGOs reported that it was more difficult for marginalized groups—including LGBTI persons, women with disabilities, displaced persons, and persons with HIV—to access reproductive health information and services. Families of girls with disabilities sometimes colluded with medical professionals to sterilize them as a means of protecting them from sexual violence, according to a disability rights activist. In 2018 the Center for Reproductive Rights sued the government for prohibiting the NGO Marie Stopes Kenya from providing reproductive health information to women and girls following allegations the NGO was promoting abortion. The case remained pending at year's end.

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

government responsible for failing to investigate and prosecute crimes of sexual and gender-based violence during the 2007-2008 postelection violence. The ruling marked the first time that survivors of conflict-related sexual violence received compensation.

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

Maternal deaths accounted for 51 percent of all deaths of women between the ages of 15 and 49, and the maternal mortality rate was 342 per 100,000 live births, according to the World Health Organization. Unsafe abortion, pregnancy, and birth complications limited access to health services, and harmful cultural practices were cited as among the main causes of maternal death and morbidity. The UNFPA reported that maternal mortality in Mandera County was 3,795 deaths per 100,000 live births—the highest in the country—partially due to harmful cultural rites like FGM/C and limited access to health services. In 2019 the High Court ruled that the director of medical services and the Ministry of Health had violated the rights of the country's women by arbitrarily withdrawing standards and guidelines on reducing morbidity and mortality from unsafe abortions. The court directed the government to reinstate the guidelines and reaffirmed the right of survivors of sexual violence to obtain abortions. The Ministry of Health had not reinstated the guidelines as of year's end.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

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 widely applied customary laws that discriminated against women, limiting their political and economic rights.

The constitution prohibits gender discrimination in relation to land and property ownership and gives women equal rights to inheritance and access to land. The constitution also provides for the enactment of legislation for the protection of wives' rights to matrimonial property during and upon the termination of a marriage, and it affirms parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution. According to a June report by Human Rights Watch, women continued to face institutional and legal barriers that hindered their access to justice and a fair share of matrimonial property upon the dissolution of marriage. Additionally, the components of the law that stipulate how to apply for succession were little known, and thus many inheritances continued to pass from fathers to sons only.

CHILDREN

Birth Registration: A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Birth on the country's territory does not convey citizenship. Birth registration is compulsory. An estimated 76 percent of births were officially registered in 2019, according to the Kenya Bureau of National Statistics. Lack of official birth certificates resulted in discrimination in delivery of public services. The Department of Civil Registration Services implements the Maternal Child Health Registration Strategy, which requires nurses administering immunizations to register the births of unregistered children. In September the government announced plans to issue children a special minor's identification document once they reach the age of six. The plan calls for the government to assign children a unique number at birth, which the government will use to issue the card after the child submits biometric data at age six. The same number is then to be used to apply for a national identity card at the age of 18.

Education: By law education is tuition free and compulsory until age 18, although public schools may impose fees for boarding, uniforms, and other expenses. Authorities did not enforce the mandatory attendance law uniformly. The government closed all schools in March due to the onset of the COVID-19 pandemic. In October the government partially opened schools, but only three grades resumed classes, with the remaining grades scheduled to resume in January 2021.

In January and February, the Teachers Service Commission authorized transfers of more than 1,000 nonlocal teachers from the northeastern counties of Garissa, Mandera, and Wajir due to heightened insecurity, including attacks by suspected al-Shabaab militants targeting nonlocal teachers. The subsequent shortage of teachers threatened the closure of nearly 200 schools, according to a Kenya National Commission on Human Rights report, before the government

closed all schools in March. Media reported efforts to hire teachers to fill the vacancies were underway as of year's end.

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

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

In July the president called for an investigation into the rising number of cases of child abuse due to COVID-19 restrictions and immediate prosecutions; 160 cases of sexual and gender-based violence, mainly defilement and neglect, were reported to a government helpline in the first week of May alone. The Teachers Service Commission recommended the removal of 30 teachers due to defilement cases and other sexual offenses.

According to IPOA, most police facilities did not have designated child protection units, and police usually requested the Department of Children Services to take custody of child victims. Although all the police facilities that IPOA inspected during the year had at least one officer designated to handle children cases, only some of the officers had received training on handling these cases, and the police stations did not have sufficient resources to process the large number of cases involving child victims. IPOA found the shortage of designated child protective units made it difficult for officers to record statements from child victims due to the lack of privacy. According to IPOA, police also reported challenges investigating cases such as child rape, since some communities defended the perpetrators and preferred to settle cases through traditional mechanisms.

The minimum sentence for conviction of statutory rape is life imprisonment if the victim is younger than age 11, 20 years in prison if the victim is between ages 11 and 15, and 10 years'

imprisonment if the child is age 16 or 17. Although exact numbers were unavailable, during the year media reported several statutory rape convictions.

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

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

Child, Early, and Forced Marriage: The minimum age for marriage is 18 years for women and men. According to UNICEF, 25 percent of girls are married by 18. Media occasionally highlighted the problem of early and forced marriage common among some ethnic groups. Under the constitution the qadi courts 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. NGOs reported an increase in child, early, and forced marriages during the COVID-19 pandemic, noting school closures left girls more vulnerable to the practice. In July authorities rescued a 12-year-old girl from two marriages in one month alone. The girl was initially identified to marry a 51-year-old man and then a 35-year-old man.

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

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

NGOs, international organizations, and local officials expressed concerns with reports of rising number of pregnancies among teenage girls, resulting in part from increased sexual abuse and exploitation during the COVID-19 pandemic. The International Rescue Committee reported that at Dadaab refugee camp, reported teenage pregnancies increased 28 percent during the April to June period, compared with the same period in 2019.

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.

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

In November a year-long BBC undercover investigation found babies and young children were being stolen, primarily from homeless or low-income women in urban areas of Nairobi, then sold for substantial profits. Illegal clinic workers or criminal groups abducted or purchased some of the children, while other cases reportedly involved staff at government-run hospitals. In late November the National Police Service announced police arrested three medical officers at a public hospital in Nairobi related to the case, and the Ministry of Labour and Social Protection stated it had formed a special team to address the matter.

Institutionalized Children: A special report published by the *Standard* newspaper in September 2019 alleged minors in children's homes under the care of the Child Welfare Society of Kenya (CWSK) suffered poor living conditions, mistreatment, and lack of proper medical care and education. A local news outlet broadcast an investigative report in October 2019 alleging that CWSK, against the advice of licensed medical practitioners, took children with significant disabilities to unlicensed facilities for experimental treatments. In January the High Court ruled in favor of the CWSK CEO, reinstated her to her position, and lifted an earlier freeze on the society's bank accounts. The court required the CWSK board of directors to forward any gifts or donations

to the board of trustees, and the board of trustees nominated two representatives to oversee the daily operations of CWSK.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at

<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/providers/legal-reports-and-data/reported-cases.html>

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ANTI-SEMITISM

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

TRAFFICKING IN PERSONS

See the Department of State's *Trafficking in Persons Report* at

<https://www.state.gov/trafficking-in-persons-report/>.

PERSONS WITH DISABILITIES

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

NGOs reported the COVID-19 pandemic disproportionately impacted persons with disabilities. One survey found 92 percent of respondents said their daily lives had been affected by the

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

The constitution states every person has the right to education, yet NGOs reported persons with disabilities had limited opportunities to obtain education and job training at any level due to lack of accessibility of facilities and resistance by school officials and parents to devoting resources to students with disabilities. Obtaining employment was also difficult. Data from the Public Service Commission indicated that, of 251 institutions evaluated on inclusion of persons with disabilities in fiscal years that spanned 2017 and 2018, only 10 institutions complied with the 5 percent requirement for employment of persons with disabilities.

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

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

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

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

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

criminal justice processes as victims of crime.

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.

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

MEMBERS OF NATIONAL/RACIAL/ETHNIC MINORITY GROUPS

The 2019 census recognized 45 ethnic groups in the country; none holds a majority. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups, especially in the coastal and Rift Valley areas. Competition for water and pasture was especially serious in the north and northeast.

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

In April a government task force attributed tribal clashes in Narok County to disputes over land ownership, sharing of local resources, and boundaries as well as incitement by local politicians. In May media reported at least 20 persons had died during the year due to clashes between Maasai and the Kipsigis, a subgroup of the Kalenjin tribe. In September, two Maasai clans signed a peace agreement to end a dispute that had lasted more than four decades.

Conflict continued among the various communities living in Eastern Mau Forest in Nakuru County due to long-running disputes over land, cattle rustling, and competition for resources. In July, eight persons died, 83 were injured, and more than 198 houses burned. More than 3,000 families were displaced, and the government imposed a five-day curfew. In September, one person died and 12 others were injured after renewed fighting.

Media reported at least 30 persons died in June and July during tribal clashes in Marsabit County along the border with Ethiopia. In September the National Cohesion and Integration Commission facilitated peace talks between leaders of the ethnic communities.

Ethnic differences also caused a number of discriminatory employment practices (see section 7.d.).

ACTS OF VIOLENCE, CRIMINALIZATION, AND OTHER ABUSES BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

The penal code criminalizes “carnal knowledge against the order of nature,” which was interpreted to prohibit consensual same-sex sexual activity and specifies a maximum penalty of 14 years’ imprisonment if convicted, and seven years for “attempting” said activity. The law also criminalizes acts of “gross indecency” between men, whether in public or in private, with five years’ imprisonment. Police detained persons under these laws, particularly persons suspected of prostitution, but released them shortly afterward. In August police arrested two men in Kakamega County for engaging in homosexual acts.

In 2016 LGBTI activists filed two petitions challenging the constitutionality of these penal codes. In May 2019 the High Court issued a ruling upholding the laws criminalizing homosexuality, citing insufficient evidence they violate LGBTI rights and claiming repealing the law would contradict the 2010 constitution that stipulates marriage is between a man and woman. The LGBTI community filed an appeal against this ruling. Leading up to the hearing of this case, and in its wake, the LGBTI community experienced increased ostracism and harassment.

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.

The 2010 constitution does not explicitly protect LGBTI persons from discrimination based on sexual orientation or gender identity. Violence and discrimination against LGBTI individuals were widespread. In October an LGBTI rights organization reported an increase in conversion therapy and practices. It attributed this increase to the fact many LGBTI persons had returned to hostile

community environments after losing their jobs during the pandemic. Some LGBTI groups also reported an increase in abuses cases against LGBTI persons during the pandemic.

In 2019 a government-appointed task force found only 10 percent of the intersex population completed tertiary education, only 5 percent recognized themselves as intersex due to lack of awareness, and the majority lacked birth certificates, which caused numerous problems, including inability to obtain a national identity card.

While the country grants refugee status to persons whose persecution is due to the individual's sexual orientation, some LGBTI refugees continued to face stigma and discrimination. They were often compelled to hide their sexual orientation or gender identity to protect themselves. National organizations working with LGBTI persons offered support to refugees who were LGBTI, including access to safety networks and specialized health facilities. In July, UNHCR released a statement calling for dialogue between refugee communities in Kakuma refugee camp following conflicting reports of violence, including reports by a small group of LGBTI refugees that they were the victims of harassment and violence. Police and local authorities increased security measures in response.

HIV AND AIDS SOCIAL STIGMA

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

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

OTHER SOCIETAL VIOLENCE OR DISCRIMINATION

Mob violence and vigilante action were common in areas where the populace lacked confidence in the criminal justice system. In June demonstrators stormed Lessos Police Station in Nandi County after a police officer fatally shot a man who intervened when the officer demanded a bribe from a person not wearing a facemask. Protesters set fire to the police commander's house, and police killed another two persons during the violence. IPOA reported it was finalizing its investigation and stated the officers involved were under internal disciplinary actions. The social acceptability of mob violence also provided cover for acts of personal vengeance. Police frequently failed to act to stop mob violence.

In October, two persons died and several were injured in Muranga County following street battles between youth factions allied to different political actors. Media outlets reported politicians instigated the violence by mobilizing and paying youth from outside areas. The governmental National Cohesion and Integration Commission condemned the violence, warning political tensions could lead to further violent conflicts ahead of the 2022 national elections.

Landowners formed groups in some parts of the country to protect their interests from rival groups or thieves. Reports indicated politicians often funded these groups or provided them with weapons, particularly around election periods.

Section 7.

Worker Rights

A. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

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

The law permits the government to deny workers the right to strike under certain conditions. For example, the government prohibits members of the military, police, prison guards, and the National Youth Service from striking. Civil servants are permitted to strike following a seven-day

notice period. A bureau of the Ministry of Labour and Social Protection typically referred disputes to mediation, fact finding, or binding arbitration at the Employment and Labour Relations Court, a body of up to 12 judges that has exclusive jurisdiction to handle employment and labor matters and that operates in urban areas, including Nairobi, Mombasa, Nyeri, Nakuru, Kisumu, and Kericho. The Employment and Labour Relations Court also has subregistries in Meru, Bungoma, Eldoret, Malindi, Machakos, and Garissa.

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

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

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

The law prohibits antiunion discrimination and provides for reinstatement of workers dismissed for union activity. The Labour Relations Court can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities. Labor laws apply to all groups of workers. Penalties for labor law violations were not commensurate with those for similar offenses.

The government enforced the decisions of the Labour Relations Court inconsistently. Many employers did not comply with reinstatement orders, and some workers accepted payment in lieu of reinstatement. In several cases employers successfully appealed the Labour Relations Court’s decisions to a branch of the High Court. The enforcement mechanisms of the Labour

Relations Court remained weak, and its case backlog raised concerns regarding the long delays and lack of efficacy of the court.

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

The chief justice designated all county courts presided over by senior resident magistrates and higher-ranking judges as special courts to hear employment and labor cases. Providing adequate facilities outside of Nairobi was challenging, but observers cited the ability of workers to submit labor-related cases throughout the country as a positive step. The 2016 employment and labor relations (procedure) rules provide parties access to file pleadings directly in electronic form, pretrial procedures, and alternative dispute resolution. The rules also set a 30-day time limit for the court to submit a report on disagreements over collective bargaining agreements filed.

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

Airport workers at Nairobi's Jomo Kenyatta International Airport went on strike in March to protest potential restructuring of the airport. Six striking workers were injured during clashes with police, and 10 members of the Kenya Aviation Workers Union, including its secretary general, were arrested. After negotiation, the union agreed to end the strike in exchange for release of the arrested union officials and an agreement not to fire striking workers.

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 to protect their interests.

The government maintained labor attaches in Qatar, Saudi Arabia, and the United Arab Emirates to regulate and coordinate contracts of migrant workers from the country and promote overseas job opportunities. The National Employment Authority manages a website that provides information to prospective migrant workers on the procedures of becoming a migrant worker in the Gulf. The Ministry of East African Community and Regional Development also helped

domestic workers understand the terms and conditions of their work agreements. The government operationalized a 2017 bilateral agreement with Saudi Arabia in January after vetting recruitment agencies in Riyadh. The government has additional bilateral agreements with Qatar and United Arab Emirates. The ministry has a directorate to regulate the conduct of labor agents for local migrant workers, including requiring the posting of a performance-guarantee bond for each worker.

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

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

The health sector experienced strikes precipitated by challenges related to the COVID-19 pandemic. Health workers, through their associations, issued strike notices citing failure by the government to meet their workplace demands, including adequate personal protective equipment while attending to COVID-19 patients. Counties like Nairobi and Trans Nzoia witnessed strikes by health workers. The health sector also witnessed industrial strikes by county government health professionals to protest delayed salary payments. The strikes occurred intermittently in various counties, since under the 2010 constitution, each county manages its own health system as part of the devolution of resources and services from the national government. According to the Council of Governors, all 47 counties faced delayed salaries for July due to government delay in disbursement of funds. The strikes affected delivery of services in counties such as Vihiga, Kisumu, and Nairobi, but negotiations averted some threatened strikes.

B. PROHIBITION OF FORCED OR COMPULSORY LABOR

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

The government did not effectively enforce the law, and forced labor occurred, including forced child labor (see section 7.c.). Certain legal provisions, including the penal code and the Public Order Act, impose compulsory prison labor, including for political offenses. Resources, inspections, and remediation were not adequate to prevent forced labor, and penalties were not commensurate with those for comparable offenses. Forms of forced labor included debt bondage, trafficking of workers, and compulsion of persons, even family members, to work as domestic servants. Domestic workers from Uganda, herders from Ethiopia, and others from Somalia, South Sudan, and Burundi were subjected to forced labor in the country; however, this trend was reportedly decreasing.

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

C. PROHIBITION OF CHILD LABOR AND MINIMUM AGE FOR EMPLOYMENT

The government prohibits most, but not all, of the worst forms of child labor. The minimum age for work (other than apprenticeships) is 17, and the minimum age for hazardous work is 18. The ministry published a list of specific jobs considered hazardous that constitute the worst forms of child labor. This list 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 (see section 6); prostitution; the use, procuring, or offering of a child for the production of pornography or for pornographic performances; and the use by an adult for illegal activities (such as drug trafficking) of any child up to age 18. The law applies equally to girls and boys. The International Labor Organization identified gaps in the law with regards to children working as cadets at sea.

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

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

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

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

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

The government continued to implement the National Safety Net Program for Results, a project that seeks 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 were some cases reported in the western part of the country of girls dropping out of secondary school and engaging in sex work to afford basic supplies.

Many children worked on family plots or in family units on tea, coffee, sugar, sisal, tobacco, and rice plantations, as well as in the production of khat. Children worked in mining, including in artisanal gold mines, small quarries, and sand mines. Children also worked in the fishing

industry. In urban areas businesses employed children in hawking, scavenging, carrying loads, fetching and selling water, selling food, and forced begging. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestic servants. Parents sometimes initiated forced or compulsory child labor, such as in agricultural labor and domestic service, but also including commercial sexual exploitation.

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 <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings> , and the Department of Labor's *List of Goods Produced by Child Labor or Forced Labor* at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods> .

D. DISCRIMINATION WITH RESPECT TO EMPLOYMENT AND OCCUPATION

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

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

Many county governors appointed and employed disproportionate numbers of the dominant tribe in their county, bypassing minority groups. These problems were aggravated by the devolution of fiscal and administrative responsibility to county governments. Observers also noted patterns of preferential hiring during police recruitment exercises (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. A report detailing the ethnic composition of 417 senior civil service staff tabled at the Senate in September indicated that four tribes dominated high-level management positions in civil service. The dominant ethnic community had 29 percent of the 417 positions, while the second had 10 percent.

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

E. ACCEPTABLE CONDITIONS OF WORK

Regulation of wages is part of the Labor Institutions Act, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category. The minimum wage for all occupations exceeded the World Bank poverty rate.

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

The government did not effectively enforce the law. Penalties were not commensurate with those for comparable offenses. Authorities reported workweek and overtime violations. Workers in some enterprises, particularly in the export processing zones and those in road construction,

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

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

The directorate's health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Employers may appeal such notices to the Factories Appeals Court, a body of four members, one of whom must be a High Court judge. The law stipulates 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. The government paid low salaries to labor inspectors and did not provide vehicles, fuel, or other resources, making it very difficult for labor inspectors to do their work effectively and leaving them vulnerable to bribes and other forms of corruption. The State Department for Labor faced a large number of retiring labor inspectors during the year, and there was no hiring of new inspectors.

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

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

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