

KENYA

Kenya is a republic with a population of approximately 40 million. It currently has a strong president and a prime minister with unclearly defined executive powers. There is a unicameral national assembly. In 2007 the government held local, parliamentary, and presidential elections. Observers judged the parliamentary and local elections to be generally free and fair. In the presidential election, the incumbent, President Mwai Kibaki, was proclaimed the winner by a narrow margin under controversial circumstances. Serious irregularities undermined the integrity of the presidential election results. Raila Odinga, the main opposition candidate, disputed the results, and violence erupted in sections of Nairobi and opposition strongholds in Nyanza, Rift Valley, and Coast provinces; approximately 1,133 persons were killed and more than 350,000 displaced between December 2007 and February 2008. The violence ended in February 2008 when, as the result of an international mediation process, the two sides agreed to form a coalition government. Under the terms of the agreement, incumbent Kibaki retained his office, and Odinga was appointed to a newly created prime ministerial position. The parties also agreed to undertake a series of constitutional, electoral, and land reforms to address underlying causes of the crisis. On August 4, citizens approved a new constitution in a national referendum, widely considered to be free and fair. Some of its elements entered into force immediately, but full implementation was expected to take several years. It was expected that if fully implemented, it would result in significant changes to the government's structure, including greater checks on executive power, the elimination of a prime minister, greater devolution of power to the counties, and creation of a second legislative chamber. There were instances in which elements of the security forces acted independently of civilian control.

The following human rights problems were reported: abridgement of citizens' right to change their government in the last national election; unlawful killings, torture, rape, and use of excessive force by security forces; mob violence; police corruption and impunity; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary interference with the home and infringement on citizens' privacy; prolonged pretrial detention; executive influence on the judiciary and judicial corruption; restrictions on freedom of speech, press, and assembly; forced return and abuse of refugees, including killing and rape; official corruption; violence and discrimination against women; violence against children, including female genital mutilation (FGM); child prostitution; trafficking in persons;

KENYA

interethnic violence; discrimination based on ethnicity, sexual orientation, and HIV/AIDS status; lack of enforcement of workers' rights; forced and bonded labor; and child labor, including forced child labor.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were several reports that the government or its agents committed arbitrary and unlawful killings, included politically motivated killings, during the year. The government took only limited action in enforcing the law against security forces suspected of unlawfully killing citizens.

On March 11, seven administration police executed seven taxi drivers in the Kawangware slums west of Nairobi. The seven men were arrested, appeared in court on March 31, and were charged on December 11. A trial had not begun by year's end.

In July, according to Amnesty International, a 74-year-old unarmed man was shot and killed by police after verbally protesting the beating of a woman during a forced evacuation of a Nairobi settlement. There were no developments in the case by year's end.

In September administration police killed 14 persons and dumped their bodies in Kinale Forest. Police made no statement about the killings although there were reports that three of the victims were known criminals. Members of Parliament (MP) tasked the Minister of Security with issuing a report on the murders although no report had been produced by year's end.

On November 6, a police officer shot and killed 10 persons, including two fellow officers, while allegedly looking for a woman who infected him with HIV. There were no developments in this case by year's end.

In February 2009 Philip Alston, the UN special rapporteur on extrajudicial, summary, or arbitrary executions, released a report that found "that police in Kenya frequently execute individuals and that a climate of impunity prevails." The rapporteur also reported "the existence of police death squads operating on the

KENYA

orders of senior police officials and charged with eliminating suspected leaders and members of criminal organizations." The government rejected the findings of the Alston report and filed a protest with the UN. According to media reports, however, the Ministry of Internal Security acknowledged in a February 2009 letter to the Kenya National Commission on Human Rights (KNCHR) that police had killed 308 youths in 2008.

In 2008 the government formed the Commission of Inquiry into Postelection Violence (CIPEV) as part of the internationally mediated political settlement. The CIPEV documented 405 gunshot deaths during the postelection period; it attributed the vast majority of these to police. The final CIPEV report recommended that the government establish a special tribunal to investigate individuals suspected of such violence; however, no local tribunal was established, and the government still had not systematically investigated or prosecuted individuals suspected of postelection violence through other means by year's end. However, on December 15, the chief prosecutor of the International Criminal Court (ICC) announced that he had asked a pretrial chamber to issue summonses for six Kenyan nationals on charges of crimes against humanity for their alleged role in the 2007-08 postelection violence.

In March 2009 unidentified gunmen, reportedly acting on orders from the former commissioner of police, shot and killed Oscar Kamau King'ara, the executive director of the local nongovernmental organization (NGO) Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and Paul Oulu, OFFLACK's program coordinator. In 2008 OFFLACK reported that police were linked with the continued disappearance and deaths of suspected members of the banned Mungiki criminal organization. Police threatened and intimidated witnesses to the killings, and four witnesses went into exile. The prime minister requested international assistance to investigate the murders, but the minister for foreign affairs subsequently rejected such assistance. No credible investigation had been conducted by year's end, and none was expected.

Security forces continued to claim that police must shoot to kill to defend themselves when confronted by armed suspects. For example, in September 2009, the media reported that the district commissioner for Murang'a East District issued a "shoot to kill" order against suspected Mungiki members, and in October 2009 a district commissioner in Marakwet announced a "shoot to kill" policy against suspected armed bandits. The policy first was enunciated in 2005 and later reiterated in 2007, after armed criminals killed 43 police officers in the line of duty.

KENYA

On March 10, police reportedly killed seven suspected members of the Mungiki in a police operation in Nairobi. Police claimed that a gun battle had started after police shot at a mob that was attacking motorcyclists to extort motorcycle taxi drivers.

During the year there were reports that persons died while in police custody or shortly thereafter, some as a result of torture.

For example, the *Daily Nation* reported in January that a 24-year-old man was tortured to death while undergoing police interrogation regarding a livestock theft at the Ngomeni Police Station. No further information was available at year's end.

In November the *Standard* newspaper reported that a man, arrested at a bar for an altercation with a police officer, was dragged to a police station by the officer and chained and beaten to death. No further information was available at year's end.

In 2008 the Independent Medico-Legal Unit (IMLU), a leading and credible human rights NGO, reported one death in police custody but noted that the actual number was likely higher; police often did not enter suspects into police custody records, impeding the ability to track such cases.

Police killed numerous criminal suspects during the year, often claiming that the suspects violently resisted arrest or were armed. During the year security forces killed 16 suspected Mungiki members as compared to killing 25 in 2009.

In 2009 the IMLU documented 33 alleged extrajudicial killings by police officers from January to October: the majority were criminal suspects whom police killed during apprehension.

No action was taken during the year against police who killed five persons traveling in a "matatu" minibus in the Githurai area of Nairobi in October 2009; police claimed that the five were armed members of Mungiki. Residents of the area stated that the five were matatu operators fleeing police harassment and that police planted the gun after the killing.

No action was taken against security force members in the following 2008 killings of criminal suspects: the killing of six suspected car thieves in Nairobi; the police

KENYA

shooting deaths of 21 robbery suspects in and around Nairobi, and the shooting deaths of three suspects and two workers in a Nairobi casino.

There also were no reported developments in the October 2009 killing of the police officer who provided evidence to the KNCHR on extrajudicial killings of Mungiki members.

A journalist was abducted and killed in 2009, reportedly at police instigation.

No action was taken against security force members responsible for the 2008 extrajudicial killings of Mungiki members or the 2008 killing of a police officer who had cooperated with the KNCHR investigation of Mungiki killings.

Unlike in 2008, police use of excessive force to disperse demonstrators did not result in deaths.

There were no developments in the following 2008 cases of deaths of demonstrators, and none were expected: the arrest of a police officer in Kisumu for the shooting death of two unarmed protesters, and the killing of at least 83 persons during postelection violence in Kisumu.

Mob violence and vigilante action resulted in numerous deaths. The great majority of victims killed by mobs were suspected of criminal activities, including theft, robbery, killings, cattle rustling, and membership in criminal or terrorist gangs. In April 2009 villagers near the town of Karatina clashed with suspected members of the Mungiki criminal organization, killing 29 persons. Police arrested 48 suspects in connection with the clashes. The case continued at year's end.

There were no developments in the August 2009 case in which an armed gang killed internationally renowned gemologist Campbell Bridges when he confronted the group for trespassing on a mine near Voi. Police arrested and quickly released six suspects in the case, but Bridges' family alleged that senior government officials involved in the killing were not investigated.

There were no developments in the following 2008 cases of death by mob violence: the death by burning of two men in Meru who allegedly robbed a matatu driver, the stoning of one man in Imenti South, or the lynching of a village chief in Mikumbune in Imenti South.

KENYA

Human rights observers attributed vigilante violence to a lack of public confidence in police and the criminal justice system; allegedly, assailants often bribed their way out of jail or were not arrested. The social acceptability of mob violence also provided cover for acts of personal vengeance, including settling land disputes.

Mobs committed violence against persons suspected of witchcraft, particularly in Kisii District and Nyanza and Western provinces. Although local officials spoke out against witch burning and increased police patrols to discourage the practice, human rights NGOs noted public reluctance to report such cases due to fear of retribution.

In February 2009 five persons were burned to death in Kitutu Chache, Kisii, after being accused of abducting and placing a spell on a young boy. In March 2009 six suspected witches were burned to death in Pokot District, and six others were killed in Kisii. No action was taken by year's end.

b. Disappearance

Unlike in the previous year, there were no reports of disappearances or politically motivated abductions.

There were no developments in the January 2009 case in which a journalist was abducted and killed.

There were no developments in the September 2009 case in which the Muslim Human Rights Forum alleged that five Muslims suspected by the government of involvement in terrorist activity were abducted by the Antiterrorism Police Unit (ATPU) and subsequently disappeared. The ATPU denied the allegations.

The KNCHR, the IMLU, and Western Kenya Human Rights Watch (WKHRW) reported that the government failed to investigate disappearances in connection with the 2008 security force operation in Mount Elgon and the crackdown on the Mungiki criminal organization in 2008.

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

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

KENYA

prosecution for torture. Police frequently used violence and torture during interrogations and as punishment of pretrial detainees and convicted prisoners. According to the IMLU, physical battery was the most common method of torture used by the police.

Human rights organizations, churches, and the press reported numerous cases of torture and indiscriminate police beatings.

In 2008 the IMLU received 772 cases alleging torture by security officers, compared with 397 in 2005, although it noted that the number of torture cases was likely higher.

There were allegations of rape by security forces, including the rape of women in prisons, as well as in camps for internally displaced persons (IDPs) and refugees and among asylum seekers crossing into the country from Somalia.

For example, in March Human Rights Watch (HRW) conducted 102 interviews regarding sexual violence in the Dadaab refugee camps. In 46 of the cases, police were accused of gang-raping women in the camps or on their way to the camps. The Center for Rights Education Awareness alleged in 2008 that policemen raped women in the Kibera slum in Nairobi and those seeking refuge in police stations.

Police use of excessive force to disperse demonstrators resulted in injuries (see section 2.b.).

Due to a shortage of civilian state prosecutors in the legal system (72 civilian prosecutors nationwide compared to 315 police prosecutors), police were responsible for investigating and prosecuting all crimes at the magistrate court level; civilian prosecutors handled cases at the high court level. Police routinely ignored evidence of security force torture provided by the IMLU and other human rights organizations. In most cases allegations of torture were not fully investigated and the perpetrators not charged.

As part of reforms agreed to in the National Accord in July 2009 the government established the Truth, Justice, and Reconciliation Commission (TJRC), whose mandate included the investigation of alleged cases of torture since independence. The TJRC had collected statements but had not conducted any hearings by year's end.

KENYA

The government did not investigate alleged cases of torture by security forces that were documented by the IMLU and HRW from the Mount Elgon and El Wake security operations in 2008. The government denied that security forces engaged in torture and refused to prosecute individuals alleged to have participated in torture during the two operations.

There were numerous instances of mob violence and vigilante action resulting in serious injury. On February 12, near Mombasa, an armed mob of between 200 and 300 persons surrounded the Kenya Medical Research Institute (KEMRI), a government health center that provides HIV/AIDS services. Police arrived, took two KEMRI employees into custody for their protection but did not arrest members of the mob. On the same day the mob beat a man who had come to the health care center and were about to set fire to him when the police took the beaten man into custody. The mob then gathered outside the police station. The following day, a mob severely beat a KEMRI volunteer, who was also taken into protective custody. Over the next week, mobs in the same area attacked and beat other persons suspected of being gay (see section 1.d. and 6).

Prison and Detention Center Conditions

Prison and detention center conditions continued to be harsh and life threatening. A KNCHR prison assessment during 2009 concluded that torture, degrading and inhuman treatment, unsanitary conditions, and extreme overcrowding were endemic in prisons. The commissioner of prisons reported that prisons were filled to 200 percent capacity during the year. According to the Legal Resources Foundation Trust (LRF), there were 49,757 prisoners on the last day of the year, held in prisons with a recommended capacity of 22,000. Approximately 36 percent of the prisoners were in remand, awaiting trial due to the judicial backlog. The *Daily Nation* reported that in February the Kakamega Remand Prison held 900 inmates awaiting trial in an institution built to accommodate 500.

Civil society organizations began visiting prisons in 2003, and these visits continued to reveal harsh conditions, as well as allegations by prisoners of inhumane treatment, including torture. For example, in February 2009 the KNCHR documented beatings and assault by prison staff of prisoners at Nairobi Remand and Meru Women's Prisons, and in April 2009 at Kisumu Women's Prison.

In 2008 wardens in Kamiti Prison scalded prisoners with hot water and beat them during an operation to interdict contraband items. One person died, and 20 were

KENYA

hospitalized. Three wardens were suspended. At year's end a police investigation of the incident continued.

Prisoners generally received three meals per day, but portions were inadequate, and sometimes they were given half rations as punishment. During the year LRF reported that prison conditions were poor due to lack of funding, overcrowding, and poor management. Water shortages, an issue outside prisons as well, continued to be a problem, although the government built one well and improved two water treatment plants. Medical care for those with tuberculosis was poor, and patients with tuberculosis or HIV/AIDS were not given supplemental food to assist in the digestion of their medication. Medical care in prisons for the general population was poor, although courts generally granted requests for referral to hospitals in serious cases. However, administrative delays, such as transport, often delayed court-ordered hospital attention. Shikusa Prison gained electricity during the year, but in general many prisoners spend most of their time indoors in poorly lit, poorly ventilated cell blocks. This was especially true for the one third of prisoners who were awaiting trial, as they were not engaged in any work programs that would allow them to leave their cell. Sanitary facilities had not been built to match the rise in prison populations.

In 2009 prison personnel stated that the rape of male and female inmates, primarily by fellow inmates, continued. Media reports indicated that it was also common for prison officials to rape female inmates. In September 2009 a transgender person alleged abuse by male prisoners and wardens in Nairobi's Kamiti Prison. In December the High Court awarded him 511,252 shillings (\$6,250) for the inhumane treatment, and he remained in solitary confinement at year's end.

Hundreds of prisoners died annually from infectious diseases spread by overcrowding, unhygienic conditions, and inadequate medical treatment. During the year, according to the commissioner of prisons, 218 prisoners died from diseases while incarcerated. In August 2009 18 prisoners died of suspected tuberculosis and pneumonia in Kodiaga Prison in Kisumu.

Prisoners were sometimes kept in solitary confinement far longer than the legal maximum of 90 days. Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who wanted to visit prisoners faced numerous bureaucratic and physical obstacles, each often requiring a bribe to overcome. According to LRF during the year, prisoners had reasonable access to visitors including lawyers, although privacy space was lacking. However, on May

KENYA

25, the *Daily Nation* reported that the Kitale branch of the Kenya Law Society stated that 35 lawyers were denied access to prisoners by court order as punishment for a lawyers' strike.

LRF also reported during the year that prisoners were able to make complaints to the courts and had the ability to send paralegal-written letters to the court without appearing personally. Some prisons had paralegal clinics. Some magistrates and judges also made prison visits during the year, providing another avenue for prisoners to raise grievances. KNHRC had a mandate to visit prisons and investigate allegations of inhumane conditions. According to the commissioner of prisons, human rights trainings took place in prisons during the year. The department of prisons had imbedded intelligence officers in the prisons to report on conditions and any abuse.

There were no separate facilities for minors in pretrial detention. Civil society activists witnessed young children, women, and men sharing the same cells. In 2008 IMLU reported that underage boys were detained in Bungoma Prison. Additionally a 2008 government report on prison conditions noted that underage female offenders, who were ineligible for diversion to a lesser security training school, were housed with adult female prisoners. According to the commissioner of prisons, there were 338 children, all under the age of four, living with their mothers in prisons. LRF reported the prisons did not have facilities, lessons, beds, or special food for the children nor did they have access to medical care.

The government permitted visits to prisons by local human rights groups during the year.

Following the 2009 release of the Madoka Committee report on prison conditions, the government increased investment in the prison system. New prison facilities and housing for prison staff were built, and bedding and meals for inmates improved, although they were still considered inadequate by rights groups.

d. Arbitrary Arrest or Detention

The law prohibits arrest or detention without a court order unless there are reasonable grounds for believing a suspect has committed or is about to commit a criminal offense; however, police frequently arrested and detained citizens arbitrarily.

KENYA

Role of the Police and Security Apparatus

There was a large internal security apparatus that included the Kenyan National Police Service (KNPS) and its Criminal Investigation Department, responsible for criminal investigations, and the ATPU; the Kenya Administration Police (KAP), which has a strong rural presence throughout the country, constitutes the security arm of the civilian provincial administration structure, and has the mandate for border security; the Kenya Wildlife Service, responsible for security and counterpoaching operations within the national parks; the paramilitary General Services Unit (GSU), responsible for countering uprisings and guarding high-security facilities; and the National Security Intelligence Service (NSIS), which collects intelligence. The KNPS, KAP, and GSU are under the authority of the Ministry of State for Provincial Administration and Internal Security. The NSIS is under the direct authority of the president. There was a public perception that police often were complicit in criminal activity.

Police were ineffective and corrupt, and impunity was a problem. In 2008 OFFLACK noted that bribery in police recruitment was a problem. The police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations.

Press and civil society reported that police continued to resort to illegal confinement, extortion, physical abuse, and fabrication of charges to accomplish law enforcement objectives, as well as to facilitate illegal activities.

Impunity was a major problem. Police officers rarely were arrested and prosecuted for criminal activities, corruption, or for using excessive force. In March 2009 police reportedly brutalized citizens during disarmament campaigns in Turkana and Samburu after promising amnesty. Authorities sometimes attributed the absence of an investigation into corruption or an unlawful killing to the failure of citizens to file official complaints. However, the required complaint form was available only at police stations, and there was considerable public skepticism regarding a process that assigned the investigation of police abuse to the police themselves.

Police also often did not enter suspects into police custody records, making it difficult to locate detainees. For example, in 2009 the civil society organization Bunge la Mwananchi reported that when members were arrested following political forums, they often were not booked at police stations.

KENYA

According to NGOs, the police practice of requiring an examination and testimony by a single police physician in the case of victims of sexual assault resulted in substantial barriers to the investigation and prosecution of sexual violence cases (see section 6). In 2009 the government established a witness protection unit pursuant to the 2007 witness protection law; however, the unit was not operational by year's end. Witness insecurity and harassment of witnesses continued to inhibit severely the investigation and prosecution of major crimes.

The government took some steps to curb police abuse during the year. For example, in January President Kibaki established the Police Reforms Implementation Committee to monitor progress of reforms required by the new constitution, including an independent police oversight board. The media also reported that several dozen police officers were arrested for petty corruption in the last quarter of the year.

In September 2009 in response to an interim report by the National Task Force on Police Reforms, the president replaced police commissioner Hussein Ali and the senior police leadership. The final task force report was released in November 2009; a Police Reform Implementation Commission charged with overseeing the implementation of the recommended reforms began its work during the year. A 15-member committee headed by the CEO of Kenya Airways was established to undertake police reforms. It was given a one year mandate (which was extended) and tasked with undertaking 200 recommendations proposed by Justice Ransley's taskforce on police reforms, with minimal success at year's end.

There were no developments, and none were expected, in the following 2008 cases: the trial of a police officer allegedly responsible for the shooting deaths of two unarmed, peaceful demonstrators in Kisumu; and the trial of a police officer for the shooting death of an MP in Kericho.

There were numerous instances in which police failed to prevent societal violence. In February near Mombasa, an armed mob of between 200 and 300 persons surrounded the KEMRI (see section 1.c.). Police did not arrest any members of the mob.

In February and March 2009, police failed to prevent the burning deaths of suspected witches in Pokot and Kisii. In April 2009, police failed to prevent a mob from beating to death suspected Mungiki members in Karatina. Police attempted to

KENYA

investigate these incidents of societal violence but were hampered by the communities' unwillingness to provide information about the cases.

Arrest Procedures and Treatment While in Detention

Under the criminal procedure code, police have broad powers of arrest. Police may make arrests without a warrant if they suspect a crime has occurred, is happening, or is imminent. Detainees in noncapital cases must be brought before a judge within 24 hours. Detainees in capital cases must be brought before a judge within 14 days; however, the government did not respect this law in practice. The courts dealt with this shortcoming by considering whether the constitutional rights of the accused had been breached. In many cases accused persons, including some charged with murder, were released because they had been held longer than the prescribed period.

The right to prompt judicial determination of the legality of detention frequently was not respected in practice. The law provides pretrial detainees the right of access to family members and attorneys. When detainees could afford counsel, police generally permitted access; however, there were cases in which police refused access to lawyers. Family members of detainees frequently complained that access was only permitted on payment of bribes. There is a functioning bail system; however, many suspects remained in jail for months pending trial because of their inability to post bail. Individuals charged with offenses that were deemed serious and capital offenses are not eligible for bail pending trial.

Police often stopped and arrested citizens to extort bribes. For example, during the year police in Eastleigh routinely targeted Somali youths, threatening to send them to refugee camps if they did not pay a bribe. Since few could afford even a modest bribe, many languished in jail unless family or friends raised the bribe money demanded by police.

Muslim leaders claimed that police indiscriminately arrested Muslims on suspicion of terrorism and that some suspects subsequently disappeared, but the police denied this.

Muslim MPs and clerics also continued to claim that Muslims were being unfairly targeted during the year. For example, the arrest and renditions of suspects of the July 7 Kampala bombings were thought to be religiously based. The Ugandan government arrested several dozen individuals in connection with the bombings

KENYA

including, on September 15, including Kenyan human rights activist Al-Amin Kimathi and Kenyan attorney Mbuga Mureithi. On September 18, authorities released Mureithi without charge and deported him back to Kenya. On December 1, authorities charged 17 persons, including Kimathi, with terrorism, murder and attempted murder in relation to the bombings and released 18 others. Hearing of the cases was pending at year's end.

There were no reports during the year that police arbitrarily arrested persons demonstrating against the government.

In August authorities arrested 13 civil society demonstrators for demanding a reason for the invitation to Sudanese President Omar al-Bashir to attend the promulgation ceremony.

Lengthy pretrial detention continued to be a serious problem that contributed to overcrowding in prisons. The government claimed the average time spent in pretrial detention on capital charges was 16 months; however, there were reports that many detainees spent more than three years in prison before their trials were completed. Police from the arresting location are responsible for serving court summonses and picking up detainees from the prison each time a court schedules a hearing on a case. A shortage of manpower and resources meant that police often failed to appear or lacked the means to transport detainees, who then were forced to await the next hearing of their cases. According to the judiciary, the backlog numbered approximately 800,000 cases, including both civil and criminal. During the year there were more than 17,000 persons incarcerated awaiting trials.

Amnesty

The president releases petty offenders periodically, with the largest amnesty occurring on December 12, Independence Day; however, the release is not automatic. During the year the president pardoned approximately 4,000 persons. In August 2009 the president commuted all death row sentences to life imprisonment.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary; however, the executive branch sometimes exercised political influence over the judiciary. The judiciary was corrupt at all levels. In 2008 after the controversial announcement of

KENYA

the presidential results, the opposition leader refused to file a court challenge to the announcement because he did not expect a fair hearing.

The president has extensive powers over appointments, including of the attorney general, chief justice, and appellate and high court judges; however, this will be reduced some under the new constitution. Key judicial appointments, including Chief Justice and Attorney General, now require the approval of parliament. A Judicial Services Commission is responsible for making recommendations for appointment of judges.

The constitution provides for Kadhi's courts and states that the "jurisdiction of a Kadhi's court shall be limited to ... questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's court." There are no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in personal matters, as long as it did not conflict with statutory law. Use of traditional law occurred most often in cases of marriage, death, and inheritance in which there was an original contract based on traditional law. Citizens may choose between national and traditional law when they enter into marriage or other contracts; however, the courts determine which kind of law governs the enforcement of the contract. Some women's organizations sought to eliminate traditional law, through a number of proposed marriage laws, because in practice the current laws were interpreted and applied in favor of men.

The government occasionally used the legal system to harass critics. Local authorities continued to prosecute a 2008 case against a physician who helped document allegations of human rights abuses in the Mount Elgon region but dropped a case against a second witness.

In May 2009 prosecutors dropped charges from a 2008 case against the director of the seafarer's welfare organization for issuing a statement that military cargo on a hijacked ship was bound for South Sudan and not Kenya, as the government claimed.

There were no developments and none were expected in the 2008 case of the former MPs charged with incitement for statements about human rights abuses in El Wak.

Trial Procedures

KENYA

Civilians are tried publicly, although some testimony may be given in closed session. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence in their defense. A defendant's right to consult with an attorney in a timely manner was generally respected. However, the vast majority of defendants could not afford representation and were tried without legal counsel. Indigent defendants do not have the right to government-provided legal counsel except in capital cases. The lack of a formal legal aid system seriously hampered the ability of many poor defendants to mount an adequate defense. Legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers (FIDA), provided it.

Discovery laws are not defined clearly, further handicapping defense lawyers. Implementation of the High Court ruling that written statements be provided to the defense before trial was slow. Often defense lawyers did not have access to government-held evidence before a trial. The government sometimes invoked the Official Secrets Act as a basis for withholding evidence. Defendants can appeal a verdict to the High Court and ultimately to the Court of Appeals. The legal system does not provide for trial by jury; judges try all cases.

In treason and murder cases, the deputy registrar of the High Court can appoint three assessors, who are lay citizens, to sit with a high court judge. Although assessors render verdicts, their judgments are not binding, and the practice was being phased out, starting in 2009. Defendants' lawyers can object to the appointment of individual assessors. A shortage of appropriate assessors frequently led to long delays in hearing cases.

According to NGOs the police practice of requiring an exam and testimony by a single police physician in cases of victims of sexual assault resulted in substantial barriers to the investigation and prosecution of sexual violence cases (see section 6).

Political Prisoners and Detainees

There were no reports of political prisoners or detainees during the year.

Civil Procedures and Remedies

KENYA

The KNCHR has some powers of a court, including the issuance of summonses and ordering the release of a prisoner or detainee, payment of compensation, or other lawful remedy; however, the government continued to ignore such summonses and orders. The police routinely refused to release suspects when ordered to do so by the KNCHR.

In 2009 the attorney general filed a brief with the High Court arguing that the KNCHR should be stripped of judicial powers; the court had not issued a final ruling but did issue an injunction barring the KNCHR from convening investigatory panels. As a result, the KNCHR was barred from intervening in cases of police and judicial misconduct.

The civil court system can be used to seek damages for victims of human rights violations. However, corruption, political influence over the civil court system, and chronic backlogs of cases limited access by victims to this remedy.

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

Court fees for filing and hearing cases--a daily rate of at least 2,040 shillings (\$28) for arguing a civil case before a judge--effectively barred many citizens from gaining access to the courts.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit such actions, except "to promote public benefit"; however, 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 to apprehend suspected criminals or to seize property believed stolen.

During the year police raided dozens of homes in the Nairobi slums in search of suspected Mungiki members.

City council officers and police officers also frequently raided, evicted, or destroyed the homes and businesses of citizens in slums or other areas who did not

KENYA

hold proper legal title. Residents complained that these actions were often intended to extort bribes from residents and small business owners.

In September 2009 parliament accepted an amended version of the Mau Forest Task Force report, authorizing the eviction of all 2,000 residents in the Mau Forest; evictions were carried out in November and December 2009. Evictees alleged that security forces destroyed property and that the government failed to provide adequate emergency shelter or promised compensation. Residents holding title deeds are entitled to compensation.

By year's end Mau Forest evictees had not been resettled and still were living in extremely poor conditions.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press, but the government sometimes restricted these rights. Unlike the previous year, there were no reports that security forces killed members of the media. However, during the year security forces harassed members of the media, and journalists practiced self-censorship.

The government occasionally interpreted laws in such a way as to restrict freedom of expression. The prohibition on discussion of issues under court consideration limited deliberation on a number of political issues, although this restriction was relaxed in September 2009. The government monitored many types of civil society meetings, and individuals were not always allowed to criticize the government publicly without reprisal. In September 2009, the speaker of parliament issued a ruling that the long-standing "sub judice" practice that prohibited parliamentary discussion of issues under judicial consideration could not be used to bar parliament from debating matters of public interest as it had in the past.

The government cited national or public security as grounds to suppress views that were politically embarrassing. The Kenya National Dialogue and Reconciliation Monitoring Project (KNDR) reported that two journalists for the *Star* newspaper were charged in court in 2009 for threatening national security. In October 2009, the KNDR reported that journalists reporting on the security sector often were intimidated by government officials and requested to reveal sources.

KENYA

The government occasionally interpreted laws to restrict press freedom, and officials regularly accused the media of being irresponsible and disseminating misinformation. There were also reports of politicians paying journalists to avoid negative coverage or to plant negative coverage of a political opponent.

Officials used libel laws to suppress criticism.

In 2009 Minister of Finance Uhuru Kenyatta sued the Nation Media Group over its coverage of discrepancies in the national budget. Aaron Ringera, the former chairman of the Kenya Anti-Corruption Commission (KACC), initiated a libel case against the *Standard Daily* newspaper. No new details were available on these cases by year's end.

In 2009 journalist Francis Kainda Nyaruri was abducted and killed near Nyamira, Kisii. NGOs reported that a credible investigation did not take place. There were no further developments in this case by year's end.

In September 2009 the Communications Commission of Kenya (CCK), the media licensing body, circulated new regulations related to the controversial 2008 amendments to the Communications Act, which President Kibaki signed in January 2009.

According to the new CCK regulations, "all licensees, except the public broadcaster shall not be assigned more than one broadcast frequency for radio or television broadcasting in the same coverage area." A license will be granted to only those who offer broadcasting services for at least eight continuous hours per day. No frequency is transferrable to another entity without the CCK's permission.

Generally the mainstream print media remained independent despite attempts at intimidation by officials and security forces. The mainstream print media included five daily newspapers, one business-focused daily, and numerous regional weekly newspapers with national distribution. There also were numerous independent tabloid periodicals that appeared irregularly and were highly critical of the government.

Of the several television stations operating in Nairobi, the government-owned Kenya Broadcasting Corporation (KBC) was the only station with a national network of broadcast and cable television, AM and FM radio, and short-wave

KENYA

transmission. Although KBC coverage was generally viewed as balanced, its monopoly on national broadcasting limited the ability of critics of the government to communicate with the electorate. The disadvantage to government critics posed by the KBC monopoly on national broadcasting was particularly pronounced in the period prior to the 2007 general elections.

The international media operated freely.

Internet Freedom

There were no government restrictions on access to the Internet. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet service was limited in rural areas due to lack of infrastructure. According to International Telecommunication Union statistics for 2008, approximately 8.6 percent of the country's inhabitants used the Internet.

In July 2009 the government announced that all cell phone users had to provide the government with their name and identification number for each line owned; this announcement also affected citizens who accessed the Internet through cell phone-based modems, potentially enabling the government to monitor Internet use.

Academic Freedom and Cultural Events

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

A number of publications remained banned, including the *Quotations of Chairman Mao Zedong* and Salman Rushdie's *Satanic Verses*. The Prohibited Publications Review Board reviewed publication bans.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The constitution and law provide for freedom of assembly, but the government frequently restricted this right in practice. Organizers must notify local police in advance of public meetings, which may proceed unless police notify organizers that the meeting is prohibited. According to the law, authorities may prohibit such gatherings only if there are simultaneous meetings previously scheduled for the same venue or if there is a perceived, specific security threat. However, police

KENYA

routinely denied requests for meetings filed by human rights activists and dispersed meetings for which no prohibition had been issued. Civil society groups noted that when they tried to comply with the licensing policy, police often refused to issue permits in a timely manner.

Police forcibly dispersed demonstrators.

Freedom of Association

The constitution and law provide for freedom of association, and the government generally respected this right. The Societies Act requires that every association be registered or exempted from registration by the registrar of societies.

The 2002 ban on membership in the Mungiki criminal organization remained in effect. The Mungiki espoused political views and cultural practices that were controversial in mainstream society. Also in 2002 the government declared the group a criminal organization because it ran protection rackets, particularly in the public transportation sector, and harassed and intimidated residents. The Mungiki had a significant following among the poor and unemployed. Other prohibited criminal organizations with political or cultural trappings included the Kamjesh, Chinkororo, Baghdad Boys, Jeshi la Embakasi, Jeshi la Mzee, Amachuma, Sungu Sungu, and a local group called "the Taliban."

c. Freedom of Religion

For a description of religious freedom, please see *the 2010 International Religious Freedom Report* at www.state.gov/g/drl/irf/rpt.

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

The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government largely cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

KENYA

Police routinely stopped vehicles throughout the country and often engaged in solicitation of bribes at such checkpoints. Ethnic Somalis are frequently required to provide additional identification. HRW stated during the year that the government continued to illegally deport hundreds of Somali asylum seekers back to Somalia. HRW also stated that the government detained and deported ethnic Somalis and Ethiopians on the assumption they were economic migrants or potential security risks; the NGO believed that some of these deportees were Kenyan citizens and legal residents.

Refugee freedom of movement was severely restricted, and the government tightened its restriction on travel outside of refugee camps unless approved by the government and the UNHCR. There were instances in which refugees outside of the camps were detained despite holding valid travel passes.

Civil servants and MPs must obtain government permission for international travel, which generally was granted.

The law prohibits forced exile, and the government did not use it. However, in 2009 four witnesses to the OFFLACK killings went into self-imposed exile after being intimidated by the police (see section 1.a.).

Internally Displaced Persons (IDPs)

In September 2009 President Kibaki stated that approximately 7,000 of the 350,000 persons who fled their homes in Rift Valley Province, Central Province, Nairobi, and other sections of the country as a result of 2008 postelection interethnic violence, still had not been resettled in their home regions. In 2008 the government announced "Operation Rudi Nyumbani" (Operation Return Home) to return IDPs in camps to their homes; however, the majority of IDPs chose to relocate to transit sites near to their homes. By the end of 2008 the government had closed or ceased providing services to IDP camps; however, in 2009 the Kenya Red Cross Society reported that 99,198 IDPs resided in transit sites. IDP camp residents complained that police used force and did not offer adequate compensation during the resettlement.

Rapes allegedly perpetrated by residents of camps, local residents, and sometimes by police personnel occurred in IDP camps. In 2008 the representative of the UN secretary general on the human rights of IDPs visited the country and concluded that the returns of some IDPs were not voluntary and based on informed choices.

KENYA

In a 2008 report the KNCHR found that the government had used intimidation and force to remove IDPs from camps and had failed to provide housing, food, and clean water to resettled camp residents. The KNCHR also found that resettled residents were exposed to sexual violence and harassment.

In 2009 government eviction and destruction of homes in low income areas resulted in IDPs. For example, in July of that year police bulldozed homes in Githogoro Village, Nairobi, displacing 3,000 residents.

There were also many other causes of displacement in 2009, including land disputes and flash floods. NGOs reported that hundreds of pastoralists were displaced in conflicts over pasture and watering holes in semiarid regions of North Eastern, Eastern, and Rift Valley Provinces. Karamojong from Uganda engaged in cross-border cattle raids in Western Rift Valley Province, resulting in death and displacement among the Pokot and Turkana tribes.

An unknown proportion of the several thousand persons displaced by ethnic clashes from the 1990s had not returned to their homes due to fear of renewed violence.

Protection of Refugees

The law provides for the granting of asylum or refugee status for those claiming asylum, and the government coordinates with UNHCR to provide refugees protection. During the year the Department of Refugee Affairs (DRA) hired a consultant to develop a refugee policy to provide implementing guidelines for the 2006 Refugee Act. By year's end, however, the government fired the consultant and was in the process of searching for a replacement consultant. Additionally the commissioner of refugee affairs stepped aside due to corruption allegations and was replaced by an acting commissioner until the allegations were investigated.

The government and UNHCR registered more than 90,000 new refugees during the year, with some 65,000 new arrivals registered in Dadaab refugee camp. The Dadaab refugee camps were severely overcrowded. UNHCR had received county authorization to transfer 20,000 refugees to land adjacent to an existing refugee camp but was blocked from implementing the transfer by local government officials. The government provided some protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group,

KENYA

or political opinion. However, there were credible reports of the forcible return of Somali asylum seekers throughout the year; the Kenya-Somalia border remained officially closed, limiting asylum seekers from legally entering the country. A planned reopening of the Liboi Registration Center for Somali asylum seekers had yet to be formally authorized by the government. Somali asylum seekers reportedly paid approximately 7,500-15,000 shillings (\$100-\$200) per family in bribes and transportation costs to travel from the Kenya-Somalia border to the Dadaab refugee camps. HRW reported a "systematic extortion network" of police officers along the Kenya-Somalia border who committed serious human rights violations of Somali asylum seekers.

In 2009 international donors initiated a program to transfer the responsibility of registering asylum seekers and completing refugee status determinations from the UNHCR to the government. However, the plan had stalled and UNHCR still performed asylee registration and refugee status determination. The government also registered refugees in Dadaab camps, located in the northeastern part of the country; however, many refugees report they had not received their identification documents by year's end.

The government permitted the UNHCR to register and assist new arrivals who successfully made their way to one of the three Dadaab refugee camps. The UNHCR registered 65,207 new arrivals in the Dadaab camps during the year, increasing the camp size to more than 300,000 refugees (the three camps were designed to accommodate 90,000 refugees). In January the Garissa County Council approved the UNHCR's request to extend the Ifo refugee camp in Dadaab to accommodate an additional 90,000 refugees. However, due to disagreements with local officials and UNHCR, the Ifo extension had not been opened. The UNHCR began improvements to the land, as well as relocated 40,000 refugees to the site. New arrivals to Kakuma refugee camp in the northwest also continued to increase during the year, with 11,387 new arrivals documented during the year bringing the camp population to 81,000. UNHCR reported that the host community had agreed to provide land for the Kakuma Camp expansion, which would accommodate 5,000 additional refugees. UNHCR was also in the process of negotiating the acquisition of land at Kalobeyei for an additional camp during the year.

The UNHCR remained unable to provide newly arrived refugees with plots in the Dadaab camps, restricting assistance to limited nonfood items (sometimes only soap) and instructions to find their own accommodations either with their clan members or outside the Dadaab refugee camp complex. Cholera, meningitis,

KENYA

H1N1, and measles outbreaks were all reported in Dadaab. Many new refugees reportedly bypassed Dadaab camps because of the conditions and continued directly to Kakuma camp or Nairobi.

Despite the policy that all refugees must reside in camps (the government has a de facto encampment policy), 11,387 newly arriving refugees were registered in Nairobi during the year, bringing the officially registered Nairobi refugee population to slightly more than 46,000 refugees. Unofficially, the UNHCR and NGOs estimated that more than 100,000 refugees resided in Nairobi. In June the DRA began a 100-day Rapid Results Initiative (RRI) to register urban refugees in Nairobi and provide them with government refugee identity cards. The DRA only targeted refugees previously registered with the UNHCR. Despite a goal of registering and issuing government refugee identity cards to 17,000 refugees, the DRA reportedly issued only 6,273 cards. Following the RRI in August, the DRA stated that registration of new asylum seekers would only take place in Dadaab and Kakuma refugee camps, and that any refugee detained in Nairobi without a government-issued refugee card would be subject to relocation to Dadaab or possible deportation. The UNHCR continued to register refugees in Nairobi at year's end. By year's end 11,813 asylum seekers were registered with UNHCR in Nairobi pending refugee status determinations.

Security concerns, including rape, banditry, and shooting, remained problems at both Dadaab and Kakuma refugee camps. Health and social workers at the camps reported that due to strong rape awareness programs, victims increasingly reported such incidents, resulting in improved access to counseling, particularly in Kakuma refugee camp. Capital FM, a local radio station, reported that during the year approximately 300 crimes in Dadaab were reported to UNHCR authorities, of which almost two-thirds were gender-based crimes, including 107 cases of reported sexual violence (rape, attempted rape, sodomy, and defilement). Fifteen relief agencies followed a code of conduct for humanitarian workers to further reduce incidents of sexual abuse by agency staff in refugee camps.

Other security and human rights problems affecting refugees included persecution of Muslim converts to Christianity; community pressure against opponents of FGM; forced marriage, particularly of young Sudanese and Somali girls; and family objections to out-of-clan marriage. At times these resulted in the kidnapping of spouses and children and domestic abuse. The UNHCR, Ministry of Internal Security, and the Ministry of Immigration reached an agreement to increase the

KENYA

police presence at all refugee camps, but the agreement remained unsigned at year's end.

There were isolated incidents of ethnic-based violence at the Dadaab refugee camps. In August a 13-year-old Somali youth was found murdered in Dagahaley camp. In response to the gruesomeness of the murder, a group of Somali refugees attacked and seriously injured several Sudanese refugees. NGO staff and property was also attacked with some damage to property and minor injuries reported. The UNCHR removed all the Sudanese from Dagahaley to Ifo camp while tensions cooled. According to the UNHCR, the violence against international humanitarian agencies in Dadaab frequently revolved around staff management disputes.

The government required all refugees to remain at UNHCR camps, which were located near the country's borders with Somalia and Sudan, unless refugees had been granted permission to attend higher education institutions, receive specialized medical care outside the camp, or leave to avoid security threats. During the year the Garissa provincial commissioner began implementing a strict adherence to the rules that resulted in several delays in transporting refugees needing urgent medical attention to Nairobi for treatment.

In 2009 the government introduced mobile courts to serve the camp populations, which were fully fledged judicial courts and instrumental in curbing crime and violence.

In October 2009 HRW reported the recruitment of citizens as well as refugees in Dadaab refugee camps by militias participating in the Somalia conflict. The UN Children's Fund (UNICEF) confirmed the reports, and the UNHCR launched an investigation. In response to its findings, the UNHCR distributed bulletins in the camp warning refugees who joined armed groups that they would be at risk of losing their refugee status if they left the camp to join a militia. Additionally the UNHCR initiated discussions with the government to stop recruitment in the camps. No incidents were reported during the year.

Stateless Persons

In 2009 the UNHCR estimated that 100,000 stateless Sudanese Nubians, reportedly the descendants of Sudanese forcibly conscripted by the British in the early 1900s, lived in the country. The Sudanese Nubians were not granted citizenship or identification documents, despite the UNHCR's conclusion that the

KENYA

Nubians qualified for citizenship under prevailing nationality law. In 2003 the Nubians sought judicial relief from the Constitutional Court to be declared citizens by birth. Citizenship is determined by parentage, but the law also provides citizenship for Africans brought to the country by colonial authorities. In 2005 the Nubians filed a memorandum of admissibility with the African Commission on Human and Peoples' Rights under the African Charter on Human Rights. In 2007 the commission heard arguments on the admissibility of the case. The government presented its arguments and filed a brief on the merits of the case. No further information on the case was available at year's end.

According to the UNHCR, an unknown number of descendants of mixed Eritrean-Ethiopian marriages also were stateless. They were unable to obtain citizenship in either of those countries due to strong nationalist prejudices. Their lack of proper documentation resulted in difficulties in finding employment.

In March the International Rescue Committee (IRC), the Humanitarian Policy Group (HPG) at the Overseas Development Institute, and the Refugee Consortium of Kenya released their study, *Hidden and Exposed: Urban Refugees in Nairobi, Kenya*, highlighting the vulnerability of urban refugees in Nairobi. The report provided a critical assessment of the government's implementation of the 2006 Refugee Act, the ineffective roles of the DRA and the UNHCR in protecting urban refugees, the scarcity of assistance programs to urban refugees, and the lack of possibility for local integration. In recognition of the challenges faced by refugees in Nairobi, the UNHCR chose Nairobi as one of five pilot cities to implement its Global Policy on Refugees in Urban Areas.

In August the government and two foreign governments released the study, *In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities*. The study found that the impacts of the camps on the host communities were significant. They were mainly positive from an economic standpoint (although illicit), and resulted in a marked increase in the host community population from 15,000 in 1989 to 148,000 in 2010. However, host and refugee communities were found to overlap so closely that an estimated 40,500 host community members within 30 miles of the camp were thought to hold refugee ration cards.

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

KENYA

The constitution and law provide citizens the right to change their government through free and fair multiparty elections, and citizens exercised this right through generally free and fair local and legislative elections held on the basis of universal suffrage. However, the manner in which the 2007 presidential election results were tallied raised serious doubts as to whether this right was respected in practice on the presidential level.

Elections and Political Participation

In 2007 the country held local, parliamentary, and presidential elections. A total of 117 parties contested local elections, presenting 15,332 candidates, and 138 parties contested parliamentary elections, putting forth 2,548 candidates. Nine parties nominated presidential candidates.

Voting and counting at polling stations for the 2007 elections generally were conducted in accordance with democratic standards, although there were irregularities in both opposition and progovernment strongholds. International observers concluded that the tallying irregularities by the Election Commission of Kenya (ECK) in Nairobi undermined the credibility of the ECK. In December 2007 the ECK announced that President Kibaki won the election; violent protests ensued.

A mixed Kenyan-international commission appointed in 2008 to evaluate the elections found that the election results were "irretrievably polluted." The commission also reported that the election results, and especially the presidential election results, lacked integrity.

International and local monitors reported that the election campaign for the 2007 elections was generally free and fair, although there were instances of violence between supporters of rival parties, especially among progovernment parties. Although the government required parties to register prior to political rallies, the government by and large did not interfere with party campaign activities. Police generally reacted professionally to instances of campaign violence. Text messages, pamphlets, and Web logs sometimes were used to disseminate hate speech that was banned under the election code of conduct. The KNCHR and other civil society organizations accused the government of misusing state resources by providing transport and funding rallies and election materials for some candidates in the election campaign. While nearly 14.3 million citizens registered to vote, an

KENYA

independent review commission concluded that voter rolls contained the names of approximately 1.3 million deceased persons.

In accordance with the National Accord, the ECK was abolished in 2008 and an Interim Independent Electoral Commission (IIEC) was established in May 2009. In August 2009, the IIEC conducted two parliamentary by-elections, in Shinyalu and Bomachoge constituencies. The by-elections were deemed free and fair by domestic and international observers, although there were problems with the voter registry, and several political parties bribed voters in exchange for votes.

Women's participation in electoral politics remained low; however, a record number of female candidates ran for parliament and for local office in 2007, despite harassment and attacks. Women constituted 10 percent of all parliamentary candidates and held 21 of the 222 seats in parliament. Women also held seven of 40 ministerial portfolios. Six of the 12 nominated MPs were women.

The new constitution provides for the representation in parliament of women, youth, persons with disabilities, ethnic minorities, and marginalized communities.

During the year several by-elections were held, all of which were peaceful and undisputed.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. The World Bank's 2009 Worldwide Governance Indicators reflected that control of corruption and rule of law were severe problems.

Frequent press reports of government corruption fueled a widespread public perception that massive corruption persisted up to the highest levels of the government and in parliament and that the government took little official action against the most corrupt. The media also reported that several dozen police officers were arrested for petty corruption in the last quarter of the year.

In September a report by the auditor general revealed that a total of 7.6 billion shillings (\$95 million) was unaccounted for within the government's ministries. The Mars Group Kenya, a local anticorruption NGO, teamed up with the KACC

KENYA

during the year to assist in the investigation regarding revenue leakages in government's budget.

In October the foreign minister and his permanent secretary chose to step down (albeit with pay) while an investigation into the fraudulent sale of embassy land in Japan worth more than 1.54 billion shillings (\$19.3 million) moved forward.

During the year the Ministry of Local Government and City of Nairobi conspired to purchase a worthless plot of land, intended to be a cemetery, for 283 million shillings (\$3.5 million). The scandal affected the deputy prime minister, his permanent secretary, and the mayor of Nairobi. The mayor was arrested in October, but the deputy prime minister was exonerated.

The Public Officer Ethics Act requires office holders to disclose their income, assets, and liabilities, as well as that of their spouses and children under the age of 18. The Act, however, does not require public disclosure of this information, under the guise of protecting the office holder's privacy. The new constitution provides citizens with access to information held by the state and further requires that the state publish and publicize any important information affecting the nation; however, many elements of the new constitution remained unimplemented. In practice, important reports regarding major corruption scandals from the last decade have never been released to the public.

In 2009 the media reported on three major corruption cases linked to the government: one involving oil; one involving education; and one involving maize. A KACC report exonerated all of the alleged participants. No one had been prosecuted in any of these cases by year's end.

In 2008 the KACC sued seven current and former MPs for making fraudulent reimbursement claims for allowances totaling 20 million shillings (\$250,000). The case was pending at year's end.

In 2003 the government created the KACC and in 2004 appointed a director and other staff. The KACC lacks prosecutorial powers and can only recommend cases for prosecution to the attorney general. At the end of 2009/2010 fiscal year, according to the KACC, it had recommended 461 cases for prosecution to the attorney general, including cases involving nine ministers, four MPs, 12 permanent secretaries, seven chairpersons of boards of public institutions, 67 directors and chief executive officers of top public institutions, and 96 other senior level

KENYA

management officers of public institutions. The attorney general accepted the prosecution recommendations in 391 of the cases and won convictions in 74 of the cases, all involving low- and mid-level officials.

Local anticorruption NGOs claimed that the KACC accomplished little, despite significant financial support provided by the government. Some civil society organizations reported that the government also used the commission to harass critics. Since President Kibaki assumed office in 2002, despite numerous scandals, no top officials have been prosecuted successfully for corruption.

In August 2009 President Kibaki unilaterally reappointed Aaron Ringera as the head of the KACC. This action led to widespread criticism from parliament, society in general, the NGO community, and international observers, since the appointment bypassed rules that require a recommendation by the KACC advisory board and approval from parliament. Parliament subsequently passed a motion nullifying Ringera's reappointment, which the executive argued was not binding. Ringera, who was the head of the KACC since its inception and was widely viewed as ineffective, voluntarily resigned in September 2009.

In July PLO Lumumba took over as head of KACC. The reinvigorated agency, which had begun to show signs of life in the months preceding his assumption of duties, continued to engage actively on corruption issues. In addition to prosecuting new cases of corruption, Lumumba promised to reopen the mega-corruption scandals of the last decade, including Anglo Leasing and Goldenberg.

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

The chief justice dealt with complaints against specific judges and magistrates; most complaints were related to court management. The August 2009 report of a multidisciplinary task force that examined judicial reform recommended introduction of a permanent mechanism to handle complaints against the judiciary. No law was passed to establish such a mechanism by year's end.

In 2008 OFFLACK noted endemic bribery in police recruitment. The police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations.

KENYA

Impunity was a major problem. Police officers rarely were arrested and prosecuted for criminal activities and corruption, or for using excessive force. Authorities sometimes attributed the absence of an investigation into corruption or an unlawful killing to the failure of citizens to file official complaints. However, the required complaint form was available only at police stations, and the public was rather skeptical regarding a process that assigned the investigation of police abuse to the police themselves.

The government took some steps in 2009 to curb police abuse. In May 2009, Internal Security Minister George Saitoti inaugurated the National Task Force on Police Reform, an 18-member team. The task force was guided by the Waki and Kriegler reports and the Vision 2030 plan. The report was completed in October 2009, following five months of gathering and analyzing views from the public and security experts.

In September 2009, President Kibaki removed Hussein Ali as police commissioner. Ali was identified in official reports as one of the key officials blocking reforms in the police force. His tenure was marred by extrajudicial killings of more than 500 Mungiki members in 2007 and brutal police killings and human rights violations during the 2008 postelection violence. His removal was widely hailed as a positive step by society, the NGO community, and international observers.

In 2008 the Ministry of Provincial Administration and Internal Security established a police oversight board to hear public complaints and recommend disciplinary actions. At year's end, the board still was not functional, due to a lack of political will and police concerns that they were not represented.

There is no freedom of information law; however, access to government information, particularly through the Internet, continued to improve. The government spokesman's briefings were televised, and updates of many government Web sites were prompt. Parliamentary debate continued to be televised live and broadcast via radio to the general public.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on

KENYA

human rights cases. With the exception of the police, government officials were usually cooperative and responsive to the queries of these groups. However, there were reports that officials also intimidated NGOs and threatened to disrupt their activities, and that provincial administrators and security forces interfered with less-established NGOs, particularly in rural areas. For example, in 2008 local authorities filed criminal charges against two persons who helped document allegations of human rights abuses against security forces in the Mount Elgon region. WKHRW officers fled the country following intimidation from local officials in 2008; however, they returned to the country during 2009. Human rights activists also claimed that security agencies conducted surveillance of their activities.

In February 2009 the UN special rapporteur on extrajudicial, summary, or arbitrary executions visited the country to investigate extrajudicial killings. He released a report documenting hundreds of extrajudicial killings by the security forces and the existence of death squads. The government rejected the report and its recommendations and filed a protest with the UN.

During the year unknown persons threatened to kill the commandant for administration at the police training college if he cooperated with the ICC investigation into responsibility for the postelection violence. The government initially provided him with adequate security but it was later withdrawn. Other potential witnesses for the ICC investigations also were harassed, threatened, and beaten during the year.

For example, in Eldoret the spouse of a witness received 3,000 shillings (\$37.50) with a note informing her to keep the money to buy her husband a coffin since he was a potential witness. Some witnesses were bribed and promised a lavish lifestyle, while two were paid by politicians to confess that they were coached by KNHRC to frame William Ruto as one of the key organizers of postelection violence.

In 2009 cabinet ministers, political leaders, and businessmen suspected of orchestrating the 2008 postelection violence allegedly directed gangs and security agents working on their behalf to intimidate and beat witnesses to the postelection violence who testified before the CIPEV. Although the minister of justice acknowledged that witnesses had been intimidated, beaten, and in some instances forced into hiding, neither the Ministry of Justice nor the Attorney General's Office took effective steps to protect the witnesses.

KENYA

Approximately 15 domestic organizations advocated for human rights in the country; 14 were independent of the government. Several NGOs maintained comprehensive files on local human rights abuses. A number of attorneys represented the indigent and human rights advocates without compensation, although they could handle only a small percentage of those who needed assistance and were concentrated in Nairobi and other large cities. The government sometimes allowed human rights organizations to witness autopsies of persons who died in police custody. The government also permitted NGOs to provide paralegal services to prisoners; the KNCHR noted that reports of human rights abuses decreased in prisons with resident paralegals.

NGOs monitored the 2009 and 2010 by-elections and the August 4 constitutional referendum, in cooperation with the KNCHR and foreign diplomatic missions.

A number of human rights organizations, including the Kenya Human Rights Commission, the IMLU, and the KNCHR, produced reports cataloguing human rights abuses. The KNCHR has the status of an appeals court and can issue summonses, order the release of prisoners, and require compensation for human rights abuses. However, the government routinely ignored the KNCHR's summonses and orders (see section 1.e.).

As required by the National Accord, in July 2009 the government established the TJRC to investigate politically and ethnically motivated human rights abuses since independence. The TJRC had not held any hearings by year's end.

During the year Chairman Bethwel Kiplagat was forced to step down for investigation for his role in the 1984 Wagalla Massacre when he was the permanent secretary of foreign affairs. It was alleged that he lacked credibility and needed to be investigated. Vice Chair Betty Murungi also resigned. During the year the TJRC carried out visits to the Mount Elgon region where members of the Saboat Land Defence Force were executed and beaten by the military personnel deployed to undertake the exercise. The TJRC also carried out visits in other parts of the country to discuss issues on historical injustice.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The constitution and law prohibit discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion,

KENYA

conscience, belief, culture, dress, language or birth. Government authorities did not enforce effectively many of these provisions. There was also evidence that some government and opposition officials tolerated, and in some instances instigated, ethnic violence. The law criminalizes homosexual activity.

Women

The law criminalizes rape, defilement, sex tourism, and sexual harassment; however, implementation remained limited, and as many as 95 percent of sexual offenses were not reported to the police. The law does not specifically prohibit spousal rape.

The law provides a maximum penalty of life imprisonment for rape, although sentences usually were no longer than the minimum of 10 years. NGO activists complained that a provision in the law that criminalized false claims of sexual assault deterred the reporting of sexual offenses.

In 2008 official police statistics indicated 627 rapes during the year, but human rights groups estimated that more than 21,000 rapes were perpetrated annually. The rate of reporting and prosecution of rape remained low because of the police practice requiring that survivors be examined by a police physician; cultural inhibitions against publicly discussing sex; survivors' fear of retribution; police reluctance to intervene, especially in case cases where family members, friends, or acquaintances were accused of committing the rape; poor training of prosecutors; and the unavailability of doctors who might provide the evidence necessary for conviction.

According to NGOs police procedures in handling cases of rape and sexual assault created substantial barriers to the investigation and prosecution of suspected perpetrators of rape and sexual assault. Police prosecutors required survivors of sexual assault to be examined by a police physician prior to the initiation of an investigation and required the same physician to testify during trial. As of the end of 2009, there was only one police physician in Nairobi, and police physicians were generally not present in rural areas. The police physician in Nairobi frequently issued examination reports that conflicted with the findings of other medical professionals, was often not available to conduct exams, and frequently failed to appear in court. As a result numerous alleged cases of sexual violence were not investigated by the police, and numerous cases were dismissed from court due to the absence of the police physician.

KENYA

The government did not investigate or prosecute reported incidents of widespread sexual violence following the disputed election in 2008. There were national guidelines on the management of sexual violence under the Ministry of Public Health, but the implementation mechanisms remained weak. The police lacked the capacity to handle most cases including handling specimens from victims.

Domestic violence against women was a serious and widespread problem but often was condoned by society and the courts. The penal code does not contain specific provisions against domestic violence but treats it as assault. Police generally refrained from investigating cases of domestic violence, which they considered a private family matter. The 2008-09 *Kenya Demographic and Health Survey* found that 39 percent of women had been the victims of domestic physical or sexual abuse. NGOs, including the Law Society of Kenya and FIDA, provided free legal assistance to some victims of domestic violence. FIDA research undertaken during the year indicated that 83 percent of women and girls in the country reported one or more episodes of physical abuse.

The law prohibits sexual harassment; however, sexual harassment continued to be a problem. It was often not reported and rarely resulted in charges being filed.

Subsidized contraception options, including condoms and birth control pills, were widely available to both men and women throughout the country, although access was more difficult in rural areas. Skilled obstetric and postpartum care was available in major hospitals, but many women were unable to access or afford these services. According to UN estimates, the maternal mortality ratio in 2008 was 530 deaths per 100,000 live births.

The government and private organizations supported a network of more than 8,000 counseling and testing centers providing free HIV/AIDS diagnosis. Diagnosis of other sexually transmitted infections was available through hospitals and clinics throughout the country. HIV/AIDS carried social stigma, and many citizens avoided testing due to social pressure.

The law provides equal rights to men and women and specifically prohibits discrimination on grounds of gender; however, women experienced a wide range of discrimination in matrimonial rights, property ownership, and inheritance rights. Women constituted an estimated 75 percent of the agricultural work force and were active in urban small businesses. The average monthly income of women was

KENYA

approximately two-thirds that of men. Women held only 6 percent of land titles; under traditional law, women in many ethnic groups could not own land. Women had difficulty moving into nontraditional fields, were promoted more slowly, and were more likely to be laid off. Societal discrimination was most apparent in rural areas. Women also faced discrimination in access to employment and to credit. The justice system--particularly customary law--often discriminated against women, limiting their political and economic rights and relegating them to second-class citizenship.

The Law of Succession, which governs inheritance rights, provides for equal consideration of male and female children but terminates the inheritance rights of widows if they remarry. Moreover, a widow cannot be the sole administrator of her husband's estate unless she has her children's consent. The law also allows the Ministry of Justice to exempt certain communities from the law in deference to tradition, which in some cases, provides for equal distribution of a man's property only among his sons. The law allows only males to transmit citizenship automatically to their spouses and children.

Certain communities commonly practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. Other forced marriages were also common. Although poor and uneducated women were more likely to be inherited or suffer from property and inheritance discrimination, prominent and educated women sometimes were victims.

Children

Citizenship is determined by parentage. Lack of official birth certificates resulted in discrimination in delivery of public services such as education and health care.

Primary and secondary education was tuition-free (although secondary enrollment was limited to students who obtained high scores on standardized primary exams); however, classes were overcrowded due to insufficient teachers and an inadequate budget. Rural families were more reluctant to invest in educating girls than boys, particularly at higher levels.

During the year more than 500 teachers were fired following reports of professional misconduct, including sexual acts with students that resulted in pregnancy in some cases. However, only approximately 30 cases appeared before the courts due to bribery.

KENYA

A report released in November 2009 by the Teachers Service Commission found that 12,660 female students were sexually abused by teachers from 2003 to 2007.

In 2008 the Centre for the Study of Adolescence reported that between 10,000 and 13,000 girls dropped out of school annually due to pregnancy. While the Education Act gave pregnant girls the right to continue their education until and after giving birth, NGOs reported that schools often did not respect this right and that schoolmasters sometimes expelled pregnant girls.

In 2008 the Ministry of Education estimated that 80,000 children dropped out of school annually due to forced marriages and child labor. Cherish Others, a local NGO, reported 30 cases of child marriage in TransMara District in 2009 but also noted that local officials had managed to prevent many more child marriages. In 2008 UNICEF reported that nine out of 10 children from poor households failed to complete primary education.

The government ordered provincial administrators to arrest parents who did not take or send their children to school. However, this law was not enforced uniformly.

The government banned corporal punishment in schools; however, there were reports that corporal punishment occurred throughout the year.

The law prohibits FGM under the age of 18 but it was practiced, particularly in rural areas. FGM usually was performed at an early age. According to UNICEF, one-third of women between the ages of 15 and 49 had undergone FGM, and in June 2009 an obstetrician estimated that 32 percent of women had suffered from the procedure. Of the country's 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana, who together constituted approximately 25 percent of the population) did not traditionally practice FGM. According to the Ministry of Gender and Children Affairs, in 2008 90 percent of girls among Somali, Kisii, Kuria, and Maasai communities had undergone the procedure. The rates among other communities were: Taita Taveta (62 percent); Kalenjin (48 percent); Embu (44 percent); Meru (42 percent); Kamba (37 percent); and Kikuyu (34 percent). There were public awareness programs to prevent the practice, in which government officials often participated.

KENYA

Some churches and NGOs provided shelter to girls who fled their homes to avoid FGM, but community elders frequently interfered with attempts to stop the practice. Various communities and NGOs instituted "no cut" initiation rites for girls as an alternative to FGM.

In August 2009 two girls were forcibly circumcised against their will in Narok, after previously fleeing threats of FGM by their families.

Child rape and molestation continued to be serious problems. Police reported that 1,626 children were defiled in 2008. The law establishes a minimum sentence for defilement--defined as a sexual act with a child involving penetration--of life imprisonment if the child is under 11 years old, of 20 years if the child is between 11 and 16 years old, and of 10 years if the child is between 16 and 18 years old; a child is any person under 18 years of age. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy. NGOs The CRADLE and Care Kenya released a 2006 report entitled *Robbing the Cradle* that indicated an increase in child sexual abuse and a decrease in the age of the youngest victims. The most vulnerable victims were girls under age 18 and boys aged three to eight. Most child abusers were neighbors, fathers, and other relatives. Teachers were the worst perpetrators in the professional category, with pastors and police officers following closely.

There were no developments in the following 2008 cases: the alleged impregnation of four primary school students in Homa Bay by a teacher, and a Nairobi teacher arrested for defiling a two-year-old boy.

Media reported discrimination against uncircumcised boys.

Newspapers frequently highlighted the problem of child marriages, which was commonly practiced among certain ethnic groups. According to UNICEF, 25 percent of young women had been married as children. The Marriage Act forbids marriage under the age of 16, but the Mohammedan Marriage and Divorce Act allows Muslim girls to marry at puberty. If a marriage is entered into under the provisions of the act, any court hearing matters related to the marriage applies the provisions of that act when deciding the case.

Child prostitution increased in recent years due to both poverty and the increase in the number of children orphaned by HIV/AIDS. Strong growth in the tourism industry also led to a large increase in foreign and domestic tourists seeking sex

KENYA

with underage girls and boys. Political leaders expressed concern that minors in drought-affected communities were leaving school and being lured to prostitution to address their basic needs.

There were reports of children joining gangs and militia and of the Mungiki gang recruiting young boys from schools. In 2009 armed groups operating in Somalia, particularly the Al Shabaab militia and militias supporting the Transitional Federal Government, allegedly recruited minors from North Eastern Province and refugee camps in the country to fight in Somalia.

Poverty and the spread of HIV/AIDS continued to intensify the problem of child homelessness. In 2007 the government began a pilot program to place two million AIDS orphans with families in 20 districts. In 2007 the program placed 5,000 children in homes. Street children faced harassment and physical and sexual abuse from police and others, and within the juvenile justice system.

The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to girls abused in, and street children exploited in the commercial sex industry.

International Child Parental Abductions

Kenya is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international parental child abduction, please see the Department of State's annual *Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction* at http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html as well as country-specific information at http://travel.state.gov/abduction/country/country_3781.html

Anti-Semitism

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

Trafficking in Persons

KENYA

For information on trafficking in persons, please see the State Department's annual *Trafficking in Persons Report* at www.state.gov/g/tip.

Persons with Disabilities

The law prohibits discrimination against persons with physical or mental disabilities in employment, education, access to health care, or the provision of other state services; however, the government did not effectively enforce these provisions. The Ministry of Health is the lead ministry responsible for implementing the law, but implementation was slow. The government equipped some public buildings with wheelchair ramps, and wheelchair-accessible elevators and sanitary facilities. The government assigned each region a sign-language interpreter for court proceedings.

Provisions for persons with disability existed but not in all polling stations. During the most recent by-elections the Kenya Society for the Mentally Handicapped (KSMH) and the Disabled Voters of Kenya Alliance worked closely with the IIEC to ensure that all persons were able to cast their votes.

In 2008 the KNCHR ordered the Kenya Commercial Bank (KCB) to reinstate an employee who had been terminated due to mental illness. The KCB filed a suit objecting to the judicial powers held by the KNCHR; the Attorney General's Office supported the KCB's claims. The court issued an injunction against further intervention which barred future action from the KNCHR in employee rights matters.

NGOs reported that persons with disabilities were affected disproportionately by postelection violence, especially in IDP camps. However, NGOs reported that camp administrators often failed to recognize those with mental disabilities.

The education ministry permanent secretary stated that only 35,000 of the 147,000 children with special needs were enrolled in school, while the KNCHR commissioner contended that fewer than 10 percent of children with special needs were enrolled in school.

The KNCHR also stated that the Kenya National Examination Council (KNEC) failed to provide adequate testing facilities and resources for students with disabilities. The KNEC claimed that it provided special accommodations, such as exams in Braille and in large print for visually impaired candidates, and extra time

KENYA

to complete exams. The government was developing disability-specific curricula, but the process was slow because the government failed to allocate sufficient resources and staff.

National/Racial/Ethnic Minorities

The population is divided into approximately 42 ethnic groups, among which discrimination and occasional violence were frequent. The 2009 census released in August revealed that the top ethnic communities were: Kikuyu at 6.6 million, Luhya at 5.3 million, the Kalenjin at 5 million, Luo at 4 million, Kamba, at 3.9 million, Kenyan Somali at 2.3 million, Kisii at 2.2 million, and Mijikenda at 1.9 million. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups. The numerically small and shrinking South Asian community controlled a disproportionate share of commerce.

There was frequent conflict, banditry, and cattle rustling among Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and Pokot ethnic groups in arid regions located in North Eastern, Eastern, and Rift Valley provinces. In 2009 intervention by security forces to reclaim stolen cattle resulted in police expropriating cattle that had not been stolen, which inflamed ethnic tension.

The government did not investigate alleged abuses committed in 2008 by security forces searching for illegal weapons in El Wak, Garri, and Mandera.

During the year some of the communities, especially the Turkhana and the Pokot, felt that the government applied selective disarmament. There were general complaints that the neighboring communities were rearming while others were being disarmed. Cattle rustling was rampant, and during the year several people were killed in Turkhana and Samburu.

In 2008 the government established the CIPEV; it issued a report that called for the establishment of a special tribunal to try suspected organizers of postelection violence. On December 15, the ICC prosecutor announced he was asking a pretrial chamber to issue summonses to six persons who allegedly committed crimes against humanity during in the postelection violence. The six named were: former minister of higher education William Ruto; former minister of industrialization Henry Kosgey; Head of Operations KASS FM radio station Joshua Sang; Secretary

KENYA

to the Cabinet Francis Muthaura, Deputy Prime Minister and Finance Minister Uhuru Kenyatta, and former police commissioner Mohamed Ali.

Through the provincial administrations, the government held public meetings to promote reconciliation in communities affected by the postelection violence and to establish a forum for dialogue and peaceful resolution of conflicts. NGOs reported that implementation of reconciliation efforts was not uniform.

Many factors contributed to interethnic conflicts: long-standing grievances over land tenure policies and competition for scarce agricultural land, the proliferation of guns, the commercialization of traditional cattle rustling, the growth of a modern warrior/bandit culture (distinct from traditional culture), ineffective local political leadership, diminished economic prospects for groups affected by a severe regional drought, political rivalries, and the inability of security forces to adequately quell violence. Conflict between land owners and squatters was particularly severe in Rift Valley and Coast provinces, while competition for water and pasturage was especially serious in the northern districts of Rift Valley and Eastern provinces and in North Eastern Province.

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

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

The penal code criminalizes "carnal knowledge against the order of nature," which is interpreted to prohibit homosexual activity and specifies a maximum penalty of 14 years' imprisonment. A further statute specifically criminalizes male-to-male sex and specifies a maximum penalty of 21 years' imprisonment. However, there were no reported prosecutions of individuals for sexual orientation or homosexual activity during the year.

Lesbian, gay, bisexual, and transgender (LGBT) advocacy organizations, such as the Gay and Lesbian Coalition of Kenya (GALCK), were permitted to register and conduct activities. There was frequent and widespread societal discrimination based on sexual orientation during the year.

KENYA

For example, during the year persons put up "not wanted" posters of the GALCK president and other LGBT activists around Nairobi. The posters also had bible verses depicting homosexuality as a sin.

On February 12, near Mombasa, an armed mob of between 200 and 300 persons surrounded KEMRI. Police arrived, took two KEMRI employees into custody for their protection but did not arrest members of the mob (see section 1.c.). Over the next week, mobs in the same area attacked and beat other persons suspected of being gay.

Other Societal Discrimination

There was societal discrimination against persons with HIV/AIDS during the year. Stigmatization of HIV/AIDS made it difficult for many families to acknowledge that a member was HIV-positive, and no socially or politically prominent individual admitted being HIV-positive. However, there were fewer reports of violence against persons with HIV/AIDS.

The Ministry of Defense arranged for uniformed personnel, their families, and some local persons to have access to HIV counseling and testing, prevention programs, and antiretroviral treatment during the year.

The government worked in cooperation with international donors on programs for HIV/AIDS prevention and treatment. This cooperation enabled a continued expansion of counseling and testing as well as care and treatment. These developments were seen as key to reducing stigma and discrimination.

Organizations representing persons with albinism claimed that they suffered widespread discrimination. There were no reported developments in the 2008 case in which a child with albinism was killed in Namanga.

Section 7 Worker Rights

a. The Right of Association

The law provides that all workers, including those in the export processing zones (EPZs), are free to form and join unions of their choice, and workers exercised this right in practice. Workers numbering seven or more in an enterprise have the right

KENYA

to form a union by registering with the trade union registrar. If the registrar denies registration, a union may appeal to the courts. The armed forces, police, prisons service, and the administration police are explicitly prohibited from forming or joining unions. There were 33 unions affiliated with the Central Organization of Trade Unions (COTU) and four unions that were not COTU affiliates. These unions represented an estimated 1.5 million workers, reflecting a steady increase over the past two years. After the postelection violence, worker displacement and other barriers that kept workers away from their places of employment and union membership declined. The increase in membership was a result of concentrated organizing efforts and outreach to women, youth, and nontraditional sectors. The law allows unions to conduct their activities without government interference, including the right to strike, but this right was not always protected.

The law permits workers to strike, but requires formal conciliation procedures to have been exhausted and seven days' notice to both the government and the employer. The law permits the government to deny workers the right to strike under certain conditions. For example, members of the military, police, prison guards, and the National Youth Service are prohibited from striking. Other civil servants are allowed to strike following the seven-day notice period.

During the year union leaders were arrested and threatened for defending the rights of workers on tea plantations. On October 18, approximately 80,000 workers went on strike over the use of tea plucking machines by six multinational companies which they claimed could cost them their jobs. Workers from the Kenya Plantation and Agricultural Worker's Union, who initiated industrial actions, were arrested and some reported being tortured. Workers ended their two-week strike after a court order which urged workers to negotiate with tea firms to resolve concerns over the use of tea plucking machines.

The Ministry of Labor typically referred disputes to mediation, fact-finding, or binding arbitration at the Industrial Court; during mediation any strike is illegal, thus removing legal prohibitions on employer retaliation against strikers. In practice a Ministry of Labor referral to dispute resolution nullifies the right to strike.

b. The Right to Organize and Bargain Collectively

While not having the force of law, the Industrial Relations Charter (IRC), implemented by the government, the COTU, and the Federation of Kenya

KENYA

Employers, gives workers the right to engage in legitimate trade union organizational activities, and the government protected these rights. Both the Trade Disputes Act and the IRC authorize collective bargaining between unions and employers, and unions and management establish negotiated wages and conditions of employment.

Security forces cannot bargain collectively but have an internal board that reviews salaries. Other groups that cannot bargain collectively, such as health sector workers, have associations, not unions, which negotiate wages and conditions that match the government's minimum wage guidelines; however, these agreements were not legally enforceable. Workers in the military, prisons, the National Youth Service, and teachers under the Teachers' Service Commission do not have the right to bargain collectively. The law allows employers in some industries to dismiss workers regardless of the provisions of their collective bargaining agreements.

During the year NGOs and trade unionists reported a growing trend towards the elimination of permanent positions in favor of casual or contract labor, especially in the EPZ, agricultural, and manufacturing sectors. In many cases the job was permanent, but an employer staffed the position with rotating contract workers. This practice held at the management level as well where employers hired individuals as management trainees and kept them in this position for the maximum time of three years. At the end of this time, instead of converting this worker to permanent staff, the person was then replaced by another trainee. In the banking sector and other commercial industries, there were reports that casual workers were replaced when they expressed interest in joining a union. One report stated that casual employment grew by 13 percent in 2009, accounting for 32 percent of total wage employment.

Except for the Factories Act, all labor laws apply in the EPZs; however, the EPZ Authority and the government granted many exemptions to applicable laws. For example, the government waived a provision of the law that prevents women from working in industrial activities at night. The Tailors and Textiles Workers Union claimed that a number of garment producers in the EPZs refused to recognize the union and resisted its efforts to organize their workers. The law prohibits employers from intimidating workers; however, some antiunion discrimination occurred, including in garment plants in the EPZs. The Industrial Court, a body of up to five judges appointed by the president, can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities.

KENYA

Workers have been fired for participating in trade union activities, especially in export processing zones. COTU reported more than 1,000 cases where workers were fired for participating in union activities across various sectors. In addition to the EPZ, there were many reports that workers in Nairobi's industrial zone were also dismissed. This practice appeared to be more common in the urban areas, although there were also reports that workers were fired on flower farms where managers insisted that workers do not join unions

The government voiced its support for union rights but did not protect them fully. Some unions complained that employers resisted efforts to establish unions in their factories, even where most workers indicated a desire for union membership, and that the Industrial Court and Ministry of Labor and Human Resources Development were ineffective in compelling employers to comply with the law.

In 2008 the government strengthened the labor dispute system by giving the Industrial Court the ability to enforce its decisions. However, during the year union leaders reported that employers often did not comply with reinstatement orders, and workers often accepted payment in lieu of reinstatement. Most employers did not comply with the reinstatement orders. In several cases, employers took the industrial court decision to the High Court which reversed the decision. The enforcement mechanisms of the industrial court remain weak.

c. Prohibition of Forced or Compulsory Labor

The law prohibits slavery, indentured servitude, and forced and bonded labor, including by children, but such practices reportedly occurred. Women, children, and men were trafficked for commercial sexual exploitation and labor. During the year there were reports of forced labor and child labor in domestic service, street vending, child prostitution, subsistence and commercial agriculture, and mining. Children primarily work in the informal sector. Commercial sexual exploitation was widespread, particularly in the coastal areas.

Forced child labor occurred. See also the Department of State's annual *Trafficking in Persons Report* at www.state.gov/g/tip.

d. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits all forms of child labor that are exploitive, hazardous, or would prevent children under age 16 from attending school. However, child labor was

KENYA

widespread, particularly in the informal sector, and children were trafficked for commercial sexual exploitation and labor. An estimated one million children between five and 17 years of age--most between 13 and 17 years old--worked.

The 2005 Kenya Integrated Household Budget survey indicated that 951,273 children below the age of 18 were employed: 79.9 percent worked in agriculture and 11.6 percent worked in domestic services. While there were no recent official statistics, the Ministry of Gender, Children Affairs and Social Development and NGOs focused on child labor problems where the number of children engaged in child labor had sharply risen to an estimated 2 million children. The increase was attributed to increasing economic hardship where families relied more on children to earn wages to support the households. The employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Children worked primarily in the informal sector, which was difficult to monitor and control. The Ministry of Labor and Human Resources Development nominally enforced the minimum age statute. The ministry remained committed to enforcing minimum age statutes, but implementation remained problematic due to resource constraints.

Children under age 13 are prohibited from working, and children between 13 and 16 years of age may perform only "light work" that is not harmful to their health or development and does not interfere with their schooling. However, the law does not apply minimum age restrictions to children serving as apprentices under the terms of the Industrial Training Act. Persons under age 18 may not be employed in any industrial undertaking at night, employment should not cause children to reside away from parents without their approval, and permission to work in a bar, hotel, or restaurant requires annually renewed consent from the labor commissioner.

The law prohibits the employment of a child (defined as a person under the age of 18) in any activity that constitutes a worst form of child labor and provides fines for employing children in such activities of up to 200,000 shillings (\$25,000) and/or imprisonment for up to 12 months. The penal code prohibits procurement of a girl under age 21 for unlawful sexual relations and criminalizes child commercial sexual exploitation, child labor, and the transport of children for sale.

Many children worked on family plots or in family units on tea, coffee, sugar, and rice plantations. Children also worked in mining, including abandoned gold mines and small quarries, breaking rocks and sifting through tailings. Children often worked long hours as domestic servants in private homes for little or no pay, and

KENYA

there were reports of physical and sexual abuse of child domestics. The Ministry of Gender, Children Affairs and Social Development and the NGO Eradicate Child Prostitution in Kenya estimated that 30,000 of these children were exploited in the sex industry every day. Forced or compulsory labor by children, such as agricultural labor, prostitution, and domestic servitude sometimes were initiated by their parents. During the year, there were reports that children participated in ethnic-based militia activity.

The government worked closely with the COTU and the International Labor Organization to eliminate child labor. In 2004 the government prepared a practical guide to labor inspection and trained labor inspectors and occupational health and safety officers to report on child labor. The National Steering Committee on the Elimination of Child Labor, which includes the attorney general, eight ministries, representatives of child welfare organizations, other NGOs, unions, and employers continued to operate and met quarterly. An Interministerial Coordination Committee on Child Labor, chaired by the minister for gender, children's affairs, and social development, was responsible for setting general policy.

Many NGOs were active on child labor issues and assisted in the return to school of child laborers. During the year the government continued to implement a multitude of programs for the elimination of child labor with dozens of partner agencies. The partners placed the children in schools, vocational training institutions, and apprenticeships and supported income-generating activities for thousands of parents. Partners also provided support to schools for income-generating activities to help keep children from poor families in school.

UNICEF, the Ministry of Tourism and Wildlife, the World Tourism Organization, and NGOs continued to work with the Kenya Association of Hotelkeepers and Caterers, a representative body of hotels and tour operators, to increase their awareness of child prostitution and sex tourism. The association encouraged all hospitality-sector businesses to adopt and implement the code of conduct developed by the NGO End Child Prostitution and Child Pornography and Trafficking of Children for Sexual Purposes. During the year the majority of hotels on the coast had signed the NGO's code of conduct and continued to self-regulate through the Kenya Association of Hotelkeepers and Caterers. The Ministry of Tourism and Wildlife continued to register villas and cottages and impose the same requirements as on hotels. During the year the cabinet approved a new tourism bill that would establish a regulatory authority to oversee all hotels, villas and cottages,

KENYA

including their adherence to the code of conduct. At year's end, the bill remained in parliament.

During the year the Child Protection Department employed a total of 450 children's officers, an increase in the number of officers. Also during the year the government's cash transfer program for orphans and vulnerable children expanded to cover 47 districts and to reach an estimated 100,000 beneficiaries. It was cofunded by the government and development partners. The beneficiaries each received 3000 shillings (\$ 39) per month, a 50 percent increase in the cash payment received by each family since last year. There were an average of three orphans and vulnerable children in each beneficiary household who directly benefitted from the program.

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 a minimum bar for monthly, daily, and hourly work in each category. In many industries, workers were paid the legal minimum wage; however, in most cases these wages were far outpaced by the cost of living. The lowest legal urban minimum wage was 6,743 shillings (approximately \$85) per month, and the lowest agricultural minimum wage for unskilled employees was 2,536 shillings (\$35) per month, excluding housing allowance. During the year the Productivity Center of Kenya, a tripartite institution including the Ministry of Labor, the Federation of Kenyan Employers, and the COTU, continued to set wage guidelines for various sectors based on productivity, inflation, and cost of living indices. While the center continued to set guidelines, it did not have the personnel with sufficient expertise to gain the respect of industry. Many employers did not obey the center's recommendations. The minimum wage did not provide a decent standard of living for a worker and family. Most workers relied on second jobs, subsistence farming, other informal work, or the extended family for additional support. A large percentage of the labor force worked in the informal sector and was not covered by these provisions.

The law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. The law specifically excludes agricultural workers. An employee in the nonagricultural sector is entitled to one rest day per week, and there are provisions for 21 days of combined annual and sick leave. The law also requires that total hours worked (regular time plus

KENYA

overtime) in any two-week period not exceed 120 hours (144 hours for night workers). The Ministry of Labor and Human Resources Development was responsible for enforcing these regulations. Violations were reported during the year. Workers in some enterprises, particularly in the EPZs and road construction, claimed that employers forced them to work extra hours without overtime pay to meet production targets. In addition employers often did not provide nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment. During the year trade unionists complained that some government labor inspectors were bribed by employers to avoid penalties for labor violations. The extremely low salaries and the lack of vehicles, fuel, and other resources made it very difficult for labor inspectors to do their work and left them vulnerable to bribes and other forms of corruption. Employers in all sectors routinely bribed labor inspectors to prevent them from reporting infractions, especially in the area of child labor.

Labor laws require two weeks' paternity leave, three months' maternity leave with full pay, and compensate both public and private employees for work-related injuries and diseases contracted at work. However, in 2008 employers challenged the workers' compensation provisions in court. At year's end, the case continued.

The law detailed environmental, health, and safety standards; however, the government did not effectively enforce the law. Fines generally were too low to serve as a deterrent to unsafe practices. EPZs are excluded from the Factory Act's provisions. The Ministry of Labor's Directorate of Occupational Health and Safety Services (DOHSS) has the authority to inspect factories and work sites, except in the EPZs; it employed 79 inspectors, far short of the 168 reportedly needed to inspect factories adequately and enforce its safety and health orders. No new inspectors were hired since 2007. During the year the DOHSS had a target of 4,840 inspections, carried out 4,000 inspections and prosecuted 100 companies for violating occupational health and safety regulations. There continued to be widespread hazards, such as lack of basic safety equipment and emergency escape routes in many companies. During the year labor unions and NGOs continued to criticize health and safety conditions in the EPZs and other sectors, such as small horticultural producers.

DOHSS health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Such notices can be appealed to the Factories Appeals Court, a body of four members, one of whom must be a high court judge. The law stipulates that factories employing 20

KENYA

or more persons should have an internal health and safety committee with representation from workers. The DOHSS developed a program to help factories establish the committees and trained them to conduct safety audits and submit compliance reports to the DOHSS. According to the government, most of the largest factories had instituted health and safety committees by year's end.

Workers, including foreigners and immigrants, theoretically have the right to remove themselves from situations that endanger health or safety without jeopardy to their employment; however, this right was not enforced effectively, and workers were reluctant to do so due to risk of losing their jobs.