

# **KENYA 2012 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Kenya is a republic with an institutionally strong president and a prime minister with unclearly defined executive powers. There is a unicameral national assembly. In 2010 citizens approved a new constitution in a national referendum, widely considered to be free and fair. The new constitution includes significant institutional and structural changes to the government, including the transition to a bicameral legislature, the abolition of the post of prime minister, and the devolution of fiscal and administrative authority from the central government to 47 newly created county governments. The new constitution stipulates the creation of a Supreme Court, which was established in June 2011. 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, incumbent 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 the Nyanza, Rift Valley, Western, and Coast provinces. Approximately 1,150 persons were killed and more than 350,000 displaced by violence from December 2007 to February 2008. The two sides agreed to form a coalition government as a result of international mediation. Under the terms of the agreement, President Kibaki retained his office and Odinga was appointed to the newly created position of prime minister. The parties also agreed to undertake a series of constitutional, electoral, institutional, and land reforms to address underlying causes of the crisis. There were instances in which elements of the security forces acted independently of civilian control.

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

Other human rights problems included police corruption; harsh and life-threatening prison conditions; arbitrary arrest and detention; prolonged pretrial detention; some judicial corruption; arbitrary interference with the home and infringement on citizens' privacy; restrictions on freedom of speech, press, and assembly; abuse and forced resettlement of internally displaced persons (IDPs); abuse of refugees, including killing and rape; abridgement of the right of citizens to change their

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

Widespread impunity at all levels of government continued to be a serious problem, despite implementation of judicial reform and the vetting of all judges and magistrates. The government took only limited action against security forces suspected of unlawful killings, and impunity in cases of corruption was common. The government took action in some cases to prosecute officials who committed abuses and, for the first time, several former senior government officials were convicted of corruption. Nevertheless, impunity--particularly in connection with human rights abuses committed during the post-2007 election violence--was pervasive.

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

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

There were numerous reports that the government or its agents committed arbitrary and unlawful killings. Human rights groups estimated that police were responsible for approximately 1,000 extrajudicial killings between 2008 and 2012; in 200 of those cases, there was credible evidence of police involvement, according to civil society groups. The government took only limited action to hold accountable security forces suspected of unlawfully killing citizens. Authorities prosecuted few police officers for unlawful killings, including those committed during the 2007-08 postelection violence.

On March 29, police officers in Isiolo shot and killed schoolteacher Saida Maalim Hussein. A postmortem report showed that she was shot at close range inside her home. Earlier in the day, the police officers had engaged in an armed confrontation with cattle rustlers approximately 12 miles from the site of the incident and reportedly took out their frustration by firing indiscriminately on homesteads in Hussein's village. The government claimed to have opened an investigation, but no action had been taken against any police officer as of year's end.

On April 21, police shot and killed three persons and injured two others while attempting to disperse a crowd in Dandora, one of Nairobi's suburbs. Two of the victims were young children. Police authorities suspended six officers for their role in the incident. The government promised an investigation but had not initiated criminal proceedings against the suspended officers as of year's end.

In November 2011 police officers attached to the Muthangari police station shot and killed a man and his 12-year-old son outside their home in Kawangware, Nairobi. Eyewitness reports indicated that the son was shot while pleading for his father's life. Police officers threatened a reporter who arrived on the scene. Two police officers were suspended and charged with murder. As of year's end, no government witnesses had testified, and the case had been adjourned multiple times.

Police killed numerous criminal suspects, often claiming that they violently resisted arrest or were armed. On March 25, police shot and killed four persons during an attempted robbery at a rural electrification authority facility in Nairobi. The suspects were allegedly part of a gang of 13 persons who were caught in the act of stealing cables. They were unarmed but were shot and killed when they attempted to flee the scene. There was no investigation, and no action had been taken against the officers as of year's end.

Impunity remained a serious problem, including for abuses committed in previous years. In January 2011 three police officers shot and killed three suspected carjackers who already had surrendered. The incident occurred in the middle of a busy Nairobi highway in broad daylight; it was captured on camera and featured prominently in the media. The officers were suspended temporarily but subsequently reinstated, although the investigation into the incident continued at year's end.

There were reports that persons died while in police custody or shortly thereafter, some as a result of torture and abuse. For example, a British citizen died in police custody on May 19 after being arrested in Diani on suspicion of smoking cannabis. Police claimed that he died from a drug overdose, but a postmortem examination revealed that the death was caused by blunt force trauma to the head. No action had been taken against the officers at the station as of year's end.

There were developments in police abuse cases from previous years. On December 18, High Court judge Fred Ochieng sentenced six Administration Police officers to death for the 2010 murder of seven taxi drivers in Nairobi's

Kawangware suburb. The landmark case was the first conviction of police officers for extrajudicial killings. The defendants appealed the sentence.

In 2008 the government formed the Commission of Inquiry into Postelection Violence as part of the internationally mediated political settlement. In 2008 the final commission report recommended that the government establish a special tribunal to investigate individuals suspected of violence; however, no local tribunal was established, and the government did not conduct any investigations.

As a result of government inaction, in 2010 the International Criminal Court (ICC) opened an investigation and in March 2011 issued summonses on charges of crimes against humanity for six individuals. At year's end three of them held official positions and two were former government officials. The six individuals were: Uhuru Muigai Kenyatta, deputy prime minister and former minister of finance; William Samoei Ruto, member of parliament and former minister of higher education, science, and technology; Henry Kiprono Kosgey, minister of industrialization; Joshua Arap Sang, former head of operations for KASS FM radio station; Francis Kirimi Muthaura, former head of the public service and secretary to the cabinet; and Mohamed Hussein Ali, police commissioner at the time of the violence. In August 2011 the ICC dismissed an appeal by the government that challenged the admissibility of the cases against the six, ruling that the government had failed to provide sufficient evidence to prove that it was conducting its own investigation. On January 23, the ICC confirmed charges against four of the six suspects, ruling that the prosecutor had not reached the threshold for charges to be confirmed against Kosgey and Ali.

In February the government appointed a task force to investigate local cases of postelection violence in 2007-08. In an August report the task force indicated that it had reviewed 4,408 of the 6,081 files compiled by police and found that most of the files were incomplete. No suspects were identified in 2,411 of the cases. In approximately 1,000 cases a suspect had been identified but there was insufficient evidence to prosecute. In 2008 human rights groups reported that police turned away victims or refused to take down witness testimony after the postelection violence. Police reportedly were also responsible for many of the human rights violations during that period. As of year's end there were 24 convictions in postelection violence cases, including two for murder. No police officers had been prosecuted successfully.

In its 2011 report, *Turning Pebbles: Evading Accountability for Post-Election Violence in Kenya*, Human Rights Watch (HRW) faulted the government for not

making a credible attempt to deliver justice for postelection violence victims. HRW noted that a March 2011 government report, which claimed that there had been 94 convictions for postelection violence, contained glaring errors, such as the inclusion of cases that were unrelated to postelection violence or that had resulted in acquittals.

## **b. Disappearance**

Members of the security forces were suspected of being responsible for a number of forced disappearances. At least half dozen prominent Muslim leaders alleged to have terrorist ties were victims of killings or forced disappearances. In April armed men forcefully removed from a bus in Mombasa activist Samir Khan, believed to have ties to the Somalia-based terrorist organization al-Shabaab, and Mohammed Kassim, arrested in connection with a March 10 grenade attack on a bus station in Nairobi. Khan's mutilated body was discovered two days later and 125 miles away in Tsavo Park; Kassim remained missing at year's end. In May armed men abducted Sylvester Opiyo, who was interrogated but never charged in connection with several terrorist attacks, after Opiyo's car broke down in the western part of the country. Opiyo's whereabouts remained unknown at year's end. On August 27, controversial Muslim cleric Aboud Rogo Mohammed was killed in a drive-by shooting in Mombasa. The Muslim Human Rights Forum indicated that Rogo and Abubakar Shariff Ahmed, who were both suspects in terror-related cases, survived an abduction attempt in Nairobi in July. Human rights groups alleged that these cases were part of a targeted police campaign to eliminate terrorism suspects following Kenya's October 2011 incursion into Somalia. Police denied their involvement in the killings and forced disappearances. The government opened an investigation into Rogo's killing but did not investigate the forced disappearances or the death of Samir Khan.

In October 2011 HRW released the report *Hold Your Heart--Waiting for Justice in Kenya's Mt. Elgon Region*, which recounted the human rights abuses perpetrated between 2006 and 2008 by government security forces and the Sabaot Land Defense Force (SLDF), a militia group operating in the Mount Elgon region of western Kenya. The report stated that during this period both government security forces and the SLDF committed atrocities, including hundreds of killings, the detention of more than 3,000 men, forced disappearances, torture, and rape. The report, which focused on enforced disappearances by security forces and unresolved abductions by SLDF militia, criticized the government for not effectively investigating such abuses or assisting families with death certificates or official recognition of the missing.

In April the government announced that it had completed its investigation of the Mount Elgon operation and found no evidence of human rights violations by the Kenya Defense Forces (KDF). The government accused human rights groups, including the Independent Medical Legal Unit (IMLU), a credible human rights nongovernmental organization (NGO), of bribing victims to make false allegations against the KDF.

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

The constitution and law prohibit such practices; however, the legal code does not define torture and provides no sentencing guidelines, which functionally bars prosecution for torture. Police reportedly used torture and violence frequently during interrogations and as punishment of pretrial detainees and convicted prisoners. According to 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. On May 11, two improvised explosive devices (IEDs) were discovered by police in Hagadera, one of five camps in the Dadaab refugee complex. HRW reported that police went house-to-house in Hagadera camp, indiscriminately beating residents while arresting others. The police made no distinction between men, women, and children, beating and detaining anyone they found and later requiring bribes in exchange for release of those who were arrested. Refugee leaders said that at least 70 individuals were detained, including three female minors. On May 15, an IED went off under a police car near the market in Dagahaley camp, killing one police officer and injuring two others. According to multiple eyewitnesses, police responded by attacking residents in the market and looting shops. The provincial police officer, Leo Nyongesa, contacted by HRW on May 21, claimed no knowledge of the detentions and denied reports of police abuse.

In July two officers from the Tetu police post in Nyeri reportedly assaulted a man, beating him with batons in the street before taking him into custody and continuing the abuse inside a jail cell. The man was released several hours later with severe injuries to both legs; he was not charged with any crime. No action had been taken against the police officers as of year's end.

On November 19, police and the KDF surrounded the town of Garissa following the killing of three KDF soldiers by unknown assailants. According to HRW, the security forces shot individuals indiscriminately, raped women, and destroyed property. A parliamentary committee concluded that the military was responsible for the property damage, stating in its report that the government should compensate the people of Garissa. No further government action had been taken as of year's end.

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

There were allegations that security forces raped female inmates, IDPs, refugees, and asylum seekers crossing into the country from Somalia (see section 2.d.).

Prison staff beat, assaulted, and raped inmates (see Prisons and Detention Center Conditions).

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

Police harassed and physically and sexually abused street children (see section 6, Children).

In December 2011 the government promised to launch an investigation into allegations of widespread abuse by security forces in North Eastern Province as a result of the incursion by Kenyan forces into Somalia, but no investigation was held. In response to earlier allegations of police misconduct in Dadaab, in 2010 the government established a team to investigate allegations of abuse. The team found significant evidence of human rights abuses, but the government did not take action to hold those responsible to account.

In September IMLU indicated that it received approximately 250 cases of alleged torture by security forces each year; many of these cases were brought by victims' relatives after the victims had died in police custody.

IMLU's *National Torture Prevalence Survey Report 2011 for Kenya*, released in November 2011, detailed the results of a nationwide survey on the prevalence of torture, the definition of which included psychological torture--such as harassment, threats, and forcing victims to make impossible choices--as well as physical abuse

by the police and other security forces. Data was collected in interviews with members of public and private organizations and a national survey of 1,200 randomly selected respondents. In the survey, 23 percent of respondents reported that they had been tortured and 29 percent claimed to know someone who had been tortured. Police were the perpetrators in two-thirds of the reported cases. Of victims who reported torture, only 25 percent claimed that action was being taken on their complaints and only 3 percent expressed complete satisfaction with the action taken. IMLU noted that psychological techniques, as opposed to physical torture techniques, were gaining in prominence.

Due to a shortage of civilian state prosecutors in the legal system, police were responsible for investigating and prosecuting all crimes at the magistrate court level. Civilian prosecutors only handled murder cases at the High Court level. There were 83 civilian prosecutors nationwide, compared to approximately 300 police prosecutors. In July the government approved the recruitment of 106 additional civilian prosecutors, but the director of public prosecutions indicated that, despite this recruitment, his office remained more than 700 prosecutors short of the estimated need. Police routinely ignored evidence of security force torture provided by IMLU and other human rights organizations. In most cases authorities did not fully investigate allegations of torture and did not charge perpetrators.

The Truth, Justice, and Reconciliation Commission (TJRC), whose mandate included the investigation of alleged cases of torture since independence, collected statements and held public hearings across the country. A report of its findings was expected in December 2011; the TJRC's work was controversial, and there were unresolved questions about the chairperson's integrity and credibility. The government extended the commission's mandate three times, but the TJRC had not released its final report by year's end, and public confidence in the TJRC declined sharply.

In 2010 IMLU filed a case against the government at the East Africa Court of Justice, seeking redress for Mount Elgon residents tortured during military operations in 2008 (see section 1.b.). The government appealed, and in March the case was dismissed on jurisdictional grounds. IMLU appealed the decision. Despite evidence of torture documented by IMLU and HRW from the Mount Elgon security operation in 2008, the government denied that security forces engaged in torture and refused to prosecute individuals who allegedly participated in torture during the two operations.

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

Prison and detention center conditions continued to be harsh and life threatening.

Physical Conditions: A 2009 prison assessment by the Kenya National Commission on Human Rights (KNCHR) concluded that torture, degrading and inhuman treatment, unsanitary conditions, and extreme overcrowding were endemic in prisons. Prison staff routinely beat and assaulted prisoners. According to media reports, prison officials also raped female inmates. Fellow inmates also committed rapes. Prisoners sometimes were kept in solitary confinement far longer than the legal maximum of 90 days. The KNCHR and human rights groups noted that the Department of Prisons began implementing reforms after the KNCHR assessment, working with the KNCHR to train human rights workers and establish paralegal clinics in prisons to cut down on abuse. Pretrial detention in police stations continued to be harsh and life-threatening, with no evidence of improvement.

As of October the Legal Resources Foundation (LRF) reported a total prison population of approximately 52,000, including 2,756 women and 49,244 men. Of these, 18,720 were in pretrial detention. The country's 108 prisons had a designed capacity of 25,000 inmates. The LRF attributed poor prison conditions to lack of funding, overcrowding, inadequate staff training, and poor management. Prison officers, who received little applicable training, discriminated against prisoners with mental problems and transgender prisoners.

Prisoners generally received three meals a day, but portions were inadequate and sometimes divided into two as punishment. Water shortages, a problem both inside and outside of prison, continued to be a problem. Sanitary facilities were inadequate. Medical care was poor, particularly for those with tuberculosis or HIV/AIDS. Supplies of antiretroviral drugs and other medications were inadequate, and insufficient food lessened the effectiveness of available medicine. Prison hospitals could not meet the needs of prisoners. Many inmates petitioned the courts for transfer to outside hospitals, but administrative problems, such as lack of transportation, often delayed court-ordered hospital attention. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks. This was especially true for the more than one-third of prisoners awaiting trial, as they were not engaged in any work programs that would allow them to leave their cells.

According to the government, 187 prisoners died in 2011, the majority from infections or other generally preventable causes. Overcrowding, unhygienic conditions, and inadequate medical treatment contributed to prisoner deaths.

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

Minors generally were separated from the adult population, except during the initial detention period at police stations, when adults and minors of both sexes often were held in a single cell.

Administration: While the Department of Prisons took steps to improve recordkeeping during the year, police frequently failed to enter detainees into police custody records, resulting in excessive pretrial detention.

Noncustodial community service programs served to alleviate prison overcrowding. However, the total prison population did not decrease, as the majority of inmates were petty offenders whose pretrial detention frequently exceeded the punishment prescribed for their crimes. There were no other known alternatives to incarceration for nonviolent offenders. Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who wanted to visit prisoners commonly reported bureaucratic and physical obstacles that generally required a bribe to resolve. In 2011 the government instituted remote parenting and open family days at prisons to increase prisoners' access to family members. According to the LRF, prisoners had reasonable access to legal counsel and other official visitors, although there was insufficient space to meet with visitors in private and conduct confidential conversations.

The LRF reported that prisoners were able to file complaints with the courts and had the ability to send letters written by paralegals to the courts without appearing

personally. There were no prison ombudsmen to handle prisoner complaints, but prisons increased the availability of paralegal clinics, which appeared to decrease the incidence of abuse. Some magistrates and judges made prison visits during the year, providing another avenue for prisoners to raise grievances. The government also established court user committees, which included paralegals and prison officials, to increase prisoners' access to the judicial system. The LRF reported that the government designated human rights officers to serve in all prisons; however, many lacked necessary training, and some prisons did not have a functioning human rights officer.

Monitoring: The government permitted prison visits by local human rights groups during the year.

Improvements: New prison facilities and housing for prison staff were built during the year, mental health facilities for offenders were refurbished, and bedding and meals for inmates improved. Nonetheless, human rights groups considered the improvements inadequate.

#### **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.

Police officers at the Juja, Thika, Kabati, and Kirwara police stations reportedly detained citizens without charging them with specific crimes. The detainees were required to pay a 100,000 shilling (\$1,160) "bond to keep the peace" to avoid imprisonment. NGO lawyers estimated that in 2011 and 2012, 35 individuals were detained without detailed charges at these four police stations. NGO lawyers secured the release of 18 prisoners detained for suspicious activity without specific charges ever being filed against them, some held for as long as nine months in prison.

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

There was a large internal security apparatus that included the Kenya Police Service (KPS) and the Administration Police Service (APS), the Antiterrorism Police Unit, and the Criminal Investigation Department (CID), an autonomous subunit under the KPS responsible for criminal investigations. The APS, which

has a strong rural presence throughout the country, provided security for the civilian population within the provincial administration structure and has the mandate for border security. The Kenya Wildlife Service is responsible for security and counter poaching operations within the national parks, and the paramilitary General Services Unit (GSU) is responsible for countering uprisings and guarding high-security facilities. The National Security Intelligence Service (NSIS) collects intelligence. The KPS, APS, CID, 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.

Military forces, including the army, navy, and air force, are responsible for the external defense of the country and support civilian organizations in the maintenance of order. They are under the authority of the Ministry of State for Defense.

Police were ineffective and corrupt, and impunity was a problem. There was a public perception that police often were complicit in criminal activity. Police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations. Police incompetence and complicity in criminal activity contributed to an increase in crime, especially in Nairobi, where crime rose 40 percent in 2011, according to police reports.

Police often stopped and arrested citizens to extort bribes; those who could not pay were jailed on trumped-up charges (e.g., preparation to commit a felony) and beaten. Transparency International's 2012 *Bribery Index* concluded that police were extremely corrupt. The study noted that more than 60 percent of respondents reported being forced to pay bribes to the police. Press and civil society groups 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. Police also reportedly accepted bribes to fabricate charges against individuals as a means of settling personal vendettas. Police often failed to enter detainees into police custody records, making it difficult to locate them.

Despite a change in the law eliminating the requirement, police continued the practice of requiring an examination and testimony by a single police physician in the case of victims of sexual assault, resulting in substantial barriers to the investigation and prosecution of sexual violence cases (see section 6, Women).

Instances of witness harassment and resultant witness insecurity continued to severely inhibit the investigation and prosecution of major crimes. The Witness Protection Agency was funded inadequately, and doubts about its independence were common.

Impunity was a major problem. Police officers rarely were arrested and prosecuted for criminal activities, corruption, or using excessive force. Authorities sometimes attributed the failure to investigate a case of police corruption or 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. Human rights activists reported that at times the police officer in charge of taking complaints was the same one who had committed abuses. Some human rights activists were jailed after going to a police station to make a complaint.

In November 2011 four members of the CID's Cyber Crimes Unit arrested a Chinese national for counterfeiting cellular telephones and other electronic devices, and they seized counterfeit equipment at his residence. Upon arrival at CID headquarters, assistant police commissioner and head of the CID Isaac Abubakar Maalim ordered the release of the suspect and started disciplinary action against the four police officers, placing them on administrative leave. The four were accused of kidnapping and extortion. They were exonerated following a judicial inquiry, but no action was taken against Maalim for his decision to release the suspect and suspend the four officers.

The government took some steps to curb police abuse and establish greater police accountability. In September 2011 the government passed legislation to establish a National Police Service Commission (NPSC), charged with appointing an inspector general and providing internal oversight of the police force. It also passed legislation to create the Independent Policing Oversight Authority (IPOA), the country's first civilian oversight board for police operations and misconduct. In September 2011 the president also signed into law the National Police Service Act, which established a unified national police service and set guidelines for its governance; however, the government was slow to implement the new police reform legislation, and some of the laws did not become operational until August.

Despite the new legislation the government resisted implementing police reform. In February President Kibaki and Prime Minister Odinga agreed on nominees to serve on the NPSC, but parliament rejected the nominees on grounds of

unsuitability. A new slate of nominees was approved in September. The NPSC worked quickly to interview and shortlist candidates for the position of inspector general of police (IGP). David Kimaiyo, the new IGP, was sworn in on December 24.

The Police Reform Implementation Committee operated to prioritize reforms of police operations and organization, without substantial progress. Its mandate ended in May. A nine-person board tasked with making the IPOA functional took office in June but had made little progress in increasing accountability of the police by year's end.

Police failed to prevent societal violence in numerous instances. According to the police, there were 543 cases of mob violence in 2011, 133 of which occurred in Nairobi. For example, on June 24, police failed to prevent a mob from beating three men suspected of an attempted robbery and setting them on fire. One of the men died in the incident.

### **Arrest Procedures and Treatment While in Detention**

The law provides police with broad powers of arrest. Police may make arrests without a warrant if they suspect a crime occurred, is happening, or is imminent. Detainees must be brought before a judge within 24 hours. Authorities frequently did not respect these rights. The courts dealt with this shortcoming by considering whether the extent of the denial of constitutional rights of the accused warranted dismissal of pending charges. In many cases accused persons, including some charged with murder, were released because they had been held longer than the prescribed period.

Although the law provides pretrial detainees with the right of access to family members and attorneys, family members of detainees frequently complained that access was permitted only on payment of bribes. When detainees could afford counsel, police generally permitted access to attorneys but often refused such access otherwise. There is a functioning bail system, and all suspects, including those accused of capital offenses, are eligible for bail. However, many suspects remained in jail for months pending trial because of their inability to post bail. Due to overcrowding in prisons, courts rarely denied bail to individuals who could pay it, even when the circumstances warranted denial. For example, an NGO that worked with child victims of sexual assault reported that suspects accused of sexually assaulting their female children frequently were released on nominal bail

and allowed to return to their homes, even in cases when there was evidence that they had threatened their victims after arrest.

Arbitrary Arrest: Police frequently responded to incidents of crime and terrorism by making arbitrary arrests. Those who were detained were overwhelmingly poor young males. According to human rights organizations, police resorted to battery and other forms of torture to coerce confessions from detainees and extort bribes (see section 1.c.).

During the year police in the Nairobi neighborhood of Eastleigh routinely targeted Somali youths, threatening to send them to jail or refugee camps if they did not pay a bribe. Since few could afford even a modest bribe, many were arrested and remained in jail unless family or friends raised the bribe money demanded by police. Following a series of bomb attacks in Nairobi, police carried out mass arrests of Somali youths in Eastleigh. On December 9 and 10, police reportedly arrested more than 400 persons in Eastleigh after a bomb was detonated near an Eastleigh mosque. On December 12, newspapers reported that some of those who had been arrested had gone missing from the Shauri Moyo police station, prompting police chief Moses Ombati to open an investigation of two police officers. The investigation continued at year's end.

Muslim leaders claimed that police indiscriminately arrested Muslims on suspicion of terrorism and that some suspects subsequently disappeared. Police denied the allegations (see section 1.b.).

Pretrial Detention: Lengthy pretrial detention continued to be a serious problem and contributed to overcrowding in prisons. Some defendants served more than the statutory term for their alleged offense in pretrial detention. Approximately 36 percent of inmates were pretrial detainees. The government claimed that the average time spent in pretrial detention on capital charges was 16 months; however, there were reports that many detainees spent two to three years in prison before their trials were completed. Police from the arresting locale are responsible for serving court summonses and picking up detainees from prison each time a court schedules a hearing on a case. Due to a shortage of manpower and resources, police often failed to appear or lacked the means to transport detainees, who then were forced to wait for the next hearing of their cases.

Amnesty: In October 2011 the government established the Advisory Committee on the Power of Mercy to interview inmates and recommend deserving cases for presidential pardon. However, human rights groups noted that the committee

lacked capacity and was ineffective. The president released petty offenders periodically. On December 21, the president pardoned 6,700 persons, including 2,586 first offenders.

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

The law provides for an independent judiciary, and the judiciary underwent significant reform and transformation during the year. In contrast to previous years, the judiciary asserted and maintained its independence, despite attempts by the executive branch to influence the outcome of judicial decisions.

The president historically had extensive powers over appointments, including for the positions of attorney general, chief justice, and appellate and High Court judges. However, a new constitution, promulgated in 2010, vests responsibility for making recommendations for the appointment of judges in the Judicial Services Commission (JSC), which must publicly vet candidates. In May 2011 the JSC conducted a transparent vetting process, leading to the appointment of a well-respected reformer to serve as chief justice. During the year the government also began the process of vetting all sitting judges and magistrates. Of the nine judges on the court of appeals, four were declared unfit to continue serving (see section 4).

In December 2011 a Nairobi court ruled that the government was obliged to turn over Sudan's president Omar al-Bashir to the ICC, where he was wanted on charges of genocide. The decision came a year after the government failed to arrest Bashir during a visit, despite its obligations under the Rome Convention. Political leaders criticized the court's decision, and President Kibaki sought to overturn it, but the court did not alter its ruling.

The government did not always respect judicial independence. In June President Kibaki ordered members of the Provincial Administration to disregard the High Court's ruling after the court declared their appointments unconstitutional.

The law provides for Qadi courts, which adjudicate Muslim personal law concerning marriage, divorce, and inheritance among Muslims. There were no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in personal matters as long as it did not conflict with statutory law.

The government occasionally used the legal system to harass critics. For example, deputy prime minister and ICC indictee Uhuru Kenyatta sought a permanent injunction against the national daily *The Star* to prevent the newspaper from printing negative reports about him (see section 2.a.).

Despite the implementation of judicial reform, judicial corruption remained a problem at the magistrate level.

### **Trial Procedures**

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. The law also provides defendants with the right to be informed promptly and in detail of the charges, to a fair and public trial without undue delay, to access government-held evidence, and not to be compelled to testify or confess guilt. These rights were generally respected, although legal proceedings were frequently adjourned when witnesses did not present themselves to give testimony, resulting in undue delays. A defendant's right to consult with an attorney in a timely manner generally was 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 clearly defined, 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 may appeal a verdict to the High Court and ultimately to the court of appeals and, for some matters, to the Supreme Court. The legal system does not provide for trial by jury; judges try all cases.

The police practice of requiring an exam and testimony by a police physician in cases of victims of sexual assault resulted in substantial barriers to the investigation and prosecution of such cases (see section 6, Women).

## **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

The civil court system can be used to seek damages for victims of human rights violations, and decisions can be appealed to the Supreme Court as well as the African Court of Justice and Human Rights. In practice corruption, political influence over the civil court system, and chronic backlogs of cases limited access by victims to this remedy. HRW reported that, as of 2011, at least 19 victims of police shootings had won civil suits, but the government had not paid the court-ordered compensation.

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

Court fees for filing and hearing civil cases effectively barred many 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 terrorists and weapons. In several instances police raids uncovered arms caches and explosives. In response to terrorist attacks in Coast and North-Eastern provinces, police conducted door-to-door searches for individuals believed to be al-Shabaab sympathizers. There were reports that police officers used excessive force during these raids. Police in Mombasa also raided homes of individuals believed to have ties to the separatist Mombasa Republican Council (MRC).

City council officers and police officers also frequently raided, evicted, or destroyed the homes and businesses of citizens in slums or other areas where

residents did not hold proper legal title. Residents complained that these actions often were intended to extort bribes.

In 2009 the government evicted more than 2,000 residents of the Mau Forest from their homes. 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. In September the government moved 400 families evicted from the Mau Forest to an estate in Rongai. The resettlement was carried out in spite of a court injunction barring the move, because 976 squatters had been living on the Rongai estate without title deeds for 45 years. Most of the Rongai squatters were evicted to make room for the Mau Forest evictees and approximately 350 postelection violence IDPs.

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

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

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

Freedom of Speech: The government occasionally interpreted laws in such a way as to restrict freedom of expression. The government monitored many types of civil society meetings, and individuals were not always allowed to criticize the government publicly without reprisal. The National Cohesion and Integration Commission (NCIC) worked with the police to monitor political rallies, media reports, parliamentary debate, and individual speech for instances of hate speech. In September Assistant Minister Ferdinand Waititu became the sixth member of parliament (MP) to be charged with hate speech since 2010. Waititu's indictment occurred a week after the judiciary dropped hate speech charges against Environment Minister Chirau Ali Mwakwere following his public apology for his inflammatory remarks. In June the NCIC recommended charges against three Kikuyu musicians for lyrics that were deemed ethnically divisive.

In some instances the government used hate speech laws to curtail legitimate speech. For example, in October MP Shaykh Mohammed Dor was charged with hate speech and incitement to violence for stating in parliament that he would fund the MRC if asked. Dor's remark came days before the government initiated a crackdown on the MRC during which the group, which had been legalized by the High Court on July 25, was again proscribed.

Freedom of Press: The government occasionally interpreted laws to restrict press freedom, and officials regularly accused the media of being irresponsible and disseminating misinformation. Of the 15 laws in place that restrict media operations, the Defamation Act, the Official Secrets Act, and the Preservation of Public Security Act placed the most severe restrictions on freedom of the press. There were also reports that politicians paid journalists to avoid negative coverage or to plant negative coverage of a political opponent.

The mainstream print media generally remained independent, but there were attempts at intimidation by officials and security forces. Independent tabloid periodicals often were highly critical of the government. There was a lack of independent national broadcast media. 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 shortwave transmission outlets. KBC coverage generally was viewed as balanced.

Violence and Harassment: Security forces harassed members of the media. For example, in April police threatened two journalists, *The Standard's* Osinde Obare and Radio Citizen's David Musindi, for publishing stories on a police raid at a market in Kitale. According to Obare, Kitale police chief Luca Ogara called him to ask why he published a negative story about the police and threatened repercussions if he returned to Kitale.

In May two journalists with The Standard Media Group, Senior Investigative Editor Mohammed Ali and Dennis Onsaringo, filed a complaint with the police commissioner regarding ongoing threats and intimidation by senior police officials. In 2011 Ali filmed an investigative series for the Kenya Television Network (KTN) on police complicity in drug dealing and the role of state agents in frustrating an investigation into a large cocaine seizure. Pressure from politicians, including former defense minister Christopher Murangaru, forced KTN to stop broadcasting the series. The police investigation into threats to Ali's life and the defamation lawsuits sparked by the program were unresolved at year's end.

In September prison warders at the Machakos Law Courts attacked Jonathan Mutiso, a KBC reporter, for filming an inmate who had attempted to escape by climbing on the roof of the court. The warders confiscated the camera and ordered two Kenya News Agency interns to erase footage of the incident, threatening the

two with violence if they did not comply. The warders were disciplined following a demonstration by journalists.

On September 30, police arrested three Somali journalists who were reporting on a grenade attack on a school in Eastleigh. The journalists were released without charge and deported from the country.

The Committee to Protect Journalists issued a report in February noting that impunity in cases of torture of journalists remained a problem. Ten journalists reported mistreatment at the hands of police in 2011; the government had taken no action in any of the cases as of year's end.

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

On November 21, magistrate Japhet Bii barred journalists from covering the trial of former parliamentarian Moffat Maitha, who was accused of raping a 15-year-old girl.

Libel Laws/National Security: The government cited national or public security as grounds to suppress views that were politically embarrassing. According to the Kenya National Dialogue and Reconciliation Monitoring Project, government officials often intimidated journalists reporting on the security sector and requested that they reveal sources. During the year, for example, the government asserted national security as a basis to pressure journalists reporting on alleged corruption at the Port of Mombasa and the incursion into Somalia.

Government officials and high-ranking individuals brought numerous defamation cases against the media. Defamation law provides for criminal libel, which can result in imprisonment of a journalist. In May a former adviser to Prime Minister Odinga, Miguna Miguna, was awarded 1.5 million shillings (\$17,400) in a defamation lawsuit against *Law Monthly* magazine for an article that relied on hearsay and unsubstantiated rumors to slander his reputation.

## **Internet Freedom**

There were no government restrictions on access to the Internet and individuals could engage in the expression of views via the Internet, including by e-mail. In

September the government announced plans to monitor short text messages and Internet communication for hate speech. Those found to be posting abusive messages or inciting violence would be subject to prosecution and a fine of up to five million shillings (\$58,100).

On August 21, blogger Robert Alai was detained for posting messages on Twitter that alleged the involvement of government spokesperson Alfred Mutua in the 2009 murder of human rights activists Oscar King'ara and Paul Oulu. Alai was released without being charged. He alleged continued harassment from the government following his release.

A lack of infrastructure inhibited Internet access in some underdeveloped parts of the country.

According to the International Telecommunication Union, 28 percent of individuals used the Internet in 2011.

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

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

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

#### **Freedom of Assembly**

Although the constitution and law provide for freedom of assembly, the government sometimes restricted this right 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 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 also forcibly dispersed demonstrators. For example, on April 18, police used tear gas and fired live ammunition into the air to disperse approximately 2,000 youths who gathered for a political rally in Limuru, outside Nairobi. Police cited the participation of Maina Njenga, a former leader of the outlawed Mungiki

criminal group, as justification for shutting down the rally, whose organizers included prominent opposition leaders. The organizers had obtained all the required permits. Police officers were filmed beating and arresting numerous youths who refused the order to disperse.

### **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.

On July 25, a panel of High Court judges in Mombasa overturned the ban on the MRC, a group that advocates secession of Coast Province. Despite the court's ruling, authorities continued to harass the MRC, denying meeting permits to the group, raiding its offices and the homes of its organizers, and arresting MRC members. In September, 15 persons were killed in Kaloleni when police raided a hideout where suspected MRC members purportedly were performing a ritual involving oaths. On October 8, police arrested MRC spokesperson Mohammed Rashid Mraja and charged him with two counts of incitement to violence for being in possession of T-shirts and pamphlets bearing the group's Kiswahili slogan "Pwani si Kenya" (the Coast is not Kenya). Between October 8 and 15, approximately 40 other MRC members were arrested after the government ordered a crackdown on the group following an October 4 attack on Fisheries Minister Amason Kingi, which the government blamed on the MRC. On October 15, police arrested MRC chair Omar Hamisi Mwamnwadzi and killed his two bodyguards. Mwamnwadzi's face was heavily bruised and bloodied when he appeared in court, indicating that he was beaten either during or after arrest. He was charged with incitement and possession of firearms. On November 12, police released Mwamnwadzi on bail. Most of the MRC members arrested during the government's October crackdown remained in jail at year's end, unable to post bail. On October 18, a Mombasa court again outlawed the MRC. The government did not investigate police abuses against the group.

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. The government declared the group a criminal organization in 2002 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. There were 30 other prohibited criminal organizations with political or cultural trappings, including 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**

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

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

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

Somali refugees in Dadaab refugee camp and ethnic Somalis in North Eastern Province experienced frequent harassment, and police and military personnel subjected them to abuse in retaliation for attacks on security personnel in the region throughout the year. In March HRW released its report *Criminal Reprisals: Kenyan Police and Military Abuse against Ethnic Somalis*, which documented various abuses perpetrated by security forces against Somali refugees and ethnic Somali Kenyans, including killings, arbitrary detentions, gender-based violence, rape, physical abuse, and destruction of property.

In-country Movement: In December the government issued a directive to enforce refugee legislation, which stipulates an encampment policy requiring all refugees to reside in refugee camps and provides legal sanctions against those who contravene the policy. Police routinely stopped vehicles throughout the country, particularly in urban areas, and often solicited bribes. Following the directive, refugees were subjected to increased arbitrary arrest and detention if found residing in urban areas. Police frequently required ethnic Somalis to provide additional identification.

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

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

A large number of IDPs still had not returned home after being displaced in previous years. According to the NGO the Kenya Human Rights Commission, approximately 50,000 IDPs displaced due to ethnic and election-related violence in the 1990s had not returned home due to fear of renewed violence. The Internal Displacement Monitoring Center (IDMC) estimated that approximately 200,000 of the 350,000 persons who fled their homes as a result of 2007-08 postelection interethnic violence had not returned home. The government's eviction of persons and destruction of homes in low income areas during the year resulted in hundreds of new IDPs. Flash floods and land disputes during the year also resulted in more IDPs. According to the IDMC, 118,000 persons were displaced as a result of intercommunal and resource-based violence during the year (see section 6).

IDPs were concentrated in informal settlements and camps, with many of those dislocated as the result of 2007-08 postelection violence concentrated in the Eldoret and Naivasha areas. Living conditions in such settlements and camps were poor, with rudimentary housing and little public infrastructure or service.

Rapes allegedly perpetrated by IDPs, local residents, and sometimes police personnel occurred in IDP camps. Police sometimes beat and arbitrarily arrested IDPs. For example, on December 3, police arrested four persons who had been among approximately 400 IDPs from Ruringu who had marched in protest to the office of the provincial commissioner of Central Province. Video of the arrests, which was broadcast by NTV News, showed administration and regular police officers dragging the IDPs through the streets before placing them in a police vehicle.

In September 2011 UN special rapporteur Chaloka Beyani commended the government for developing a draft IDP policy and for the return and resettlement of some IDPs affected by postelection violence. Throughout the year the government continued the resettlement of postelection IDPs from camps in Rift Valley Province. The government asserted that nearly all of the postelection IDPs had been resettled by year's end and that only five of the 107 IDP camps established in 2008 remained open. The government's assertion directly contradicted the IDMC estimate that approximately 200,000 IDPs from the postelection violence had not returned home. The discrepancy between the government's number of IDPs and civil society estimates was because many of the persons displaced by the postelection violence were not registered in the government camps. The government did not try to verify the extent of the IDP problem and inhibited civil society efforts to do so. In 2011 human rights groups

formed the Protection Working Group on Internal Displacement and submitted a strategy to the government to document all IDPs. After reaching agreement on the way forward, the government withdrew its support, and the strategy was not implemented.

The government continued to pressure IDPs to return to their homes. In 2008 the representative of the UN secretary-general for the human rights of IDPs visited the country and concluded that some returns were not voluntary or based on informed choices. 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. Forcible resettlement fueled additional violence. For example, in May political leaders in Kitale mobilized local squatters to resist the resettlement of 200 IDPs from Nakuru. Similar clashes occurred in 2011 when the government attempted to resettle Kikuyu IDPs on land that had been allocated for Maasai squatters dislocated during pre-2007 election-related violence.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status for those claiming asylum, and the government coordinated with the UNHCR to provide assistance and protection to refugees. While there were fewer new arrivals overall than in the previous year, significant numbers of Somali refugees entered the country, and events in Sudan and South Sudan also led to new arrivals. The refugee influx and security threats emanating from Somalia, particularly those associated with the Dadaab refugee camps, severely strained the government's ability to provide security, impeding the efforts of the UNHCR and other humanitarian organizations to assist and protect refugees and asylum seekers.

The number of new arrivals from Somalia declined. The government did not allow new arrivals in Dadaab to register, except during a one-month window in June and two weeks in November, during which 12,775 new arrivals were registered. Due to conditions in Sudan and South Sudan, 11,542 new arrivals registered in Kakuma refugee camp by year's end, compared with 4,619 in 2011. The UNHCR estimated the total number of refugees in the country at 650,000, including more than 445,000 at Dadaab, more than 105,000 at the Kakuma refugee camp and more than 100,000 in urban areas throughout the country

The government officially took over responsibility for the registration of refugees, moving to implement a new government-issued identity card to be the sole proof of refugee status in the country. However, lack of government capacity hampered the process of distributing the identity cards. In early December the government announced the cessation of refugee registration in urban areas and required services to take place exclusively in the camps, despite inadequate capacity and its refusal to resume registration in Dadaab. The government recognizes Somalis from south and central Somalia as refugees on a prima facie basis and therefore does not require a refugee status determination for them.

Refugee Abuse: Police abuse of refugees increased following the 2011 military incursion into Somalia, which triggered a series of attacks directed at police officers in the Dadaab refugee camps. For example, on February 29, after police found an explosive in one of Dadaab's camps, they arbitrarily rounded up dozens of refugees who were in the area and arrested them, releasing those who were detained in exchange for bribes. In March HRW received reports of police extorting money and looting shops in Hagadera camp. In December 2011, in what HRW's report *Criminal Reprisals: Kenyan Police and Military Abuse against Ethnic Somalis* called a "planned response intended to punish refugees," police officers spent four days beating scores of refugees, including pregnant women and children. HRW also noted that police raped at least one woman, attempted to rape others, looted shops, and stole money from refugees.

Kituo cha Sheria, an NGO that works with refugees and asylum seekers in Nairobi, noted that police frequently arrested refugees and threatened them with charges of terrorism or membership in an organized criminal gang. Police did not record the arrests or take the refugees to court, detaining them indefinitely until relatives brought bribes to secure their release. Lawyers from Kituo cha Sheria were sometimes denied access to detained refugees, as happened at the Pangani police station on December 24.

In April 2011 the UNHCR and the government signed a memorandum of understanding to reinforce security in Kakuma and Dadaab refugee camps by increasing the number of police officers, procuring additional equipment for police, and establishing a screening center at Liboi. In November 2011, 92 officers (of the 200 officers requested) were deployed to Dadaab, bringing the total to 349 officers. Security sharply deteriorated in Dadaab starting in September 2011, forcing the UNHCR and NGOs that work with refugees to suspend some activities in the camps.

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

Mobile court officials associated with the camps reportedly directed imams not to officiate at weddings of girls under the age of 18 in an effort to reduce the occurrence of coerced, underage marriages.

Other security problems in refugee camps included banditry, ethnic-based violence, and the harassment of Muslim converts to Christianity.

Mobile courts continued to serve the camp populations and were instrumental in curbing crime and violence when cases were reported; however, most crimes went unreported. In September 2011 the magistrate with jurisdiction over Dadaab reported that despite the massive influx of refugees, there was no corresponding increase in new cases reported to the mobile courts.

Refugees' freedom of movement remained restricted outside of the Dadaab and Kakuma refugee camps. In December the government announced its intention to enforce an encampment policy requiring refugees to remain at the camps and all urban refugees in cities to report to Dadaab or Kakuma. Urban refugees were harassed, arrested, and requested to pay bribes for violating the encampment directive. However, the government granted permission to refugees to attend higher education institutions and receive specialized medical care outside the camps, and it made exceptions to the encampment policy for extremely vulnerable groups in need of protection.

Numerous refugees were arrested for violating movement restrictions. In September 2011 the government reported that 70 percent of refugees who were granted movement passes did not return to the camps. According to the UNHCR, approximately 1,500 refugees from Dadaab were detained for unauthorized movement outside the camp in 2011; of those, 330 were minors who were handed

over to the UNHCR. In Kakuma during the same period 150 persons were detained, of whom only seven were registered refugees.

### **Stateless Persons**

According to the UNHCR, approximately 20,000 stateless Sudanese Nubians, reportedly the descendants of Sudanese forcibly conscripted by the British in the early 1900s, lived in the country. Sudanese Nubians were not granted citizenship or identification documents, despite the UNHCR's conclusion that the Nubians qualified for citizenship under the prevailing nationality law. In 2009 the African Committee of Experts on the Rights and Welfare of the Child heard a case filed on behalf of the Nubians. In its March 2011 decision, the committee found that the government was in violation of the African Charter on Human and Peoples' Rights and recommended that the government take immediate steps to ensure that children of Nubian descent could acquire citizenship. The government had taken no action to grant citizenship to children of Nubian descent by 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.

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

The constitution and law provide citizens the right to change their government peacefully, and in 2007 citizens exercised this right through generally free and fair multiparty 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 at the presidential level.

In a peaceful 2010 referendum, 67 percent of voters approved a new constitution, which provides for a bill of rights and reforms the electoral system, administration of land, and judiciary. The new constitution provides parliamentary representation for women, youth, persons with disabilities, ethnic minorities, and marginalized communities. Implementation of constitutional reforms continued during the year, although full implementation was expected to take years. In some instances the government removed key provisions from draft implementing legislation prepared by the Commission for Implementation of the Constitution, rendering the reforms mandated by the constitution less effective. For example, the government removed

key provisions from the 2012 Leadership and Integrity Act, weakening protections against official corruption.

### **Elections and Political Participation**

Recent Elections: In 2007 the country held parliamentary and presidential elections. Observers judged the parliamentary elections to be generally free and fair. In the presidential election, incumbent 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, Western, and Coast provinces. Approximately 1,150 persons were killed and more than 350,000 displaced between December 2007 and February 2008.

A mixed Kenyan-international commission appointed in 2008 to evaluate the elections found that the results were “irretrievably polluted.” The commission also reported that the election results, and especially the presidential election results, lacked integrity. While nearly 14.3 million citizens registered to vote, an independent review commission concluded that voter rolls contained the names of approximately 1.3 million deceased persons.

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 tallying irregularities by the Election Commission of Kenya (ECK) in Nairobi undermined the credibility of the ECK.

During the campaign 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 generally did not interfere with party campaign activities. Text messages, pamphlets, and blogs 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 for rallies and election materials for some candidates in the election campaign. In accordance with the National Accord, the ECK was abolished in 2008 and replaced by the Independent Electoral and Boundaries Commission (IEBC). In September the IEBC conducted three parliamentary by-elections, which international observers deemed free and fair, although there were problems

with the voter registry and bribery of voters, as well as one reported case of violence and voter intimidation.

Political Parties: There were numerous political parties. In the 2007 elections, 138 parties with 2,548 candidates competed in parliamentary elections, and nine parties nominated presidential candidates. The Political Parties Act, which came into effect in 2010, sets stringent conditions for political parties but does not discriminate against any particular party. Pursuant to the act, approximately 52 groups registered as political parties by year's end.

To reduce voter fraud, the government announced biometric voter registration of all citizens ahead of the next national elections, scheduled for March 2013. Voter registration began in mid-November and proceeded for 30 days; the electoral commission registered 14.3 million Kenyans. Possession of a national identity card or a Kenyan passport was a prerequisite for voter registration. The electoral commission, the census bureau, and the Ministry of Immigration estimated that at least three million citizens, primarily youth, did not have national identity cards, while civil society organizations estimated the number probably was closer to five million. Civil society organizations, international NGOs, and the donor community estimated that two to three million youths would not be able to obtain national identity cards in time to register to vote in the 2013 national elections. The electoral commission did not provide the breakdown of registered voters by age. Media reports indicated that millions of Kenyans were unable to register because they lacked identity documents. The government was ill-prepared to issue the large number of documents required for registration in a timely fashion, and many Kenyans lived too far from collection points to pick up national identity cards once they had been issued.

Participation of Women and Minorities: Women's participation in electoral politics remained low; however, a record number of female candidates ran for parliament in 2007, despite harassment and attacks. Women constituted 10 percent of all parliamentary candidates. The new constitution provides that no more than two-thirds of any elected or appointed government body can be of one gender. However, the Supreme Court ruled that the gender requirement can be applied progressively, noting the practical impediments to electing enough women to meet the quota in the 2013 elections. The constitution created the new position of women's representative to increase the political participation of women. However, many women were actively discouraged from contesting other political positions.

The new constitution provides for the representation in government of ethnic minorities; however, implementation posed risks. Alliances and hardened divisions among ethnic groups and subgroups characterized the political system. Ethnic groups often perceived a political gain by one group as a loss to the other and, as evidenced by the postelection violence in 2007-08, such perceptions could trigger violence.

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

The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. Since President Kibaki assumed office in 2002, despite numerous scandals, no top officials had been prosecuted successfully for corruption. The World Bank's 2011 Worldwide Governance Indicators indicated that corruption was a severe problem.

In September 2011 President Kibaki signed into law the Ethics and Anticorruption Commission Act, which replaced the Kenya Anticorruption Commission (KACC) with the Ethics and Anticorruption Commission (EACC). The law expanded the mandate of the EACC from investigation of corruption to developing and enforcing a code of ethics for public officials. Both the KACC and the EACC drew significant public attention to corruption issues, but the government took no complementary actions to punish the most senior perpetrators. Like the KACC, the EACC lacked prosecutorial authority, which remained with the director of public prosecutions.

In September a panel of High Court judges nullified the appointment of Mumo Matemu as EACC chairman based on deficiencies in the vetting process. Matemu was accused of financial impropriety during his tenure as commissioner at the Kenya Revenue Authority and legal counsel at the Agricultural Finance Corporation. Two EACC commissioners nominated concurrently with Matemu were sworn into office in September; however, the commission was barred from recruiting additional staff or signing new contracts without a chairman. Throughout the year key technical staff members, including investigators, left the EACC to pursue other career options. On December 17, Abdi Ahmed Muhammed was sworn in as chairman of the EACC, but by year's end the EACC was a severely weakened institution.

Between July 2011 and June 30, the EACC recommended 73 cases for prosecution to the attorney general, who accepted the recommendation in 54 of these cases.

Most of these cases involved mid- or low-level officials, reinforcing the notion that corruption at the highest levels went unchecked.

Despite the implementation of significant judicial reforms, corruption persisted throughout the legal system. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases. To address corruption in the judiciary, the Judicial Services Commission established the Judges and Magistrates Vetting Board. In April the vetting board dismissed four court of appeals judges. The board found these judges to be lacking in fairness and impartiality, although it found no evidence of bribery (see section 1.e.). Although police corruption was endemic, authorities rarely arrested and prosecuted officers for corruption or criminal activities.

In September the National Taxpayers Association alleged that as much as 25.77 billion shillings (\$299 million), or 30 percent of all public funds allocated to the Constituency Development Fund since its inception in 2003, had been lost due to corruption. The government did not investigate this allegation.

In July the EACC arrested and charged the director general and procurement manager of the Kenya National Bureau of Statistics with abuse of office and procurement fraud for allegedly paying a nonexistent warehousing firm 7.4 million shillings (\$86,000) to store census materials. The two individuals were awaiting trial at year's end.

Local media reported on allegations of high-level corruption at the Ministry of Energy related to a coal mining contract awarded to a Chinese firm. The media also reported on allegations of corruption involving the contract for new construction at the airport in Nairobi.

There were ongoing corruption investigations at the Nairobi City Council and the Ministries of Education, Water and Irrigation, Roads, Energy, Immigration, Sports and Youth Affairs, Special Programs, and Land. Officials at the National Social Security Fund and the National Health Insurance Fund also faced corruption allegations.

There were developments in corruption cases from previous years.

In September three former government officials, including the former permanent secretary in the Ministry of Tourism, Rebecca Nabutola, were convicted of abuse

of office, conspiracy to commit fraud, and violation of public procurement laws. Nabutola was sentenced to four years in prison without the option of paying a fine.

In September Sylvester Mwaliko, the former permanent secretary in the Ministry of Home Affairs, was convicted of three counts of abuse of office in connection with the Anglo Leasing scandal. Mwaliko was the only senior government official to have been convicted in this case; however, his conviction included the option of paying a fine to avoid time in jail. Numerous other officials, including cabinet ministers, had yet to face charges at year's end.

In June the High Court cleared Henry Kosgey, the suspended minister of industrialization, of 12 charges of abuse of office related to his alleged attempts to import vehicles that did not meet requirements set by the Kenya Bureau of Standards. Kosgey was reinstated to the cabinet following this decision.

In March Enos Magwa, a former deputy director at the Ministry of Education, was sentenced to three years in jail and a fine of 3.6 million shillings (\$42,000) for his part in the free primary education scandal, in which 4.2 billion shillings (\$48.8 million) were misappropriated. Magwa was convicted of these crimes in 2008. The government repeatedly rejected calls for then minister of education Sam Ongeru to resign and face consequences over the disappearance of funds, which included some international donor funding meant for the country's free primary education system during the period 2005-09. Ongeru did not resign and subsequently was appointed foreign minister.

The Public Officer Ethics Act 2003 requires all public officers every two years to declare publicly their income, assets, and liabilities. Public officers must also include income, assets, and liabilities of their spouses and dependent children under the age of 18. Officers must declare this information to their responsible commission (e.g., the Parliamentary Service Commission in the case of members of parliament). Information contained in these declarations is not readily available to the public, and requests to obtain and publish this information must be approved by the relevant commission. Any person who publishes or otherwise makes public information contained in public officer declarations without such permission may be subject to five years in prison or a fine of up to 500,000 shillings (\$5,810), or both.

The Leadership and Integrity Act 2012 also requires public officers to register potential conflicts of interest with the relevant commissions. The law identifies interests that should be registered, including directorships in public or private

companies, remunerated employment, securities holdings, and contracts for supply of goods or services, among others. To date no public officer declarations of wealth or conflicts of interest have been challenged in public.

The new constitution provides citizens with access to information held by the state and requires the state to publish and publicize important information affecting the nation, and the government took steps to implement those provisions during the year. The government launched an open government national action plan at the Connected Kenya conference in March. This followed the June 2011 launch of Kenya Open Data, a Web site containing selected data from the most recent national census and on government expenditures, parliamentary proceedings, and public service locations. The government spokesman's briefings were televised and parliamentary debates were broadcast live on television and radio. Nevertheless, important reports regarding major corruption scandals from the last decade were not released to the public.

There is no freedom of information law, but some government information was available on the Internet.

### **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 human rights cases. With the exception of the police, government officials were usually cooperative and responsive to the queries of these groups; however, the government generally ignored the recommendations of the UN, other international bodies, and NGOs if such recommendations were contrary to government policies. There were reports that officials intimidated NGOs and threatened to disrupt their activities and that provincial administrators and security forces interfered with less-established NGOs, particularly in rural areas. Human rights activists claimed that security agencies conducted surveillance of their activities, and some reported threats and intimidation. In December human rights activists who raised concerns about the integrity of various candidates for the newly created post of inspector general of police reported increased threats and harassment from government agents.

The government frequently did not respond to attacks on human rights activists. For example, authorities failed to investigate the November 9 attack on the executive director of the NGO Kenyans for Justice and Development, who was

seriously beaten and threatened with death over a lawsuit he filed against the government.

On October 17, police at Pangani police station arrested seven human rights activists, including Amnesty International staff members, who had arrived for a prearranged meeting with the station's commanding officer to discuss policing in Nairobi's Mathare slum. Police beat the activists and arrested them on what Amnesty International termed "trumped-up charges" but did not record their arrest. The police refused to grant Amnesty International's lawyer access to the activists, denying that they were being held. The activists ultimately were released, but no investigation had been completed by year's end.

Approximately 15 domestic organizations advocated for human rights in the country, 14 of which were independent of the government. The Kenya Human Rights Commission and HRW produced reports cataloguing human rights abuses.

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

Human rights workers were abducted during the year. For example, in June four staff members from the Norwegian Refugee Council were abducted in Dadaab refugee camp and taken to Somalia. They were freed in July.

According to the *2011 Annual Report of the Observatory for the Protection of Human Rights Defenders*, since 2010 at least five human rights defenders who assisted with the ICC investigation into the 2007-08 postelection violence were forced to relocate after being threatened. The observatory added that the offices of human rights organizations that provided information to assist with the ICC investigation were vandalized. Starting in mid-2010, human rights defenders working on other human rights issues also were targeted and accused of working for the ICC, even if it was not the case. During the year the ICC reported attempts to bribe or intimidate witnesses in the postelection violence cases.

UN and Other International Bodies: The government permitted visits by representatives of the UN and other international organizations in connection with the investigation of abuses or monitoring of human rights problems in the country.

Although the government publicly reiterated its commitment to the ICC process, it took various steps to undermine the ICC trials of four Kenyans accused of orchestrating the 2007-08 postelection violence. After its petition to try the accused locally was denied (see section 1.a.), the government sought to transfer the cases to the East African Court of Justice, which experts agreed did not have the jurisdiction or capacity to try the cases. The ICC also lodged multiple complaints alleging that the government was slow in providing requested evidence, such as medical records related to postelection violence cases.

Government Human Rights Bodies: In 2011 the government passed legislation to transform the KNCHR from an autonomous human rights institution to a constitutional commission, thereby stripping the KNCHR of its juridical powers, including its powers to issue summonses, order the release of prisoners, and require compensation for human rights abuses. The government also created two additional commissions, the Commission on Administrative Justice and the National Gender and Equality Commission, which took over some of the functions of the KNCHR. Throughout the year the KNCHR functioned under the leadership of an acting chairperson, as the term of the previous KNCHR chair expired in 2011. In November the terms of four other KNCHR commissioners, including the acting chairperson, also expired.

The TJRC, established in 2009 to investigate politically and ethnically motivated human rights abuses since independence, collected statements and held public hearings across the country; its final report was not released by year's end (see section 1.c.).

## **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, conscience, belief, culture, dress, language, or birth. Government authorities did not enforce effectively many of these provisions, and discrimination against women, lesbian, gay, bisexual, and transgender (LGBT) persons, individuals with HIV/AIDS, persons with disabilities, ethnic groups, and persons suspected of witchcraft was a problem. There was also evidence that some national and local

government officials tolerated, and in some instances instigated, ethnic violence. The law criminalizes homosexual activity.

## Women

Rape and Domestic Violence: The law criminalizes rape, defilement, and sex tourism; however, enforcement remained limited, and 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. Traditional dispute mechanisms frequently were used to address sexual offenses in rural areas, with village elders assessing financial compensation for the victims' families. NGOs reported difficulties in obtaining evidence and the unwillingness of witnesses to testify in sexual assault cases in areas where traditional dispute mechanisms were employed.

Police statistics for 2011 indicated 4,517 reported cases of gender-based violence, including 934 rapes. In 2010 police reported 4,551 cases of gender-based violence, including 922 rapes. Human rights groups, however, estimated that the actual number of rapes and other cases of gender-based violence was much higher. The rate of reporting and prosecution of rape remained low because of the police practice requiring that victims be examined by a police physician; cultural inhibitions against publicly discussing sex, particularly sexual violence; the stigma attached to rape victims; survivors' fear of retribution; police reluctance to intervene, especially in 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.

National guidelines on the management of sexual violence, including the handling of forensic evidence, post-rape care, and victim support, were promulgated in 2009, but implementation mechanisms remained weak.

Police procedures for handling cases of rape and sexual assault created substantial barriers to the investigation and prosecution of suspected perpetrators. In addition to requiring those who allegedly experienced sexual assault to be examined by a police physician prior to the initiation of an investigation, police prosecutors also required the same physician to testify during trial. At the beginning of the year there was only one police physician in Nairobi, and human rights groups noted that

the physician was often unavailable to conduct exams, frequently failed to appear in court, and issued examination reports that conflicted with the findings of other medical professionals. Following reports by human groups criticizing the physician's unavailability, the police hired an additional physician for Nairobi. Police physicians generally were not present in rural areas.

During the year police approved a change in procedure to allow clinical officers, in addition to police physicians, to examine victims of sexual violence; however, authorities did not implement the change by year's end, and the new forms used to report sexual assaults were not available at most police stations. Police also lacked the facilities to preserve forensic evidence. As a result numerous alleged cases of sexual violence were not investigated by the police and numerous cases were dismissed from court due to lack of evidence.

The final report of the Commission of Inquiry on Postelection Violence included a chapter on the widespread sexual and gender-based violence following the disputed election in 2007-08. There was no government effort to prosecute anyone in connection with the reported abuses.

Domestic violence against women was widespread but often condoned by society and seldom addressed in the courts. According to the 2009 Kenya Demographic and Health Survey (KDHS), 53 percent of women and 44 percent of men agreed that there exists sufficient justification for wife beating. 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. NGOs, including the Law Society of Kenya and FIDA, provided free legal assistance to some victims of domestic violence. In 2010 FIDA reported that 83 percent of women and girls in the country reported one or more episodes of physical abuse.

Harmful Traditional Practices: Certain communities commonly practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. Other forced marriages were also common. Poor and uneducated women living outside major cities were more likely to be inherited.

Female Genital Mutilation/Cutting: See section 6, Children, Harmful Traditional Practices.

Sexual Harassment: 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.

Reproductive Rights: Subsidized contraception options, including condoms, birth control pills, and long-acting or permanent methods, were widely available to both men and women throughout the country, although access was more difficult in rural areas. An estimated 30 percent of girls and women between the ages of 15 and 49 used a modern method of contraception. Skilled obstetric, prenatal, and postpartum care was available in major hospitals, but many women were unable to access or afford these services. In 2009 skilled health personnel attended an estimated 44 percent of births. According to KDHS and UN estimates, the maternal mortality ratio in 2009 was 488 deaths per 100,000 live births, up from 414 in 2004. Access to family planning and reproductive health services was impeded by sociocultural beliefs and practices, lack of female empowerment, lack of male involvement, poverty, and poor health management systems.

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.

Discrimination: 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. The average monthly income of women was 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 new constitution eliminates gender discrimination in relation to land and property and gives women equal rights to inheritance and unbiased access to land. The constitution also provides for the enactment of legislation for the protection of matrimonial property during and upon the termination of the marriage, and it

affirms that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution.

## **Children**

Birth Registration: A child's citizenship is determined by the citizenship of the parents, and either parent may transmit citizenship. Births often were not registered in rural areas, where community elders rather than official entities were considered the legitimate authorities in family matters. Lack of official birth certificates resulted in discrimination in delivery of public services, such as education and health care.

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

Education: Education was free and compulsory through age 13. Secondary enrollment was limited to students who obtained high scores on standardized primary exams. Enrollment of girls increased 22.5 percent from 2007 to 2011; enrollment of boys increased 19 percent during the same period. Rural families were more reluctant to invest in educating girls than boys at higher levels, but the former priority placed on sending male children to primary school lessened, with 4.9 million girls enrolled in 2011, compared with 5 million boys. Between the ages of 12 and 14, girls generally dropped out of school at a higher rate than boys due to the lack of sanitary facilities at schools and the general family preference to focus limited resources on the education of sons. In 2008 the Ministry of Education estimated that 80,000 children dropped out of school annually due to forced marriages and child labor. The government ordered provincial administrators to arrest parents who did not send their children to school. However, this law was not enforced uniformly.

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

Child Abuse: Violence against children, particularly in poor and rural communities, was a common occurrence, and child abuse, particularly sexual abuse, was a problem. Child rape and molestation continued to be serious problems. Police received reports that 3,191 children were defiled (defined as a sexual act with a child involving penetration) in 2011, down slightly from 3,273 reported the previous year. The law establishes a minimum sentence for defilement of life imprisonment if the child is less than 11 years old, 20 years in prison if the child is between ages of 11 and 16, and 10 years if the child is between the ages of 16 and 18. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy.

The Teachers Service Commission reported that more than 160 cases of sexual misconduct were filed against teachers across the country in 2011; however, cases prosecuted were considered a fraction of actual abuses. A report released in 2009 by the Teachers Service Commission found that 12,660 female students reported sexual abuse by teachers from 2003 to 2007. In 2011 the commission established a code of conduct that addresses sexual relations with students and stipulates stiff penalties for violations of the new code.

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

Child Marriage: Newspapers frequently highlighted the problem of child marriage, which was commonly practiced among some ethnic groups. According to UNICEF, 25 percent of young women were children when they married. 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.

Harmful Traditional Practices: In September 2011 the government passed a law making it illegal to practice FGM/C, procure the services of someone who practices FGM/C, or send a person out of the country to undergo the procedure. The new law also makes it illegal to make derogatory remarks about a woman who has not undergone FGM/C. Although the new law was praised by NGOs and others opposed to FGM/C, FGM/C was practiced widely, particularly in rural areas. FGM/C usually was performed at an early age. According to UNICEF, one-third of girls and women between the ages of 15 and 49 had undergone FGM/C. Of the 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. In 2008 the Ministry of Gender and Children's Affairs reported that 90 percent of girls among Somali, Kisii, Kuria, and Maasai communities had undergone the procedure. The rates among other communities included Taita Taveta (62 percent); Kalenjin (48 percent); Embu (44 percent); Meru (42 percent); Kamba (37 percent); and Kikuyu (34 percent). Government officials often participated in public awareness programs to prevent the practice.

Some churches and NGOs provided shelter to girls who fled their homes to avoid FGM/C, but community elders frequently interfered with attempts to stop the practice. Various communities and NGOs instituted "no cut" initiation rites for girls as an alternative to FGM/C; however, in some communities some girls continued to insist on undergoing the practice.

Media reports indicated that discrimination against uncircumcised boys continued.

Sexual Exploitation of Children: 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. Nevertheless, children were subjected to sexual exploitation and were victims of trafficking.

The Ministry of Gender, Children's Affairs, and Social Development and the NGO Eradicate Child Prostitution in Kenya estimated that 30,000 children were exploited in the sex industry every day. Prostitution sometimes was initiated by parents. NGOs reported that Somali children who had been sent by their parents to escape recruitment by al-Shabaab frequently were employed in prostitution on the coast.

Child prostitution increased in recent years due to poverty and an 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 with underage girls and boys. Political leaders expressed concern that minors in drought-affected communities were leaving school and being lured into prostitution to address their basic needs. Child prostitution was prevalent in Nairobi, Kisumu, Eldoret, Nyeri, and the coastal areas. UNICEF estimated that between 10,000 and 15,000 girls were engaged in prostitution in the coastal areas alone. 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 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 continued to uphold the NGOs' 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. As part of a new tourism bill, the Tourism Regulatory Authority was established in September 2011 to oversee hotels, villas, and cottages to ensure their adherence to the code of conduct.

Child Soldiers: Although there were no reports that the government recruited child soldiers, there were reports that children participated in ethnically based militia activity perpetrated by groups such as al-Shabaab.

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

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

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

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/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. While the law provides that persons with disabilities should have access to public buildings, and some buildings in major cities had wheelchair ramps and modified elevators and restrooms, the government did not enforce the law, and new construction often did not include accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible for persons with disabilities.

There was limited societal awareness regarding persons with disabilities and significant stigma attached to disability. Learning and other disabilities not readily apparent were not widely recognized. NGOs reported that persons with disabilities had limited opportunities to obtain education and job training at all levels due to lack of accessibility to facilities and resistance on the part of school officials and parents to devoting resources to students with disabilities. The KNCHR reported that fewer than 10 percent of children with special needs were enrolled in school and that no curriculum existed for teaching children with learning disabilities.

The KNCHR carried out a survey on the status of the rights of persons with disabilities in Uasin Gishu and Elgeyo Marakwet counties during the year, visiting learning institutions, hospitals, law courts, government buildings, and prisons. According to the KNCHR report, most government buildings in these counties were inaccessible to persons with disabilities, and lack of sign language interpretation and Braille at public places, police stations, and the courts created significant barriers and prevented persons with disabilities from meaningful public participation. Negative societal attitudes also posed significant challenges to persons with disabilities, as most families tended to abandon relatives with disabilities in hospitals or in special schools for children with disabilities, which lacked the funds either to educate or care for them. The report noted that a cash-transfer program from the Disability Fund was being implemented in Elgeyo Marakwet, but that it targeted few households and the amount of 1,500 shillings (\$17) distributed monthly was very inadequate.

There were significant barriers to accessing health care by persons with disabilities. They had difficulty obtaining HIV testing and contraceptive services due to the perception that they did not or should not engage in sexual activity.

Few facilities provided interpreters or other accommodations to the deaf or those with other hearing disabilities. The government assigned each region a sign-language interpreter for court proceedings. Nevertheless, cases of persons who were deaf or had hearing disabilities often were delayed or forced to adjourn due to

the lack of standby interpreters, according to an official with the Deaf Outreach Program.

Not all polling stations were equipped with accommodations for persons with disabilities. However, during recent by-elections the Kenya Society for the Mentally Handicapped and the Disabled Voters of Kenya Alliance worked closely with the Interim Independent Electoral Commission of Kenya, the predecessor to the IEBC, to ensure that all persons were able to cast their votes.

The Ministry of Gender, Children, and Social Development is the lead ministry for implementation of the law to protect persons with disabilities. The parastatal National Council for Persons with Disabilities assisted the ministry. Neither entity received sufficient resources to effectively address issues related to persons with disabilities. The Association for the Physically Disabled of Kenya carried out advocacy campaigns on behalf of persons with disabilities, distributed wheelchairs, and worked with public institutions to promote the rights of persons with disabilities. The KNCHR noted that awareness of the rights of persons with disabilities had increased as a result in some counties, but it faulted the government for not ensuring equal protection of the rights of persons with disabilities throughout the country.

In December the Office of the Prime Minister organized a conference on disability issues that was attended by approximately 350 disability activists from around the country as well as the permanent secretaries of various government ministries. The conference enabled disability leaders to communicate their concerns directly to leaders of the coalition government.

Societal discrimination continued against persons with albinism, many of whom left their home villages due to fear of persecution and moved to urban areas where they believed they were safer. Persons with albinism were attacked for their body parts, which were thought by some to confer magical powers and which could be sold for significant sums. Since 2007 at least seven persons with albinism were killed, the most recent killing occurring in 2010. Also in 2010 a man was arrested for trafficking a person with albinism to Tanzania and attempting to sell him for 400 million Tanzanian shillings (\$260,000). The government carried out a census of persons with albinism and provided them with sunscreen but offered little health care or other support. Due to societal discrimination, employment opportunities for persons with albinism were limited.

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

The population is divided into 42 ethnic groups, among whom discrimination and occasional violence were frequent. The 2009 census released in 2010 identified eight major ethnic communities: Kikuyu, 6.6 million persons; Luhya, 5.3 million; Kalenjin, 5 million; Luo, 4 million; Kamba, 3.9 million; Kenyan Somali, 2.3 million; Kisii, 2.2 million; and Mijikenda, 1.9 million. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups, especially on the coast, where land grievances fueled the rise of a secessionist movement.

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.

The expected devolution of fiscal and administrative responsibility to county governments, which was scheduled to take place after the March 2013 general elections, led to an increase in interethnic conflict.

Throughout the year interethnic conflict flared in several parts of the country. From December 2011 through May, violent clashes between the Borana and Turkana communities around Isiolo caused the displacement of 7,500 persons and the deaths of dozens of others. Fighting between the Borana and the Gabra around the town of Moyale on the Ethiopian border caused many deaths and the displacement of 40,000 persons in February.

Between August and September, more than 100 persons died in clashes between the Orma and Pokomo ethnic groups in the Tana River delta, and thousands more were displaced as a result of the conflict. In one attack on August 22, 52 persons, including 31 women and 11 children, were hacked and burned to death. There were allegations of rape. The government imposed a curfew in an attempt to stem the violence; the curfew created difficulties ascertaining the extent of the human rights abuses in Tana River. Several political and local leaders were accused of

instigating the violence, and in September authorities charged one, Assistant Livestock Minister Dhadho Godhana, with inciting violence. The courts subsequently dismissed the charge against him.

On September 12, the government deployed 1,300 GSU officers to the Tana River delta to bring calm to the region and conduct a search for illegal weapons. Following accusations of use of excessive force, the KNCHR sent a team to investigate reports that GSU officers deployed to Tana River violated the rights of residents during the security operation. The KNCHR reported that it found evidence of the excessive use of force and even instances of torture carried out by police, but it could not confirm some of the more sensational media reports, which accused police of torching houses and raping residents during the security operation.

In December violence renewed in the restive Tana River delta, as both Orma and Pokomo ethnic groups carried out revenge attacks. Police were able to restore calm to the area, and the government appointed a judicial task force to investigate human rights violations in the delta. By year's end the death toll had reached 160, and hundreds more were displaced by the violence. On December 28, the new police inspector general David Kimaiyo stated that investigations revealed that political aspirants had planned and funded the attacks and that the government would take action to punish those who organized the violence.

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 was fairly common in urban areas.

There was frequent conflict, banditry, and cattle rustling among the Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and Pokot ethnic groups in arid regions located in North Eastern, Eastern, and Rift Valley provinces, which at times resulted in deaths. For example, during the year cattle rustling was rampant, and several persons were killed in Isiolo and Turkana in connection with cattle raids and counterattacks.

In response to armed incursions and kidnappings conducted from Somali territory, in October 2011 Kenyan military forces entered southern Somalia to conduct operations against al-Shabaab forces. In conjunction with these operations, the government launched security measures inside the country to counter suspected al-Shabaab militants and sympathizers. Citizens, including Muslims and those of

Somali ethnic origin, generally were supportive of these efforts; however, abuses occurred. In May HRW released *Criminal Reprisals: Kenyan Police and Military Abuses against Ethnic Somalis*, which chronicled security force abuses against Kenyans of Somali ethnic origin in Wajir, Mandera, and Garissa, as well as abuse of Somali refugees in the Dadaab refugee camps. HRW documented multiple instances in which police or military officers beat, arbitrarily arrested, and tortured ethnic Somalis. On January 11, a HRW researcher witnessed the mistreatment of civilians at the Garissa military camp, parts of which were visible from the road. Military personnel denied HRW entry to the camp, stating, “There are no human rights here.”

### **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 consensual same-sex sexual activity and specifies a maximum penalty of 14 years’ imprisonment. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years’ imprisonment. Police detained persons under these laws, particularly suspected sex workers, but released them shortly afterward. There were no reported prosecutions of individuals for same-sex sexual activity during the year. Police statistics for 2011 indicated 114 “unnatural offenses,” down from 154 in 2010.

LGBT advocacy organizations, such as the Gay and Lesbian Coalition of Kenya, were permitted to register and conduct activities. However, societal discrimination based on sexual orientation was widespread and resulted in loss of employment and educational opportunities. Violence against the LGBT community also occurred, particularly in rural areas and among refugees. NGO groups reported that police intervened to stop attacks but generally were not sympathetic to LGBT individuals or concerns.

For example, on June 25, a transgender individual was beaten by her employer and other community members in Kisumu, who alleged that she intended to rape the children in the house where she was employed as a domestic servant. Police intervened but subsequently arrested her on charges of impersonation of character. A Kisumu-based LGBT rights group intervened in the case and succeeded in securing the individual’s release and relocation to Nairobi.

During the year multiple political leaders made public statements critical of same-sex relationships and LGBT rights. For example, Prime Minister Odinga

reportedly suggested during a political rally in Langata that gays should be put in prison. Eldoret MP and ICC indictee William Ruto, labeled by Gay Trust Kenya as “persistently homophobic,” issued repeated statements criticizing same-sex relationships and accused the KNCHR of pushing a foreign agenda for its defense of the human rights of LGBT persons. LGBT advocacy organizations noted that stricter enforcement of hate speech laws by the NCIC, as well as strict guidelines against hate speech adopted by major media groups during the year, decreased instances of homophobic hate speech.

No anti-LGBT publicity campaigns were conducted during the year; however, sensational reporting often inflamed societal prejudices.

### **Other Societal Violence or Discrimination**

Societal discrimination against persons with HIV/AIDS was a problem. 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. Violence against persons with HIV/AIDS occurred.

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.

Mob violence and vigilante action were common and resulted in numerous deaths. Most victims were persons suspected of criminal activities, including theft, robbery, killings, cattle rustling, and membership in criminal or terrorist gangs. Human rights observers attributed vigilante violence to a lack of public confidence in police and the criminal justice system, in which assailants evaded arrest or bribed their way out of jail. The social acceptability of mob violence also provided cover for acts of personal vengeance, including settling land disputes. Police frequently failed to act to stop mob violence. For example, on July 24, mobs killed five suspected thieves in separate incidents in Kibera Soweto, Kahawa Wendani, Dandora, Kayole, and Kitengela.

Mobs also attacked persons suspected of witchcraft or participation in ritual killings, 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.

## **Section 7. Worker Rights**

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

The law provides that workers, including those in export processing zones (EPZs), are free to form and join unions of their choice. Any seven or more workers in an enterprise have the right to form a union by registering with the trade union registrar. If the registrar denies registration, a union may appeal to the courts. The new constitution no longer explicitly prohibits members of the armed forces, police, prisons service, and the administration police from forming or joining unions. However, it permits legislation that does so, a reference to the 2007 Labor Relations Act, which continued in effect.

The law permits workers in collective bargaining disputes to strike but requires the exhaustion of formal conciliation procedures and seven days' notice to both the government and the employer. The law permits the government to deny workers the right to strike under certain conditions. For example, members of the military, police, prison guards, and the National Youth Service are prohibited from striking. Other civil servants are allowed to strike following the seven-day notice period. The Ministry of Labor typically referred disputes to mediation, fact-finding, or binding arbitration at the industrial court, a body of up to five judges appointed by the president. During mediation any strike is illegal, thus removing legal prohibitions on employer retaliation against strikers. In addition, a Ministry of Labor referral of a dispute to the conciliation process nullifies the right to strike. By law those who provide essential services, defined as "a service the interruption of which would probably endanger the life of a person or health of the population," are not allowed to strike. Any trade dispute in a service that is listed as or is declared to be an essential service may be adjudicated upon by the industrial court.

The law provides the right of collective bargaining to every trade union, employer's organization, and employer. Workers in the military, prisons, and the National Youth Service, however, do not have this right. The law also provides that collective labor disputes must first undergo conciliation, although conciliation is not compulsory in individual employment matters. Security forces cannot bargain collectively but have an internal board that reviews salaries. Other groups that cannot bargain collectively, such as health sector workers, have associations rather than unions, which negotiate wages and conditions that match the

government's minimum wage guidelines. In 2011 a total of 361 collective bargaining agreements were negotiated and registered by the industrial court.

The law allows employers in some industries to dismiss workers regardless of the provisions of their collective bargaining agreements. The bill of rights in the 2010 constitution allows trade unions to undertake their activities without government interference, and the government generally respected this right.

The law prohibits antiunion discrimination and provides for reinstatement for workers dismissed for union activity. The industrial court can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities. All labor laws are intended to apply to all groups of workers. In practice migrant workers often lacked formal organization and consequently missed the benefits of collective bargaining. Similarly, domestic workers, commercial sex workers, and others who operated in private spaces were vulnerable to exclusion from legal protections.

Freedom of association and the right to collective bargaining were generally respected in practice. The government expressed its support for union rights as mandated in the constitution. Due to human and material resource constraints, the government did not always effectively protect union rights. Worker organizations were independent of both the government and political parties. Civil servants were active members of worker organizations. At year's end none of the country's security forces had joined unions, although the Central Organization of Trade Unions (COTU) continued to advocate on their behalf for this right. The government continued to encourage a strengthened labor dispute system, but the decisions of the industrial court were not enforced consistently. Many employers did not comply with the court's reinstatement orders, and some workers accepted payment in lieu of reinstatement. In several cases employers successfully appealed the industrial court's decisions to the High Court. The enforcement mechanisms of the industrial court remained weak, and its case backlog raised concerns regarding the efficacy of the court.

The industrial court continued to receive an increased number of cases arising from the implementation of new labor laws. The majority of cases were filed directly by the parties without referring them to the Ministry of Labor for conciliation. There were 2,240 cases filed with the industrial court during 2011, up from 1,630 in 2010. Of these, 2,150 were trade disputes, with the remaining cases being appeals, cases transferred from the High Court, recognition disputes, and miscellaneous applications. In 2011 the five judges of the industrial court announced a total of

894 awards and rulings, which included cases from previous years. The industrial court was established to provide for quick resolution of labor disputes, yet cases in the backlog dated to 2007. The chief justice designated all courts presided over by magistrates in the 47 newly established counties as special courts to hear and determine employment and labor cases. The five judges of the industrial court went on strike in March to protest the selection of new judges for the court. The president swore in 11 industrial court judges in July, while the permanent secretary of the Ministry of Labor fired four judges who previously went on strike. All judges were vetted in accordance with the constitution; the government intended to have 67 judges on the industrial court.

Some antiunion discrimination occurred, including in garment plants in EPZs. Mass dismissals were the tactic of choice by employers punishing their workers for taking strike action or simply joining a union. Workers dismissed for joining a union included more than 100 truck drivers, 50 textile workers, and 19 oil workers. Nearly 600 postal workers received dismissal notices for taking part in a strike, as did 50 cut flower workers. Two officials from the electrical workers' union, the Kenya Electrical Trades and Allied Workers' Union, were arrested during a strike in March. There were also many reports that workers in Nairobi's industrial zone were dismissed arbitrarily.

On October 10, Francis Atwoli, general secretary of COTU, was sentenced to three months' imprisonment. The High Court found that Atwoli defied a court decision that forbade an allegedly illegal strike by tea plantation workers. The court decision reportedly did not violate any International Labor Organization (ILO) conventions.

During the year NGOs and trade unionists continued to report a growing trend toward the elimination of permanent positions in favor of casual or contract labor, especially in EPZs and the agricultural and manufacturing sectors. In many cases the job was permanent, but an employer staffed it with rotating contract workers. This practice occurred at the management level as well, where employers hired individuals as management trainees and kept them in this position for the maximum permitted period of three years. Instead of converting such trainees to permanent staff, they were replaced by new trainees. Casual employment continued to grow, accounting for 32 percent of total wage employment for the most recent period for which figures were available. This trend continued to increase across sectors.

The majority of strikes were in the public sector. Public sector strikes were resolved peacefully with no violence or intimidation from the police. Teachers struck on September 3, citing government inaction on implementing 1997 and 2009 collective bargaining agreements. A major source of contention was disparity in teachers' salaries in relation to other civil service employees. On September 24, union leaders ratified an agreement with the government to end the three-week strike. The agreement, which effectively harmonized teachers' salaries with those of other civil service employees, came just hours before a government-imposed deadline for teachers to return to work or be fired. The Teachers Service Commission, in consultation with the teachers' unions, drafted a return-to-work formula to assure that teachers were not punished for striking and would receive their September salary.

There were no incidents of police violence against protesters in the teachers' strike. Press reports indicated that, in the Imenti North District, police fired in the air to repulse striking teachers who marched into the Meru Technical Training College to disrupt head teacher training. Similar disturbances were reported in Kiriyanga county, where striking teachers held 270 principals and primary school teachers hostage. Armed police were deployed, but no injuries or fatalities were reported. In solidarity with the September 3 teachers' strike, the Universities Academic Staff Union struck on September 6. University of Nairobi students took to the streets in downtown Nairobi on September 20 and stoned cars while engaging the police in running battles. The strike ended with a three-year collective bargaining agreement retroactively implemented from 2010 through 2013 that included a 33.1 percent salary increase and a 14.27 percent increase in housing allowances.

Tens of thousands of nurses from the Kenyan Health Professionals Society (KHPS) and the National Nurses Association of Kenya (NNAK) went on strike in March for two weeks over remuneration that had been previously agreed but not paid. The government responded by firing 25,000 nurses; it later rescinded the firing actions, promising to address the nurses' complaints. On September 18, the NNAK issued a one-week strike notice to press for a salary increase agreed to in 2010, as well as improved services in public hospitals. On September 27, nurses at Moi Referral hospital announced plans to return to work after the hospital agreed to implement promotions of nurses and pay extraneous allowances. The KHPS threatened to strike again in October after no real progress was made in negotiations with the government but had not carried out the threat by year's end. The Kenya National Union of Nurses submitted a letter to the Registrar of Trade Unions in a bid to form a single union geared particularly towards representing nurses. In November the registrar rejected the application, stating that nurses were

sufficiently represented by other entities. The result was a legal battle with the Union of Kenya Civil Servants and a strike by the nurses on December 2. The industrial court upheld the right of nurses to register their union. The nurses returned to work, but the legal battle was unresolved at year's end.

On September 17, junior police officers ended a week-long "go-slow" action, during which police purposely jammed the communication network used to coordinate traffic flow, causing gridlock on major roads in Nairobi and other towns. The officers were protesting a delayed salary increase that they had been promised in 2007. The government implemented the changes by year's end.

On April 10, the Kenya Aviation Authority (KAA) fired striking workers who failed to report to work in a protest over low pay. Other government agencies, including police, took over the roles of the striking workers. The 1,300 members of the Aviation and Allied Workers Union struck for more than a week. COTU obtained a court order barring the KAA from firing striking workers, but the court also ordered the striking employees to call off the strike and resume duty. On April 11, the strike was resolved and the workers reinstated.

Kenya Airways fired 447 employees, asserting that their positions had been abolished. The workers took the matter to the industrial court, which ruled that they could not be fired. The Federation of Kenya Employers were concerned that the message sent to private employers and investors was that staff could not be let go. The industrial court blocked reinstatement until Kenya Airways' appeal was heard and determined. The case had not been decided at year's end.

The Rift Valley Railways Workers Union sued Rift Valley Railways Ltd. in an attempt to stop the dismissal of 112 employees. Rift Valley Railways held the positions were obsolete and offered a severance package of 120,000 shillings (\$1,400) and other benefits. The case had not been decided at year's end.

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

The law prohibits all forms of forced or compulsory labor; however, the government did not effectively enforce this law. During the year there were reports of forced labor and forced child labor in domestic service, street vending, child prostitution, subsistence and commercial agriculture, and mining. Forced child labor primarily occurred in the informal sector. Some children were subjected to debt bondage or prostitution and were trafficked for commercial sexual exploitation and labor. Women and men also were trafficked for

commercial sexual exploitation and labor. Commercial sexual exploitation was widespread, particularly in the coastal areas.

In June the government imposed a temporary ban on recruitment of domestic workers for employment in the Middle East, citing reports of forced labor, trafficking, and abuse. In addition to more than 200 registered recruiters, there were numerous agencies that circumvented the ban by recruiting girls directly from villages and sending them to Saudi Arabia and other countries in the Middle East. The government undertook no other efforts to prevent and eliminate forced labor. There was no data available on the number of victims removed from forced labor during the year.

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

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

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 or that would prevent children younger than 16 from attending school. Children under the age of 13 are prohibited from working, and the government's policy of free and compulsory education through age 13 continued to be one of the most successful means to combat child labor. Children between the ages of 13 and 16 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 younger than 18 may not be employed in any industrial undertaking at night, employment should not cause children to reside away from home without parental approval, and permission to work in a bar, hotel, or restaurant requires renewed consent annually from the labor commissioner. The law provides fines of up to 200,000 shillings (\$2,320), imprisonment for up to 12 months, or both for employing children in such activities.

Despite legal restrictions, child labor was widespread, particularly in the informal sector, where children often worked in hazardous conditions, including in subsistence agriculture, fishing, and on small-holder and family farms. Children also worked as domestic servants. An estimated one million children between five and 17 years of age worked. The Ministry of Labor, in collaboration with the international donor community and NGOs, started preparing a list of specific jobs that are considered hazardous and would constitute the worst forms of child labor.

The 2005 Kenya Integrated Household Budget survey indicated that 951,273 children under 18 years of age were employed: 79.9 percent worked in agriculture (coffee, tea, rice, sisal, sugar, tobacco, and miraa--a stimulant plant) and 11.6 percent worked in domestic services. While there were no recent official statistics on child labor, the Ministry of Gender, Children, and Social Development and NGOs focused on child labor problems. The employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Child labor in the informal sector was difficult to monitor and control.

Many children worked on family plots or in family units on tea, coffee, sugar, sisal, tobacco, and rice plantations. Children also were used in the production of flowers and miraa. Children also worked in mining, including abandoned gold mines and small quarries, breaking rocks, amalgamation of gold, and sifting through tailings. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestic servants. Parents sometimes initiated forced or compulsory labor by children, such as agricultural labor, prostitution, and domestic servitude. Children also reportedly were recruited by and participated in activities with armed militias, such as al-Shabaab.

The Ministry of Labor nominally enforced the minimum age statute. The ministry remained committed to enforcing the statute, but implementation remained problematic due to resource constraints.

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

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 they 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. For example, in September the ILO announced the rescue of 2,500 children from child labor in the coastal Kilifi district. Most of the children were employed as loaders or miners in the coral block quarries or were engaged in commercial sex exploitation. Moving the Goalposts rescued 940 girls from early marriages, and 900 girls were rescued from commercial sexual exploitation through a program called Solidarity for Women in Distress.

During the year the government continued to increase the number of children's officers in the Child Protection Department, yet its protection capacity remained limited. The government's cash transfer program for orphans and vulnerable children covered 47 districts and reached an estimated 100,000 beneficiaries. It was cofunded by the government and development partners. The beneficiaries each received 3,000 shillings (\$35) per month. There were an average of three orphans and vulnerable children in each beneficiary household who directly benefitted from the program.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

Regulation of wages is part of the Labor Institutions Act, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category.

On May 1, the government raised the national minimum wage by 13.1 percent. In many industries, workers were paid the legal minimum wage; however, these wages were often far outpaced by the cost of living. The lowest legal urban minimum wage was increased to 11,995 shillings (\$139) per month, and the lowest agricultural minimum wage for unskilled employees was increased to 4,258 shillings (\$49) per month, excluding housing allowance. In July civil servants and National Youth Service (NYS) personnel received a salary increase. Depending on the civil service category, increases ranged from 12 to 20 percent, with 17 percent quoted in the press. For NYS officers, the salary increment ranged from 12 to 22 percent.

The law provides for equal pay for equal work. The constitution established the Salaries and Remuneration Commission to set and regularly review the remuneration and benefits of all state officers and to advise the national and county

governments on the remuneration and benefits of all other public officers. The commission also ensures that the total public compensation bill was fiscally sustainable, promoted retention and recruitment, recognized productivity and performance, and was transparent and fair. The commission announced that all pending collective bargaining agreements must be completed before June 2013 and that a new civil service pay system would be introduced in 2013.

The law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. The law specifically excludes agricultural workers from such limitations. An employee in the nonagricultural sector is entitled to one rest day per week and 21 days of combined annual and sick leave. The law also requires that total hours worked (regular time plus overtime) in any two-week period not exceed 120 hours (144 hours for night workers) and provides premium pay for overtime. Labor laws require two weeks' paternity leave, three months' maternity leave with full pay, and compensation for both public and private employees for work-related injuries and diseases.

While employees in the public sector enjoyed the benefits of paternity/maternity leave and workplace compensation, those in the private sector did not fully enjoy such benefits. Many employers did not allow paternity leave, but most respected the maternity leave provisions of the law. In 2008 private employers challenged the workers' compensation provisions in court. The case continued at year's end.

Workweek and overtime violations also were reported during the year. Workers in some enterprises, particularly in 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 employers bribed some government labor inspectors 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.

The law details environmental, health, and safety standards. Fines generally were too low to deter 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. 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 or more persons have an internal health and safety committee with representation from workers. Workers, including foreigners and immigrants, theoretically have the right to remove themselves from situations that endanger health or safety without jeopardy to their employment. The Ministry of Labor did not effectively enforce these regulations, and despite the law, workers were reluctant to remove themselves from working conditions that endangered their health or safety due to the risk of losing their jobs.

The DOHSS employed 95 inspectors, far short of the 298 reportedly needed to inspect factories adequately and enforce its safety and health orders. There continued to be widespread hazards, such as lack of basic safety equipment and emergency escape routes in many companies. During the year violations of health and safety conditions were found routinely in EPZs and other sectors, such as small horticultural producers. There were 6,033 industrial accidents in 2011, with 249 fatalities.

According to the government, many of the largest factories had instituted health and safety committees by year's end. The Kenya Federation of Employers provided training and auditing of workplaces for health and safety practices.

There were no accurate government statistics on the number of persons employed in the informal economy. The government did not provide social protections for workers employed in the sector.