

# KENYA 2013 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Kenya is a republic with an institutionally strong president and a bicameral legislature. The country is undergoing the transfer of significant elements of fiscal and administrative authority from the central government to 47 newly created county governments. In a national referendum in 2010, citizens approved a new constitution that called for significant institutional and structural changes to the government, including the abolition of the post of prime minister and creation of an elected deputy president position, transition to a bicameral national legislature, and the creation of county governments with directly elected governors and county legislatures. The new constitution also created an independent judiciary and a Supreme Court, which were established in 2011.

On March 4, citizens voted in the first general election under the new constitution, electing a president and deputy president, parliamentarians including members of the newly established senate, county governors, and representatives to the new county legislatures. International and domestic observers judged the elections to be generally free and credible, although some civil society groups pointed to irregularities and questioned the final results. In the presidential election, Jubilee Coalition candidate Uhuru Kenyatta was proclaimed the winner over second-place candidate Raila Odinga of the Coalition for Reforms and Democracy (CORD). Kenyatta received a majority at 50.07 percent of votes cast as well as more than 25 percent of votes in more than one-half of the 47 counties, meeting the threshold to avoid a constitutionally mandated run-off election. Odinga challenged the results in a March 16 petition to the Supreme Court, citing irregularities in voter registration and technical problems with vote tallying. The Supreme Court ruled unanimously on March 30 to uphold the results, and Odinga accepted this verdict. The country remained generally calm following the election, although after the court verdict, violence occurred in the city of Kisumu, an opposition stronghold, during which police reportedly killed five protesters. There were also 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, 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; judicial corruption; arbitrary interference with the home and infringement on citizens' privacy; restrictions on press freedom and freedom of assembly, including passage of a new law likely to result in a significant increase in government power over the media; abuse and forced resettlement of internally displaced persons (IDPs); abuse of refugees, including rape by police forces; 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 force members suspected of unlawful killings. Impunity in cases of corruption was also common, although the government took action in some cases to prosecute officials who committed abuses.

## **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, particularly of known or suspected criminals. Human rights groups reported more than 100 extrajudicial killings between May and August and estimated that police were responsible for at least 1,000 extrajudicial killings between 2008 and 2012. Some groups alleged this number was less than half of the true total, due to limited public reporting of security force killings in informal settlements. Although the new Independent Policing Oversight Authority (IPOA) began investigating its first cases of extrajudicial killings by police in June, the government took only limited action to hold accountable security forces suspected of unlawfully killing citizens.

On September 11, IPOA launched its inaugural baseline report on police effectiveness and public perceptions of police based upon surveys of several thousand households and more than 500 police officers. More than half of the police respondents stated they had participated in or witnessed police misconduct

in the last year, including unwarranted shooting, assault, brutality, threat of imprisonment, bribery, and falsification of evidence.

On April 14, a police officer shot and killed a well-known local community athlete waiting at a bus stop in the Mathare informal settlement in Nairobi. IPOA took up the case in August, but the officer had not been prosecuted by year's end.

On June 16, two Administration Police Service (APS) officers in Thika opened fire on unarmed 18-year-old medical student Dennis Simba and his girlfriend as they were approaching Simba's car in a local park. Simba died of multiple gunshot wounds to his chest. Local police officials gave contradictory statements to the media, with some denying police involvement and others indicating the two officers had been removed from duty immediately. A subsequent investigation produced no results by year's end.

There were numerous reports of police killings from the use of live bullets for crowd control during the year. On March 30, following the Supreme Court's announcement of its decision to uphold the March 4 presidential election results, violent demonstrations broke out in the western city of Kisumu. Police sent to contain the violence shot and killed five persons and injured dozens. In a May report, Human Rights Watch (HRW) accused police of subsequently intimidating witnesses to the violence to frustrate investigations into the shootings. No officers had been prosecuted by year's end.

On July 15, police shot into the air to disperse an angry crowd during a drug raid in a Nairobi informal settlement, killing a woman nearby. When local residents paraded the woman's body through the streets demanding an investigation, some police again fired live bullets into the air as other officers attempted to recover the body and leave the scene. IPOA took up the case and issued a statement pledging to review any separate internal investigations by police, but authorities took no action against any police officer by year's end.

Police continued to kill numerous criminal suspects rather than taking them into custody, often claiming that the suspects violently resisted arrest or were armed. On August 16, the *Daily Nation* newspaper reported that police had shot and killed 30 suspected criminals in July alone. For example, on July 12, police in the town of Embu opened fire on a car outside a bar after the bar's owner, a local police officer, alleged the car's passengers had robbed the bar. At least one of the car's occupants was killed. The local deputy commissioner of police reportedly praised the officers involved for stopping the thieves. There was no known investigation,

and no action had been taken against the officers by year's end. During the week of August 12, police reportedly shot and killed five suspected robbers in three separate incidents across Nairobi. In each case, police alleged they had caught the suspects robbing area residents.

During the year leading security figures made several public announcements threatening or encouraging the use of lethal force by police officers. For example, in July Cabinet Secretary for Internal Security Joseph ole Lenku announced a campaign to curb illegal gun use in Samburu County following clashes with police in 2012, during which local residents stole police weapons. Lenku publicly threatened that if residents failed to turn in all guns to police within two weeks, the government would "use force and people will die." Security forces also continued to claim that police must shoot to defend themselves when confronted by dangerous suspects. In August, following a spate of unrelated attacks on police officers across the country, Inspector General for Police David Kimaiyo told the media on several occasions that he had urged his officers to use lethal force in self-defense whenever necessary.

There were reports that persons died while in police custody or shortly thereafter, some due to torture and abuse.

Impunity remained a serious problem, including for abuses committed in previous years (see below, Role of the Police and Security Apparatus).

Police reported initiating a new investigation into the May 2012 death of a British citizen arrested in Diani on suspicion of smoking marijuana. Police claimed that he died from a drug overdose, but a postmortem examination revealed that the cause of death was blunt force trauma to the head. No action had been taken against the officers involved in the arrest as of year's end.

There were developments in police abuse cases from previous years. In 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. Authorities suspended two police officers and charged them with murder in a criminal case that was adjourned multiple times and had not been resolved at year's end. In April 2012 the government-funded Kenya National Commission on Human Rights (KNCHR) filed a civil suit against the government demanding compensation for the family of the deceased. Hearings were underway at year's end.

In a landmark police conviction case, in December 2012 a High Court judge sentenced six Administration Police officers to death for the 2010 murder of seven taxi drivers in Nairobi's Kawangware suburb. It was the first known conviction of police officers for extrajudicial killings. The defendants appealed the sentence.

Due to government inaction, in 2010 the International Criminal Court (ICC) opened an investigation into the 2007-08 postelection violence. In March 2011 the ICC issued summonses for six individuals on charges of crimes against humanity. The six individuals were: Uhuru Kenyatta, now president; William Ruto, now deputy president; Henry Kosgey, former minister of industrialization; Joshua Arap Sang, former head of operations for KASS FM radio station; Francis 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 January 2012 the ICC confirmed charges against four of the six suspects, while ruling that the prosecutor had not reached the threshold for charges to be confirmed against Kosgey and Ali. In March the ICC prosecutor dropped the charges against Francis Muthaura. In September the ICC opened the trial against Ruto. On December 19, the ICC prosecutor applied to the Trial Chamber to adjourn Kenyatta's trial--previously scheduled to begin February 5, 2014--for an additional three months, citing lack of evidence. The ICC Prosecutor has cited unprecedented levels of witness tampering in the ICC's Kenya cases, and has formally charged one Kenyan with corruptly influencing witnesses in connection with the case against Ruto and Sang. There have been numerous reports of tampering and interference with witnesses in the ICC proceedings.

## **b. Disappearance**

Members of the security forces were suspected of being responsible for a number of forced disappearances. For example, the Rift Valley nongovernmental organization (NGO) Nakuru County Human Rights Network received multiple reports during the year of detainees from the area disappearing after being arrested. The group brought a public complaint about these disappearances to local police, who pledged to investigate; the individuals were not found by year's end.

As in 2012, several Muslim leaders accused of having terrorist ties were allegedly victims of extrajudicial killings or forced disappearance. The outgoing executive director of Muslims for Human Rights, Hussein Khalid, alleged that the Antiterrorism Police Unit and other police organizations maintained a "hit list" of Muslims suspected of terrorist ties whom they planned to kill. Police publicly took

responsibility for some killings of terror suspects during the year and reported conducting several internal reviews of the cases, alleging in the media that suspects drew weapons on police before officers opened fire.

On October 3, a Muslim cleric and three other Muslims were killed in a drive-by shooting in Mombasa. Some local leaders alleged this was a revenge killing in response to the September 21 terrorist attack at the Westgate Mall in Nairobi, although the circumstances around the October 3 shooting remained unclear. 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/).

In August a task force established to investigate the August 2012 killing of Muslim cleric Aboud Rogo Mohammed delivered a confidential report on the case to the inspector general of police. The report highlighted police failure to investigate Rogo's killing properly but did not identify any police as being involved in the killing. It recommended establishing a follow-on inquiry to continue investigating the case.

### **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 the human rights and anti-torture group Independent Medico-Legal Unit (IMLU), physical battery was the most common method of torture used by police.

Human rights organizations and the media reported numerous cases of torture and indiscriminate police beatings with impunity. Police beat and tortured dozens of refugees and ethnic Somalis, including women and children, during house-to-house raids in Nairobi over the course of 10 weeks early in the year (see section 2.d.). On October 22, police beat both suspects and bystanders during a crackdown on local gang activity in the Nairobi neighborhood of Eastleigh, in which police arrested approximately 120 persons.

In September the IMLU indicated that it had received 589 individual allegations of torture by security forces during the year, and approximately 300 of these cases had sufficient information for the group to take legal action, including civil suits,

by year's end. The victims' relatives brought some of these cases after the victim died in police custody.

There was no update during the year to IMLU's *National Torture Prevalence Survey Report 2011 for Kenya*, which showed that an estimated 23 percent of the survey's randomly selected respondents reported they had been tortured.

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). For example, on September 5, a local court ordered police to investigate allegations that an officer had raped and impregnated a teenage detainee while she awaited transfer to a probation hostel.

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

There were reports that security forces deployed 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).

Due in part to a shortage of civilian state prosecutors, police were responsible for investigating and prosecuting all crimes at the magistrate court level. Civilian prosecutors handled only murder cases at the High Court level. The government approved recruitment of 106 additional civilian prosecutors, but fewer than 100 were hired, for approximately 170 civilian prosecutors by year's end, up from 83 in 2012. The director of public prosecutions (DPP) indicated that despite this recruitment, his office remained more than 700 prosecutors short of the estimated need. Police routinely ignored evidence of torture committed by police officers 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, whose mandate included the investigation of alleged cases of torture and other crimes since independence, released a report of its findings in May (see section 5). Among other findings, the report concluded that the country's three prior administrations failed to stop, and at

times encouraged, deliberate torture and mistreatment by security forces.

### **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 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 and several NGOs to train human rights workers and establish paralegal clinics in prisons to curb abuse. Pretrial detention in police stations continued to be harsh and life threatening, with no evidence of improvement by year's end.

Prison officials reported a total prison population of 53,163 as of September. Of these, approximately 36.5 percent were in pretrial detention. More than 90 percent of the prison population was male. The country's 108 prisons had a designated capacity of 24,794 inmates. Nairobi's Industrial Area Remand Prison, which holds prisoners not yet sentenced, had a designated capacity of 3,000 but was reportedly well over capacity for most of the year. The NGO Legal Resources Foundation (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. 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 regularly.

According to the government, 187 prisoners died in 2011, the majority from infections or other generally preventable causes. Figures were unavailable for subsequent years. Overcrowding, unhygienic conditions, and inadequate medical treatment contributed to prisoner deaths. At year's end IMLU was investigating several cases of wrongful deaths in custody, including one preventable death due to a common disease.

In smaller jails female prisoners were not always separated from men. There were no separate facilities during pretrial detention, and sexual abuse of female prisoners was a problem. 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. The LRF in 2012 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. Prison officials reported that limited detention facilities for minors meant that minors were often transported very long distances to serve their sentence, spending nights at police stations under varying conditions along the way.

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. The total prison population did not decrease, however, as most 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. Legal rights NGOs and prison officials reported overuse of the charge of "robbery with violence," which can carry a life sentence, without sufficient evidence (see section 1.d.). This resulted in a growing

number of petty offenders receiving disproportionately heavy sentences.

Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who wanted to visit prisoners commonly reported bureaucratic obstacles that generally required a bribe to resolve. In 2011 the government instituted remote parenting and open family days at prisons to increase prisoners' access to family members, although the program was suspended in some prisons in 2012 after media reports indicated some prisoners had abused the program. 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.

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. In 2012 the government also established special committees, which included paralegals and prison officials, to increase prisoners' access to the judicial system. The government continued to designate human rights officers to serve in all prisons; however, many lacked necessary training, and some prisons did not have a functioning human rights officer by year's end. In many cases authorities expected individuals designated to serve as the human rights officer to continue their existing full-time prison work in addition to human rights responsibilities. In Nairobi prison officials initiated a training program for the newly designated prison human rights officers and also provided printed materials on prisoner rights in several prisons. There were reports that inadequate mechanisms for prisoners to report abuse and other concerns, even with human rights officers present, remained a serious problem.

Independent Monitoring: The government permitted prison visits by local human rights groups and international diplomatic representatives during the year.

Improvements: Authorities built new prison facilities and housing for prison staff during the year, refurbished mental health facilities for offenders, and provided bedding and improved meals for inmates. Prison officials acquired livestock and developed farming facilities at some juvenile detention centers to expand work opportunities for prisoners. Human rights groups noted that many prison facilities remained 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 or arbitrarily accused them of more severe crimes than they had committed.

IPOA revealed in its September 11 baseline survey that 64 percent of felony cases reviewed did not meet the minimum evidentiary standards required for charging. Approximately 62 percent of charges of “robbery with violence” failed to ascertain basic evidentiary details such as proving the individual actually used or threatened violence. The report noted that more than 80 percent of cases of “robbery with violence” were returned to police for further investigation, adding that “police investigators are not necessarily producing any additional evidence” in these cases. There were separate reports from government officials during the year that police in certain districts were under pressure from superiors to increase felony arrests in response to reports of rising crime, which resulted in more frequent misuse of the “robbery with violence” charge. The conviction rate for felony cases reviewed by IPOA was 25 percent.

According to IPOA’s report, only 27 percent of felony cases since late 2010 fulfilled a law requiring that suspects be charged within 24 hours. Although the report stated the average time between arrest and charging was 5.5 days, it also noted that detainees at times waited as many as 95 days in custody before being taken to court for charging. Only 40.2 percent of household respondents to the IPOA survey said they believed they were familiar with their rights upon arrest.

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

The National Police Service (NPS) was headed by the inspector general of police (IGP) and included the Kenya Police Service (KPS) and the APS. The KPS is responsible for general policing and maintains specialized subunits such as the Antiterrorism Police Unit and the paramilitary General Services Unit (GSU), which is responsible for responding to significant and large-scale incidents of insecurity and guarding high-security facilities. The Criminal Investigations Department (technically renamed the Directorate of Criminal Investigations) is a separate division under the KPS. The APS, which historically provided security for the civilian population within the now disbanded provincial administration structure and has the mandate for border security, was subsumed into the NPS and began to take on more traditional policing duties. The NPS is under the authority

of the Ministry of the Interior and Coordination of National Government. The National Intelligence Service collects intelligence internally and 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 Defense.

Both the National Police Service Commission (NPSC) and IPOA are government bodies established in 2012 and report to parliament. The NPSC consists of six civilians, including two retired police officers, as well as the IGP and his two deputies. By law the NPSC is responsible for managing recruiting, transferring, promoting, and removing police officers in the NPS. IPOA, a civilian body, investigates police misconduct, especially cases of death and serious injury at the hands of police. The government intended both agencies to improve accountability and transparency of police operations but faced some challenges during the year.

Police were largely ineffective, and there was a public perception that police often were complicit in criminal activity. Police incompetence and complicity in criminal activity contributed to an increase in crime, especially in Nairobi. In June the IGP released figures on police criminality. In the first five months of the year, there was a threefold increase in the number of officers reported to have been involved in crimes, compared with the same period in the previous three years. According to the report, formal charging of police officers for crimes increased; between January and May, 48 officers were charged with crimes, compared with 14 in the same period in 2012 and 18 in 2011. Police also frequently failed to enter detainees into police custody records, making it difficult to locate them.

Police corruption remained a significant problem. Police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations. Police often stopped and arrested citizens to extort bribes; those who could not pay were jailed on trumped-up charges (for example, preparation to commit a felony) and sometimes beaten. Refugees and ethnic Somalis were especially frequent targets of extortion by police (see section 2.d.). Transparency International's 2013 Global Corruption Barometer named the police among the most corrupt institutions in the country (see also section 4). A 2012 Transparency International study concluded that police were extremely corrupt, noting that more than 60 percent of respondents reported being forced to pay bribes to police. The media 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 hired two additional police physicians in Nairobi to conduct examinations and provide testimony in the case of victims of sexual assault, which improved the investigation and prosecution of sexual violence cases, although substantial barriers to reporting and investigation remained (see section 6, Women).

Police failed to prevent vigilante violence in numerous instances, including many attacks on individuals accused by the community of committing crimes (see section 6). For example, on August 12, police failed to prevent local residents in Taita-Taveta from beating a suspected thief to death.

There were some reports that police successfully prevented mob killings. For example, on July 12, police reportedly saved a man from being beaten to death after a mob of local residents attacked him for defiling a five-year-old girl in the community.

Instances of witness harassment and insecurity continued to inhibit severely the investigation and prosecution of major crimes. The Witness Protection Agency, founded in 2011, was funded inadequately, and doubts about its independence were common (see section 4). The agency reported it could assist a maximum of only 30 witnesses, due to limited funding, and noted the most common protection cases in its first year of operation involved organized crime, corruption, 2007 postelection violence, and murder. The agency reported that it was not protecting any witnesses involved in the ICC trials.

Impunity was a major problem. Authorities rarely arrested and prosecuted police officers 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. 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 police, although IPOA was available to take cases of police abuse referred to the new body (see below). The NPS also created its first Internal Affairs Unit to review complaints against police, designed to complement the civilian oversight of IPOA.

Human rights activists reported that at times police officers in charge of taking

complaints at the local level were the same ones who had committed abuses. Some human rights activists were jailed after going to a police station to make a complaint. Amnesty International's 2013 annual report highlighted impunity for human rights violations committed by police.

There were reports that security officials resisted efforts by civil society and oversight bodies to investigate cases. Research by a leading legal advocacy and human rights NGO found that police frequently used disciplinary transfers of guilty police officers as a tool for hiding the officers' identities and frustrating investigations into their crimes. Media and civil society follow-up investigations into numerous reported cases of police abuse ended after officers were transferred to other regions of the country and police failed to provide any information about their identities or new whereabouts.

The formal launch of IPOA in September created a civilian agency with which citizens could lodge complaints about police, although the organization faced capacity problems during the year. IPOA received an estimated 1,000 complaints in its first four months of operation, some from inside the police service, and indicated processing all complaints would take months if not longer. In June IPOA hired approximately 10 investigators to begin analyzing the complaints, which included several high-profile killings and deaths in police custody. By year's end IPOA had not concluded an investigation, nor had it referred a recommendation for discipline or prosecution to either the NPSC or the DPP. IPOA also engaged in public debates regarding police policy during the year, including testifying before a parliamentary committee in August to express its displeasure about proposed legislation that would expand the legal use of lethal force by police. IPOA did not receive full compliance by police, who are legally required to report to them all deaths and serious injuries with police involvement.

During the year the NPSC also faced several challenges in fulfilling its mandate. The NPSC and the IGP engaged in a public debate over which office controlled personnel decisions within the police service. While the NPSC has a constitutional mandate to recruit, appoint, promote, and transfer officers, the IGP complained that many of these powers conflicted with his mandate to have operational control over the service. The IGP flouted constitutional divisions of labor by unilaterally appointing 94 county police commanders despite the NPSC's open call for applications to fill those positions.

NPSC members were generally ineffective in carrying out their mandate due in part to their disputes with the police leadership and involvement of some members

in corruption scandals regarding their misuse of funds.

The NPSC's preparation for a new program to vet all officers also created additional tension within policing institutions. The vetting program started in November, beginning with 32 officers in senior leadership positions, although the top four police leaders were exempted from vetting. There were reports that some officers exercised their right, afforded by the NPSC, to leave the service rather than be vetted. In August the NPSC chairman received a widely publicized death threat in the form of a decapitated human head and wrists delivered to NPSC offices. No formal investigation had been concluded by year's end.

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

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 authorities released accused persons because they had been held longer than the prescribed period.

Police frequently used excessive force when making arrests (see section 1.a.). For example, on August 15, police reportedly opened fire on a motorcyclist who was transporting the illegal alcoholic drink chang'aa when he refused orders to stop his vehicle. He was taken to the hospital with gunshot wounds.

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. 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 authorities frequently released on nominal bail suspects accused of sexually assaulting their female children and allowed them 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 men. According to human rights organizations, police resorted to battery and other forms of torture to coerce confessions from detainees and extort bribes.

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. In early February police arrested more than 30 ethnic Somalis in Eastleigh, including refugees and nonrefugees, releasing them only after they paid bribes of more than Kenya shillings (KSh) 10,000 (\$115) each. In a crackdown on local gang activity on October 22, police arrested 120 persons, including many persons of Somali origin.

The trend extended beyond Nairobi: In an operation reportedly designed to curb poaching, on October 19-20, police arrested 50 persons in Narok County who were primarily of Somali origin.

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. The government claimed that the average time spent in pretrial detention was 14 days, but 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 labor and resource shortages, 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 2011 the government established the Advisory Committee on the Power of Mercy to interview inmates and recommend deserving cases for presidential pardon. Human rights groups noted, however, 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 continued to undergo significant reform and transformation initiated by the constitution.

The president historically had extensive powers over appointments, including for the positions of attorney general, chief justice, and appellate and High Court judges. The constitution, however, vests responsibility for making recommendations for the appointment of judges in the Judicial Services Commission (JSC), a constitutionally mandated oversight body intended to insulate the judiciary from political pressure and which also must publicly vet judge candidates. In 2012 the JSC completed the process of vetting all 53 sitting judges and magistrates. Eleven judges were found unfit, but the government had not dismissed all of the 11 by year's end.

The Supreme Court's hearings on the March 4 presidential election marked its most significant case since its establishment in 2011. While some international observers praised the court's process, some civil society organizations criticized the handling of the case and its verdict. In advance of the March 4 general election, the chief justice proposed changes to laws on election petitions to allow magistrates, in addition to High Court judges, to review petitions in anticipation of the upcoming burden on the judiciary and ensure organizational capacity. The judicial system ultimately reviewed dozens of election petitions during the year. Some civil society groups complained of corruption by the judiciary or improper procedures during the review of election petitions.

The judiciary pursued several internal allegations of corruption during the year. In August the National Assembly's Justice and Legal Affairs Committee began an inquiry into alleged financial improprieties by members of the JSC. In October, JSC members challenged the legality of the National Assembly's inquiry in court and obtained an injunction ordering the parliamentary committee to refrain from debating its report into the matter. In November the committee recommended that President Kenyatta begin proceedings to remove six JSC members despite the injunction. President Kenyatta subsequently formed a tribunal to investigate the charges, but a court in December ruled that the tribunal could not be formed until the courts resolved the JSC's case challenging the legality of the National Assembly inquiry. At year's end the court's ruling was pending.

On October 18, the JSC fired Chief Registrar of the Judiciary Gladys Shollei after finding that she had committed financial improprieties. On November 1, Shollei filed suit to overturn the decision. Shollei's case remained pending at year's end.

The constitution gives the judiciary authority to review all appointments by other branches of government. The judiciary exercised that right in September 2012 by initiating an investigation into Mumo Matemu, whom parliament had appointed to chair the Ethics and Anticorruption Commission. He was reinstated after the court found insufficient evidence of corruption (see section 4).

The law provides for kadhis' 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.

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

During the year the government assembled a working group to develop an International Crimes Division of the High Court, proposed to have jurisdiction over genocide, crimes against humanity, and war crimes, as well as transnational crimes including human trafficking, terrorism, piracy, and money laundering. The division had not been constituted at year's end.

### **Trial Procedures**

Courts try civilians 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. Authorities generally respected a defendant's right to consult with an attorney in a timely manner. 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 remained inconsistent. Often defense lawyers did not have access to government-held evidence before a trial. There were reports that 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, and 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. 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,” but authorities sometimes infringed on citizens’ privacy rights. The law permits police to enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants to apprehend suspected criminals or to seize property believed stolen.

During the year police raided dozens of homes in informal settlements in Nairobi and the coast region in search of suspected terrorists and weapons. In several instances police raids uncovered arms caches and explosives. Police conducted door-to-door searches for individuals believed to be sympathizers of the al-Shabaab extremist group. There were reports that police officers used excessive force during these raids (see section 2.d.). Police in Mombasa also raided homes of individuals believed to have ties to the separatist Mombasa Republican Council (MRC).

Police officers also frequently raided, evicted, or destroyed the homes and businesses of citizens in informal settlements or other areas where residents did not hold proper legal title. Residents complained that authorities often planned these actions to extort bribes.

In June the government assisted a private company in evicting approximately 60 families residing on a long-contested piece of farmland in Naivasha from their homes. A court had ruled that a private company owned the land and authorized the eviction, but evictees alleged that security forces participated in the destruction of families’ property without any advance warning and failed to provide adequate emergency shelter or compensation. Police provided protection for scores of men hired by the private company who were caught on video burning and breaking down homes as residents fled. President Kenyatta and Deputy President Ruto both traveled to the area following the violence, and Ruto promised to secure compensation for the evicted families. The process continued at year’s end.

## **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 police to monitor political rallies, media reports, parliamentary debate, and individual speech for instances of hate speech. In May the quasi-independent but government-legislated Media Council of Kenya ordered *The Star* newspaper to apologize publicly for an article it published in February that stated President Kenyatta was not fit for office. Also in May, Deputy President Ruto publicly threatened to sue the Sunday *Nation* newspaper for “false reporting” concerning Ruto’s use of a luxury jet to visit four African countries.

In some instances the government used hate speech laws to curtail speech considered likely to incite tribal hatred and violence. For example, in January the government formed a National Steering Committee on Media Monitoring that worked in tandem with the NCIC to monitor hate speech before the March 4 election with the intention of putting inciters of violence on notice. The team focused on social media, FM stations, and blog postings deemed to be spreading tribal hatred. The team publicly identified three Facebook administrators for spreading ethnic animosity, although it did not shut down the pages: Luo Nation, RIP Citizen TV, and Nyanza si Kenya.

Press Freedoms: The government occasionally interpreted laws to restrict press freedom, and officials accused the international media of potentially inciting violence. During the year the government considered two media bills--the Media Council Bill and the Kenya Information and Communications (Amendment) Bill (KICA) drafted by the Ministry of Information--that proposed altering government powers to regulate media, among other changes. On October 31, the National Assembly passed a version of the KICA that greatly increased government oversight of the media by creating a complaints tribunal with expansive authority, including the power to remove journalists’ credentials and levy debilitating fines if they violate broadly conceived ethics codes. Following widespread public protests against the bill’s restrictive provisions, President Kenyatta initially returned the bill to parliament without signing it and recommended some changes. On December 4, however, parliament passed a final version of the bill that retained key restrictive provisions. President Kenyatta signed this version into law. At year’s end several prominent journalists, editors, and civil society groups pledged to challenge the law’s constitutionality in court. Of the 15 other 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.

The mainstream media generally remained independent, but there were reports by journalists that government officials pressured them to avoid certain topics or stories or intimidated them upon reading critical work in print. There were also reports that journalists did not report on stories they knew would not be accepted by their editors due to direct or indirect government pressure. All news media continued to report on a wide variety of political and social issues, and most newspapers published opinion pieces criticizing the government.

There were reports that the media intentionally avoided reporting on stories that might incite violence during or after the March 4 general elections, for fear of a repeat of the postelection violence of 2007-08. Critics claimed that by avoiding topics surrounding the Independent Electoral and Boundaries Commission's alleged lack of preparation for the elections, the media gave citizens the impression that the election was held without problems or irregularities and that issues surrounding the fairness of the election process were suppressed.

In June the clerk of the National Assembly, Justin Bundi, ordered journalists to vacate the media center at the National Assembly building and allegedly said journalists could cover parliament only when invited. Speaker of the National Assembly Justin Muturi denied that journalists would be restricted from covering parliament, stating the government would locate an alternative space in the building. Journalists charged that the closure was intended to intimidate them. The government did not announce new accommodation for journalists, although journalists were permitted to attend parliament sessions.

Violence and Harassment: Journalists alleged in a number of cases that security forces harassed and physically intimidated them.

For example, in April Standard Group broadcast journalists Mohammed Ali and John-Allan Namu alleged officials from the Ministry of Interior and Coordination of National Government had threatened them. The journalists said they had received anonymous calls and social media posts regarding a story they broadcast that suggested the late Interior Minister George Saitoti had been murdered. The journalists claimed they were being watched and feared for their lives.

In January two journalists with the Nation Media Group, photographer Dennis Okeyo and cameraman John Otanga, reported to the Media Council of Kenya that members of the GSU attacked them while they covered politically motivated clashes in Nairobi's Kibera neighborhood. Otanga said that after Okeyo showed

GSU officers his press credentials, the officers beat the two of them with clubs, and then took Okeyo's camera memory card and KSh 2,000 (\$23). The Media Council of Kenya condemned the attacks.

There were reports of government criticism and harassment of international media during the year. On March 13, Ministry of Information Director of Information Joseph Owiti warned in a press conference that foreign journalists might be deported if they did not have appropriate accreditation to work in the country. Many observers perceived the comments as an attempt to harass the international media, particularly since the independent Media Council of Kenya is the organization with authority over accreditation rather than the ministry. On October 23, the IGP threatened two well-known local investigative journalists with arrest after they broadcast stories on October 18 in which Kenyan Defense Forces were shown looting Nairobi's Westgate mall following the September 21 attack on the building by al-Shabaab. Police dropped initial summonses against the journalists, apparently in response to public outcry over the threats.

The government frequently failed to investigate allegations of harassment, threats, and physical attacks on members of the media.

Journalists also reported harassment by politicians, business executives, and communities, including in relation to the ICC cases. Threats from members of some communities, who believed journalists did not represent local interests, led journalists to avoid reporting from some areas.

The Standard Group's Robert Wanyonyi claimed the provincial administration in Bungoma targeted him for writing a story on coffee smuggling to Uganda that was allegedly facilitated by Bungoma district commissioners.

*Mediamax's* Paul Gitau wrote a story on potentially illegal activities being carried out in villas owned by foreigners in Malindi, and he reported the villa owners threatened him. Freelancer for *The Star* and *Mediamax* David Wainaina reported he was threatened by local residents believed to be government supporters in Thika and Gatundu, who told him to stop writing stories on the ICC cases because they were not favorable to President Kenyatta. Walter Barasa of *Mediamax* reported community members in Eldoret threatened him after he published stories on the ICC, saying they accused him of writing stories that would be used as evidence against Deputy President Ruto.

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

Libel Laws/National Security: The government cited national or public security as grounds to suppress views that were politically embarrassing. According to the government-led 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 on the military intervention in Somalia.

Government officials and high-ranking individuals brought defamation cases against the media. Defamation law provides for criminal libel, which can result in imprisonment of a journalist.

### **Internet Freedom**

There were no government restrictions on access to the internet. During the year, however, authorities monitored websites and arrested several social media practitioners for hate speech and incitement after the March 4 general elections. The National Steering Committee on Media Monitoring/National Cohesion and Integration Commission team identified six bloggers for use of hate speech. In March authorities arrested one of them, Robert Alai, and charged him with hate speech. Alai was arraigned in Milimani, and his case was pending at year's end. The others included a military officer, a prison warden, a high school teacher, and a high school student.

Mobile phone service providers blocked numerous mass messages during the election period that they judged would incite violence. The NCIC tracked bloggers and social media practitioners accused of spreading hate speech.

According to the International Telecommunication Union, 32 percent of citizens used the internet in 2012. A lack of infrastructure inhibited internet access in some underdeveloped parts of the country.

### **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. 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. Authorities exercised this right in banning political rallies and other demonstrations around the March 4 election, including specifically barring any gatherings outside the Supreme Court when it released its March 30 verdict on the presidential election. Police also 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.

There were reports that some political groups faced harassment that prevented their public assembly. For example, during the year human rights groups reported that police frequently broke up public meetings of the informal political debate society Bunge la Wananchi (“the people’s parliament”) and harassed its members.

Police also used excessive force to disperse demonstrators. For example, on May 14, police used batons to move protesters forcibly, including civil society activists, who brought live pigs to parliament to protest parliamentarians’ efforts to raise their own salaries. Video footage of the event depicted police officers approaching several men who were sitting on the ground and beating one of them repeatedly. The individual fell into a prone position and covered his head, and police did not stop the assault until another demonstrator intervened.

## **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.

In 2012 a High Court overturned the ban on the MRC, a group that advocates the secession of the coast region, although another court later ruled that the organization was not operating as a legally registered society, thereby making its activities illegal. In late 2012 the government ordered a crackdown on the MRC following an attack on a government official that was blamed on the organization.

Police arrested more than 40 MRC members and killed several individuals in the process. Authorities continued to harass the MRC. The government reportedly denied meeting permits to the group, raided its offices and the homes of its organizers, and continued to arrest MRC members. Government officials called the MRC a violent extremist or terrorist group.

### **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. The government generally respected these rights but increasingly enforced restrictions on movement of refugees.

The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to IDPs, refugees, asylum seekers, stateless persons, and other persons of concern. The government maintained its suspension of continuous registration of new refugee arrivals in the Dadaab refugee camps, Nairobi, and other urban areas.

Somali refugees, particularly in Nairobi and in northeastern areas such as the Dadaab refugee camp, experienced frequent harassment. Police and military personnel subjected them to abuse in retaliation for attacks on security personnel throughout the year.

In-country Movement: In July the High Court issued a ruling quashing a December 2012 policy directive to relocate all urban refugees to camps, finding it to be in violation of international refugee and human rights laws, the constitution, and the 2006 Refugee Act. The government subsequently gave notice that it would appeal the High Court decision. In the interim the Department of Refugee Affairs did not resume registration of refugees, and restrictions on movement of refugees continued.

Shortly after the directive was announced, authorities subjected refugees found residing in urban areas to increased harassment, extortion, arbitrary arrest, and

detention. Police routinely stopped individuals and vehicles throughout the country ostensibly to enforce the directive, particularly in urban areas, and often solicited bribes. Police frequently required ethnic Somalis to provide additional identification beyond normal requirements.

Foreign Travel: Civil servants and members of parliament must obtain government permission for international travel, which generally was granted. On November 10, the governments of Kenya and Somalia and the UNHCR signed a tripartite agreement establishing a legal framework and process for the voluntary repatriation of Somali refugees to Somalia when conditions in Somalia permit such returns.

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

A large number of IDPs had not returned home after being displaced in previous years. The Internal Displacement Monitoring Center (IDMC) estimated in 2012 that approximately 200,000 of the 350,000 persons who fled their homes as a result of 2007-08 postelection violence had not returned to their place of origin. The government took steps to address remaining IDPs from postelection violence, including providing cash for resettlement. On November 6, the deputy chairman of the House Committee on Finance, Planning, and Trade reportedly told the National Assembly that 62,784 families had yet to be resettled from the 2007-08 postelection violence.

There were also many IDPs from other crises and from natural disasters. According to the KNCHR, 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 government's eviction of persons and destruction of homes in low-income areas during the year resulted in hundreds of new IDPs. For example, in July the government assisted in evicting hundreds of Maasai families from a plot of land in Naivasha after a court awarded the land to a private company, giving the families no warning and allowing young men hired by the private company to burn the families' homes. Flash floods and land disputes during the year resulted in more IDPs. For example, land disputes between the Kisii, Maasai, and other communities in Narok County in September left hundreds of families displaced and at least eight persons dead.

According to the IDMC, as many as 60,000 persons were newly displaced during the year due to intercommunal and resource-based violence in the Moyale and Marsabit areas of the northern part of the country. Many thousands more were reportedly displaced in other similar conflicts throughout the country (see section 6). In 2012 the IDMC reported a total of 118,000 persons had been newly displaced due to such conflicts.

IDPs were concentrated in informal settlements and camps; many individuals had been displaced because of the 2007-08 postelection violence occurring specifically in the Eldoret and Naivasha areas. Living conditions in such settlements and camps remained poor, with rudimentary housing and little public infrastructure or services. There were reports that some IDPs died of preventable diseases due to squalid conditions and limited access to health care in the camps. In the north, IDP settlements primarily composed of recently displaced ethnic Ethiopians and Somalis were targets of clan and resource-based violence. For example, on June 23, gunmen reported to be of the ethnically Ethiopian Gare clan attacked an IDP camp in Mandera County, launching a grenade that killed 14 persons of the ethnically Ethiopian Degodia clan.

Rapes allegedly perpetrated by IDPs, local residents, and sometimes police personnel occurred in IDP camps. Police sometimes beat and arbitrarily arrested IDPs. For example, in December 2012 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 police officers dragging the IDPs through the streets before placing them in a police vehicle.

Throughout the year the government continued the resettlement of post-2007 election IDPs from camps in the Rift Valley. In 2012 the government asserted that nearly all of the postelection IDPs had been resettled by year's end, directly contradicting the IDMC estimate that approximately 200,000 IDPs from the postelection violence still had not returned home. Similar discrepancies between civil society and government estimates of IDPs persisted during the year.

In September the government announced that it would close all IDP camps within the month and would offer cash, rather than land for resettlement, to remaining IDPs. The cabinet secretary for the Ministry of Devolution and Planning, the ministry newly responsible for IDPs under a government reorganization, stated the government would offer KSh 400,000 (\$4,600) per person to individuals displaced during the 2007-08 postelection violence and the 2009 government eviction of

residents from the Mau Forest in order for them to purchase land. The media reported mixed reactions to the decision. Just weeks prior, the government had announced plans to provide new homes for the Mau Forest evictees. IDPs at Vumilia Eldoret IDP camp in the Rift Valley told journalists the cash-for-resettlement plan violated the government's commitment to resettle IDPs and complained that the proposed monetary compensation was insufficient to secure land.

The government continued to pressure IDPs to return to their homes. Civil society reports also indicated that some resettled residents were exposed to sexual violence and harassment. There were also reports during the year that the government abandoned some IDPs after moving them to temporary resettlement locations. Media coverage highlighted several dozen elderly IDPs who were given resettlement priority in 2008 and transferred from Mawingu camp to a farm allotted to IDPs. Although the government reportedly promised to finish constructing permanent buildings and provide food relief for these elderly IDPs, only partial construction had occurred and food deliveries had nearly ceased at year's end.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status for those claiming asylum, and the government generally coordinated with the UNHCR to provide assistance and protection to refugees. The number of new refugees arriving steadily increased from the previous year, including significant numbers of Sudanese and South Sudanese, as well as new arrivals from Burundi, the Democratic Republic of Congo, Ethiopia, and Somalia, although the Somali refugee influx was less than in 2011 and 2012. Security threats emanating from Somalia and those associated with the Dadaab refugee camps in Kenya severely strained the government's ability to provide security to those seeking asylum, thereby impeding the efforts of the UNHCR and other humanitarian organizations to assist and protect refugees and asylum seekers.

According to the UNHCR, the total number of registered refugees as of late October exceeded 585,000, including more than 405,000 in the Dadaab refugee camp (majority Somalis), 127,000 in the Kakuma refugee camp (majority Somalis and South Sudanese), and 51,000 in Nairobi (majority Somalis). The unofficial estimate of urban refugees exceeded 100,000.

The number of new refugees arriving from Somalia declined, although an accurate count was unknown, since continuous registration of refugees was suspended in the Dadaab refugee camp in October 2011 and in urban areas in December 2012 (although registration continued in the Kakuma refugee camp during the year). A joint UNHCR-government population verification exercise in the Dadaab refugee camp, however, showed a decrease of 60-80,000 refugees in the camps, likely due to relocation to urban areas and other departures or other circumstances. The government canceled its original plans to allow thousands of new arrivals in the Dadaab refugee camp to register during the year, instead allowing only 863 new refugees in Dadaab to do so during a three-day window in June. In the Kakuma refugee camp, due to conditions in Sudan and South Sudan, 11,042 new arrivals registered through August, compared with 11,542 registered in Kakuma in all of 2012.

The government officially took responsibility for refugee registration, moving to implement a new government-issued identity card as the sole proof of refugee status in the country. A lack of government capacity hampered the process of distributing the cards. The government recognized Somalis from south and central Somalia as refugees on a prima facie basis and, therefore, did not require a refugee status determination for them. Continuous refugee registration was indefinitely suspended in Dadaab and urban areas.

Refugee Abuse: The prevalence and severity of police abuse of refugees increased significantly following the government's announcement of its directive to relocate all urban refugees to camps. HRW and Refugees International reported that security force members treated refugees brutally during house-to-house searches and round-ups of individuals over the course of 10 weeks. In late 2012 and early in the year, police officers beat scores of refugees, including women and children. HRW also noted that police raped women, including two cases of gang rape, attempted to rape others, looted shops, and stole money from refugees. In Mombasa, Malindi, Isiolo, Nakuru, and Eldoret, police routinely and arbitrarily stopped refugees and demanded bribes, and they threatened to deport those who were unable to pay.

Police round-ups and security sweeps of refugees and ethnic Somalis increased after the government's 2011 military incursion campaign in Somalia, which triggered a series of retaliatory improvised explosive device, grenade, and gun attacks in the Dadaab refugee camp, Garissa, Nairobi, and Mombasa by al-Shabaab or its sympathizers. For example, in April, after grenade attacks killed 10 individuals in Garissa, police conducted a security sweep of the Garissa and

Dadaab refugee camps and arrested more than 500 individuals who were primarily refugees or undocumented Somalis. Police charged 111 refugees and undocumented individuals with failure to register as a refugee or illegally residing outside designated refugee areas. Following a November 2012 grenade attack on a bus in the Eastleigh district of Nairobi, HRW received reports from Ethiopian and Somali refugees that police conducted multiple sweeps of the neighborhood over the course of several weeks. Refugees reported that police from the APS, KPS, GSU, and Criminal Investigation Department physically abused them.

Kituo cha Sheria, a local legal aid NGO that worked with refugees and asylum seekers in Nairobi, noted in 2012 that police frequently arrested refugees and threatened them with charges of terrorism or membership in an organized criminal gang. This trend continued during the year. Police often did not record the arrests or take the refugees to court, detaining them until relatives brought bribes to secure their release. Lawyers from Kituo cha Sheria were sometimes denied access to detained refugees.

In 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 in the town of Liboi. In November 2011 the total number of officers deployed to the Dadaab refugee camp reached 349. Security sharply deteriorated in the Dadaab refugee camp starting in September 2011, forcing the UNHCR and NGOs that work with refugees to suspend some activities in the camps. Although criminality decreased over time (particularly during Ramadan in July) to sporadic events of banditry, the previous attacks increased calls for the international community to offer humanitarian assistance inside a “liberated” buffer zone on the Somali side of the border.

The security situation in Dadaab remained precarious, although there were some improvements. During the year a majority of police officers were reassigned to other areas for the March 4 general elections, and only a very small contingent remained in the Dadaab refugee camp at year’s end.

Sexual and gender-based violence remained problems in both the Dadaab and Kakuma refugee camps. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, FGM/C, 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 the Dadaab refugee camp, however, the government's limited ability and the UNHCR's restricted access and limited ability to provide refugee services or protection resulted in numerous cases of sexual and gender-based violence and the underreporting of crimes and abuse.

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. Refugees generally dealt with criminality in accordance with customary law and traditional practices rather than through the country's justice system. 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, according to the UNHCR.

Refugees' freedom of movement remained restricted outside of the Dadaab and Kakuma refugee camps. In July the High Court declared unconstitutional the December 2012 directive in which the government announced its intention to enforce an encampment policy requiring refugees to remain at the camps and for all refugees in urban centers to report to Dadaab or Kakuma refugee camps. For a period after the announced directive, urban refugees were harassed, arrested, and requested to pay bribes for violating the encampment directive. The government granted limited permission to refugees to receive specialized medical care outside the camps and to refugees in the resettlement pipeline, and it made exceptions to the encampment policy for extremely vulnerable groups in need of protection.

Numerous refugees were arrested for violating movement restrictions. 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 the Dadaab camp were detained for unauthorized movement outside the camp in 2011, of whom 330 were minors who authorities transferred to the UNHCR. In the Kakuma refugee camp 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 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.

On July 30, Cabinet Secretary for Land Charity Ngilu announced the allocation of 300 acres of public land for a private group representing the Nubian Council of Elders that asserts an ancestral claim to approximately 700 acres of land, including the Kibera informal settlement of Nairobi. The newly established National Land Commission, vested with powers of land adjudication through the constitution and 2012 implementing legislation, protested that it had not approved the allocation.

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

### **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. On March 4, citizens exercised this right through generally free and credible multi-party elections held based on universal suffrage. Although the runner-up presidential candidate petitioned to annul the results based on irregularities in voter registration and vote tallying, on March 30, the Supreme Court ruled that these irregularities were not significant enough to render the election invalid and upheld the results.

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,

including the creation of a senate, the realization of new parliamentary representative positions, and the establishment of 47 county governments and legislatures, as well as devolution of certain authorities to these county governments after the March 4 election. Full implementation of constitutional reforms, however, was expected to take years. In some instances the government removed or altered key provisions of 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 proposed amendments that would increase restrictions on media freedom in two key bills, which critics said would increase government's ability to restrict the media. In 2012 the government removed key provisions from the 2012 Leadership and Integrity Act, weakening protections against official corruption.

### **Elections and Political Participation**

Recent Elections: On March 4, citizens voted in the first general election under the new constitution, electing executive leadership, parliamentarians including members of the newly established senate, governors, and members of the new county assemblies. International and domestic observers judged the elections to be generally free and credible, although some civil society groups raised concerns about irregularities and questioned the results. In the presidential election, Jubilee Coalition candidate Uhuru Kenyatta was proclaimed the winner with a moderate margin over runner-up candidate Raila Odinga of CORD. Kenyatta received a simple majority at 50.07 percent of votes cast as well as over 25 percent of votes in more than half of the country's 47 counties, without which the constitution mandates a subsequent run-off election. Odinga challenged the results in a petition to the Supreme Court, citing irregularities in voter registration and technical problems with vote tallying. The Supreme Court ruled unanimously on March 30 to uphold the results. Odinga shortly thereafter accepted the ruling and urged his supporters to do the same. On July 29, an election observation consortium, the Elections Observation Group, released its final report on the elections, finding that they were generally credible despite being fraught with technological failures and a lack of preparedness by the Independent Electoral and Boundaries Commission (IEBC).

Voting and counting at polling stations generally were conducted in accordance with democratic standards, although there were some irregularities in strongholds of the two major opposing political alliances.

The country remained generally calm following the elections. After the court

verdict upholding Kenyatta's victory, followers of losing candidate Raila Odinga initiated isolated but intense protests in areas of Nairobi and Kisumu, destroying businesses and homes, blocking streets, and confronting police. Police reportedly killed five protesters in Kisumu and shot several others in Nairobi. The media reported dozens more were injured and more than 100 displaced during the clashes.

During the campaign leading up to the March 4 elections, there were instances of violence. On March 3, hours before the polls were due to open, coordinated attacks in Mombasa and at four Kilifi County polling stations left at least 10 security officers, a polling station official, and several of the attackers dead. One polling station was forced to close and others delayed their openings because of the violence. Some observers attributed the attacks to the separatist MRC movement, while others alleged that politicians had orchestrated the violence to depress turnout in the coast region stronghold of CORD.

Although the government required parties to register political rallies in advance, the government generally did not interfere with party campaign activities. Text messages, pamphlets, and blogs sometimes were used to disseminate hate speech that the election code of conduct banned (see section 2.a.).

To reduce voter fraud, the government instituted biometric voter registration of all citizens ahead of the March elections. Voter registration began in November 2012 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 IEBC, census bureau, and Ministry of Immigration estimated that at least three million citizens, primarily youth, did not have national identity cards, while civil society organizations estimates put the number 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. Ethnic Somali and Muslim populations on the coast complained of discriminatory treatment in the issuance of registration cards, noting they were sometimes asked to produce documentation proving their parents were Kenyan citizens. The government was ill prepared to issue the large number of documents required for registration in a timely fashion, and many citizens lived too far from collection points to pick up national identity cards once they had been issued.

In October the government arrested four IEBC officials for failing to comply with procurement laws and abuse of office in relation to their involvement in electronic

voter identification devices. The case continued at year's end.

In August the IEBC conducted its first by-election of the year, for the Makueni County senate seat. Observers deemed the by-election, which the opposition party candidate won, free and fair. The IEBC disqualified the initial opposition party candidate immediately before the by-election because she was not a registered voter and later investigated her for falsifying candidacy eligibility documents.

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 had registered to vote, an independent review commission concluded that voter rolls contained the names of approximately 1.3 million deceased persons.

Political Parties: There were numerous political parties. In February the IEBC announced 59 political parties were formally registered. Eight 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.

Participation of Women and Minorities: Women's participation in electoral politics remained low. While a record number of female candidates ran for parliament in 2007 despite harassment and attacks, in 2013 fewer women secured elected positions than in 2007. In the National Assembly, only 16 of the 290 open seats went to women. No female governors or senators were elected. The new constitution provides that no more than two-thirds of any elected or appointed government body can be of one gender. The Supreme Court ruled in December 2012 that the gender requirement can be applied progressively, noting the practical impediments to electing enough women to meet the quota in the March elections. The court set a new deadline of 2015 for parliament to institute a mechanism for enforcing the gender requirement. The constitution created the new elected position of women's representative for each county to increase the political participation of women in the National Assembly. Many female candidates, however, reported that fellow male politicians actively discouraged them from contesting other political positions. County assemblies also failed to meet the one-third gender threshold in the elections, although a constitutional provision allows county assemblies to continue adding women from party lists progressively until the threshold is met.

The constitution provides for the representation in government of ethnic minorities, but implementation was incomplete.

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

The law provides for criminal penalties for official corruption; however, the previous and current government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. Despite many scandals no top officials were prosecuted successfully for corruption during the year. The World Bank's most recent Worldwide Governance Indicators indicated that corruption was a severe problem. Official-level corruption often came in the form of land seizures and conflict of interest in government procurement.

Corruption: The Ethics and Anticorruption Commission (EACC), an independent agency, continued to investigate corruption and develop and enforce a code of ethics for public officials. The EACC lacked prosecutorial authority, which remained with the DPP, to bring senior officials to justice. The Leadership and Integrity Bill of 2012, a watered-down version of a previously introduced integrity bill, allowed candidates with pending criminal court cases to run for government office and stripped the EACC of its authority to gather information from government bodies on political candidates. Both the EACC and DPP suffered from capacity constraints to carry out their mandates effectively.

In July, Mumo Matemu was reinstated as the EACC's chairman, replacing Abdi Ahmed Muhammed, after the Court of Appeals reversed the High Court decision that nullified Matemu's appointment as chairman in September 2012 amid allegations of financial impropriety during his tenure as commissioner at the Kenya Revenue Authority and legal counsel at the Agricultural Finance Corporation. Although the High Court had criticized the government for failing to investigate accusations against Matemu, the appellate court ruled that evidence against Matemu was insufficient to deny him the chairmanship. Throughout the year key technical staff members, including investigators, left the EACC to pursue other career options, which severely weakened the institution.

According to the government's *Economic Survey for 2013*, the number of cases the EACC handled declined by 51 percent, from 7,326 in 2011 to 3,592 in 2012. The number of criminal cases the EACC referred to other investigative agencies dropped from 2,916 in 2011 to 1,486 in 2012. The number of cases the EACC referred to the DPP dropped by 49 percent, from 138 in 2011 to 70 in 2012. Most of these cases involved mid- or low-level officials.

Despite the implementation of significant judicial reforms, corruption persisted throughout all levels of the legal system. Transparency International's Global Corruption Barometer 2013 found police, the judicial system, registry and permit service, and land service to be the country's most corrupt institutions. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases. To address corruption in the judiciary, in April 2012 the JSC established the Judges and Magistrates Vetting Board. By December 2012 the board had vetted all 53 judges in office. The process declared 11 judges unfit to continue serving in the judiciary, but the government dismissed only eight.

Although police corruption was endemic, authorities rarely arrested and prosecuted officers for corruption (see section 1.d., Role of the Police and Security Apparatus).

In January the National Taxpayers Association released results of a sample audit it conducted in 2012 of 28 constituencies (out of 210) that received money from the national Constituency Development Fund. The association reported the disappearance of KSh 355 million (\$4.1 million), a high prevalence of ghost projects, and inflated project costs. The association blamed parliament, the overseer of the fund, of mismanagement. In September 2012 the National Taxpayers Association alleged that as much as KSh 25.77 billion (\$298 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 a court accused Nairobi parliamentarian John Njoroge, a former Nairobi deputy mayor, of soliciting a bribe of KSh 150,000 (\$1,730) from a contractor to authorize payment of KSh 3.3 million (\$38,000) to the contractor for the construction of a secondary school. At year's end Njoroge was free on bond awaiting trial.

In March the government indicted former foreign affairs permanent secretary Thuita Mwangi, former charge d'affaires of the embassy in Tokyo Allan Mburu, and the deputy director of administration at the Ministry of Foreign Affairs, Anthony Mwaniki Muchiri, on allegations of corruption in the 2010 procurement of the chancery and ambassador's residence in Tokyo. They were released on bail of KSh two million (\$23,120). The case was pending at year's end.

Local media reported on allegations of high-level corruption related to energy, airport construction, and infrastructure contracts awarded to Chinese firms that allegedly did not comply with public procurement laws.

Corruption investigations were in progress 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, National Health Insurance Fund, and National Bureau of Statistics also faced corruption allegations.

There were developments in corruption cases from previous years.

In an unprecedented ruling, in June the High Court ordered Deputy President William Ruto to surrender a 100-acre farm and pay KSh five million (\$57,800) in compensation to a farmer who sued Ruto for illegally taking his land during the 2007 election violence. In August, Ruto returned the land to the farmer.

The government freed on bail two former government officials convicted of corruption in 2012 while appealing their convictions. Former permanent secretary of the Ministry of Tourism Rebecca Nabutola was found guilty of defrauding the ministry of KSh 8.9 million (\$102,900). Former deputy director at the Ministry of Education Enos Magwa was sentenced to three years in jail and fined KSh 3.6 million (\$41,600) for his part in the disappearance of KSh 4.2 billion (\$48.6 million) meant for free primary education.

Whistleblower Protection: The 2006 Witness Protection Act calls for the protection of witnesses in criminal cases and the creation of the Witness Protection Agency, and it outlines the agency's powers, functions, and management. The Witness Protection Agency became operational in 2011, first under the Attorney General's Office but later as an independent agency. Limited funding and technical expertise, inexperienced staff, and a lack of public awareness of its duties hampered the effectiveness of the agency. It also faced the challenge of gaining witnesses' trust in the agency's ability to provide them adequate protection. The media and the agency reported that witnesses often recanted their statements, went into hiding, or ultimately refused to testify. The agency suspected witness intimidation. Protection services were most often given to witnesses in organized crime, corruption, 2007 post-election violence, and murder cases.

Financial Disclosure: The law requires that all public officers declare publicly their income, assets, and liabilities every two years. 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, a fine of up to KSh 500,000 (\$5,780), or both.

The Leadership and Integrity Act of 2012 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. No public officer declarations of wealth or conflicts of interest were challenged in public, although this information is not publicly available. The law required candidates seeking appointment to public office (nonelective) to declare their wealth, political affiliations, and relationships with other senior public officers. This requirement is in addition to background screening on education, tax compliance, leadership, and integrity, which was generally implemented.

Public Access to Information: The constitution provides citizens with access to information held by the state and requires the state to publish and publicize important information affecting the nation. 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 2012. This followed the 2011 launch of Kenya Open Data, a website containing selected data from the most recent national census and on government expenditures, parliamentary proceedings, and public service locations. The government spokesperson'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, although some groups reported experiencing increased government harassment. Government officials were sometimes cooperative and responsive to the queries of these groups, but 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. Less-established NGOs, particularly in rural areas, reported harassment and threats by county-level officials and security forces. Human rights activists claimed that security forces conducted surveillance of their activities, and some reported threats and intimidation.

On August 7, Ali Hassan Guyo, an activist for the rights of women, children and refugees, was shot and killed in the town of Moyale near the Kenyan-Ethiopian border. Seven leading local and international human rights groups issued a joint press release after the killing stating that a military officer shot Guyo as he was documenting excessive use of force by security personnel. The human rights groups reported that members of the military had been called to Moyale that day to assist police in containing a public protest against a local police official. The human rights groups, including the government-sponsored KNCHR, further alleged that military officers actively prevented onlookers from taking Guyo to the hospital. The Kenya Defense Forces wrote a letter to the KNCHR in October pledging to undertake a fact-finding mission to Moyale to investigate the killing, but results of the investigation had not been released by year's end.

An August survey report by Rift Valley NGO the National Association for Human Rights Activists, titled "A Cry for Justice: The State of Human Rights Defenders in Kenya," contained testimony from 23 human rights defenders across the country who described a range of intimidating or threatening action allegedly undertaken by government officials. The most common form of harassment activists reported was arrest on fabricated charges. Others reported being assaulted by police, being placed under surveillance, facing frequent office break-ins, and receiving direct threats from police officers and others allegedly hired by local politicians. Many reported that they relocated their residences for safety.

The government frequently failed to respond to attacks on human rights activists. In October 2012 police at Pangani police station in Nairobi arrested seven human rights activists, including an Amnesty International (AI) staff member, who had arrived for a prearranged meeting with the station's commanding officer to discuss

policing in Nairobi's Mathare informal settlement. Police beat the activists and arrested them on what AI termed "trumped-up charges" of incitement to violence, obstructing an officer, and disorderly behavior but did not record their arrest. Police refused to grant AI's lawyer access to the activists, denying that they were being held. The activists ultimately were released and initiated a lawsuit against police, but no official investigation had been completed by year's end.

On September 20, Maina Kiai, a long-time human rights activist and current UN special rapporteur on the rights to freedom of peaceful assembly and of association, issued a statement describing threats against him by unidentified militia groups. While Kiai thanked police for alerting him to some of these threats, he argued that politicians, including staff of President Kenyatta's office and the president himself, were behind "vicious attacks" against civil society and creating an "extremely intimidating environment" for activists, witnesses, and others. Kiai stated that he would hold the president personally responsible should Kiai, his family, or other human rights defenders be harmed.

Many domestic organizations advocated specifically for human rights in the country and produced reports cataloguing key areas of abuse during the year. Many other civil society groups had sub-offices and staff members dedicated to human rights work as part of their broader missions.

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.

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. In 2012 and during the year, the terms of all KNCHR commissioners, including the chairperson and subsequent acting chairpersons, expired. Commissioner seats remained vacant as a court reviewed a petition by minority groups challenging the representativeness of short-

listed candidates. After the court dismissed the original petition challenging the new candidates in August, the attorney general ordered the KNCHR to start its recruitment process afresh, further delaying staffing the commission. The process continued at year's end. Civil society groups and journalists argued that the government deliberately undermined the KNCHR by dragging out the appointment of new staff.

The Truth, Justice, and Reconciliation Commission (TJRC) was established in 2009 to investigate gross human rights violations and other historical injustices between independence in 1963 until February 2008. On May 21, the TJRC presented its final report to President Kenyatta. The report concluded that government institutions and office holders committed gross violations of human rights--including massacres, torture, political assassinations, arbitrary detention of political opponents, sexual violence, and violations of children's rights--during the period covered. The report recommended, among other things, that multiple former presidents and former heads of security institutions issue public apologies for past human rights violations. Individuals named in the report's recommendations for further investigation included 38 current and former members of parliament and 22 current and former police officials.

The TJRC's three international commissioners published a dissent in local media complaining of political interference by the government in the work of the TJRC on the chapter of the report addressing land. In June the report was presented to parliament, which was tasked with reviewing the recommendations and developing plans for implementation. In August members of parliament drafted a bill to amend the TJRC Act of 2008 to allow parliament to change the content of the report, including the recommendations. Some civil society groups expressed concerns that parliament would alter or fail to implement key recommendations in the report. Two relatives of President Kenyatta filed separate lawsuits against the TJRC to expunge text in the report linking them to illegal land acquisition. A private citizen also filed a lawsuit contending that the recommendations of the commission cannot be considered mandatory under the constitutional framework. Implementation of the report's recommendations had not begun by year's end.

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

The constitution and law prohibit discrimination based on race, gender, disability, language, or social status. Government authorities did not effectively enforce many of these provisions, and discrimination against women, lesbian, gay, bisexual, and transgender (LGBT) persons, individuals with HIV/AIDS, persons

with disabilities, persons suspected of witchcraft, and certain ethnic groups 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 civil society groups indicated that victims did not report as many as 95 percent of sexual offenses to 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. In October citizens gathered more than one million international signatures for a petition protesting government mishandling of a gang rape of a 16-year-old girl in Busia, in which a court reportedly ordered several perpetrators to cut grass as punishment for their crime.

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, compared with 4,551 cases of gender-based violence, including 922 rapes, in 2010. Human rights groups, however, estimated that the actual number of rapes and other cases of gender-based violence was much higher. A study by the NGO Peace Initiative Kenya identified 383 cases of rape reported in the media between January and May, noting a 15 percent increase from that same period in 2012. The study stated that Nairobi's women's hospital reported receiving an average of 18 cases of rape and incest daily. The Coalition on Violence Against Women estimated that 16,500 rapes occurred per year. Several NGOs working to end gender-based violence stated in November that unofficial reports of rape during the year had already exceeded that number.

A December 2012 study on violence against women in Nairobi by the Small Arms Survey, a project funded by the Swiss government, found that the number of rapes

reported to Nairobi's largest post-rape service centers had risen during the year. The study also found that these centers were treating an increasing number of underage females--more female children than female adults--for sexual violence. The study also noted that women in informal settlements were more often targets of regular sexual violence. An NTV Kenya television program reported a dramatic increase in gang rapes in the Dandora informal settlement in Nairobi during the year. Sexual and gender-based violence also remained significant problems in the Dadaab and Kakuma refugee camps (see section 2.d.).

The rate of reporting and prosecution of rape remained low because of police practice requiring a police physician examine victims; 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 the victim accused family members, friends, or acquaintances of committing the rape; poor training of prosecutors; and the unavailability of doctors who might provide the evidence necessary for conviction. Reporting also remained low due to traditional attitudes toward sexual violence. A 2010 baseline survey by the National Commission on Gender and Development reported that 72 percent of respondents did not consider gender-based physical violence, including rape, to be "serious" crimes.

In 2009 the government promulgated national guidelines on the management of sexual violence, including the handling of forensic evidence, post-rape care, and victim support, 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 2012 and during the year, police hired two additional police physicians for Nairobi following reports by human groups criticizing the existing physician's unavailability. Human rights groups reported these additions significantly improved the speed and frequency of investigations into sexual crimes, but they also continued to note that the physicians sometimes were unavailable to conduct exams, failed to appear in court, and issued examination reports that conflicted with the findings of other medical professionals. Police physicians generally were not present in rural areas.

In 2012 police approved a change in procedure to allow clinical officers, in addition to police physicians, to examine victims of sexual violence; however, implementation of this change was slow during the year. Police prosecutors continued to require the same physician or clinical officer who conducted the initial examination to testify during trial. Human rights groups reported that lengthy and frequently interrupted trial procedures deterred clinical officers and

outside medical professionals from assisting with the investigation of sexual violence cases. The new forms used to report sexual assaults, which many in civil society hailed as an important step in professionalizing police response to such crimes, were unavailable at most police stations at year's end. Police also lacked the facilities to preserve forensic evidence. As a result, police did not investigate numerous alleged cases of sexual violence, 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. The UN Population Fund's 2012 annual report indicated 39 percent of women experienced gender-based violence after the age of 15, primarily perpetrated by husbands. 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. Economically disadvantaged women with limited access to education living outside major cities were more likely to be inherited.

Female Genital Mutilation/Cutting (FGM/C): 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. IPOA reported in August that police officers frequently solicited sexual favors from junior officers to influence transfers and promotions and pledged to investigate cases that had been brought to the oversight body.

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 39 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 UN estimates, the maternal mortality ratio in 2010 was 360 deaths per 100,000 live births, a decline from 450 in 2005. A woman's lifetime risk of dying as a result of pregnancy or childbirth was 1 in 55. Of the 5,500 estimated maternal deaths, 20 percent were AIDS-related. 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. Nonetheless, 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.

During the year parliament reviewed a new Marriage Bill with a controversial provision requiring husbands to seek existing wives' permission before taking on an additional wife, which supporters cited as a safeguard for wives in regions with widespread polygamy but critics cited as the institutionalization of a practice harmful to women. The draft bill also included provisions to strengthen property rights for wives. In November, however, the National Assembly passed a draft of the separate Matrimonial Property Bill 2013 in which provisions in its earlier draft that protected the 50-50 ownership of jointly held property between man and wife had been altered. The version that was passed instead dictated that ownership of jointly held property would depend on how much each spouse contributed monetarily to that property. Many women's rights groups and female members of parliament argued this provision was discriminatory and regressive.

Under the new government structure, the former Ministry of Gender, Children, and Social Development was subsumed into other ministries, including the newly created Ministry of Labor, Social Security, and Services, although the Ministry for Devolution and Planning is now the lead ministry for implementation of laws protecting the rights of women.

## **Children**

Birth Registration: A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Parents in rural areas often did not register births, 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.

The law requires citizens 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 is 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 five 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 in 2012 ordered local government leaders to arrest parents who did not send their children to school, but authorities did not enforce this law 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, occurred frequently. Child rape and molestation continued to be serious problems. In 2011 police received reports that 3,191 children were defiled (defined as a sexual act with a child involving penetration), 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 16 and 18. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy.

In November 2012 the government released the results of its first national survey on violence against children, which was launched in 2010 in collaboration with the U.S. Centers for Disease Control and Prevention, the Kenya National Bureau of Statistics, and UN Children's Fund (UNICEF). The survey found that 32 percent of female respondents and 18 percent of male respondents between the ages of 18 and 24 had experienced sexual violence before the age of 18. One in 10 female respondents and one in 20 male respondents between the ages of 13 and 17 reported in the survey that they had experienced sexual violence during the previous year; 66 percent of female respondents and 73 percent of male respondents had experienced physical violence of varying types during childhood. Results also indicated that perpetrators of physical, sexual, and emotional violence were rarely strangers to the child: Romantic partners were the most common

perpetrators of sexual violence, followed by neighbors, while parents and teachers were the most common perpetrators of physical and emotional violence.

Awareness of and access to professional postviolence support services were very low, although an estimated 90 percent of respondents who had experienced sexual violence said they were aware of facilities that offered HIV-testing services.

The Teachers Service Commission reported in 2011 that more than 160 cases of sexual misconduct were filed against teachers across the country; however, cases prosecuted were considered a fraction of actual abuses. 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 banned corporal punishment in schools, but there were reports that corporal punishment occurred throughout the year.

Forced and Early Marriage: The media frequently highlighted the problem of child marriage, which was commonly practiced among some ethnic groups. A 2012 report on child marriage by the UN Population Fund found that 26.4 percent of respondents were married before the age of 18 and noted a strong correlation between poverty and child marriage. The report also noted that child marriage increased during conflicts or after natural disasters, as families sought to benefit economically from or offer alternative financial security for young daughters. 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: A 2011 law makes it illegal to practice FGM/C, procure the services of someone who practices FGM/C, or send a person out of the country to undergo the procedure. The law also makes it illegal to make derogatory remarks about a woman who has not undergone FGM/C. Although the 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/C. 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.

The media reported arrests of perpetrators and parents who agreed to FGM/C during the year. For example, on June 25, the *Daily Nation* newspaper reported that a mother was charged in a local court for failing to report the forced performance of an FGM/C ritual on her daughter. The 2012 joint UN Population Fund and UNICEF annual report on FGM/C highlighted several arrests of FGM/C perpetrators and noted key leaders of the Kisii ethnic community publicly renounced the practice in June 2012. The media also reported, however, that parents in regions with a high prevalence of FGM/C frequently bribed police to allow the practice to continue unchecked.

Leading newspapers noted a growing number of female students in certain regions of the country refused to return home for the August school holiday to avoid FGM/C ceremonies traditionally performed during that time of the year. 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, but in some communities, this effort was unsuccessful. There were reports during the year that the practice of FGM/C increasingly occurred underground rather than through traditional public ceremonies to avoid prosecution by authorities.

Media reports indicated that discrimination against uncircumcised boys continued.

Sexual Exploitation of Children: The penal code criminalizes sexual exploitation of children, including prohibiting procurement of a girl under age 21 for unlawful sexual relations. The Employment Act of 2007, Counter-Trafficking in Persons Act of 2010, and Sexual Offenses Act of 2006 prohibit domestic and international trafficking, or the recruitment, harboring, transportation, transfer, or receipt of children for the purpose of forced labor, as well as child soldiering, offering of a child for the production of pornography or for pornographic performances, and the use by an adult for illegal activities (such as drug trafficking) of children up to age 18. Provisions apply equally for girls and boys. The Sexual Offences Act has specific sections on child trafficking, child sex tourism, child prostitution, and child pornography. Nevertheless, children were sexually exploited and were victims of trafficking.

In 2012 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. Parents sometimes initiated prostitution. 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 region.

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 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 in 2012 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. As part of a new tourism bill, the Tourism Regulatory Authority was established in 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 ethnically based militias and the al-Shabaab extremist group recruited children.

Displaced Children: Poverty and the spread of HIV/AIDS continued to intensify the problem of child homelessness. Street children faced harassment and physical and sexual abuse from police and others and within the juvenile justice system. The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to 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. For country-specific information, see the Department of State's report

at [travel.state.gov/content/childabduction/english/country/kenya.html](http://travel.state.gov/content/childabduction/english/country/kenya.html).

### **Anti-Semitism**

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

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/](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 in 2012 that schools enrolled fewer than 10 percent of children with special needs, and that no curriculum existed for teaching children with learning disabilities.

During the year IMLU issued a first-ever survey on discrimination against and torture of persons with mental disabilities. The survey found the highest rates of physical assault on the mentally disabled occurred in schools, with more than 60 percent of respondents reporting they had experienced caning and other violence, often due to failure to perform adequately on academic tests rather than due to bad behavior. Torture, degrading treatment, inhuman conditions, and sexual abuse of persons with mental disabilities were high at police stations and in prisons. More

than 58 percent of patients surveyed had experienced torture or inhumane treatment in their homes. There was also a high prevalence of abuse of mentally disabled patients in hospitals, including assault by both hospital staff and fellow patients and denial of adequate facilities for bathing and sleeping.

There were reported killings of persons with disabilities during the year, and the government took action in some cases. On September 4, a Nairobi court sentenced a woman to six years in jail for pushing her five-year-old deaf and dumb son into a pit where he was later found dead.

In 2012 the KNCHR carried out a survey on the status of the rights of persons with disabilities in Uasin Gishu and Elgeyo Marakwet counties. 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 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 it targeted few households, and the amount of KSh 1,500 (\$17.34) distributed monthly was 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. During by-elections in 2012, however, 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 try to ensure that all persons were able to cast their votes in the March elections.

Under the new government structure, the former Ministry of Gender, Children, and Social Development was subsumed into other ministries, and the Ministry for Devolution and Planning became the lead ministry for implementation of the law to protect persons with disabilities. The quasi-independent but government-funded parastatal National Council for Persons with Disabilities assisted the ministry. Neither entity received sufficient resources to address effectively 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.

During the year Isaac Mwaura became the first person with albinism to serve in parliament when his party nominated him for a seat in the National Assembly designated for marginalized persons. Mwaura led other nominated and elected parliamentarians with disabilities in forming the Kenya Disability Parliamentary Caucus, which was formally launched in June. Caucus members issued a strategy statement focusing on improving economic empowerment and physical access for persons with disabilities as well as integrating disability rights into county government policies.

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. The government carried out a census of persons with albinism in 2012 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. During the year the National Council of Persons with Disabilities and the Kenya Albino Child Support Program, in partnership with the government, began an awareness campaign to combat discrimination and continued to distribute sunscreen.

### **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, five million; Luo, four 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 regional droughts, political rivalries, and the inability of security forces to quell violence adequately. Conflict between landowners and squatters was particularly severe in the Rift Valley and the coast region, while competition for water and pasturage was especially serious in the north and northeast.

The process of devolving fiscal and administrative responsibility to county governments, which began following the March 4 elections, led to an increase in interethnic conflict in some areas.

Throughout the year conflict flared in several parts of the country. Violence between the ethnically Ethiopian but primarily Kenya-based Gare and Degodia clans occurred in Mandera and Wajir counties throughout the year. Dozens were killed and hundreds displaced in the region in attacks by militia groups from the two clans, who sought control over land, other resources, and political power. The government sent hundreds of police officers and members of the Kenya Defense Forces to assist local security forces in disarming area residents. From March to May, violence erupted in Bungoma and Busia counties that left more than a dozen persons dead and hundreds of residents injured. Unidentified gangs attacked local residents across the region, and police were at a loss to explain the motivation behind the violence. The inspector general of police sent more than 150 reinforcement officers, including from the GSU, Special Crimes Prevention Unit, and Criminal Investigations Department, to quell the violence. Police arrested hundreds of area residents on suspicion of involvement in the violence, although many were not formally charged for weeks or months. Several political and local leaders were accused of instigating the violence. Intercommunal and resource-based violence also occurred in the Moyale and Marsabit areas in the north. Civil society and media reports indicated tens of thousands of area residents were

displaced due to the violence. The Kenya Defense Forces sent troops to the area to restore calm.

The Tana River Delta, a region on the coast, continued to experience severe ethnic violence. Clashes resumed in the region early in the year as both Orma and Pokomo ethnic groups carried out revenge attacks. In January, 20 additional persons were killed despite the presence of the estimated 2,000 police officers deployed to the area, although by the end of the year, an estimated 400 police officers remained to patrol the area. Observers believed the conflict displaced thousands. At year's end the Kenya Red Cross Society reported that most displaced persons had returned to their communities. At year's end no prosecutions of alleged instigators of the attacks had taken place.

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 informal settlement areas of the capital, tended to be segregated ethnically, although interethnic marriage was common in urban areas.

There was frequent conflict, including banditry, fights over land, and cattle rustling among the Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and Pokot ethnic groups in arid northern, eastern, and Rift Valley areas, which at times resulted in deaths. For example, on September 4, Pokot raiders attacked a Turkana village over land disputes, stabbing and killing a Turkana woman. Cattle rustling was rampant, and several persons were killed in Isiolo and Turkana in connection with cattle raids and counterattacks. Fighting over land and other resources erupted several times throughout the year between Maasai and Kisii communities, resulting in the killing of eight persons in a revenge attack for previous clashes in Trans Mara on September 2.

Ethnic tensions heightened as several counties engaged in disputes related to county borders. For example, Isiolo and Meru county leaders clashed over defining county lines.

In some cases county governments took steps to prevent cross-county ethnic violence. For example, Samburu and Laikipia county leaders negotiated a joint intervention plan to prevent resource clashes when scores of Samburu herders crossed the border into ethnic Pokot territory in Laikipia in August to escape a drought affecting the region.

### **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 organizations reported, however, that police frequently used public order laws to arrest LGBT individuals on charges such as disturbing the peace, rather than using legislation on same-sex sexual activity. Police frequently harassed, intimidated, or physically abused LGBT individuals in custody for such public order charges.

Authorities permitted LGBT advocacy organizations to register and conduct activities. There were reports, however, that some organizations registered under modified platforms to avoid being turned down by the government. Societal discrimination based on sexual orientation was widespread and resulted in loss of employment and educational opportunities. Violence against LGBT persons was a problem in cities and even more frequently in rural areas. NGO groups reported that police sometimes intervened to stop attacks but generally were not sympathetic to LGBT individuals.

In May LGBT activist Audrey Mbugua, born Andrew Mbugua, sued the government in a petition to change her legal name and gender identity. Hearings in the case continued at year’s end.

In an unprecedented gender identity discrimination case, on June 18, the High Court ruled that police violated transgender person Alexander Ngungu Nthungi’s rights and dignity by forcibly stripping him naked in public to determine his sexual identity. The court ordered police to pay damages to Nthungi for the incident.

During the year several political and societal leaders made public statements critical of same-sex relationships and LGBT rights. No anti-LGBT publicity campaigns were conducted during the year; however, sensational media reporting often inflamed societal prejudices.

## **Other Societal Violence or Discrimination**

Societal discrimination against persons with HIV/AIDS remained 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. LGBT individuals reported severe harassment and physical attacks at HIV/AIDS clinics during the year.

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

Mob violence and vigilante action were common and resulted in numerous deaths. According to police, in 2011 there were 543 cases of mob violence, 133 of which occurred in Nairobi. Most victims were persons suspected of criminal activities, including theft, robbery, killings, cattle rustling, and membership in criminal or terrorist gangs. For example, on August 14, a mob chased four suspected robbers leaving a local resident's home in Nairobi, catching one and setting him afire. The man died during the incident. On August 13, a mob killed a Ministry of Defense accountant, his driver, and assistant after mistaking the accountant for a wanted local cattle rustler. The mob hacked the three men to death with knives and then burned their bodies in their car. Human rights observers attributed widespread 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 (see section 1).

Mobs also attacked persons suspected of witchcraft or participation in ritual killings, particularly in Kisii, Nyanza, and other western counties. 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 for the right of workers, including those in export processing zones (EPZs), 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 law does not explicitly prohibit members of the armed forces, police, prisons service, and the administration police from forming or joining unions.

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, Social Security, and Services typically referred disputes to mediation, fact-finding, or binding arbitration at the industrial court, a body of up to 12 judges appointed by the JSC. During mediation any strike is illegal, thus removing legal prohibitions on employer retaliation against strikers. Additionally, a Ministry of Labor, Social Security, and Services 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 essential or is declared an essential service may be adjudicated 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 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. Informal workers may establish associations, or even unions, which negotiate wages and conditions that match the government's minimum wage guidelines as well as advocate for better working conditions and representation in 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 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. Due to human and material resource constraints, the government did not always effectively protect union rights.

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 many 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 1,858 cases filed with the industrial court during 2012, down from 2,240 in 2011. In 2012 the 12 judges of the industrial court announced a total of 653 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, with the rank of senior resident magistrate and above, in the 47 newly established counties as special courts to hear and determine employment and labor cases. Providing adequate facilities outside of Nairobi was challenging, but observers noted that the ability of workers to bring cases to the industrial court throughout the country was a positive step.

The government generally respected freedom of association and the right to collective bargaining. The government expressed its support for union rights as mandated in the constitution. Worker organizations were independent of both the government and political parties. Civil servants were active members of worker organizations and exercised these rights. Workers in the essential services, such as police, often retaliated against employers, usually the government, through a "go slow" period and delayed services to display worker displeasure with salary and working conditions.

In 2012, 285 collective bargaining agreements were negotiated and registered by the industrial court. Employers, including the government, did not always honor the collective agreements.

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. Domestic workers, although still a vulnerable group, received significant attention during the year. There was an increase in domestic worker rights protection projects by trade unions and civil society organizations advocating for the ratification of International Labor Organization (ILO) Convention 189. Many informal workers formed associations or unions that provide certain levels of worker protection and education, but these associations may not have bargaining power for collective bargaining agreements.

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, the Port of Mombasa, as well as in 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.

Some antiunion discrimination occurred in September 2012 when more than 100 nurses were dismissed at the Moi Teaching and Referral Hospital for participating in a strike.

In April the industrial court made a landmark ruling in favor of Robai Musinzi, a domestic worker, who sued for wrongful dismissal by her employer, Safdar Mohamed Khan. Musinzi, who had worked for Khan for more than four years under a verbal agreement, won KSh 174,397 (\$2,015) after Khan summarily dismissed her. The industrial court judge justified this ruling by saying that under the Employment Act, “a verbal contract is a contract that can confer rights and can be enforced.” The judge ruled that the national minimum wage and other provisions of the employment law cover, thus effectively placing domestic workers under the protection of the law.

In late 2012 and during the year, parliamentarians proposed various increases to their severance packages and salaries that sparked protest from the public and civil

society organizations. In February the Salaries and Remuneration Commission (SRC), the constitutionally mandated entity tasked to set public-sector salaries, announced a reduction in pay for parliamentarians, arguing that the public-sector wage bill of KSh 457 billion (\$5.28 billion) was unsustainable as it consumed 30.2 percent of the country's budget. The parliament sworn in after the March 4 elections, however, continued to push for a salary increase and threatened to "shut down the government" if they did not receive it. The government ultimately negotiated a settlement with parliamentarians. Immediately following this negotiated settlement, parliamentarians renewed a call for an amendment to allow them to set their own salaries. Many public-sector workers responded by embarking on a series of strikes.

On June 25, the Kenya National Union of Teachers (KNUT, with approximately 200,000 members) and the Kenya Union of Post-Primary Education Teachers (approximately 50,000 members) went on strike demanding payment of allowances the unions claimed were agreed in 1997. The strike followed inconclusive attempts by the government to negotiate with the unions, which complained that the budget presented to parliament by the National Treasury did not fund benefits, salary increases for newly promoted teachers, or hiring of up to 64,000 new teachers the unions claimed were needed to meet the government's promise to provide free secondary education. The strike was peaceful, and police did not employ force to break up protests organized by the unions and the striking teachers. The government's stance toward the primary school teachers resulted in school closures, firing of teachers, and threats that striking teachers would not be paid for time on strike. The prospect of striking teachers going without pay for three months after the government closed primary schools indefinitely prompted the end of the 23-day strike. Striking teachers and the government reached an agreement that the government would pay the teachers a commuter (transport) allowance and hire 10,000 new teachers.

At the height of the strike, union officials representing striking teachers defied a court order that termed their industrial action illegal. They risked being fined or jailed and asked the government to drop the case against them. It was the first time in the union's history and in seven strikes since 1997 that it faced court action for refusing to call off a strike as part of a case filed by the Teachers' Service Commission. KNUT's top two officials were each fined KSh 500,000 (\$5,780) and the union KSh five million (\$57,800) for contempt of court over the strike. KNUT threatened to strike again in August if teachers were not paid their July salaries. President Kenyatta intervened and averted yet another teachers' strike by agreeing to pay the teachers for the time they were on strike.

In July nurses at the Kenyatta National Hospital also abandoned work after accusing the management of renegeing on a salary increment agreement reached in April. They vowed to stay away from the wards unless the government paid them their 46 per cent salary increase and 23 percent housing allowance. The government agreed to pay all outstanding allowances, thus averting a strike.

On September 2, the industrial court suspended a strike planned by more than 11,000 employees of the Nairobi county government to demand that the government implement a collective bargaining agreement signed in 2012.

The Ministry of Labor reported that in 2012 there were 17 strikes in the private sector, involving 4,694 employees and the loss of 51,588 man-hours. The majority of the strikes were on plantations, (relating to a delay in the conclusion and implementation of collective bargaining agreements), horticulture (due to poor terms and conditions of employment), and agriculture (due to a call for higher salaries).

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

The law prohibits most forms of forced or compulsory labor, including of children (see section 6, Children); however, the Chief's Authority Act provides that able-bodied male persons between 18 and 50 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. Additionally, certain provisions, including the penal code and the Public Order Act, impose compulsory prison labor.

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 constitution gives children the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labor. The law explicitly prohibits forced labor, trafficking, and other practices similar to slavery; child soldiering; prostitution; the use, procuring, or offering of a child for the production of pornography or for pornographic performances; and the use by an adult for illegal activities (such as drug trafficking) of all children up to age 18. The law applies equally for girls and boys.

The law sets the minimum age for employment at 16 and the minimum age for hazardous work at 18. Children ages 16 to 18 may work in nonhazardous activities. Children between the ages of 13 and 16 are allowed to perform “light work,” which is not further defined. The law prohibits the employment of a child (defined as a person under 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. Additionally, the minimum age to be an apprentice or indentured learner is also 18. It is a criminal offence for anyone to employ a child of up to age 18 in any labor or occupation that prevents a child from attending school. During the year there were reports of forced labor and forced child labor in domestic service, street vending, child prostitution, subsistence and commercial agriculture, scavenging, begging, and mining. Forced child labor primarily occurred in the informal sector.

The law provides for penalties for any person who employs, engages, or uses a child in an industrial undertaking in violation of the law. 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. An individual convicted of such offenses is liable to a fine not exceeding KSh 200,000 (\$2,310), imprisonment for not more than one year, or both.

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. With support from the ILO, alternatives such as Community Child Labor monitoring helped provide additional resources to combat child labor. These monitoring communities complemented law enforcement efforts by identifying children who were working illegally, removing them from hazardous work conditions, and referring them to the appropriate service providers. The Ministry of Labor, in collaboration with the ILO, 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 government worked closely with the Central Organization of Trade Unions, the Federation of Kenyan Employers, 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 meet quarterly. The Interministerial Coordination Committee on Child Labor is responsible for setting general policy. Additionally, a network of organizations, including government ministry departments, social partners, and NGOs working on child labor, was formed in 2011 and met regularly under the supervision of the Ministry of Labor, Social Security, and Services' Child Labor Division. This collaboration facilitated greater coordination of efforts to combat child labor.

During the year the government continued to implement many programs for the elimination of child labor with dozens of partner agencies. The partners placed children in schools, vocational training institutions, and apprenticeships. Partners also provided support to schools for income-generating activities to help keep children from poor families in school. Moving the Goalposts rescued 940 girls from early marriages, and 900 girls were rescued from commercial sexual exploitation through a program supported by Solidarity with Women in Distress. Through the ILO Child Labor project, authorities rescued another 3,500 children in Busia and Kitui District, mainly from agriculture and domestic labor. In Busia authorities also rescued children trafficked from neighboring countries such as Uganda and the Democratic Republic of the Congo.

Child labor awareness was also included in the primary school curriculum and in different policies such as the Alternative Education Policy, again with ILO support. The ILO also promoted child participation through its program Support Children's Rights through Education Arts and Media. In this program, teachers were trained on identifying and reducing child labor, with children's rights clubs formed in schools where the project was implemented. The success of this program depended on children being actively involved in identifying and reporting cases of child labor within their communities.

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. The government and development partners co-funded the program. The beneficiaries each received KSh 3,000 (\$35) per month. There were an average of three orphans and vulnerable children in each beneficiary household who directly benefitted from the program.

Child labor was widespread, particularly in the informal sector, where children often worked in hazardous conditions. According to the 2009 National Census, nearly four million school-age children were out of school. Almost three million children between the ages of five and 14 years old (32.5 percent) engaged in child labor. 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 (khat). Children worked in mining, including abandoned gold mines and small quarries. In urban areas children were employed in hawking, scavenging, carrying loads, fetching/selling water, and selling food. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestic servants. Parents sometimes initiated forced or compulsory labor by children, such as agricultural labor, prostitution, and domestic servitude.

Some children were subjected to debt bondage or prostitution and trafficked for commercial sexual exploitation and labor. Most of the trafficking of children within the country appeared to be related to domestic labor, with migrant children trafficked from rural to urban areas. Studies indicated that often children were trafficked for domestic labor through the complicity of the parents or other relatives.

The ILO held a workshop focusing on a study entitled “Situational Analysis of Child Domestic Work in Kenya” and encouraged the government to ratify and enforce ILO Convention 189 on decent work for domestic workers.

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.

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, President Kenyatta announced that the national minimum wage would increase by 14 percent. This announcement prompted criticism from the

Federation of Kenya Employers that the wages were becoming too high in relation to the costs of doing business. In many industries workers were paid the legal minimum wage, but the cost of living often far outpaced these wages. Despite the May 1 announcement, the new minimum wage was not published in the *Kenya Gazette* until September 6. The law calculates levels of minimum wage for skilled workers, with a general laborer earning KSh 9,780 (\$113) per month, and machine operators earning from KSh 11,085 (\$128) to KSh 15,064 (\$174) per month; an average of skilled workers used in previous years would represent an urban minimum wage of KSh 13,674 (\$158) per month. The lowest agricultural minimum wage for unskilled employees was increased to KSh 4,854 (\$56) per month, excluding housing allowance.

The law provides for equal pay for equal work. The constitution establishes the SRC 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 ensured that the total public compensation bill was fiscally sustainable, promoted retention and recruitment, recognized productivity and performance, and was transparent and fair.

The Transition Authority, the government entity responsible for implementing the constitutionally mandated devolution of government, embarked on a large-scale deployment of civil servants across the country without consulting public-sector trade unions. Both the SRC and the Transition Authority were accused of ignoring calls for consultation with public-sector unions on decisions concerning deployment of civil servants and changes to terms of already signed collective bargaining agreements.

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.

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. Additionally, 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 government labor inspectors to avoid penalties for labor violations. The 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 2012 labor commissioner's report stated that "understaffing and in particular of technical officers (inspectorate staff) affected efficient delivery of services." In 2012 the labor commissioner's department had 94 technical officers against an authorized establishment of 298 technical staff. The result was that one officer staffed some county labor offices while others had no officer representation.

Labor inspections are required by law and are meant to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring compliance with labor laws. In 2012 the Ministry of Labor conducted 10,088 labor inspections. The results of these inspections highlighted numerous violations. Hotel industry workers were usually paid the minimum statutory wages, but employees worked long hours without compensation. Employers frequently underpaid security guards and protective staff. Agricultural workers were underpaid compared with other sectors, and the ministry established a horticulture wages industry order to address issues affecting the floriculture sector. Inspection forms do not include persons with disabilities, and the ministry was addressing how to capture data affecting such workers. The ministry was reviewing widespread misuse of term contract employment.

The law details environmental, health, and safety standards. Fines generally were too low to deter unsafe practices. The law excludes EPZs from the Factory Act's provisions. The Ministry of Labor's Directorate of Occupational Health and Safety Services has the authority to inspect factories and work sites, except in the EPZs. The directorate's 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.

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 6,019 industrial accidents in 2012, with 257 fatalities. Most accidents were in the agricultural and manufacturing sectors, while the largest number of fatalities (77) was in transport.

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.

The government initiated a harmonization process of key legislation with the constitution. It started a process to amend the 2007 Work Injury Benefits Act and the National Occupational Safety and Health Policy to ensure that provisions in these acts were in line with the constitution. One of the proposals was to provide that a database be established to capture and collect information on occupational accidents, injury, and disease cases.

In December 2012 the World Bank's "Kenya Economic Update: Kenya at Work" reported that each year 800,000 persons entered the job market seeking 50,000 jobs. 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, but informal workers were organized into associations, cooperatives, and, in some cases, unions.