



## Kenya

### Country Reports on Human Rights Practices - [2007](#)

Released by the Bureau of Democracy, Human Rights, and Labor  
March 11, 2008

Kenya has a population of approximately 37 million. It is a republic dominated by a strong president who is both chief of state and head of government. There is a unicameral National Assembly. In December local, parliamentary, and presidential elections were held. Observers judged the parliamentary and local elections to be generally free and fair. In the presidential election, the incumbent, President Mwai Kibaki, was proclaimed the winner by a narrow margin under controversial circumstances. The main opposition candidate contested the result and violence erupted in sections of Nairobi and opposition strongholds in Nyanza, Rift Valley, and Coast provinces. Observers concluded that, while the voting and counting process generally met democratic standards in most areas of the country, there were serious irregularities in both opposition and progovernment strongholds and in the tallying of results by the Electoral Commission of Kenya (ECK) in Nairobi. These irregularities undermined the credibility of the presidential election result. While civilian authorities generally maintained effective control of the security forces, and security forces generally exercised restraint in dealing with protestors and rioters, there were instances in which the security forces, particularly the police, acted independently.

The government in many areas respected the human rights of its citizens or attempted to institute reforms to address deficiencies; however, serious problems remained. The following human rights problems were reported: unlawful killings, torture, and use of excessive force by police; vigilante justice; police impunity; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary interference with the home; prolonged pretrial detention; executive influence on the judiciary; disrespect for freedom of speech and of the press; internally displaced persons, refugees, and stateless persons; government corruption; abuse of, and discrimination against, women; female genital mutilation (FGM); child prostitution and labor; trafficking in persons; interethnic violence; and lack of enforcement of workers' rights. The government took limited steps to prosecute abusers.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including

#### Freedom From:

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

There were no reports that the government or its agents committed politically motivated killings during the year; however, security forces committed arbitrary or unlawful killings. The government took only limited action in enforcing the law against security forces suspected of unlawfully killing citizens.

The Independent Medico Legal Unit (IMLU), a leading and credible human rights nongovernmental organization (NGO), reported that 125 extrajudicial killings occurred in the nine months through September. The Kenya National Commission on Human Rights (KNCHR) estimated there were 700 extrajudicial killings during the year, including the extrajudicial killing of 454 suspected members of the Mungiki criminal organization. From January to May IMLU reported three deaths in police custody. In all cases IMLU documented, there were clear indications of misuse of firearms by police.

In March 2005 the minister of state for provincial administration and internal security issued a "shoot-to-kill" order against anyone possessing an illegal firearm. In September the justice and constitutional affairs minister claimed that police must shoot to kill to defend themselves when confronted by armed suspects; security forces continued to make similar claims because of the large number of firearms in the hands of criminals. In July the *Kenya Times* reported that approximately 20 police officers were killed in the first quarter of the year. Some NGOs reported that police were again issued shoot-to-kill orders as part of suppressing postelection violence in December, but the government denied this.

Police killed numerous criminal suspects during the year. On January 20 alone, police shot and killed 13 robbery suspects around Nairobi, and in February police killed seven suspects in Nairobi and Nakuru. In May the *Daily Nation* reported that police shot an innocent vegetable trader while they were in pursuit of a suspected carjacker. Witnesses stated that police ordered the man to lie down and shot him in the head despite the man's pleas that he was innocent.

On June 4, unknown assailants killed two police officers in Nairobi's Mathare slum. In response the government deployed hundreds of officers to the area the following night to search for suspected members of Mungiki, the country's largest criminal organization. Media reported that police shot and killed between 22 and 33 persons, but alleged that only one was a Mungiki member; police contended that they killed only 18 suspects after finding weapons in the area belonging to the dead officers. In July police again raided Mathare in a crackdown on Mungiki members. The *Daily Nation* reported that police killed more than 27 persons and destroyed property, but the police denied the claims.

The Oscar Foundation (OFFLACK), an NGO offering free legal aid, reported that on July 1, police raided the home of a man in Murang'a, believing that a Mungiki oath ceremony was taking place. The police ordered the youths present out of the house and then opened fire on them. Reportedly, the next day local residents recovered 23 bodies.

There was at least one media report that police killed civilians at checkpoints when they refused to pay bribes. Media reported that on August 18, a police officer stopped a matatu (public bus) at a roadblock and ordered the driver to offload the passengers. The policeman then shot through an open bus window, killing a woman still seated inside.

There were reports that persons died while in police custody or shortly thereafter, some as a result of torture. IMLU tracked 35 cases in which persons died in police custody during the year, but noted that the actual number of such deaths was likely higher. In January a court ordered the government to pay approximately \$37,000 (2.4 million shillings) to the family of Peter Njenga Karanja, who had been beaten to death by police. On May 20, a man died in a hospital after he was beaten unconscious by police during his arrest, according to OFFLACK.

There were no reported developments in the following 2006 cases of death in police custody: two men who were allegedly drowned by police in January in Mombasa; the January death in detention of Wycliffe Ngara Onyanha; the January deaths of two robbery suspects; and the deaths of three persons at the Sultan Hamud police station in Machakos District.

During the year police at times used excessive force to disperse demonstrations, resulting in deaths. On December 31, in the wake of demonstrations protesting the announced results of the presidential election, police in Kisumu opened fire on crowds, killing 43 protesters, according to media reports. The media also reported that on December 31, police killed at least 40 persons in Nairobi while dispersing similar demonstrations. It remained unclear whether all of these killings constituted excessive use of force, or whether police in some cases were responding appropriately in life-threatening situations.

At year's end nine prison wardens were standing trial for murder in the suspicious deaths of seven death row inmates in 2000.

There were numerous instances of mob violence and vigilante action. The great majority of victims killed by mobs were suspected of criminal activities, including robbery, killings, cattle rustling, and membership in terrorist gangs. The government rarely made arrests or prosecuted the perpetrators.

For example, in February the media reported that a mob beat to death a church leader for allegedly sexually assaulting a 12-year-old boy. On July 22, a mob in Rift Valley Province stoned to death two policemen who were trying to arrest a woman after mistaking them for armed criminals. Police stated they would investigate and bring murder charges against the assailants. At year's end no further information on the case was available.

There were no reports of official action in the following 2006 cases of death by mob violence: the beating death in January of two suspected carjackers in Nakuru; the January beating death of a suspected robber near Nyeri; and the March killings of two alleged robbers in Karatin by villagers who slit their throats.

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

Mobs committed violence against persons suspected of witchcraft, particularly in Kisii District, and in Nyanza and Western provinces. Human rights NGOs noted public reluctance to report such cases due to fear of retribution.

Interethnic violence continued to cause numerous deaths. From October through December, interethnic violence between Kalenjin (including among Kalenjin subtribes), Kikuyu, and Kisii communities in Kuresoi and Molo resulted in the deaths of at least 20 persons. There was increased interethnic violence after the December 30 announcement of the presidential election results. Mobs and groups of traditional warriors in opposition strongholds violently targeted ethnic Kikuyu and

others suspected of supporting the incumbent president. In Nairobi Kikuyu gangs targeted Luo or Luhya in retaliation. An unknown number of persons were killed and tens of thousands displaced in the December violence.

#### b. Disappearance

There were no reports of politically motivated disappearances.

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

The constitution and law prohibit such practices, and the government took some steps to eliminate prisoner abuse; however, police use of violence and torture during interrogations and as punishment of pretrial detainees and convicted prisoners continued. According to IMLU's 2005-06 annual report, common methods of torture included whipping, burning with cigarettes, and beating with gun butts and wooden clubs.

Human rights organizations, churches, and the press condemned numerous cases of torture and indiscriminate police beatings. From June 2006 to May 2007, the IMLU received 108 cases alleging torture--32 cases between January and May--by security officers, compared to 397 in 2005, although it noted that the real total of torture cases was likely higher.

In February the Legal Resource Foundation released a report which stated that torture in prisons was commonplace and inflicted openly. Of 948 prisoners from 29 prisons interviewed, 83 percent claimed they were beaten, and 59 percent witnessed wardens mistreating other prisoners. Police did not appear to target any particular ethnic, religious, or social group for torture. Authorities did not take action against those accused of torture.

Due to a lack of civilian state prosecutors in the legal system--63 civilian prosecutors compared to 300 police prosecutors--police were responsible for investigating and prosecuting most crimes. Police routinely ignored reports from the IMLU and other human rights organizations that provided evidence of torture by security forces.

In July IMLU offered rehabilitation services to Zachariah Kabengu Gitau, who was tortured in police custody. On July 31, Ann Njogu, a civil society activist who was arrested with other persons for demonstrating against parliament, was dragged down stairs by police and injured while in custody. The other arrested protesters were admitted to the hospital after police transporting them drove recklessly and collided with a matatu on their way to the police station. One of the arrested protesters stated that police tried to force them out of their hospital beds before doctors discharged them.

Police occasionally used excessive force to disperse demonstrators, which resulted in injuries.

Police sometimes abused street children. In 2006 a KNCHR report noted that street children formed "cooperatives" in which each member contributed regularly to a fund to bribe police in hopes of being spared abuse.

There were allegations of rape by security forces, including the rape of women in prisons and refugee camps. An activist with the National Executive Council heard complaints from persons in detention that police rounded up young women off the streets without pressing any charges and sexually assaulted them before releasing them the next morning.

There were numerous instances of mob violence and vigilante action leading to serious injury. After the announcement of the presidential voting results in late December, mob violence, including targeted looting and arson, struck Kisumu, Eldoret, Nairobi, Mombasa, and other cities.

#### Prison and Detention Center Conditions

Prison and detention center conditions continued to be harsh and life threatening, although the government attempted to make some improvements. Most prisons, particularly men's prisons, continued to be severely overcrowded. According to an OFFLACK study released during the year, Meru Prison held three times more inmates than its intended capacity and had only nine toilets for 1,405 prisoners, forcing many to use as toilets the same buckets they also used to bathe with. In Kamiti Maximum Security Prison, approximately 700 inmates shared a cell block designed for 300. Murang'a Prison, built to accommodate 150 inmates, held more than 600. Kin'ong'o Prison housed more than 2,000 in its 800-person capacity prison, according to *The Standard* newspaper. In February the Parliamentary Committee on Health visited Embu Prison and expressed concern about health conditions in prisons. A backlog of cases in the judicial system contributed to prison overcrowding.

Reforms improved conditions in some prisons. In September 2006 the prisons department established a health unit to improve delivery of health services. Some facilities offered access to academic classes, enabling a number of prisoners to sit for national exams, or vocational training, such as carpentry or tailoring. Charitable associations organized occasional medical clinics for inmates. In April the water filtration system at Kodiaga Prison in Kisumu, which dated from the colonial era, was replaced, leading to a decrease in water-borne disease among inmates.

Prisoners generally received three meals per day, but portions were inadequate, and prisoners were sometimes given half rations as punishment. Water shortages continued to be a problem.

Civil society organizations began visiting prisons in 2003, and these visits continued to reveal harsh conditions as well as allegations by prisoners of inhumane treatment including torture. Such treatment, perpetrated by police, prison guards, and inmates, at times resulted in death.

Prison personnel stated that the rape of male and female inmates, primarily by fellow inmates, continued. Media reports indicated that it was also common for prison officials to rape female inmates. Experts believed the prevalence of HIV infection was high among prisoners.

Hundreds of prisoners died annually from infectious diseases spread by overcrowding, unhygienic conditions, and inadequate medical treatment. OFFLACK reported that at least 600 prisoners have died since 2006 due to preventable diseases. In a two-month period in 2007, eight inmates died of a suspected malaria outbreak at Kodiaga Prison in Kisumu.

Two civil society activists who were arrested during a July 31 protest described the conditions of their detention cells as harsh and unsafe. One went to the Muthangari jail in Nairobi, where he met a woman who had miscarried in a prison due to its deplorable conditions and overcrowding; she was never taken to a hospital. The activist stated that nearly 100 persons shared one small cell and one toilet. There were naked wires hanging down and poor ventilation. The activist reported similar conditions at the Central, Langata, and Uburu police stations.

Prisoners sometimes were kept in solitary confinement far longer than the legal maximum of 90 days. Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who wanted to visit prisoners faced numerous bureaucratic and physical obstacles, each often requiring a bribe to overcome. An NGO reported that citizens were more likely to face extortion attempts by members of the prison service than by employees of any other agency. In May 2006 Vice President Moody Awori, who was responsible for the prison system in his capacity as minister for home affairs, acknowledged that bribery occurred throughout the country's jails and prisons. Vice President Awori spoke frequently throughout the year on the need for prison reform, although follow-up was limited.

There were no separate facilities for minors in pretrial detention. Civil society activists witnessed young children, women, and men sharing the same cells.

At year's end there were no known developments in the 2005 petition by 31 pretrial detainees in Embu Prison to separate young boys from their adult counterparts to protect them from sodomy in the cells. A 2005 media report noted that high court judges touring King'ong'o Maximum Security Prison discovered several minors, one only 15 years old, serving long sentences among adult prisoners. The judges ordered the prison to provide information on the minors' convictions and imprisonment in order to conduct a review, but there were no known developments in the review during the year.

In January 2006 a judiciary subcommittee report recommended that judges and magistrates visit prisons regularly to ensure that children were not confined with adult inmates. However, there were no reports that they conducted any prison visits.

Some children under the age of four lived with their mothers in the 14 prisons for women. Nationwide data were unavailable, but in 2006 two prisons, Nyeri and Thika, housed 27 and 12 such children, respectively.

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

#### 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.

#### Role of the Police and Security Apparatus

There was a large internal security apparatus that included the Kenyan National Police Service (KNPS), including its Criminal Investigation Department (CID), responsible for criminal investigations, and Anti-Terrorism Prevention Unit (ATPU); Kenya Administration Police (KAP), responsible for border security; the paramilitary General Services Unit (GSU), responsible for countering uprisings and guarding high-security facilities; and the National Security Intelligence Service (NSIS), which collects intelligence. The KNPS, KAP, and GSU are under the authority of the Ministry of State for Provincial Administration and National Security. The NSIS is under the direct authority of the president. There was a public perception that police often were complicit in criminal activity.

OFFLACK noted that bribery in police recruitment was a problem. The police often recruited unqualified candidates who

had political connections or who paid bribes, which led to poorly conducted investigations.

The absence of a witness protection law and the requirement that witnesses directly confront suspects in police line-ups severely inhibited the investigation and prosecution of major crimes.

Police, colluding with prosecutors, resorted to illegal confinement, extortion, torture, and fabricated charges as a cover-up for malpractice.

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

The government took some steps to curb abuse of authority by police. In August 2006 the police commissioner deployed a special police squad that included undercover detectives whose mandate was to combat corruption involving police during traffic stops. The government arrested and charged some officers with various offenses, including corruption. For example, on August 21, media reported that two police officers were charged with receiving a bribe. They were scheduled to be tried in December. At year's end no further information was available.

There were instances when police failed to respond to societal violence. In April the National Executive Council accused security forces of failing to respond to violence in the Mt. Elgon region which forced 10,000 persons to flee their homes. In October and November well-organized Kalenjin raiders targeted Kikuyu and Kisii communities, as well as some Kalenjin subtribes, burning their houses and forcing them to flee. Civil society organizations and victims reported that in some instances, police failed to respond. In December organized gangs targeted the Kikuyu community in Rift Valley Province, forcing tens of thousands to flee. Civil society organizations reported that police in many cases failed to respond to the violence.

#### Arrest and Detention

Under the criminal procedure code, police have broad powers of arrest. Police may make arrests without a warrant if they suspect a crime has occurred, is happening, or is imminent. The law provides for prompt judicial determination of the legality of detention: in noncapital cases, detainees must be brought before a judge within 24 hours; in capital cases, detainees must be brought before a judge within 14 days. The penal code excludes weekends and holidays from this 14-day period. If a suspect cannot be brought before an appropriate judicial officer within 24 hours and the offense is not deemed to be "serious," police are empowered to release the suspect on a reasonable bond, to appear later before a judicial officer.

The right to prompt judicial determination of the legality of detention frequently was not respected in practice. Human rights organizations reported that detainees were frequently detained for periods significantly longer than 24 hours before arraignment.

The law provides pretrial detainees the right of access to families and attorneys. When detainees could afford counsel, police generally permitted access; however, there were cases in which police refused access to lawyers. Family members of detainees frequently complained that access was only permitted on payment of bribes.

Police often arrested citizens to extort bribes. Since few could afford even a modest bribe, many languished in jail unless family or friends raised the bribe money demanded by police.

In June and July, after two policemen were murdered, allegedly by Mungiki members, the police cracked down on suspected Mungiki members. There were reports that police arbitrarily accused persons of belonging to Mungiki.

Muslim leaders claimed that police indiscriminately arrested Muslims on suspicion of terrorism, but the police denied this.

The government had not reformed the bail system in decades. Individuals charged with offenses that were deemed serious or that involve major violence are not eligible for bail pending trial. Some detainees spend years incarcerated before their cases are adjudicated due to an overcrowded court docket and the absence of any law mandating a speedy or continuous trial.

The law does not state how long after charges are pressed a trial must begin. Police from the arresting location are responsible for serving court summonses and picking up detainees from the prison each time a court schedules a hearing on a case. A shortage of manpower and resources meant that police often failed to appear or lacked the means to transport detainees, who then were forced to await the next hearing of their cases.

Unlike in 2006, there were reports that police arbitrarily arrested persons demonstrating against the parliament.

Lengthy pretrial detention continued to be a serious problem that contributed to overcrowding in prisons. According to the chief justice, as of August there was a judicial backlog of nearly one million cases, resulting in persons being detained for years before seeing a judge. In 2005 the backlog of judicial cases resulted in a daily average of 21,474 pretrial detainees, constituting nearly 45 percent of the prison population. The government claimed the average time spent in pretrial detention on capital charges was 16 months; however, many detainees spent more than three years in prison before their trials were completed. Very few could afford attorneys.

During and following the December 2006 fighting inside Somalia, authorities in Somalia arrested and detained numerous persons accused of terrorism and support for the former Islamic Courts. Authorities in Kenya subsequently arrested other suspected terrorists after they fled Somalia for Kenya. According to media reports and human rights NGOs, some of those detained were released, while others were transferred without judicial process to Ethiopia, where they remained in secret detention at year's end. In May Ethiopian authorities acknowledged that 41 suspected international terrorists were being held and investigated, though most were released by year's end.

#### Amnesty

The president releases petty offenders on December 12, which is Independence Day; however, the release is not automatic. In June the Prisons Staff Training College commandant told the media that there were plans to release 800 petty offenders in Nairobi to ease congestion in facilities. Local NGOs confirmed that prisoners were amnestied during the year; however, data on the number was not available. In July 2006 the government released nearly 8,000 prisoners to ease prison congestion.

#### e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary; however, the executive branch sometimes influenced the judiciary. In December 2006 the African Peer Review Mechanism, an African Union (AU) initiative which evaluates AU member states for conformance with commonly agreed political and economic standards, reported a "visible lack of independence of the judiciary."

The president has extensive powers over appointments, including of the attorney general, chief justice, and appellate and high court judges. The president can dismiss judges and the attorney general upon recommendation of a special tribunal appointed by himself. Although judges have life tenure, except for a few foreign judges hired under contract, the president has authority over judicial transfers. In January a judiciary subcommittee recommended increasing transparency in selecting judges.

The court system consists of the Supreme Court, Court of Appeals, High Court, and two levels of magistrate courts, where most criminal and civil cases originate. The Supreme Court is the highest court; the chief justice is a member of both the Court of Appeals and the High Court. All judges on the Court of Appeals and the High Court are appointed by the president upon recommendation of the Judicial Service Commission; magistrates are hired by the commission. Criminal trials are conducted by magistrate courts, while the High Court and Court of Appeals hear appeals. Civil cases may be heard by any of the courts, depending on the nature of the case.

The government tried to influence the judiciary. On April 20, the newspaper *Daily Nation* printed excerpts from a letter written by the Busia principal magistrate in which he accused the vice president of "derail[ing] the course of justice" and pleaded with the chief justice to protect judicial officers from the vice president's interference. Allegedly, the vice president tried to secure the release of three suspects in a murder-robbery case heard by the magistrate.

In May the judiciary appointed a governance and ethics committee to assess judicial corruption and misappropriation of court fees. By year's end there were no reports of committee actions.

In 2006 the Ministry of Justice announced it would establish a public complaints unit, noting that corruption had contributed to the judiciary's inability to adequately protect human rights. By year's end the unit was holding weekly sessions, during which the public could file complaints with the ministry's director of human rights affairs. No data on the number of complaints registered were publicly available.

The government occasionally used the legal system to harass critics; some civil society organizations reported that the anticorruption commission was used for this purpose.

#### Trial Procedures

Civilians are tried publicly, although some testimony may be given in closed session. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence

in their defense. Defendants can appeal a verdict to the High Court and ultimately to the Court of Appeals. The legal system does not provide for trial by jury; judges try all cases.

In treason and murder cases the deputy registrar of the High Court can appoint three assessors to sit with a high court judge to offer interpretation or guidance on local customs and culture. Although assessors render verdicts, their judgments are not binding. Defendants' lawyers can object to the appointment of individual assessors. A shortage of appropriate assessors frequently led to long delays in hearing cases.

A defendant's right to consult with an attorney in a timely manner was generally respected. However, the vast majority of defendants could not afford representation and were tried without legal counsel. Indigent defendants do not have the right to government-provided legal counsel except in capital cases. The lack of a formal legal aid system seriously hampered the ability of many poor defendants to mount an adequate defense. Legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers, provided it.

Discovery laws are not defined clearly, further handicapping defense lawyers. Often defense lawyers do not have access to government-held evidence before a trial. There have been occasions where the government has invoked the State Security Secrets Law as a basis for withholding evidence.

The constitution provides for Shari'a (Islamic) courts and states that the "jurisdiction of a Kadhi's court shall extend to ... questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings in which all the parties profess the Muslim religion." There are no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in civil matters as long as it did not conflict with statutory law. This occurred most often in cases of marriage, death, and inheritance in which there was an original contract based on traditional law. Citizens may choose between national and traditional law when they enter into marriage or other contracts; however, the courts determine which kind of law governs the enforcement of the contract. Some women's organizations sought to eliminate traditional law due to its bias in favor of men.

Military personnel are tried by courts-martial, and verdicts may be appealed through military court channels. The chief justice appoints attorneys for military personnel on a case-by-case basis. Military courts do not afford defendants all the rights that civilian courts provide. Military courts are not empowered to try civilians.

#### Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

#### Civil Judicial Procedures and Remedies

The KNCHR has the power of a court. It can issue summonses or order the release of a prisoner or detainee, payment of compensation, or other lawful remedy.

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

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

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

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

The constitution and law prohibit such actions, except "to promote public benefit"; however, authorities sometimes infringed on citizens' privacy rights. The law permits police to enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants to apprehend suspected criminals or to seize property believed stolen.

There were reports that security officers raided homes in Mt. Elgon District, destroying property and setting houses on fire, in their search for militia members. Police also raided homes in the Nairobi slums in search of suspected Mungiki members.

In May Amnesty International, the Centre on Housing Rights and Evictions, Kenya Land Alliance, Hakijamii Trust, and KNCHR jointly issued a report on forced evictions. The report noted that the government had made no effort to resettle evicted families. On June 7, the *Daily Nation* reported that the district commissioner in Marakwet District ordered more

than 8,000 squatters to vacate the Embobut forest. In January 2006 the government completed the eviction from the Mau forest of an estimated 600 squatters who had returned after the government evicted approximately 10,200 of them in 2005 for living illegally on protected lands.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press, but the government sometimes restricted these rights. During the year security forces harassed, beat, and arrested members of the media. Journalists practiced self-censorship. On December 30, following the announcement of presidential election results, the government banned all live radio and television broadcasts.

The government occasionally interpreted laws in such a way as to restrict freedom of expression. The prohibition on discussion of issues under court consideration and a parliamentary ruling against debate on certain aspects of presidential conduct limited deliberation on a number of political issues. The government monitored many types of civil society meetings, and individuals were not always allowed to criticize the government publicly without reprisal.

Generally the media remained independent despite attempts at intimidation by officials and security forces. The mainstream print media included four daily newspapers that reported on national politics and regularly criticized the government. There also were numerous independent tabloid periodicals that appeared irregularly and were highly critical of the government.

Of the several television stations operating in Nairobi, the government-owned Kenya Broadcasting Corporation (KBC) was the only station with a national network of broadcast and cable television, AM and FM radio, and short-wave transmission. Although KBC coverage continued to become more balanced, its monopoly on national broadcasting continued to limit the ability of opposition leaders and other critics of government to communicate with the electorate. This disadvantage was particularly pronounced in the run-up to the December general elections. Stations owned by other media companies, including 12 radio stations, operated primarily along the country's central corridor and more densely populated adjacent regions.

The international media operated freely; 120 international correspondents worked in the country, and approximately 100 media organizations reported from Nairobi. There were four international FM broadcasters in Nairobi: Radio France International, Voice of America, the BBC, and China Radio International.

During the year officials repeatedly accused local media of being irresponsible and disseminating misinformation. Journalists continued to be susceptible to harassment, intimidation, and arrest. On January 7, security forces roughed up a *Nation* photographer trying to photograph the president and his wife at church. In March youths supporting the NARC-Kenya interim chairman allegedly threatened a *Standard* journalist for writing negative stories about him.

On April 16, the Criminal Investigations Division (CID) detained the directors and a senior editor with the Standard Group for questioning over an article published in the *Standard*. The article claimed that a minister approached the article's source and offered to pay the source to kidnap and possibly assassinate a sitting member of parliament. The CID did not allow the detainees' lawyers to be present during questioning. The detainees were released after six hours of questioning.

In February 2006 police arrested three journalists with the *Standard* for writing an allegedly false story about a meeting between President Kibaki and opposition leader Kalonzo Musyoka. Two days later security forces raided the *Standard* and its sister television station, the Kenyan Television Network. The minister of state for provincial administration and internal security stated that the raid was warranted on security grounds and would be repeated if necessary. The government held no one responsible for the raid, which sparked widespread criticism. In September 2006 a court dismissed the case against the three journalists.

There were no reported updates on the 11 persons associated with the *Weekly Citizen* who were charged with publishing an "alarming" story in 2006 or the April 2006 ban prohibiting Royal Media House from covering parliament's proceedings.

The regulatory framework for broadcast media continued to allow abuse and manipulation in the issuance, withholding, and revoking of broadcast permits and frequencies.

Journalists occasionally practiced self-censorship due to pressure and bribes from officials and other influential persons wishing to prevent reporting on issues that could harm their interests or expose their wrongdoings. There also were credible reports that journalists accepted payments to report certain stories, some fabricated. On September 17, the *People's Daily* reported that journalists were likely to compromise their objectivity and engage in graft due to their low salaries.

Unlike in 2006, there were reports that individuals associated with officials used criminal libel laws to intimidate journalists and publications. On March 6, a court sentenced the *Independent's* editor to prison for one year and fined him approximately \$7,200 (500,000 shillings, or 25 times the maximum fine) for libeling the justice and constitutional affairs minister in a 2004 story. In June the editor was released pursuant to a presidential amnesty for petty offenders. According to Mars Kenya, an organization that tracks governance and corruption issues, very few private suits result in jail sentences. The attorney general tended to terminate most such cases, as he did with cases against the president's wife, a former vice president, and himself.

Sedition was not grounds for censorship of publications; however, the Prohibited Publications Review Board reviewed publication bans. A number of publications remained banned, including the *Quotations of Chairman Mao Zedong* and Salman Rushdie's *Satanic Verses*.

#### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet service was limited in rural areas due to lack of infrastructure.

#### Academic Freedom and Cultural Events

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

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

##### Freedom of Assembly

The constitution and law provide for freedom of assembly, but reports that the government restricted this right increased. Organizers must notify local police in advance of public meetings. According to 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.

In February the minister of state for provincial administration and internal security banned all protests and demonstrations organized by civil organizations or political parties unless they had been approved by the district security committees. On December 31, the government banned rallies by opposition parties to protest the results of the presidential election. A civil society leader stated that the police commissioner and internal security minister were trying to implement a licensing policy with powers that they did not possess. Additionally, he noted that the police only targeted protests against government corruption and having political content. For example, religious groups rarely gave notification, and there were no reports of police disruption of religious meetings.

There was an increase in incidents of police forcibly dispersing demonstrators.

On July 31, civil society activists demonstrated against a proposed hefty severance package for members of parliament. Police claimed that the group did not obtain a permit and threw three tear gas canisters at them before arresting five activists. The activists stated that their group had given notice. The court dismissed their cases because their rights were violated when police detained them for more than 24 hours without pressing charges. On the same day police used tear gas on two other groups. During the same week police dispersed another group that had gathered outside of the CID, claiming that their protest was unlawful. In December police fired live ammunition and used tear gas to disperse demonstrators protesting the results of the presidential election.

Civil society activists also stated that groups supporting the government were allowed to meet without notice. For example, the rally for President Kibaki's reelection speech on September 16 was announced only the night before, which would not have fulfilled the advance notification requirement.

##### 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 all, 138 political parties contested the December general elections, and parties reported little or no difficulty registering.

The 2002 ban on membership in the Mungiki criminal organization remained in effect. In previous years the Mungiki espoused political views and cultural practices that were controversial in mainstream society; later the group became a feared criminal organization, particularly in the public transportation sector, and harassed and intimidated residents. The Mungiki had a significant following among the poor and unemployed. Other prohibited criminal organizations with political

or cultural trappings included the Kamjesh, Chinkororo, Baghdad Boys, Jeshi la Embakasi, Jeshi la Mzee, Amachuma, and the Taliban.

#### c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right. There was considerable tolerance among religious groups; however, some Muslims believed they were treated like second-class citizens in the predominantly Christian country.

The government requires new religious organizations to register with the registrar of societies. The government allowed indigenous religious organizations to register, although many chose not to do so. Religious organizations generally received equal treatment from the government; however, some small splinter groups found it difficult to register due to their inability to define their status as more than an offshoot of a larger religious organization.

According to Muslim leaders, authorities rigorously scrutinized the identification cards of persons with Muslim surnames, particularly ethnic Somalis, and sometimes required additional documentation of citizenship, such as birth certificates of parents and even grandparents. The government stated that the heightened scrutiny was an attempt to deter illegal immigration rather than to discriminate against ethnic Somalis or their religion. However, there were reports that the government arbitrarily arrested Muslim men as terrorist suspects.

Witchcraft was illegal but still practiced. On January 10, the *Nation* reported a trend in the killing of elderly residents in Kilifi District, Coast Province, on suspicion of witchcraft. For example, in mid-February a mob killed an 81-year-old man of the Mijikenda community in Kilifi District, alleging that he had cursed his three grandchildren who had died a few days earlier. One suspect was arrested.

#### Societal Abuses and Discrimination

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

For a more detailed discussion, see the *2007 International Religious Freedom Report*.

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

The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights.

Police routinely stopped vehicles throughout the country and often engaged in extortion at such checkpoints. Ethnic Somalis were required to provide additional identification. The NGO Human Rights Watch stated that the government illegally detained and deported ethnic Somalis and Ethiopians on the assumption they were potential terrorists; the NGO believed that some of these deportees were Kenyan citizens and legal residents.

In 2005 the government completed the issuance of identification documents to refugees in Kakuma. In July the government began issuance of the same documents to urban refugee populations. The government registered refugees in Dadaab; however, these refugees did not receive their identity documents.

Refugee freedom of movement was severely restricted and the government intermittently imposed bans on travel outside of refugee camps.

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

The law prohibits forced exile, and the government did not use it. However, John Githongo, who resigned in 2005 as the highest anticorruption official, remained in self-imposed exile out of fear for his safety.

#### Internally Displaced Persons (IDPs)

An unknown proportion of the several thousand persons displaced by ethnic clashes from the 1990s to the end of the reporting period had not returned to their homes due to fear of renewed violence. In December tens of thousands of people fled their homes in Rift Valley Province as a result of postelection interethnic violence. The government provided shelter, food, and transport to IDPs, and coordinated support services with NGOs, particularly the Kenya Red Cross Society (KRCS), and church charities.

During the year there were many causes of displacement, from land disputes to flash floods. In May 2006 the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated there were 431,000 IDPs. In 2006 the government established a task force to survey IDPs in Rift Valley and Coast provinces, but results were not published. Postelection violence in December created tens of thousands of additional IDPs, mainly in Rift Valley Province.

In May OCHA reported that cattle raids displaced 27 families in Marsabit. In October and November, ethnic violence displaced up to 18,000 in Kuresoi and Molo, according to the KRCS. Moreover, a long rainy season caused heavy floods, displacing over 3,600 persons in Western Province and over 3,000 persons in Coast Province, including 500 families in Kilifi. The KRCS provided food, medical supplies, and other nonfood items. Drought also forced pastoralists to leave their cattle and move into areas surrounding cities and towns.

OCHA estimated that more than 1,000 persons were displaced in July in West Pokot District due to cross-border raids by the Ugandan army to protect Ugandans; the Kenyan government did not respond. Ugandan and Kenyan pastoralists frequently crossed the border in search of pasture; the two groups were armed and frequently clashed and raided each other's cattle.

KRCS estimated that by July there were 116,000 IDPs in the Mt. Elgon region, but the large number included landless persons affected by the clash who moved in with other family members, as well as people who crossed the Ugandan border. In December the district commissioner estimated the number of persons displaced by the conflict at 45,000. In August 2006 tensions over land between the Soy and Ndorobo clans intensified in Mt. Elgon District after the government announced plans to implement phase three of the Chebyuk settlement scheme, initiated in 1971. The Soy took up arms and formed the Sabaot Land Defense Force (SLDF), a militia which terrorized and forcibly displaced local residents. In August 50 armed members killed seven persons at a market, and on August 3, a group of 30 men killed a former civic leader. The *Standard* reported that membership in the SLDF had become compulsory; each family was required to send at least two boys to the militia for training. The clashes affected approximately 4,400 students who were unable to report to school or sit for national examinations.

In response the government deployed police from the General Service Unit. There were reports that police officers indiscriminately raided homes, beat, shot at, and raped community members, and burned down homes. OCHA confirmed two cases of rape by police officers in February, and there were numerous complaints of rape by police in Kopsiro and Cheptais. In the *Standard*, the member of parliament for Mt. Elgon also accused police of killing innocent people.

In April the government replaced all security officers in the Mt. Elgon region. OCHA reported that the situation calmed down by May, and some IDPs returned home. However, in July clashes intensified, forcing the government to impose a curfew. In mid-September the district commissioner brokered a cease-fire between the two sides, and tensions again lessened. However, besides the Soy-Ndorobo dispute, clashes occurred throughout the year, as many persons settled old scores.

In January police officers barred the KRCS from entering Mt. Elgon District with relief supplies, saying the area was a security operation zone. In April the government allowed IDP access to humanitarian organizations and distributed food in conflict areas through the KRCS, but during the year periodically refused humanitarian access to the region.

The government resettled some IDPs in Rift Valley and Coast provinces. According to OCHA, the government announced plans during the year to resettle 32,000 families from conflict-affected areas in Rift Valley Province, but there was little progress by year's end. In 2006 KRCS provided emergency shelter to an estimated 7,000 persons fleeing the Turbi massacre in Marsabit.

In August the government restricted the movement of IDPs in the Mt. Elgon area by imposing a curfew. By the end of August, police arrested more than 300 people for disobeying the curfew. Media reported that police used the curfew to extort money, especially from teachers and students.

#### Protection of Refugees

In May the government adopted a new refugee law that provides for the granting of asylum and refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol. The government provided general protection for registered refugees against refoulement, the return of persons to a country where there is reason to believe they feared persecution; however, on January 3, 414 Somali asylum seekers were forcibly returned to Somalia at the Liboi border crossing. It was reported that another 291 asylum seekers were forcibly returned at the Kiunga border town. After January 3, the Kenya-Somalia border remained officially closed to all asylum seekers. The government permitted the Office of the UN High Commissioner for Refugees (UNHCR) to register and assist new arrivals that successfully crossed the porous border to the Dadaab refugee camps.

The government had not provided temporary protection since 2004 to individuals who may not qualify as refugees under the 1951 convention and its 1967 protocol.

The government required all refugees to remain at UNHCR camps, most of which were located near the Somali and Sudanese borders, unless granted permission to attend higher education institutions, receive specialized medical care outside the camp, or to leave to avoid security threats. The government did not provide opportunities for local integration; however, it worked closely with the UNHCR in facilitating refugee resettlement in other countries.

Security concerns, including rape, banditry, and shooting, remained problems at both Dadaab and Kakuma refugee camps. Health and social workers at the camps reported that due to strong rape awareness programs, rape incidents were better reported by victims, resulting in improved access to counseling.

Other security and human rights problems affecting refugees included persecution of Muslim converts to Christianity, community pressure against opponents of female genital mutilation (FGM), forced marriage, particularly of young Sudanese and Somali girls, and family objections to out-of-clan marriage. At times these resulted in the kidnapping of spouses and children. The UNHCR requested increased police presence in the identified troubled areas, as well as increased patrolling within the refugee camps.

Fifteen relief agencies followed a code of conduct for humanitarian workers to further reduce incidents of sexual abuse by agency staff in refugee camps.

There were isolated incidents of interclan violence at the Dadaab refugee camps.

The government introduced mobile courts, which are fully fledged judicial courts, and which proved to be instrumental in curbing violence and unlawfulness and providing a legal response to abuses.

#### Stateless Persons

The UNHCR estimated that there were 100,000 stateless Sudanese Nubians in the country, reportedly the descendants of Sudanese forcibly conscripted by the British in the early 1900s. The UNHCR reported that the Nubians should have been granted Kenyan citizenship under prevailing nationality law. In 2003 they sought judicial relief from the Constitutional Court to be declared Kenyan citizens by birth. Kenyan citizenship is determined by jus sanguinis (based on parentage), but the law also provides citizenship for Africans brought to Kenya by colonial authorities. By year's end the court had not heard their case. In 2005 they filed a memorandum of admissibility with the African Commission on Human and Peoples' Rights (ACHPR) under the African Charter on Human Rights. In May the ACHPR heard arguments on the admissibility of the case. The Kenyan government was represented and presented its arguments and filed a brief on the merits of the case. By year's end the commission had not reached a decision.

According to the UNHCR, an unknown number of descendants of mixed Eritrean-Ethiopian marriages were also stateless. They were unable to obtain citizenship in either of those countries due to strong nationalist prejudices.

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

#### Elections and Political Participation

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

To prepare for the December general elections, in March the Electoral Commission of Kenya (ECK) initiated nationwide voter registration. Registration was slow because many persons lacked national identification cards, especially in districts that border neighboring countries. The slow issuance of identification cards in these districts was due to lengthy vetting of applicants to ensure non-Kenyans were not issued the document, due to Kenyan security concerns. From January until the close of the preelection registration period in November, the ECK registered 1,831,686 voters. Altogether, nearly 14.3 million citizens were registered to vote.

The election campaign was generally free and fair, although there were instances of violence between supporters of rival parties, especially among progovernment parties. Police generally reacted professionally to instances of campaign violence. During the campaign, SMS messages, pamphlets, and Web logs were sometimes used to disseminate speech that was banned under the election code of conduct as prohibited hate speech. The KNCHR and other civil society organizations accused the government of misusing state resources in the election campaign. In December four members of the Administration Police were arrested on charges of distributing hate literature in Rift Valley Province. In December an

official car assigned to an assistant minister was stopped by police and found to contain weapons.

During the election campaign, the government required parties to register planned political gatherings with the police in order to prevent clashes if rival parties held simultaneous rallies. Despite this measure, political parties were able to operate largely free of government interference. Political parties did at times face restrictions on their activities imposed by supporters of competing political parties or candidates.

Voter turnout was approximately 65 percent, the highest level in the country's history. Voting and counting at polling stations was generally conducted in accordance with democratic standards, although there were irregularities in strongholds of both the opposition and progovernment parties. The tallying of the presidential results by the ECK in Nairobi was marked by irregularities. International observers concluded that these irregularities undermined the credibility of the ECK. However, the ECK announced that President Kibaki won the election. After the ECK announcement of the presidential election results on December 30, violent protests ensued.

While the presidential results were marked by serious irregularities, the local and parliamentary results were generally credible. The opposition Orange Democratic Movement won 99 parliamentary seats, while the progovernment Party of National Unity won 43. Altogether 23 parties entered parliament.

Women's participation in electoral politics remained low, but a record number of women candidates ran for parliament and for local office. Nevertheless, only 10 percent of all parliamentary candidates were women. The percentage of women in parliament and political party leadership remained low. Voters elected 15 women to parliament in the December elections, up from eight in 2002. In the outgoing government women held two of 32 ministerial portfolios.

There were reports of harassment and attacks on female candidates for parliament. In May a group of men with rifles and machetes attacked a female candidate in Central Province. On September 7, a group of men publicly warned a female candidate contesting the seat of the minister of environment against opposing him and then attacked her. The *Daily Nation* reported that on September 15, another female parliamentary aspirant was attacked, allegedly by supporters of her opponents. In November the UN Development Fund for Women established a Gender Rapid Response Unit (GRRU) to monitor threats against female candidates and to provide assistance. According to GRRU, 252 female candidates reported threats or attacks. The most common threat was death threats, followed by threats of rape and threats against property.

While the constitution does not specify representation for women, youth, or minorities, it emphasizes gender equality. Moreover, the constitution provides for 12 nominated parliamentary seats representing "special interests" to be appointed by the president. Because the constitution does not define "special interests," the interpretation of this provision is left to the nominating political parties and the ECK.

#### Government Corruption and Transparency

The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity.

Frequent press reports of incidents of government corruption fueled a widespread public perception that large-scale corruption up to the highest levels of the government and in parliament persisted, and that little official action had been taken against the most corrupt. The World Bank's Worldwide Governance Indicators reflected that corruption was a severe problem.

In July President Kibaki reappointed former finance minister David Mwiraria to a cabinet position. Mwiraria had resigned in February 2006 over allegations that he was involved in several of the so-called Anglo Leasing scandals in which the Treasury approved payments on suspect contracts. Former governance and ethics permanent secretary and "anticorruption czar," John Githongo, had revealed details of the massive Anglo Leasing scandal in January 2006 and provided evidence that Mwiraria tried to persuade him to call off his investigation. In February 2006 details of the Goldenberg scandal, which occurred in the 1990s, also were published. Both reports implicated a number of former and current government officials, renewing public frustration over corruption. Three ministers resigned following their inclusion in the reports, but the High Court declared one minister immune from prosecution based on protection from double jeopardy. In 2005 President Kibaki eliminated the position of permanent secretary for ethics and governance during restructuring of the cabinet.

In 2003 the government created the Kenya Anti-Corruption Commission (KACC) and in 2004 appointed a director and other staff. However, in August the NGO Name and Shame Corruption Network Campaign claimed that the KACC had accomplished little, despite the millions of shillings the government provided. On August 19, the NGO and the Center for Law and Research International (Clarion) issued a report that claimed the KACC failed to investigate and prosecute influential persons and criticized its failure to address the Goldenberg and Anglo Leasing scandals. The KACC director told the media he had forwarded 284 cases to the attorney general for prosecution. During President Kibaki's five-year tenure no top officials have been charged with corruption, despite numerous scandals.

In September the findings of the Kroll Report were leaked. In 2003 the incoming Kibaki government had commissioned the Kroll Report, an investigation into stolen state assets. The report provided evidence indicating that former president Daniel arap Moi, his family, and his associates stole more than \$30 million (two billion shillings) of state revenues. However, the government indicated it would not attempt to recover the assets, claiming a lack of substantial evidence in the report. It also blamed developed countries for allowing stolen money to be deposited in their banks. The public and media questioned the government's motives in light of the endorsement by former president Moi of President Kibaki's reelection bid.

The *Kenya Times* reported that in the past three years, the government fired 12 senior officials of county councils for graft. In January the controller and auditor general in Kilifi issued an audit report accusing chief officers of working with revenue collectors to steal local funds. Also, in February all of the Senior Plan Record Office staff in the Ministry of Lands were suspended, and investigations were underway at year's end into irregular transactions.

On February 16, police arrested three Constituency Development Fund (CDF) officials in Coast Province for receiving a bribe from contractors. Also in February police arrested a senior official of another county council for demanding a bribe.

In December 11 prison wardens were charged with aiding eight death row inmates to escape from Naivasha Prison earlier that month.

In October 2005 the government enacted the Public Procurement and Disposal Act, which provides for a procurement oversight board. The board became fully operational during the year after the president approved the new act.

The Public Officers and Ethics Act requires that senior officials disclose their assets. However, the law does not require that disclosures be released to the media or that the public has a right to request disclosure of public officials' assets.

There is no freedom of information law; however, access to government information, particularly through the Internet, improved. The government spokesman's briefings were televised, and updates of many government Web sites were prompt.

#### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. With the exception of the police, government officials were usually cooperative and responsive to the queries of these groups. However, there were reports that officials also intimidated NGOs and threatened to disrupt their activities, and that less-established NGOs (particularly in rural areas) were subjected to interference from provincial administrators and security forces.

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

NGOs monitored the December general elections in cooperation with the electoral commission, the KNCHR, and foreign diplomatic missions.

A number of human rights organizations, including the Kenya Human Rights Commission (KHRC), the IMLU, and the KNCHR, produced reports cataloguing human rights abuses. The KNCHR has the status of an appeals court and can issue summonses, order the release of prisoners, and require compensation for human rights abuses. In September 2006 the organization's first human rights tribunal ordered the government to pay journalist Peter Makori approximately \$70,200 (5,053,671 shillings) as a result of his torture and illegal detention by the police in 2003; however, it was not known whether payment was made.

In July police used force to disrupt a peaceful demonstration organized by civic leaders from various organizations, despite their having given notice to the police as required by the Public Order Act. Five civil society activists from various NGOs were arrested, but the court dismissed their cases.

The government generally cooperated with international governmental organizations. However, in November the UN Special Rapporteur for Extrajudicial Killings requested permission to visit to investigate the killings of suspected Mungiki members. By year's end, the government had not approved the request.

#### Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The constitution and law prohibit discrimination based on race, tribe, place of origin or residence, or other local connection, political opinions, color, creed, or gender. However, government authorities did not enforce effectively many of these provisions. There was also evidence that some government and opposition officials tolerated, and in some instances instigated, ethnic violence. The law establishes limited rights for the disabled, but does not prohibit discrimination based on language or social status.

#### Women

In 2006 the government enacted the Sexual Offenses Act, which criminalized rape, defilement, sex tourism, and sexual harassment. In February the attorney general agreed to train the judiciary, prosecutors, desk police officers, CID investigators, and health workers on provisions of the new act, and in March he appointed a 27-member task force to implement the act. However, by year's end many law enforcement officers were not trained on, or ignored, the new law. Implementation remained limited, and sexual offenses remained largely underreported.

The new law maintains the existing maximum penalty of life imprisonment for rape, although sentences usually were no longer than the minimum of 10 years. The law established minimum sentences for both rape and defilement--defined as an act with a child involving penetration--with higher penalties for the latter. The new law defines a child as any person under 18 years of age, consistent with the children's act and thereby raising the age of consent to 18. No data were available on the number of prosecutions and convictions for rape during the year.

The rate of prosecution remained low because of cultural inhibitions against publicly discussing sex, victims' fear of retribution if they report crimes, the disinclination of police to intervene in domestic disputes, and the unavailability of doctors who otherwise might provide the evidence necessary for conviction. Moreover, traditional culture permitted a husband to discipline his wife by physical means. The law does not specifically prohibit spousal rape.

During the year the Nairobi Women's Hospital received 2,562 sexual assault and domestic violence cases. The youngest rape victim was five months old. According to police statistics, there were 2,736 reported rapes nationwide in 2006, compared with 2,867 reported in 2005. However, these statistics greatly underreported the problem, since social mores discouraged women from going outside their families or ethnic groups to report sexual abuse. Human rights groups estimated that over 16,000 rapes were perpetrated annually. In December NGOs reported an increase in rape during the postelection violence. Some NGOs reported that courts gave increasingly harsh sentences to those convicted of rape.

In May Coast General Hospital opened the first post-rape center in the country.

Domestic violence against women was a serious and widespread problem. 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 private family matters. The *2004 Kenya Demographic and Health Survey* revealed that more than half of women had experienced domestic violence after the age of 15. Wife beating was prevalent and usually, but not always, condoned by society. For example, in April a court sentenced a man either to serve six months in jail or to pay a fine for beating his wife. In July a man went to jail for killing his wife with a machete when she attempted to leave him. NGOs, including the Law Society of Kenya, provided free legal assistance to some victims of domestic violence.

Prostitution is illegal but was perpetuated by poverty. Police arrested women in prostitution but not the men who solicited them. In 2005 a number of illegal immigrants were repatriated after police raided a nightclub where they were allegedly forced to engage in prostitution.

The law prohibits sexual harassment; however, sexual harassment was a problem. The *Daily Nation* reported that in May a member of parliament accused the Ministry of Education of failing to respond to three female teachers who reported sexual harassment to the Teachers Service Commission. Rather than addressing their complaints, the ministry transferred the teachers to other schools.

The law provides equal rights to men and women and specifically prohibits discrimination on grounds of gender; however, women experienced a wide range of discriminatory practices in matrimonial rights, property ownership, and inheritance rights. They also face a justice system that often discriminates against women, and customary laws grounded in patriarchal traditions, limiting their political and economic rights and relegating them to second-class citizenship.

Women often faced discrimination in access to employment, received less pay than men for doing substantially similar work, and faced discrimination in access to credit.

In September the government pledged to reserve one-third of civil service positions for women, but women continued to face both legal and de facto discrimination in other areas. According to the government's *2007 Economic Survey*, enrollment in primary and secondary schools was balanced, but only 39.1 percent of students in universities were women. Only 70 percent of women were literate, according to the UN Children's Fund (UNICEF).

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

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

Women made up an estimated 75 percent of the agricultural work force and were active in urban small businesses. The average monthly income of women was approximately two-thirds that of men. Women held only 6 percent of land titles; under traditional law, in many ethnic groups women cannot 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.

#### Children

The government was generally committed to the rights and welfare of children. There were legislation and policies to promote education and protect children's rights; however, the government did not implement its policies fully.

According to 2003 UNICEF data, only 81 percent of births in urban areas and 57 percent in rural areas were registered. This resulted in discrimination in delivery of public services such as education and health care.

According to the *Economic Survey* published during the year, primary school enrollment was 7.63 million in 2006. Education was tuition-free; however, classes were overcrowded due to insufficient teachers and an inadequate budget. The government continued to support informal schools, particularly for children in urban slums; enrollment in these schools was an estimated 147,000, increasing the enrollment in both formal and informal primary schools to 7.78 million. Of enrolled children, 79.9 percent completed the eight years of primary school in 2005, compared with 76.2 percent in 2004.

Enrollment in secondary schools increased by 11.1 percent from 2005 to 2006. Approximately 64 percent of primary school graduates went on to secondary school in 2005, up from less than 50 percent in 2004. The law mandates compulsory schooling for all children through grade 12, but in 2005 enrollment in secondary school was only 29.3 percent.

Enrollment of boys and girls was approximately equal at the primary level, but boys outnumbered girls in higher education by nearly 25,000 students. Rural families were more reluctant to invest in educating girls than boys, particularly at higher levels. According to the Federation of Women Lawyers, 8,000 to 13,000 girls annually dropped out of school due to pregnancy. UNICEF reported that nine out of 10 children from poor households fail to attain basic education.

The government ordered provincial administrators to arrest parents who did not take or send their children to school. For example, in June police arrested a father who put his 12-year-old son to work in a quarry rather than enroll him in school. However, this law was not enforced uniformly.

The government provided free primary health care for children who were five years old and younger. Boys and girls had equal access to state-provided medical care.

The government banned corporal punishment in schools, but it occurred throughout the year, with caning the most frequent form of punishment.

The law prohibits FGM, but it was still practiced, particularly in rural areas. According to UNICEF, one-third of women between the ages of 15 and 49 had undergone FGM. Of the country's 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana, constituting 25 percent of the population) did not traditionally practice FGM. According to the NGO Maendeleo Ya Wanawake (Development of Women), the percentage of girls undergoing the procedure was 80 to 90 percent in some districts of Eastern, Nyanza, and Rift Valley provinces. There were more public awareness programs intended to prevent the practice, in which government officials often participated.

FGM usually was performed at an early age. Some churches and NGOs provided shelter to girls who fled their homes to avoid becoming victims, but community elders frequently interfered with attempts to stop the practice.

Officials continued to attempt to stem FGM. In January three women were fined approximately \$1,550 (100,000 shillings) for having their daughters undergo FGM. In February two district commissioners for Loitokitok and Kajiado instructed police to arrest anyone perpetrating FGM. They noted that some older men were sneaking girls out of schools to take them

away for FGM, and that more than 10,000 girls from Kajiado fled to rescue centers to avoid FGM.

Various communities and NGOs have instituted "no cut" initiation rites for girls as an alternative to FGM. According to the Family Planning Association of Kenya, its "no cut" program, called Ntanira na Kithomo (Initiate Me through Education), contributed to a 13 percent decline in the prevalence of FGM in Meru North District through 2005.

Child rape and molestation continued to be serious problems. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy. During the year the Nairobi Women's Hospital handled 915 cases of child abuse; however, the stigma attached to sexual violence made many people reluctant to report such cases or seek assistance, and the true rate of occurrence was much higher.

On February 20, the NGOs The CRADLE and Care Kenya released their 2006 report entitled *Robbing the Cradle* which indicated that child sexual abuse had increased, while the age of the youngest victims had decreased. The most vulnerable victims were girls and boys aged three to eight. Most child abusers were neighbors, fathers, and other relatives. For example, in January a woman was sentenced to eight years in prison for harming her seven-year-old niece, including engaging her in domestic labor. On June 7, a man defiled his nine-year-old daughter and burned her in an attempt to erase the evidence.

Teachers had the highest number of perpetrators in the professional category, with pastors and police officers following closely. For example, on June 8, a police officer was charged with defiling an eight-year-old girl at a police station. The *Daily Nation* cited a nominated member of parliament who claimed that six students were impregnated by teachers in his constituency.

In July 2006 the president signed into law the Sexual Offenses Act. It states that the legal minimum age for consent is 18; however, most prosecutors, judicial officers, and police still referred to old law rather than rely on the new act, which defined minimum sentences for rape and defilement, with harsher penalties for defilement. NGO activists complained that a provision in the law making false claims of sexual assault a criminal offense, subject to punishment equal to that of the offense complained about, acts as a deterrent to reporting sexual offenses. In December the government distributed copies of the act to every prosecutor, and the attorney general launched a reference manual for prosecuting sexual offenses.

In January police arrested two men for defiling two nursery school girls, aged four and five. In March a court sentenced two men to 20 years in jail for defiling a 13-year-old girl and infecting her with a sexually-transmitted disease. In April an 18-year-old man went to jail for 15 years for defiling a five-year-old girl. In August a court sentenced a man to 20 years in prison for defiling a 13-year-old girl and sentenced a female accomplice to 14 years in prison for permitting the act.

Media reported discrimination against uncircumcised boys. For example, in February the high school principal in Meru South District sent 20 boys home for being uncircumcised and refused to enroll them until they underwent the procedure.

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

In May teachers rescued a 10-year-old girl from forced marriage to a 35-year-old man who had paid her parents a dowry. In August the police rescued a 14-year-old girl from forced marriage.

Trafficking in children and child prostitution were problems, although the new Sexual Offenses Bill outlaws both, as well as child pornography. The minimum sentence for child trafficking is 10 years in prison and a fine of approximately \$27,400 (two million shillings). The director of children's services of the Ministry for Home Affairs stated that some persons used the guise of adoption to traffic children.

In June 2006 the director of children's services announced that, through a justice sector reform program, children's officers, probation officers, and provincial administrators had received training on children's rights, and 80 more chief children's officers had been appointed to the Department of Children's Services. In August 2006 the assistant education minister announced that the government would build shelters throughout the country for sexually abused children; however, it was not known whether any shelters were built.

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

The *Daily Nation* reported in March that there were 10,000 to 30,000 children engaged in prostitution, mostly in tourist

areas. According to a December 2006 UNICEF report, 10,000 to 15,000 girls living in four main coastal resort areas were involved in prostitution.

Based on the 2005-06 household survey, approximately 1.2 million children were engaged in child labor.

Poverty and the spread of HIV/AIDS continued to intensify child homelessness. The *Standard* reported in May that the government began a pilot program to place two million AIDS orphans with families in 20 districts. As of August the government had placed 5,000. In 2006 the children's rights NGO, African Network for the Prevention and Protection Against Child Abuse and Neglect, estimated that 750,000 children lived on the streets. 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 shelter for girls abused by their employers, and provided shelter and medical care to street children exploited in the commercial sex industry.

There were reports of children joining gangs and militia, and of the Mungiki gang recruiting young boys from schools. On June 18, police ambushed a group administering oaths and providing military training to armed youths. The Mt. Elgon area district commissioner warned parents to turn in their children who had joined the Sabao Land Defense Force or face prosecution.

#### Trafficking in Persons

The law does not explicitly prohibit all forms of trafficking in persons, although the Sexual Offenses Act and the Children's Act criminalize trafficking of children and trafficking in persons for the purpose of sexual exploitation. Persons were trafficked to, from, and within the country.

The country was a source, transit, and destination country for men, women, and children trafficked for forced labor and commercial sexual exploitation. Children were trafficked within the country for domestic servitude, street vending, agricultural labor, and commercial sexual exploitation, including in the coastal sex tourism industry. Men, women, and girls were trafficked to the Middle East, other African nations, Europe, and North America for domestic servitude, enslavement in massage parlors and brothels, and forced manual labor. Foreign employment agencies facilitated and profited from the trafficking of Kenyan nationals to Middle Eastern nations, notably Saudi Arabia, the United Arab Emirates, and Lebanon, as well as to Germany. Chinese, Indian, and Pakistani women reportedly transited Nairobi en route to exploitation in Europe's commercial sex trade. Brothels and massage parlors in Nairobi employed foreign women, some of whom were likely trafficked. Asian nationals were trafficked into the country and coerced into bonded labor. Human trafficking in the country began to attract attention from the media, the public, and the government, especially after the release of the joint UNICEF/Ministry of Home Affairs research report in December 2006. The report, *Extent and Effect of Sex Tourism and Sexual Exploitation of Children on the Kenyan Coast*, stated that 10,000 to 15,000 girls living in four main coastal resort areas were involved in prostitution--up to 30 percent of all 12- to 18-year-olds living in these areas. The government recognized the Day of the African Child on June 16 and dedicated the day to the fight against child trafficking.

Police reportedly investigated trafficking cases in the coastal and Rift Valley regions; however, the government was unable to provide statistics on trafficking-related investigations, arrests, and prosecutions during the year.

Victims trafficked abroad generally were recruited through employment agencies under false pretenses. Domestic trafficking victims were often lured by friends and relatives, who offered them false promises of good employment or access to education. Poor families were misled into believing that their child was gaining the opportunity for a better life. The NGO Behavioural Change Plus Care of Humanity reported that traffickers targeted poor and illiterate girls in slum areas to work for little or no pay.

Information on transnational trafficking in persons is limited. However, cases of trafficking of Asians indicated that trafficking generally occurred through recognized border crossing points, using both legitimate and forged travel documents. However, nationals of neighboring countries were often trafficked using forged travel documents and entered the country through unmonitored border crossing points.

The minimum penalty for trafficking for sexual exploitation is 15 years' imprisonment, a fine of up to \$27,400 (1,918,000 shillings), or both. However, fines in practice were limited, and jail time was rarely imposed. Laws prohibiting the forcible detention of women for prostitution, child labor, transportation of children for sale, and the commercial sexual exploitation of children can also be used to prosecute trafficking-related offenses. On June 25, the National Steering Committee to Combat Human Trafficking, chaired by the vice president's office and the Ministry of Home Affairs permanent secretary, selected a task force of government agencies, NGOs, and UN agencies to draft a national plan of action and a smaller group to serve as a secretariat.

During the year police assisted with international trafficking in persons investigations in other countries. The police assisted

the International Criminal Police Organization (Interpol) in investigating the suspected trafficking to Ireland of four children ages four to 14 years. At year's end police were continuing to work with Interpol to investigate the case of a 19-year-old woman allegedly trafficked to Holland. There were no reports that the government had received any requests to extradite Kenyan citizens accused of trafficking in persons offenses in other countries.

The police antitrafficking unit, in conjunction with other police formations, has primary responsibility for combating trafficking. During the year, 14 community policing and child protection police units were established. In February one unit obtained indictments and made its first arrests. However, police had limited capacity to track data on trafficking arrests, and no year-end statistics were available.

During the year the government did not systematically screen vulnerable population groups to identify trafficking victims.

Government collaboration with NGOs to combat human trafficking increased. Awareness among government departments grew during the year, largely due to NGOs' efforts to study the issue, educate the media, and inform the public about the problem. The media, especially the government-owned Kenya Broadcasting Corporation, reported cases of suspected human trafficking.

In July police arrested two female secondary school teachers in Kirinyaga district for alleged child trafficking. No further information was available on the case. In May a court sentenced a woman to two years in jail for trafficking a child to the United Kingdom. At year's end six persons were on trial for trafficking 14 children--age six months to 12 years--in Bomet and Nandi districts.

#### Persons with Disabilities

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

A study conducted by the KNCHR revealed that many students with disabilities were denied admission to regular schools, while in some cases the government declined to fund special schools. The Education Ministry permanent secretary stated that only 35,000 of the 147,000 children with special needs were enrolled in school, while the KNCHR commissioner contended that fewer than 10 percent of children with special needs were enrolled in school. However, the number of special education teachers who have graduated from the Kenya Institute of Special Education increased to 9,000.

The KNCHR also stated that the Kenya National Examination Council (KNEC) failed to provide adequate testing facilities and resources for students with disabilities. The KNEC claimed that it provided special accommodations, such as exams in Braille and in large print for visually impaired candidates and extra time to complete exams. The government was developing disability-specific curricula, but the process was slow due to lack of funding and staff.

#### National/Racial/Ethnic Minorities

The population is divided into more than 40 ethnic groups, among whom discrimination and occasional violence were frequent. The 1999 census indicated that Bantu ethnic groups constituted approximately 67 percent of the population, of which the Kikuyu and closely related Embu and Meru accounted for 32 percent, the Luhya 16 percent, and the Kamba 10 percent; Nilotic groups constituted 30 percent, of which the Kalenjin accounted for 12 percent and the Luo 11 percent; and Cushitic groups--mainly Somalis--constituted 3 percent of the population. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their home province, which sometimes resulted in fierce resentment from other ethnic groups. The numerically small and shrinking South Asian community controlled a disproportionate share of commerce.

The conflict between two Cushitic groups in the far north continued, with each group accusing the other of maintaining militias and receiving armed support from their ethnic kinsmen across the border in Ethiopia to harass, intimidate, and kill members of the other group. The government quickly sent a police force supported by the army to stop the attacks. In April it formed a peace committee involving local politicians and elders of the two communities to discuss problems and seek peaceful solutions to the conflict.

Leading up to the 2007 general elections, some political leaders made blatant appeals to traditional ethnic animosities for political purposes, resulting in intimidation of members of targeted ethnic groups and communal clashes. After the announcement of the disputed presidential election results in December, interethnic violence occurred in many areas of the country. In many cases, ethnic Kikuyu living outside their Central Province homeland were targeted with violence. Tens of thousands fled their homes in Rift Valley Province and, to a much lesser extent, elsewhere in the country. There were

also reports that Kikuyu gangs forcibly circumcised Luo males in Nairobi.

Through the provincial administrations, the government held public meetings in regions plagued by ethnic violence to promote dialogue and peaceful resolution of conflicts. The government dispatched police and a paramilitary force to patrol affected areas to prevent a recurrence of violence. In June 2006 ethnic violence erupted in the region of Western Province bordering Uganda and continued for six months. Competition over land exacerbated by rivalries among political leaders representing contending ethnic communities were the cause. Other conflicts in 2006 took place between the Maasai and Kuria in southern Rift Valley Province and between rival Kikuyu and Luo criminal gangs in a major slum in Nairobi. Both conflicts were quickly suppressed by security forces.

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

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

In 2006 members of coastal ethnic groups attempted to seize land they claimed had been given away unfairly decades earlier to persons from outside the province, allegedly in an attempt to change the region's demography for political purposes. The government acknowledged that some illegal land deals had taken place, but insisted that persons seek redress through the courts and not simply squat on disputed land. During the year the government distributed land titles in Coast Province to landless persons who had long challenged the legality of their dispossession.

#### Other Societal Abuses and Discrimination

There was societal discrimination based on sexual orientation. The Council of Imams and Preachers of Kenya (CIPK) and other civic leaders condemned homosexuality and argued against legalizing gay marriages. A group in Mombasa created the Muslim Youth Pressure Group to oppose homosexuality.

There was societal discrimination against homosexuals and persons with HIV/AIDS. The common view of HIV/AIDS as a stigma made it difficult for many families to acknowledge that a member was HIV-positive, and to date no socially or politically prominent individual has admitted being HIV-positive. However, there were fewer reports of violence against persons with HIV/AIDS.

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

The government worked in cooperation with international donors on programs for HIV/AIDS prevention and treatment. This enabled a rapid expansion of counseling and testing as well as care and treatment. During the year the number of people with knowledge of their HIV status and those able to achieve improved health if found to be infected more than doubled. These developments were seen as key to ultimately reducing stigma and discrimination.

#### Section 6 Worker Rights

##### a. The Right of Association

The law provides that all workers, including those in the export processing zones (EPZs), are free to form and join unions of their choice, and workers exercised this right. Workers numbering seven or more 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 armed forces, police, prisons service, and the administration police are explicitly prohibited from forming or joining unions.

There were 42 unions representing an estimated 500,000 workers, approximately one-third of the formal sector work force. All but five of these unions, representing an estimated 300,000 workers, were affiliated with the one approved national federation, the Central Organization of Trade Unions (COTU).

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

The law prohibits employers from intimidating workers; however, some antiunion discrimination occurred, including in garment plants in the EPZs. The Industrial Court, a body of up to five judges appointed by the president, can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities. However, union leaders reported that employers often did not comply with reinstatement orders, and workers often accepted payment in lieu of reinstatement.

#### b. The Right to Organize and Bargain Collectively

While not having the force of law, the Industrial Relations Charter (IRC), implemented by the government, COTU, and the Federation of Kenya Employers, gives workers the right to engage in legitimate trade union organizational activities, and the government protected these rights. Both the Trade Disputes Act and the IRC authorize collective bargaining between unions and employers, and unions and management establish negotiated wages and conditions of employment.

The security forces cannot bargain collectively but have an internal board which reviews salaries. Other groups that cannot bargain collectively, such as health sector workers, have associations, not unions, which negotiate wages and conditions that match the government's minimum wage guidelines; however, these agreements were not legally enforceable.

The law permits workers to strike, but workers found it difficult to exercise this right. Workers must notify the Ministry of Labor and Human Resource Development 21 days before a planned strike. The ministry always referred disputes to mediation, fact-finding, or binding arbitration at the Industrial Court; during that period any strike is illegal, thus removing legal prohibitions on employer retaliation against strikers. Members of the military, police, prison guards, and the National Youth Service are prohibited from striking. Other civil servants can strike following the 21-day notice period (28 days for essential service workers, such as water, health, education, or air traffic control workers).

Except for the Factories Act, all labor laws apply in the EPZs; however, the EPZ Authority and the government granted many exemptions to applicable laws. For example, the government waived a provision of the law that prevents women from working in industrial activities at night. The Tailors and Textiles Workers Union claimed that a number of garment producers in the EPZs have refused to recognize the union and resisted its efforts to organize their workers.

There were no reports of police using force to disperse strikers during the year.

#### c. Prohibition of Forced or Compulsory Labor

The law prohibits slavery, servitude, and forced and bonded labor, but there were reports of forced or compulsory labor by children, such as agricultural labor, prostitution, and domestic servitude sometimes initiated by their parents. Women, children, and men were trafficked for commercial sexual exploitation and labor.

#### d. Prohibition of Child Labor and Minimum Age for Employment

The 2001 Children's Act prohibits all forms of child labor that are exploitative, hazardous, or would prevent children under age 16 from attending school. However, child labor was widespread, particularly in the informal sector, and children were trafficked for commercial sexual exploitation and labor. The Ministry of Labor and Human Resources Development nominally enforced the minimum age statute.

The law defines child labor, and the worst forms of child labor can be prosecuted, both under the Children's Act, which prohibits child sexual exploitation, and under the penal code. The penal code prohibits procurement of a girl under 21 for unlawful sexual relations and criminalizes child commercial sexual exploitation, child labor, and the transport of children for sale. Persons under 18 may not be employed in any industrial undertaking at night, employment should not cause children to reside away from parents without their approval, and permission to work in a bar, hotel, or restaurant requires annually-renewed consent from the labor commissioner. Children under 16 are prohibited from working and the employment of children in the industrial sector is illegal.

However, the law does not apply minimum age restrictions to the agricultural sector, where approximately 70 percent of the labor force was employed; to children serving as apprentices under the terms of the Industrial Training Act; or to household domestic service.

An estimated 1.9 million children between five and 17 years of age--most between 13 and 17 years old--worked. The employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Children worked primarily in the informal sector, which was difficult to monitor and control. Many children worked on family plots or in family units on tea, coffee, sugar, and rice plantations. Children also worked in mining, including abandoned gold mines, and small quarries. 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 domestics. In addition tens of thousands of children were exploited in the sex industry.

The government worked closely with COTU and the ILO to eliminate child labor. In 2004 the government prepared a practical guide to labor inspection and trained labor inspectors and occupational health and safety officers to report on child labor. In 2006 the government renewed the three-year mandate for 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. An Interministerial Coordination Committee on Child Labor, chaired by the vice president, was responsible for setting general policy.

Many NGOs were active on child labor issues and assisted in the return to school of child laborers. During the year the government implemented 73 programs for the elimination of child labor with 25 partner agencies. The partners placed the children in schools, vocational training institutions, and apprenticeships, and supported income-generating activities for an estimated 10,000 parents. Partners also provided support to schools for income-generating activities to help keep children from poor families in school.

UNICEF, the Ministry of Tourism and Wildlife, the World Tourism Organization, and NGOs continued to work with hotels and tour operators to increase their awareness of child prostitution and sex tourism. They encouraged all hospitality-sector businesses to adopt and implement the code of conduct developed by the NGO End Child Prostitution and Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT). In 2006, 30 hotels on the coast signed the ECPAT code of conduct. The Ministry of Tourism and Wildlife's campaign to register villas and cottages and impose the same requirements as on hotels resulted in an estimated 1,200 registrations. By year's end 25 more hotels had signed the code of conduct.

In 2006 the government launched a national campaign to stop violence against children and address child labor and trafficking issues. The campaign was supported by UNICEF and NGOs, and groups held local events to raise awareness of child protection issues, including child labor. The government increased the Ministry of Home Affairs' budget, enabling the Child Protection Department to hire an additional 160 children's officers. The Children's Department cash transfer program for orphans and vulnerable children (partially funded by UNICEF) expanded in 2006 to reach 10,500 children in 17 districts, providing approximately \$8-\$15 (500-1,000 shillings) per child per month to help fund basic needs, including school costs, so that the children would not have to work.

#### e. Acceptable Conditions of Work

The legal minimum wage for blue-collar workers in the wage sector has 12 scales, varying by location, age, and skill level. In many industries the legal minimum wage equaled the maximum wage. In May 2006 the government increased the legal minimum wages for industrial workers by 12 percent and for agricultural workers by 11 percent. The lowest urban minimum wage was approximately \$105 (7,578 shillings) per month, and the lowest agricultural minimum wage for unskilled employees was \$35 (2,536 shillings) per month, excluding housing allowance. In May the Productivity Center of Kenya, a tripartite institution including the Ministry of Labor, the Federation of Kenyan Employers, and COTU, set wage guidelines for various sectors based on productivity, inflation, and cost of living indices. The minimum wage did not provide a decent standard of living for a worker and family. Most workers relied on second jobs, subsistence farming, other informal work, or the extended family for additional support.

The law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. The law specifically excludes agricultural workers. An employee in the nonagricultural sector is entitled to one rest day per week, and there are provisions for 21 days of combined annual and sick leave. The law also requires that total hours worked (regular time plus overtime) in any two-week period not exceed 120 hours (144 hours for night workers). The Ministry of Labor and Human Resources Development was responsible for enforcing these regulations. Violations were reported during the year. Workers in some enterprises, particularly in the EPZs and road construction, claimed that employers forced them to work extra hours without overtime pay to meet production targets. In addition employers often did not provide nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment.

The law sets forth detailed environmental, health, and safety standards; however, the government did not effectively enforce the law. Fines generally were too low to serve as a deterrent to unsafe practices. EPZs are excluded from the Factory Act's provisions. The Ministry of Labor's Directorate of Occupational Health and Safety Services (DOHSS) has the authority to inspect factories and work sites, except in the EPZs; however, it had only 52 inspectors instead of the 168 needed to adequately inspect factories and enforce its safety and health orders. Informal surveys found widespread hazards such as lack of basic safety equipment and emergency escape routes. According to DOHSS, the ministry took 11 companies to court in 2005 for not observing workplace safety and health guidelines and, including referrals from years prior to 2005, prosecuted 27 cases in 2005. In 2006 DOHSS carried out 1,985 inspections and took 38 companies to court. The department's occupational safety and health advisers made 402 safety audits in 2006. Labor unions and NGOs continued to criticize health and safety conditions in the EPZs and other sectors, such as small horticultural producers.

DOHSS health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Such notices can be appealed to the Factories Appeals Court, a body of four members, one of whom must be a high court judge. The law stipulates that factories employing 20 or more persons should have an internal health and safety committee with representation from workers. DOHSS developed a program to help factories establish the committees and trained them to conduct safety audits and submit compliance reports to DOHSS. However, according

to the government, fewer than half of the largest factories had instituted health and safety committees.

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



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