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2009 Human Rights Report: Kenya

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

March 11, 2010

Kenya has a population of approximately 39 million. It is a republic with a mixed presidential and parliamentary system. It has a strong president and a prime minister with unclearly defined executive powers. There is a unicameral National Assembly. In 2007 the government held local, parliamentary, and presidential elections. Observers judged the parliamentary and local elections to be generally free and fair. In the presidential election, the incumbent, President Mwai Kibaki, was proclaimed the winner by a narrow margin under controversial circumstances. Serious irregularities undermined the integrity of the presidential election results. Raila Odinga, the main opposition candidate, disputed the results, and violence erupted in sections of Nairobi and opposition strongholds in Nyanza, Rift Valley, and Coast provinces; approximately 1,333 persons were killed and more than 350,000 displaced between December 2007 and February 2008. The violence ended in February 2008 when, as the result of an international mediation process, the two sides agreed to form a coalition government. Under the terms of the agreement, incumbent President Kibaki retained his office, and Odinga was appointed to a newly created prime ministerial position. The parties also agreed to undertake a series of constitutional, electoral, and land reforms to address underlying causes of the crisis; these reforms were not completed by year's end. While civilian authorities generally maintained effective control of the security forces, there were frequent instances in which the security forces, particularly the police, acted independently.

The following human rights problems were reported: abridgement of citizens' right to change their government; unlawful killings, torture, rape, and use of excessive force by police and the military; mob violence; police corruption and impunity; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary interference with the home; prolonged pretrial detention; executive influence on the judiciary; restrictions on freedom of speech, assembly, and of the press; forced return of refugees and societal abuse of refugees including killing and rape; official corruption; violence and discrimination against women including female genital mutilation; child prostitution and labor; trafficking in persons, including allegations of recruitment of child soldiers to fight in Somalia, and minors who were internally displaced; interethnic violence; and lack of enforcement of workers' rights.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

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

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In February Philip Alston, the UN special rapporteur on extrajudicial, summary or arbitrary executions, released a report which found "that police in Kenya frequently execute individuals and that a climate of impunity prevails." The rapporteur also reported "the existence of police death squads operating on the orders of senior police officials and charged with eliminating suspected leaders and members of criminal organizations." The government rejected the findings of the Alston report and filed a protest with the UN. According to media reports, however, the Ministry of Internal Security acknowledged in a February letter to the Kenya National Commission on Human Rights (KNCHR) that police had killed 308 youths in 2008.

In 2008 the government formed the Commission of Inquiry into Postelection Violence (CIPEV) as part of the internationally mediated political settlement. The CIPEV documented 405 gunshot deaths during the postelection period; it attributed the vast majority of these to police. Law enforcement authorities offered no evidence to contradict reports that police officers perpetrated the shooting deaths. The final CIPEV report recommended that the government establish a special tribunal to investigate individuals suspected of such violence; however, no tribunal had been established by year's end, and the government had not systematically investigated or prosecuted individuals suspected of postelection violence through other means.

In March unidentified gunmen, reportedly acting on orders from the commissioner of police, shot and killed Oscar Kamau King'ara, the executive director of the local NGO Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and Paul Oulu, OFFLACK's program coordinator; the gunmen first blocked King'ara's car at a roundabout. On the day of the killing, government spokesman Alfred Mutua accused OFFLACK of being a front for the Mungiki, the country's largest criminal organization, and criticized OFFLACK's role in providing information on extrajudicial killings of Mungiki members to the UN special rapporteur. In 2008 OFFLACK reported that police were linked with the continued disappearance and deaths of suspected Mungiki members. Police threatened and intimidated witnesses to the killings, and four witnesses went into exile. The prime minister requested international assistance to investigate the murders, but the minister for foreign affairs subsequently rejected such assistance, and no credible investigation had been conducted by year's end.

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

During the year there were reports that persons died while in police custody or shortly thereafter, some as a result of torture. In 2008 the Independent Medico-Legal Unit (IMLU), a leading and credible human rights nongovernmental organization (NGO), reported one death while in police custody but noted that the actual number was likely higher; police often did not enter suspects into police custody records, impeding ability to track such cases.

Police killed numerous criminal suspects during the year, often claiming that the suspects had violently resisted arrest or were armed. From January to October, IMLU documented 33 alleged extrajudicial killings by police officers, the majority of whom were criminal suspects killed by police during apprehension. Human rights organizations claimed that police often planted weapons to justify the killing of criminal suspects during apprehension.

For example, in October police killed five persons traveling in a "matatu" minibus in the Githurai area of Nairobi, claiming that they were armed members of Mungiki. Residents of the area stated that the five were matatu operators fleeing police harassment and that police planted the gun after the killing.

No action was taken against security force members in the following 2008 killings of criminal suspects: the February killing of six suspected car thieves in Nairobi; the police shooting deaths of 21 robbery suspects in and around Nairobi, and the shooting deaths of three suspects and two workers in a Nairobi casino.

During the year more than 25 suspected Mungiki members were killed by security forces.

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

A journalist was abducted and killed during the year (see section 2.a.).

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

There were no developments in the following 2008 cases of demonstrator deaths: the January arrest of a police officer in Kisumu for the shooting death of two unarmed protesters, and the killing of at least 83 persons during postelection violence in Kisumu. There also were no reported developments in the October killing of the police officer who provided evidence to the KNCHR on extrajudicial killings of Mungiki members.

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

In August an armed gang killed internationally renowned gemologist Campbell Bridges when he confronted the group for trespassing on a mine near Voi. Police arrested six suspects in the case, but Bridges' family alleged that senior government officials involved in the killing were not investigated.

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

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

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

In February five persons were burned to death in Kitutu Chache, Kisii, after being accused of abducting and placing a spell on a young boy. In March six suspected witches were burned to death in Pokot District, and six others were killed in Kisii.

b. Disappearance

Disappearances and politically motivated abductions occurred during the year.

For example, in January a journalist was abducted and killed (see section 2.a.).

In September the Muslim Human Rights Forum (MHRF) alleged that five Muslims suspected by the government of involvement in terrorist activity were abducted by the Anti-Terrorism Police Unit (ATPU) and subsequently disappeared. The ATPU denied the allegations.

The KNCHR, IMLU, and Western Kenya Human Rights Watch (WKHRW) reported that the government failed to investigate disappearances in connection with the 2008 security force operation in Mount Elgon and the crackdown on the Mungiki criminal organization in 2008 and 2007.

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

The constitution and law prohibit such practices; however, the legal code does not define torture and provides no sentencing guidelines, which functionally bars prosecution for torture. Police frequently used violence and torture during interrogations and as punishment of pretrial detainees and convicted prisoners. According to IMLU, physical battery was the most common method of torture used by the police.

Human rights organizations, churches, and the press condemned numerous cases of torture and indiscriminate police beatings. In 2008 IMLU received 772 cases alleging torture by security officers, compared with 397 in 2005, although it noted that the number of torture cases was likely higher.

Unlike in previous years, there were no reports that police abused street children.

There were allegations of rape by security forces, including the rape of women in prisons, as well as in camps for internally displaced persons (IDPs) and refugee and among asylum seekers crossing into the country from Somalia. The Center for Rights Education Awareness alleged in 2008 that policemen raped women in the Kibera slum in Nairobi and those seeking refuge in police stations.

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

Due to shortage of civilian state prosecutors in the legal system (73 civilian prosecutors nationwide compared to 350 police prosecutors), police were responsible for investigating and prosecuting all crimes at the magistrate court level; civilian prosecutors handled cases at the high court level. Police routinely ignored evidence of security force torture provided by IMLU and other human rights organizations. In most cases allegations of torture were not fully investigated and the perpetrators not charged.

As part of reforms agreed to in the National Accord, in July the government established the Truth, Justice, and Reconciliation Commission (TJRC) whose mandate included the investigation of alleged cases of torture since independence. However, the TJRC had conducted no hearings by the year's end.

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

There were numerous instances of mob violence and vigilante action resulting in serious injury. For example, in June a mob beat three suspected thieves to death in Nairobi.

Prison and Detention Center Conditions

Prison and detention center conditions continued to be harsh and life threatening. A KNCHR prison assessment during the year concluded that torture, degrading and inhuman treatment, unsanitary conditions, and extreme overcrowding were endemic in prisons. Most prisons, particularly men's prisons, continued to be severely overcrowded in part due to a backlog of cases in the judicial system. In May 2008 the director of health services for prison services stated that the country's 90 prisons held 48,000 prisoners but were designed to hold only 12,000 persons. The WKHRW reported that in September, Bungoma Prison near Mount Elgon held more than 1,100 prisoners in a facility with a 480-person capacity.

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

In 2008 wardens in Kamiti Prison scalded prisoners with hot water and beat them during an operation to interdict contraband items. One person died, and 20 were hospitalized. Three wardens were suspended. At year's end a police investigation of the incident continued.

In 2007 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.

Prisoners generally received three meals per day, but portions were inadequate, and they were sometimes given half rations as punishment. Water shortages, an issue outside prisons as well, continued to be a problem.

Prison personnel stated that the rape of male and female inmates, primarily by fellow inmates, continued. Media reports indicated that it was also common for prison officials to rape female inmates. In September a transgender person alleged abuse by male prisoners and wardens in Nairobi's Kamiti Prison.

Hundreds of prisoners died annually from infectious diseases spread by overcrowding, unhygienic conditions, and inadequate medical treatment. In August, 18 prisoners died of suspected tuberculosis and pneumonia in Kodiaga Prison in Kisumu. In July 2008 a Ministry of Home Affairs report on prison conditions estimated that 46 inmates died monthly because of overcrowding, unhygienic conditions, and poor health care.

Prisoners were sometimes kept in solitary confinement far longer than the legal maximum of 90 days. Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who wanted to visit prisoners faced numerous bureaucratic and physical obstacles, each often requiring a bribe to overcome.

There were no separate facilities for minors in pretrial detention. Civil society activists witnessed young children, women, and men sharing the same cells. In 2008 IMLU reported that underage boys were detained in Bungoma Prison. Additionally, a July 2008 government report on prison conditions noted that underage female offenders, who were ineligible for diversion to a lesser security training school, were housed with adult female prisoners.

Some children under the age of four lived with their mothers in the 14 prisons for women. Official data were unavailable, but the Law Society of Kenya issued a report in December 2008 stating that 281 children lived with their mothers in prisons.

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

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

d. Arbitrary Arrest or Detention

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

Role of the Police and Security Apparatus

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

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

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

Impunity was a major problem. Police officers were rarely arrested and prosecuted for criminal activities, 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.

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

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

The government took some steps to curb police abuse during the year; the media reported that several dozen police officers were arrested for petty corruption in the last quarter of the year.

In September, in response to an interim report by the National Task Force on Police Reforms, the president replaced police commissioner Hussein Ali and the senior police leadership. The final task force report was released in November;

by year's end the government had not appointed the Police Reform Implementation Commission charged with overseeing the implementation of the recommended reforms.

There were no developments in the following 2008 cases: the trial of a police officer allegedly responsible for the shooting deaths of two unarmed, peaceful demonstrators in Kisumu; and the trial of a police officer for the shooting death of a member of parliament (MP) in Kericho.

There were numerous instances in which police failed to prevent societal violence. In February and March, police failed to prevent the burning deaths of suspected witches in Pokot and Kisii. In April police failed to prevent a mob from beating to death suspected Mungiki members in Karatina. Police attempted to investigate these incidents of societal violence but were hampered by the communities' unwillingness to provide information about the cases.

Arrest Procedures and Treatment While in Detention

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

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

Police often stopped and 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 (see section 2.c.).

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

There were reports during the year that police arbitrarily arrested persons demonstrating against the government. For example, in December police arrested 22 BLM members who were peacefully demonstrating against a corruption scandal in the Ministry of Education. Despite an order by the magistrate to release the demonstrators, police held them in detention for three days over Christmas, during which time they were alleged to have been deprived of food and water.

Lengthy pretrial detention continued to be a serious problem that contributed to overcrowding in prisons. The government claimed the average time spent in pretrial detention on capital charges was 16 months; however, there were reports that many detainees spent more than three years in prison before their trials were completed. Police from the arresting location are responsible for serving court summonses and picking up detainees from the prison each time a court schedules a hearing on a case. A shortage of manpower and resources meant that police often failed to appear or lacked the means to transport detainees, who then were forced to await the next hearing of their cases. According to the chief justice, as of August 2007 there was a judicial backlog of nearly one million criminal cases, resulting in persons being detained for months before seeing a judge.

Amnesty

The president releases petty offenders periodically, with the largest amnesty occurring on December 12, Independence Day; however, the release is not automatic. According to the Kenya Prison Service, in 2008 the president amnestied 4,960 prisoners on Independence Day; the total number amnestied during 2008 was 11,523.

In August the president commuted all death row sentences to life imprisonment.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary; however, the executive branch sometimes exercised political influence over the judiciary. The judiciary was corrupt at all levels. In 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." In January 2008, after the controversial announcement of the presidential results, the opposition leader refused to file a court challenge to the announcement because he did not expect a fair hearing.

In 2008 the government established a National Task Force on Judicial Reforms; the task force presented a final report to the president in August but the report was not publicly released by year's end.

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 him. Although judges have life tenure, except for a few foreign judges hired under contract, the president has authority over judicial appointments.

The court system consists of the Court of Appeals, High Court, and various levels of magistrate courts, where most criminal and civil cases originate. The Court of Appeals 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. The High Court has a criminal division that handles capital offences and other serious crimes. The bulk of criminal trials are conducted by magistrate courts, while the High Court and Court of Appeals also hear appeals. Civil cases may be heard by any of the courts, depending on the nature of the case.

The constitution provides for Kadhi's 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 personal matters as long as it did not conflict with statutory law. Use of traditional law occurred most often in cases of marriage, death, and inheritance in which there was an original contract based on traditional law. Citizens may choose between national and traditional law when they enter into marriage or other contracts; however, the courts determine which kind of law governs the enforcement of the contract. Some women's organizations sought to eliminate traditional law, through a number of proposed marriage laws, because in practice the current laws were interpreted and applied in favor of men.

Military personnel are tried by court-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.

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

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

There were no developments in the 2008 case of the former MPs charged with incitement for statements about human rights abuses in El Wak.

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. 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. During the year the government launched a National Legal Aid Office, but the program was not functional by year's end.

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

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

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

Political Prisoners and Detainees

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

Civil Judicial Procedures and Remedies

The KNCHR has some powers of a court, including the issuance of summonses and ordering the release of a prisoner or detainee, payment of compensation, or other lawful remedy; however, the government continued to ignore such summonses and orders. The police routinely refused to release suspects when ordered to do so by the KNCHR. During the year the attorney general filed a brief with the High Court arguing that the KNCHR should be stripped of judicial powers; the court has not issued a final ruling but did issue an injunction barring the KNCHR from convening investigatory panels. As a result, the KNCHR was barred from intervening in cases of police and judicial misconduct.

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

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

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

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

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

Unlike in 2008, there were no reports that security officers raided homes in the Mount Elgon District, destroying property and setting houses on fire, in their search for militia members; however, police raided homes in the Nairobi slums in search of suspected Mungiki members.

City Council and police officers also frequently raided, evicted, or destroyed the homes and businesses of citizens in slums or other areas who did not hold proper legal title. Residents complained that these actions were often intended to extort bribes from residents and small business owners.

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

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 killed, harassed, beat, and arrested members of the media. Journalists practiced self-censorship.

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

On January 2, President Kibaki signed into law the 2008 amendments to the Communications Act; the amendments permitted government regulation of the media and allowed the information minister to exert political influence on the Communications Commission of Kenya (CCK), the media licensing body. Media pressure on the president resulted in the May withdrawal of the controversial amendments from the Communications Act, which was signed into law. The CCK, the government's agency mandated to oversee the implementation of the new law, circulated new regulations in late September.

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

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

Of the several television stations operating in Nairobi, the government-owned Kenya Broadcasting Corporation (KBC) was the only station with a national network of broadcast and cable television, AM and FM radio, and short-wave transmission. Although KBC coverage was generally viewed as balanced, its monopoly on national broadcasting limited the ability of critics of government to communicate with the electorate. The disadvantage to government critics posed by the KBC monopoly on national broadcasting was particularly pronounced in the period prior to the December 2007 general elections. Eleven television stations owned by other media companies and more than 100 radio stations operated in both rural and urban areas.

The international media operated freely; approximately 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 British Broadcasting Corporation, and China Radio International.

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

In January journalist Francis Kainda Nyaruri was abducted and killed near Nyamira, Kisii. The KNCHR and IMLU reported that the police officer investigating the case stated that Nyaruri was killed on the orders of senior Nyanza police officers in retaliation for Nyaruris' reporting on police corruption. The Committee to Protect Journalists and the Overseas Press Club of America subsequently reported that neither the police nor the attorney general initiated a credible investigation of the case.

Officials used libel laws to suppress criticism.

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

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

Internet Freedom

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

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

Academic Freedom and Cultural Events

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

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

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The constitution and law provide for freedom of assembly, but the government frequently restricted this right in practice. Organizers must notify local police in advance of public meetings, which may proceed unless police notify organizers that the meeting is prohibited. According to the law, authorities may prohibit such gatherings only if there are simultaneous meetings previously scheduled for the same venue or if there is a perceived, specific security threat. However, police routinely denied requests for meetings filed by human rights activists and dispersed meetings for which no prohibition had been issued. Civil society groups noted that when they tried to comply with the licensing policy, police often refused to issue permits in a timely manner.

For example, BLM and the KNCHR reported that police frequently disrupted weekly political discussions held by BLM on a weekly basis at Jevanjee Gardens, Nairobi, and at times arrested participants. In December police arrested and prosecuted 22 BLM members for unlawful assembly under the Chiefs Authority Act, which stipulates that any gathering of more than three persons must have government approval.

Police forcibly dispersed demonstrators.

In March, according to IMLU, police beat students with clubs and guns when breaking up a student demonstration at Kenyatta University, resulting in 14 documented injuries.

No action was taken against police responsible for injuring six persons while dispersing demonstrators in Nairobi protesting election results.

Freedom of Association

The constitution and law provide for freedom of association, and the government generally respected this right. The Societies Act requires that every association be registered or exempted from registration by the registrar of societies. The 2008 Political Parties Act, which increased the fee for registering a political party to 600,000 shillings (\$8,000), resulted in a decrease in the number of political parties from 138 in 2007 to 47 by year's end.

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

c. Freedom of Religion

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.

For example, in September the MHRF alleged that five Muslims suspected by the government of involvement in terrorist activity were abducted by ATPU and subsequently disappeared (see section 1.b.).

There were no reported developments in the 2008 case of a Lamu imam arrested on suspicion of aiding the paramilitary training of youths.

Societal Abuses and Discrimination

During the year tensions between Muslim and Christian groups occasionally resulted in violence.

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

Witchcraft was illegal but still practiced, and mobs sometimes killed alleged witches (see section 1.a).

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/irf/rpt/.

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

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

Police routinely stopped vehicles throughout the country and often engaged in solicitation of bribes at such checkpoints. Ethnic Somalis were required to provide additional identification. HRW 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.

Refugee freedom of movement was severely restricted, and the government maintained its restriction on travel outside of refugee camps unless approved by the government and the United Nations High Commissioner for Refugees (UNHCR). There were instances in which refugees outside of the camps were detained despite holding valid travel passes.

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

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

Internally Displaced Persons (IDPs)

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

Rapes allegedly perpetrated by residents of camps, local residents, and sometimes by police personnel occurred in IDP camps. In May 2008 the representative of the UN secretary-general on the human rights of IDPs visited the country and concluded that the returns of some IDPs were not voluntary and based on informed choices. In an October 2008 report, the KNCHR found that the government had used intimidation and force to remove IDPs from camps and had failed to provide housing, food, and clean water to resettled camp residents. The KNCHR also found that resettled residents were exposed to sexual violence and harassment.

During the year government eviction and destruction of homes in low income areas resulted in IDPs. For instance, in July police bulldozed homes in Githogoro Village, Nairobi, displacing 3,000 residents.

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

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

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, and the 1969 Organization of African Unity Convention Governing the Specific Aspects of the Refugee Problem in Africa. The country is a signatory of this convention. Its laws minimally provide for the granting of asylum or refugee status, and the government has established a system for providing protection to some refugees.

The government provided some protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. However, there were reports of forcible returns of Somali asylum seekers throughout the year; the Kenya-Somalia border remained officially closed, preventing asylum seekers from legally entering Kenya. Somali asylum seekers reportedly paid approximately 7,500–15,000 shillings (\$100- \$200) per family in bribes and transportation costs to travel from the Kenya-Somalia border to the Dadaab refugee camps.

During the year international donors initiated a program to transfer the responsibility of registering all asylum seekers and determining refugee status from the UNHCR to the government. The government also registered refugees in Dadaab

camps, located in the northeastern part of the country; however, many refugees had not received their identification documents by year's end.

The government permitted the UNHCR to register and assist new arrivals who successfully made their way to one of the three Dadaab refugee camps. The UNHCR registered more than 59,000 new arrivals in the Dadaab camps between January and the end of November, increasing the camp size to more than 266,000 (the three camps were designed to accommodate 90,000 refugees). In August the UNHCR requested government permission to build a fourth camp in Dadaab due to severe overcrowding; however, as of year's end the government had not responded. Between August and October the International Organization for Migration (IOM) transported more than 13,000 newly arrived Somali refugees from the Dadaab camps to the Kakuma camps to minimize overcrowding.

The UNHCR stopped providing newly arrived refugees with plots in the Dadaab camps, restricting assistance to limited nonfood items (plastic sheeting and cooking utensils) and instructions to locate clan members or search for accommodations in Dadaab refugee camp. Cholera, meningitis, H1N1, and measles outbreaks were all reported in Dadaab. Many new refugees reportedly were bypassing Dadaab camps because of the conditions and continued directly to the Kakuma camp or on to Nairobi.

Despite the policy that all refugees must reside in camps (encampment policy), slightly more than 45,000 refugees were registered in Nairobi as of December; however, the UNHCR provided assistance to these refugees only in exceptional cases. Unofficially, the UNHCR and NGOs estimated that more than 100,000 refugees resided in Nairobi. The government did not provide opportunities for local integration; however, it worked closely with the UNHCR in facilitating refugee resettlement to 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, victims increasingly reported such incidents, resulting in improved access to counseling. During the year approximately 249 crimes were reported in Kakuma refugee camp, including two homicides and three cases of sexual assault. There were no reported cases of sexual assault by police in either camp. Fifteen relief agencies followed a code of conduct for humanitarian workers to further reduce incidents of sexual abuse by agency staff in refugee camps.

Other security and human rights problems affecting refugees included persecution of Muslim converts to Christianity, community pressure against opponents of 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. Additional police were also assigned to the camps but not in sufficient numbers.

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

The government required all refugees to remain at UNHCR camps, which were located near the country's borders with Somalia and Sudan, unless refugees had been granted permission to attend higher education institutions, receive specialized medical care outside the camp, or to leave to avoid security threats.

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

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.

Stateless Persons

During the year the UNHCR estimated that 100,000 stateless Sudanese Nubians, reportedly the descendants of Sudanese forcibly conscripted by the British in the early 1900s, lived in the country. The Sudanese Nubians were not granted citizenship or identification documents, despite the UNHCR reporting that the Nubians qualified for citizenship under prevailing nationality law. In 2003 the Nubians sought judicial relief from the Constitutional Court to be declared citizens by birth. Citizenship is determined by jus sanguinis (based on parentage), but the law also provides citizenship for Africans brought to the country by colonial authorities. In 2005 the Nubians filed a memorandum of admissibility with the African Commission on Human and Peoples' Rights under the African Charter on Human Rights. In 2007 the commission heard arguments on the admissibility of the case. The government presented its arguments and filed a brief on the merits of the case. No further information on the case was available at year's end.

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

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

The constitution and law provide citizens the right to change their government 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 2007 presidential election results were tallied raised serious doubts as to whether this right was respected in practice on the presidential level.

Elections and Political Participation

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

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

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

International and local monitors reported that the election campaign for the 2007 elections was generally free and fair, although there were instances of violence between supporters of rival parties, especially among progovernment parties. Although the government required parties to register prior to political rallies, the government by and large did not interfere with party campaign activities. Police generally reacted professionally to instances of campaign violence. Text messages, pamphlets, and Web logs were sometimes used to disseminate hate speech that was banned under the election code of conduct. The KNCHR and other civil society organizations accused the government of misusing state resources by providing transport and funding rallies and election materials for some candidates in the election campaign. While nearly 14.3 million citizens registered to vote, an independent review commission concluded that voter rolls contained the names of approximately 1.3 million deceased persons.

In accordance with the National Accord, the ECK was abolished in November 2008 and an Interim Independent Electoral Commission (IIEC) was established in May. In August the IIEC conducted two parliamentary by-elections, in Shinyalu and Bomachoge constituencies. The by-elections were deemed free and fair by domestic and international observers, although there were problems with the voter register, and several political parties bribed voters in exchange for votes. By year's end the IIEC had not yet initiated the creation of a new national voter's register as mandated in the National Accord.

Other reforms mandated by the National Accord and intended to address the root causes of violence following the 2007 elections (such as constitutional, judicial, police, and land reforms) were not completed by year's end.

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

While the constitution does not specify representation for women, youth, or minorities, it emphasizes gender equality. Moreover, the constitution provides that 12 nominated parliamentary seats be filled by parties in proportion to the number of seats held in parliament; six of the 12 nominated MPs were women.

Section 4 Official Corruption and Government Transparency

Executive and Legislative Corruption

The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. The World Bank's 2008 Worldwide Governance Indicators reflected that corruption was a severe problem.

Frequent press reports of government corruption fueled a widespread public perception that massive corruption persisted up to the highest levels of the government and in parliament and that the government took little official action against the most corrupt.

During the year the media reported on three major corruption cases linked to the government: one involving oil; one involving education; and one involving maize. In the oil case, parastatal Kenyan Pipeline Company directors and employees colluding with executives from the Triton Oil company allegedly illegally released over 126 million liters of oil to Triton. The scheme allowed Triton to make large profits selling oil that it did not own. Since the pipeline company was responsible for managing those stocks, the government owed creditors up to 7.6 billion shillings (\$101 million) after Triton Oil collapsed. In the second case, 25 Ministry of Education officials were suspended after reports that an estimated 174 million shillings (\$2.3 million) were stolen from the Free Education program. Foreign funding was suspended until those involved have been punished and the money returned. In the third case, the minister of agriculture, MPs, and officials from the National Cereals and Produce Board were implicated in the theft and resale of maize from the strategic grain reserve. In return for political favors, MPs were allegedly allowed to sell the grain, which was intended to help ordinary citizens, to millers for large profits. According to a World Bank report, the scandal cost citizens more than 22.7 billion shillings (\$300 million). A report from the Anti-Corruption Commission exonerated all of the alleged participants. No one had been prosecuted in any of these cases by year's end.

In December 2008 the Kenya Anti-Corruption Commission (KACC) sued seven current and former MPs for making fraudulent reimbursement claims for allowances totaling 20 million shillings (\$250,000). Among those accused was Information Minister Samuel Poghisiso, who denied taking 2.8 million shillings (\$37,000) in 2006 and 2007. Four additional MPs were sued in January for recovery of false reimbursements totaling 14 million shillings (\$187,000). Both cases were pending at year's end.

In 2003 the government created the KACC and in 2004 appointed a director and other staff. The KACC lacks prosecutorial powers and can only recommend cases for prosecution to the attorney general. By year's end, according to the KACC, it had recommended 382 cases for prosecution to the attorney general, including eight ministers, four MPs, 11 permanent secretaries, seven chairpersons of boards of public institutions, 65 directors and chief executive officers of top public institutions, and 96 other senior level management officers of public institutions. The attorney general accepted the prosecution recommendations in 316 of the cases and has won convictions in 74 of the cases, all involving low- and mid-level officials.

Local anticorruption NGOs claimed that the KACC accomplished little, despite significant financial support provided by the government. Some civil society organizations reported that the government also used the commission to harass critics. In 2007 the NGOs Name and Shame Corruption Network Campaign and the Center for Law and Research International claimed the KACC failed to investigate and prosecute influential persons and criticized its failure to address the Goldenberg and Anglo Leasing megascandals. Since President Kibaki assumed office in 2002, no top officials have been successfully prosecuted for corruption, despite numerous scandals.

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

Judicial Corruption

In May the government appointed a multidisciplinary task force to examine accelerating judicial reforms. The task force presented an interim report in June and the final report in August. The report was forwarded to cabinet for approval and once approved, a bill will be presented to parliament for vote. The main recommendations included hiring additional judicial personnel, standardization and automation of court processes, introduction of small claims courts, introduction of a permanent mechanism to handle complaints against the judiciary, and additional funding.

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

The chief justice dealt with complaints against specific judges and magistrates; most complaints were mainly related to court management.

Police Corruption

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

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

The government took some steps in 2009 to curb police abuse. In May Internal Security Minister George Saitoti inaugurated the National Task Force on Police Reform, an 18-member team. The task force was guided by the Waki and

Kriegler reports and the Vision 2030 plan. The report was completed in October, following five months of gathering and analyzing views from the public and security experts.

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

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

The Public Officers and Ethics Act require that senior officials disclose their assets. However, the law does not require that disclosures be released to the public or the media.

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. Parliamentary debate continued to be televised live and broadcast via radio to the general public.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. With the exception of the police, government officials were usually cooperative and responsive to the queries of these groups. However, there were reports that officials also intimidated NGOs and threatened to disrupt their activities, and that provincial administrators and security forces interfered with less-established NGOs, particularly in rural areas. For example, in 2008 local authorities filed criminal charges against two persons who helped document allegations of human rights abuses against security forces in the Mount Elgon region. WKHRW officers fled the country following intimidation from local officials in 2008; however, they returned to the country during the year. Human rights activists also claimed that security agencies conducted surveillance of their activities.

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

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

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

government also permitted NGOs to provide paralegal services to prisoners; the KNCHR noted that reports of human rights abuses decreased in prisons with resident paralegals.

NGOs monitored the August by-elections in cooperation with the KNCHR and foreign diplomatic missions.

A number of human rights organizations, including the Kenya Human Rights Commission, IMLU, and KNCHR, produced reports cataloguing human rights abuses. The KNCHR has the status of an appeals court and can issue summonses, order the release of prisoners, and require compensation for human rights abuses. However, the government routinely ignored the KNCHR's summonses and orders, and the attorney general filed a brief with the High Court seeking to strip the KNCHR of its judicial powers (see section 1.e.).

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

Section 6 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. It also provides for limited rights for the disabled, but does not prohibit discrimination based on language or social status. Government authorities did not enforce effectively many of these provisions. There was also evidence that some government and opposition officials tolerated, and in some instances instigated, ethnic violence. The law criminalizes homosexual activity.

Women

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

The law provides a maximum penalty of life imprisonment for rape, although sentences usually were no longer than the minimum of 10 years. The law establishes a minimum sentence for defilement--defined as a sexual act with a child involving penetration--of life imprisonment if the child is under 11 years old, of 20 years if the child is between 11 and 16 years old, and of 10 years if the child is between 16 and 18 years old; a child is any person under 18 years of age. NGO activists complained that a provision in the law that criminalized false claims of sexual assault deterred the reporting of sexual offenses.

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

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

As a result, numerous alleged cases of sexual violence were not investigated by the police, and numerous cases were dismissed from court due to the absence of the police physician.

The government did not investigate or prosecute reported incidents of widespread sexual violence following the disputed election in 2008 and 2007.

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

Prostitution is illegal but was widespread. While operating a brothel is illegal, soliciting prostitution is not a crime. Police arrested women engaged in prostitution. High rates of prostitution existed in tourist areas such as Nairobi and coastal tourist areas. A 2006 study report by the UN Children's Fund (UNICEF) estimated that as many as 30 percent of minor girls ages 12 to 18 engaged in prostitution to varying degrees in coastal tourist areas.

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

Subsidized contraception options, including condoms and birth control pills, were widely available to both men and women throughout the country, although access was more difficult in rural areas. The UN estimated in 2007 that 39 percent of adult women used contraceptives regularly. Skilled obstetric and postpartum care was available in major hospitals, but many women were unable to access or afford these services. Also in 2007 the UN estimated that 88 percent of women had at least one antenatal exam, and 42 percent had skilled obstetric care during childbirth.

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

The law provides equal rights to men and women and specifically prohibits discrimination on grounds of gender; however, women experienced a wide range of discrimination in matrimonial rights, property ownership, and inheritance rights. Women constituted an estimated 75 percent of the agricultural work force and were active in urban small businesses. The average monthly income of women was approximately two-thirds that of men. Women held only 6 percent of land titles; under traditional law, women in many ethnic groups could not own land. Women had difficulty moving into nontraditional fields, were promoted more slowly, and were more likely to be laid off. Societal discrimination was most apparent in rural areas. Women also faced discrimination in access to employment and to credit. The justice system--particularly customary law--often discriminated against women, limiting their political and economic rights and relegating them to second-class citizenship. In 2007 the government pledged to reserve one-third of civil service positions for women but had not implemented its pledge by year's end.

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

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

Children

According to 2007 UNICEF data, only 64 percent of births in urban areas and 48 percent in rural areas were registered. Lack of official birth certificates resulted in discrimination in delivery of public services such as education and health care.

Primary and secondary education was tuition-free (although secondary enrollment was limited to students who obtained high scores on standardized primary exams); however, classes were overcrowded due to insufficient teachers and an inadequate budget. According to 2007 UNICEF data, approximately 79 percent of eligible children were enrolled in primary school, while only 13 percent of eligible minors were enrolled in secondary school. Boys outnumbered girls in secondary education by approximately 25,000 students. Rural families were more reluctant to invest in educating girls than boys, particularly at higher levels. Approximately 40 percent of university students were female.

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

Teachers often impregnated secondary students, a practice Minister for Education Sam Ongeru criticized in April. A report released in November by the Teachers Service Commission found that 12,660 female students were sexually abused by teachers from 2003 to 2007.

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

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

The government banned corporal punishment in schools; however, there were reports that corporal punishment occurred throughout the year, with caning the most frequent form of punishment.

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

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

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

Child rape and molestation continued to be serious problems. Police reported that 1,626 children were defiled in 2008. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy. In 2007 the Nairobi Women's Hospital handled 915 cases of child abuse; however, the stigma attached to sexual violence made many persons reluctant to report such cases or seek assistance, and the true rate of occurrence was likely much higher. NGOs The CRADLE and Care Kenya released a 2006 report entitled *Robbing the Cradle* that indicated an increase in child sexual abuse and a decrease in the age of the youngest victims. The most vulnerable victims were girls under age 18 and boys ages three to eight. Most child abusers were neighbors, fathers, and other relatives. Teachers were the worst perpetrators in the professional category, with pastors and police officers following closely.

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

Media reported discrimination against uncircumcised boys.

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

Child prostitution increased in recent years due to both poverty and the increase in the number of children orphaned by HIV/AIDS. Strong growth in the tourism industry also led to a large increase in foreign and domestic tourists seeking sex with underage girls and boys. During the year political leaders expressed concern that minors in drought affected communities were leaving school and being lured to prostitution to cater for basic needs.

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

Poverty and the spread of HIV/AIDS continued to intensify child homelessness. In 2007 the government began a pilot program to place two million AIDS orphans with families in 20 districts. In 2007 the program placed 5,000 children in homes. In 2006 the African Network for the Prevention and Protection Against Child Abuse and Neglect, a children's rights NGO, 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 medical care to girls abused and street children exploited in the commercial sex industry.

Trafficking in Persons

The law does not explicitly prohibit all forms of trafficking in persons, although it criminalizes trafficking of children and trafficking in persons for the purpose of sexual exploitation. Persons were trafficked to, from, and within the country. 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.

The country was a source, transit, and destination point 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. During the year there were reports that ethnic-based criminal organizations and foreign militia, such as the Somali Al Shabaab, recruited youths, including those in refugee and IDP camps. 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 continued to employ foreign women, some of whom were likely trafficked internally. Ethiopian and Somali nationals were trafficked into and through the country. In June a Ministry of Labor official reported that 800,000 children were out of school and working as manual laborers. According to a 2006 UNICEF/Ministry of Home Affairs research report, between 10,000 and 15,000 girls living in four main coastal resort areas were involved in prostitution, representing up to 30 percent of all 12- to 18-year-old girls living in these areas.

Although police continued to investigate trafficking cases in the country, a database to track trafficking-in-persons cases was not operational by year's end.

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 marriage, good employment, or access to education. Poor families were misled into believing that their child was gaining the opportunity for a better life. Traffickers continued to target poor and illiterate girls in slum areas to work for little or no pay.

For example, the media reported in May a story about a woman repatriated to the country after being lured into forced domestic labor in Saudi Arabia. The woman stated that while in a Saudi detention center, she met 11 other Kenyan women who had been trafficked for forced domestic labor.

Trafficking of Asians 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 two million shillings (\$27,400), or both. The minimum sentence for child trafficking is 10 years in prison and a fine of approximately two million shillings (\$27,400). Fines in practice were limited; jail time was imposed in some cases.

During the year police assisted with international trafficking in persons investigations in other countries. There were no reports that the government had received any requests to extradite 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. Fourteen community policing and child protection police units were established but not fully operational by year's end. Police had limited capacity to track data on trafficking arrests, and no year-end statistics were available.

In September courts convicted a former managing director for the Java House coffee company for three counts of defilement and sentenced him to 15 years' imprisonment. Two codefendants were given 10-year jail terms for subjecting the three minors to prostitution.

In March 119 parents and guardians of 209 children were charged in an Eldoret court with abusing their children by removing them from school and forcing them to work as domestic servants.

There were no developments in the 2008 case of six suspects on trial for allegedly trafficking 14 children in Bomet and Nandi districts.

The media reported in July that two men received one year's imprisonment each in a 2007 case in which an Ethiopian girl was trafficked into the country by her elder brother and forced into early marriage.

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

The National Steering Committee to Combat Human Trafficking did not meet during the year.

The labor unions, in conjunction with the Ministry of Labor and local NGOs, particularly the Solidarity Center, IOM, and Kenya Association of Private Employment Agencies, worked to limit trafficking for forced labor abroad. The coalition developed a code of conduct to ensure that recruitment is done according to accepted standards and to educate citizens seeking employment abroad about the dangers of forced employment.

The State Department's annual *Trafficking in Persons Report* can be found at www.state.gov/g/tip.

Persons with Disabilities

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

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

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

A 2007 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 in 2007.

The KNCHR also stated that the Kenya National Examination Council (KNEC) failed to provide adequate testing facilities and resources for students with disabilities. 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 because the government failed to allocate sufficient resources and staff.

National/Racial/Ethnic Minorities

The population is divided into approximately 42 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 traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups. The numerically small and shrinking South Asian community controlled a disproportionate share of commerce.

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

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

In 2008 the government established CIPEV; it issued a report that called for the establishment of a special tribunal to try suspected organizers of postelection violence. By year's end the government had not established a special tribunal, and the list of suspects prepared by CIPEV was handed by Kofi Annan to the International Criminal Court for investigation. According to the director of public prosecutions, the government prosecuted a number of low level individuals suspected of having engaged in postelection violence; the cases continued at years' end.

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

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

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

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

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

Lesbian, gay, bisexual, and transgender advocacy organizations, such as the Gay and Lesbian Coalition of Kenya, were permitted to register and conduct activities.

There was frequent and widespread societal discrimination based on sexual orientation during the year. In 2007 the Council of Imams and Preachers of Kenya 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 in 2007.

Other Societal Discrimination

There was societal discrimination against persons with HIV/AIDS during the year. Stigmatization of HIV/AIDS made it difficult for many families to acknowledge that a member was HIV-positive, and 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 Ministry of Defense arranged for uniformed personnel, their families, and some local persons to have access to HIV counseling and testing, prevention programs, and antiretroviral treatment during the year.

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

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

Section 7 Worker Rights

a. The Right of Association

The law provides that all workers, including those in the export processing zones (EPZs), are free to form and join unions of their choice, and workers exercised this right in practice. Workers numbering seven or more in an enterprise have the right 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 44 unions representing an estimated 500,000 workers, approximately 5 percent of total employment. The law allows unions to conduct their activities without government interference, including the right to strike, but this right was not always protected.

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

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

b. The Right to Organize and Bargain Collectively

While not having the force of law, the Industrial Relations Charter (IRC), implemented by the government, Central Organization of Trade Unions (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.

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. Workers in the military, prisons, and the National Youth Service and teachers under the Teachers' Service Commission do not have the right to bargain collectively.

During the year NGOs and trade unionist reported a trend towards the elimination of permanent positions in favor of casual or contract labor especially in the EPZ, agricultural, and manufacturing sectors. One report stated that casual employment grew by 13 percent during the year, accounting for 32 percent of total wage employment.

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

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.

In 2008 the government strengthened the labor dispute system by giving the Industrial Court the ability to enforce its decisions. However, during the year union leaders reported that employers often did not comply with reinstatement orders, and workers often accepted payment in lieu of reinstatement.

Prohibition of Forced or Compulsory Labor

The law prohibits slavery, indentured servitude, and forced and bonded labor, including by children, but such practices reportedly occurred. Women, children, and men were trafficked for commercial sexual exploitation and labor (see section 6.).

Forced child labor occurred.

d. Prohibition of Child Labor and Minimum Age for Employment

The law 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. An estimated one million children between five and 17 years of age--most between 13 and 17 years old--worked; approximately 773,000 of those children were classified as child laborers. The

employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Children worked primarily in the informal sector, which was difficult to monitor and control. The Ministry of Labor and Human Resources Development nominally enforced the minimum age statute. The ministry remained committed to enforcing minimum age statutes, but implementation remained problematic due to resource constraints.

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

The law prohibits the employment of a child (defined as a person under the age of 18) in any activity that constitutes a worst form of child labor and provides fines for employing children in such activities of up to 200,000 shillings (\$25,000) and/or imprisonment for up to 12 months. The penal code prohibits procurement of a girl under 21 for unlawful sexual relations and criminalizes child commercial sexual exploitation, child labor, and the transport of children for sale. Many children worked on family plots or in family units on tea, coffee, sugar, and rice plantations. Children also worked in mining, including abandoned gold mines, and small quarries, breaking rocks and sifting through tailings. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestics. In addition thousands of children were exploited in the sex industry. Forced or compulsory labor by children, such as agricultural labor, prostitution, and domestic servitude sometimes were initiated by their parents. During the year there were reports children participated in ethnic-based militia activity.

The government worked closely with COTU and the International Labor Organization to eliminate child labor. In 2004 the government prepared a practical guide to labor inspection and trained labor inspectors and occupational health and safety officers to report on child labor. 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 minister for gender and children's affairs, was responsible for setting general policy.

Many NGOs were active on child labor issues and assisted in the return to school of child laborers. During the year the government continued to implement 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. By year's end 66 hotels on the coast had signed the NGO's 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. During the year the Child Protection Department employed a total of 160 children's officers, an increase of 100 officers over 2008. In 2008 the government's cash transfer program for orphans and vulnerable children (partially funded by UNICEF) expanded to reach more than 25,000 children in 17 districts, providing approximately 500-1,000 shillings (\$7-\$15) per child per month to help fund basic needs, including school costs, so that the children would not have to work. During the year the government expanded the program to 47 districts serving 43,347 households at an average of rate 600 shillings (\$8) child per month.

e. Acceptable Conditions of Work

Labor laws passed in 2007 established two weeks' paternity leave, increased maternity leave with full pay from two to three months, and compensated both public and private employees for work-related injuries and diseases contracted at work, among other provisions. However, in 2008 employers challenged the workers' compensation provisions in court. At year's end the case continued.

There is no national minimum wage. However, the government established minimum wages by location, age, and skill level. In many industries the legal minimum wage equaled the maximum wage. The lowest urban minimum wage was approximately 7,578 shillings (\$105) per month, and the lowest agricultural minimum wage for unskilled employees was 2,536 shillings (\$35) per month, excluding housing allowance. In 2007 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 his or her family. Most workers relied on second jobs, subsistence farming, other informal work, or the extended family for additional support. A large percent of the labor force worked in the informal sector and were not covered by these provisions.

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

The law detailed environmental, health, and safety standards; however, the government did not effectively enforce the law. Fines generally were too low to serve as a deterrent to unsafe practices. EPZs are excluded from the Factory Act's provisions. The Ministry of Labor's Directorate of Occupational Health and Safety Services (DOHSS) has the authority to inspect factories and work sites, except in the EPZs; it employed 79 inspectors, far short of the 168 reportedly needed to inspect factories adequately and enforce its safety and health orders. During the year DOHSS carried out 1,976 safety audits and prosecuted 38 companies. In 2008 informal surveys found widespread hazards such as lack of basic safety equipment and emergency escape routes. DOHSS occupational safety and health advisers made 405 safety audits from July 2007 through June 2008. DOHSS prosecuted 29 firms for violating occupational health and safety regulations during the same period. During the year labor unions and NGOs continued to criticize health and safety conditions in the EPZs and other sectors, such as small horticultural producers.

DOHSS health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Such notices can be appealed to the Factories Appeals Court, a body of four members, one of whom must be a high court judge. The law stipulates that factories employing 20 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. According to the government, most of the largest factories had instituted health and safety committees by year's end.

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