



2008 Human Rights Report: Kenya

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

[2008 Country Reports on Human Rights Practices](#)

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Kenya has a population of approximately 37 million. It is a republic with a mixed presidential and parliamentary system. It has a strong president who is both chief of state and head of government and a prime minister with limited executive powers. There is a unicameral National Assembly. In December 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. 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 1,500 persons were killed and more than 500,000 displaced between December 2007 and February. The violence ended in February 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. The government appointed a commission to study the integrity of the election results; it concluded that serious irregularities occurred in voting and counting in both opposition and progovernment strongholds and in the tallying of results by the Electoral Commission of Kenya (ECK). These irregularities seriously undermined the integrity of the election results. The ongoing conflict in Mount Elgon resulted in human rights abuses. 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: 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 (FGM); child prostitution and labor; trafficking in persons, including recruitment of child soldiers and minor Internally Displaced Persons (IDPs); 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 no reports that the government or its agents committed politically motivated killings during the year; however, security forces committed arbitrary or unlawful killings. The government took only limited action in enforcing the law against security forces suspected of unlawfully killing citizens.

The 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 violence, and 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 Independent Medico Legal Unit (IMLU), a leading and credible human rights nongovernmental organization (NGO), reported that 100 extrajudicial killings occurred during the year. The Kenya National Commission on Human Rights (KNCHR) estimated that 349 extrajudicial killings occurred during the year, including the killing of over 500 suspected members of the outlawed Mungiki criminal organization from July 2007 through September. IMLU reported that during the year there were clear indications of deaths and injuries resulting from police misuse of firearms during the year, particularly in response to postelection violence.

In January a police constable fatally shot two unarmed, peaceful protesters in Kisumu (see 1.d). In November police officers killed two persons who were attempting to steal light bulbs from street lights in Nairobi's Runda estate.

Security forces continued to claim that police must shoot to kill to defend themselves when confronted by armed suspects. The policy first was enunciated in 2005 and reiterated in 2007 when armed criminals killed 43 police officers in the line of duty. In January police commanders issued orders for police to use live ammunition to quell postelection violence. KNCHR reported that police commanders in Nyanza Province issued "shoot to kill" orders as part of suppressing postelection violence, but police authorities denied this. KNCHR called for an investigation to determine whether these killings constituted excessive use of force, or whether police in some cases were responding appropriately in life-threatening situations. By year's end, with the exception of the January 16 Kisumu killings, there was no evidence that police authorities investigated allegations of excessive use of force.

Police killed numerous criminal suspects during the year. In February police killed six suspected car thieves in Nairobi. During one weekend in July, police shot and killed 21 robbery suspects in and around Nairobi. In July police responding to a Nairobi casino robbery shot and killed three suspects and two casino workers.

The Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), a local human rights NGO, reported that police were linked with the continued disappearance and deaths of suspected members of the Mungiki, the country's largest criminal organization. On October 16, a police officer, who had cooperated with the KNCHR investigation of the extrajudicial killings of suspected Mungiki-sect members, was murdered in Nairobi. By year's end no suspects had been arrested.

There were no developments in the investigation of the June 2007 police raids in Nairobi's Mathare slum, where police admitted to killing 18 persons in response to the murder of two police officers. There were also no developments in the investigation of the July 2007 police killings of 27 persons in Mathare.

During the year there were reports that persons died while in police custody or shortly thereafter, some as a result of torture. IMLU reported one death while in police custody, but noted that the actual number was likely higher. In several other cases, persons died under mysterious circumstances after being detained by police. Police also often did not enter suspects into police custody records. For example, in June KNCHR reported that a man was last seen being arrested in Ruaka, Kiambu District by five police officers. He was found with a gunshot wound to the head in the city mortuary the following day.

There were no developments in the following 2007 cases: the July deaths of 23 suspected Mungiki members in Murang'a and the August shooting death by a policeman of a matatu (public bus) passenger at a roadblock.

During the year police occasionally used excessive force to disperse demonstrations, resulting in deaths. The CIPEV

found that police killed at least 83 persons during postelection violence in Kisumu, although NGOs estimated that the number was much higher. On January 16, police wounded six persons in Nairobi while dispersing demonstrators protesting the election results in the Kibera and Mathare slums. On the same day, television stations broadcast footage of a police officer in Kisumu fatally shooting two unarmed, peaceful protesters. The officer subsequently was arrested and charged in a criminal case; the case was pending at year's end.

In December nine prison wardens were convicted of murder in the deaths of seven death row inmates in 2000. The wardens were sentenced to death.

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 terrorist gangs. The government rarely made arrests or prosecuted the perpetrators.

For example, in February the media reported that mobs in Meru burned to death two men who allegedly robbed a matatu driver. In March a mob in Imenti South District stoned to death one man and seriously injured three others who posed as policemen in order to rob residents. In September a mob lynched a village chief in Mikumbune, Imenti South District, after he was found in possession of a stolen chicken. Police arrested 40 suspects. The investigation was ongoing at year's end.

There were no reports of official action in the following 2007 cases of death by mob violence: the February beating death of a church leader for allegedly sexually assaulting a 12-year-old boy and the July deaths of two policemen who were mistaken for armed criminals.

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 in Nyanza and Western provinces. Human rights NGOs noted public reluctance to report such cases due to fear of retribution. In May, 15 persons suspected of practicing witchcraft were burnt to death in Kisii Central District.

b. Disappearance

There were reports of disappearances during the year in connection with the conflict in Mount Elgon (see section 1.g.). In addition, OFFLACK and KNCHR alleged that the government was responsible for disappearances that occurred during its crackdown on the Mungiki criminal organization.

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

The constitution and law prohibit such practices; however, police frequently used violence and torture during interrogations and as punishment of pretrial detainees and convicted prisoners. According to IMLU's 2005-06 annual report, common methods of torture included whipping, burning with cigarettes, and beating with gun butts and wooden clubs.

In November KNCHR accused police of torturing male residents of El Wak, Northeastern Province, in an operation to interdict illegal arms fueling interclan warfare. In addition, police allegedly beat and whipped residents with electrical cables and other weapons.

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

There were reports of torture by security forces during the year in connection with conflict in Mount Elgon. Human Rights Watch (HRW) recommended a government-led investigation of security forces for possible war crimes committed during the operation and IMLU accused the government of perpetrating crimes against humanity in the conflict. The government denied the use of torture (see section 1.g.).

Due to a lack of civilian state prosecutors in the legal system (63 civilian prosecutors nationwide compared to 300 police prosecutors); police were responsible for investigating and prosecuting most crimes. However, police routinely ignored evidence of torture by security forces provided by IMLU and other human rights organizations.

In most cases allegations of torture were not fully investigated and the perpetrators were not charged. However, the civil justice system in some cases recognized torture and ordered the government to pay damages. For example, in May, the Nairobi High Court awarded seven plaintiffs approximately 1.5 million shillings (\$20,000) each in damages for torture they suffered in the 1980s and 1990s under the regime of former President Daniel Arap Moi.

Police frequently used excessive force to disperse demonstrators, which resulted in injuries, especially during the postelection period (see section 2.b.).

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

There were allegations of rape by security forces, including the rape of women in prisons, as well as in IDP and refugee camps. The Center for Rights Education Awareness alleged that policemen raped women in the Kibera slum in Nairobi and those seeking refuge in police stations. For example, a woman told CIPEV that police raped her and her 15-year-old daughter during the postelection violence in Nairobi's Kibera slum. CIPEV condemned the police for its response to gender-based violence (GBV). As a result, in October the police commissioner established a task force to investigate GBV; however, it appeared that the task force was not empowered to investigate allegations of GBV perpetrated by police or other security forces.

There were numerous instances of mob violence and vigilante action leading to serious injury. After the announcement of the presidential voting results in December 2007, mob violence, including targeted looting and arson, struck Kisumu, Eldoret, Nairobi, Mombasa, and other cities.

Prison and Detention Center Conditions

Prison and detention center conditions continued to be harsh and life threatening. 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 the director of health services for prison services stated that the country's 90 prisons held 48,000 prisoners while they were designed to hold only 12,000 persons. According to an OFFLACK study released in 2007, Meru Prison held three times more inmates than its intended capacity and had only nine toilets for 1,405 prisoners, forcing many to use as toilets the same buckets they also used for bathing. In Kamiti Maximum Security Prison, approximately 700 inmates shared a cell block designed for 300. During the April security operation in Mount Elgon, IMLU noted that Bungoma Prison held over 900 prisoners in a facility with a 480-person capacity.

In 2007 the Parliamentary Committee on Health visited Embu Prison and expressed concern about health conditions in prisons.

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

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

In February 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.

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.

Hundreds of prisoners died annually from infectious diseases spread by overcrowding, unhygienic conditions, and inadequate medical treatment. In July a Ministry of Home Affairs report on prison conditions concluded that 46 inmates died monthly because of congestion, 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. In 2006 then-Vice President Moody Awori, who was responsible for the prison system in his capacity as minister for home affairs, acknowledged that bribery occurred throughout the country's jails and prisons.

There were no separate facilities for minors in pretrial detention. Civil society activists witnessed young children, women, and men sharing the same cells. For example, IMLU reported in April that underage boys were detained in Bungoma Prison. Additionally, a July 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 women 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 stating that 281 children lived with their mothers in Kenyan prisons.

The government permitted visits to prisons by local human rights groups during the year. In 2006 a judiciary subcommittee report recommended that judges and magistrates visit prisons regularly to ensure that children were not confined with adult inmates. However, there were no reports that they ever conducted any prison visits. In December KNCHR visited Kamiti Prison to investigate allegations of torture following a television broadcast of footage showing wardens pouring hot water on naked prisoners during a prison action to confiscate contraband items. KNCHR called for a police investigation, which was ongoing at year's end.

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; Kenya Administration Police (KAP), responsible for border security; the paramilitary General Services Unit (GSU), responsible for countering uprisings and guarding high-security facilities; and the National Security Intelligence Service (NSIS), which collects intelligence. The KNPS, KAP, and GSU are under the authority of the Ministry of State for Provincial Administration and 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.

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.

The government's failure to implement the 2007 witness protection law and to abolish the requirement that witnesses directly confront suspects in police line-ups severely inhibited the investigation and prosecution of major crimes.

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

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

The government took some steps to curb police abuse during the year. In September 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 had met but did not hear any public complaints or issue any decisions. Some legal rights groups questioned whether the minister had the legal authority to establish the board. In 2006 the police commissioner established a special police squad that included undercover detectives whose mandate was to combat corruption involving police during traffic stops. The government arrested and charged some officers with various offenses, including corruption and murder.

In January prosecutors charged a police officer with two counts of murder in the shooting deaths of two unarmed, peaceful demonstrators in Kisumu. The trial began in May and was ongoing at year's end. Also in January, police arrested a fellow officer, who prosecutors charged with murder in the shooting death of a member of parliament in Kericho. At year's end the trial was ongoing.

There were numerous instances in which police failed to respond to societal violence. A KNCHR report on the postelection violence reported examples where security forces in multiple locations failed to protect endangered communities from violence. For example, in January police in the Langas section of Eldoret failed to respond to destruction of property. Residents also reported that police in Kuresoi failed to respond to threats against the Kikuyu community. In late January NGOs alleged that police in Naivasha and Nakuru failed to respond to violent attacks on non-Kikuyu communities.

Arrest and Detention

Under the criminal procedure code, police have broad powers of arrest. Police may make arrests without a warrant if they suspect a crime has occurred, is happening, or is imminent. 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 law was not respected in practice.

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, individuals charged with offenses that were deemed serious or that involve major violence are not eligible for bail pending trial.

Police often arrested citizens to extort bribes. Since few could afford even a modest bribe, many languished in jail unless family or friends raised the bribe money demanded by police (see section 2.c.).

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

There were reports during the year that police arbitrarily arrested persons demonstrating against parliament.

Lengthy pretrial detention continued to be a serious problem that contributed to overcrowding in prisons. 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 years before seeing a judge. The government claimed the average time spent in pretrial detention on capital charges was 16 months; however, many detainees spent more than three years in prison before their trials were completed.

During and following the 2006 fighting inside Somalia, authorities in Kenya arrested suspected terrorists after they fled Somalia for Kenya. According to media reports and human rights NGOs, some of those detained were released, while others were transferred without judicial process to Ethiopia. In 2007 Ethiopian authorities acknowledged that 41 suspected international terrorists were being held and investigated, though most were released by year's end. During the year Ethiopia reportedly released most detainees. In December eight Kenyan citizens, who had been detained and released, sued the Kenyan government for human rights violations related to their detention and extradition.

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, the president amnestied 4,960 prisoners on Independence Day while the total number amnestied during the year was 11,523.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary; however, the executive branch sometimes influenced the judiciary. 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 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.

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 transfers.

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

The constitution provides for Shari'a (Islamic) courts and states that the "jurisdiction of a Kadhi's court shall extend to ... questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings in which all the parties profess the Muslim religion." There are no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in civil matters as long as it did not conflict with statutory law. 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 because, in practice, it was 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.

In May 2007 the judiciary appointed a governance and ethics committee to assess judicial corruption and misappropriation of court fees. However, there were no reports of committee actions by year's end.

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

The government occasionally used the legal system to harass critics. In October local authorities in Mombasa charged the director of the seafarers' welfare organization for issuing false statements after he claimed that military cargo on a hijacked ship was bound for South Sudan, not Kenya as the government claimed. In November a former member of parliament was charged in Nairobi with incitement for statements he gave to the press accusing police and military of human rights abuses in El Wak (see section 1.c.). These trials were ongoing at year's end. Local authorities filed criminal charges against two persons who helped document allegations of human rights abuses against security forces in the Mount Elgon region (see sections 1.g., and section 4). Some civil society organizations reported that the government also used the anticorruption commission to harass critics.

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.

Discovery laws are not defined clearly, further handicapping defense lawyers. Often defense lawyers did not have access to government-held evidence before a trial. The government sometimes invoked the State Security Secrets Law 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 to sit with a high court judge to offer interpretation or guidance on local customs and culture. Although assessors render verdicts, their judgments are not binding. Defendants' lawyers can object to the appointment of individual assessors. A shortage of appropriate assessors frequently led to long delays in hearing cases.

Political Prisoners and Detainees

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

Civil Judicial Procedures and Remedies

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

The civil court system can be used to seek damages for victims of human rights violations. However, corruption, 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.

Arbitrary Interference with Privacy, Family, Home, or Correspondence

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

There were reports that security officers raided homes in the Mount Elgon District, destroying property and setting houses on fire, in their search for militia members. Police also raided homes in the Nairobi slums in search of suspected Mungiki members (see section 1.g.).

In July the government announced its intention to evict 2,000 squatter families living in the protected water catchment area of the Mau Forest. In November the government announced that evictions would be delayed until 2009. In 2006 the government evicted from the Mau Forest approximately 600 squatters who had returned after the government evicted approximately 10,200 of them in 2005 for living illegally on protected lands.

Use of Excessive Force and Other Abuses in Internal Conflicts

In 2006 land tensions between the Soy and Ndorobo clans intensified in Mount Elgon District after the government announced plans to implement phase three of the Chebyuk settlement scheme, initiated in 1971, which was intended to resettle the Ndorobo subclan from the protected upper reaches of Mount Elgon National Park. However, the settlement scheme disadvantaged the Soy clan which had traditionally used the land on which the Ndorobo were resettled. In response, the Soy formed the Sabaot Land Defense Force (SLDF), a militia that initially terrorized and forcibly displaced Ndorobo residents, but also attacked Soy who did not support the SLDF. In response the government in 2007 deployed police from the antiriot GSU. Police officers reportedly indiscriminately raided and burned down homes, and beat, shot at, tortured, and raped community members.

In March the government began a joint military-police operation aimed at defeating the SLDF. During the initial phase of the operation, the government attempted to remove the SLDF from its hiding places in the remote reaches of Mount Elgon. Security forces also swept villages to identify and capture SLDF members and sympathizers.

According to HRW and other human rights NGOs, security forces detained all males in the targeted area of Mount Elgon and screened them for possible SDLF membership, using informants to identify members. HRW, IMLU, and Western Kenya Human Rights Watch (independent of the London-based Human Rights Watch) accused the government of excessive use of force during detention and screening of suspects, which included torture and disappearances.

IMLU provided medical treatment to 285 persons who alleged that they had been tortured by security forces. HRW also reported that more than 40 persons, last seen in military custody, disappeared. In July the government issued a report in which it claimed that all allegations of abuse and disappearance by security forces were baseless. The government claimed that any abuse of detainees happened at the hands of local residents or was committed by the SLDF prior to security forces taking custody of suspects.

The government operation against the SLDF resulted in the arrest of more than 1,000 suspected members of the organization. Local NGOs reported that the government did not make available proper medical care to those jailed, although authorities did permit IMLU to examine prisoners and provide some medical care. Local NGOs reported that authorities at the Bungoma Prison refused to admit a prisoner due to insufficient medical facilities to treat his injuries. NGOs also reported that security forces held underage children in prisons with adults but also noted that Bungoma Prison authorities established a makeshift school for underage prisoners. During the April security operation in Mount Elgon, IMLU noted that Bungoma Prison held over 900 prisoners in a facility with a 480 person capacity (see section 1.c.).

The government restricted access to humanitarian groups at times. For example, from late June until mid-August, the government prevented Medicins Sans Frontieres-Belgium (MSF-B) from delivering medical services and humanitarian supplies in the Mount Elgon region. MSF-B alleged that this was in response to their May report which showed a sharp increase in the number of persons they treated at the onset of the March operation who had suffered trauma injuries consistent with torture.

The government also used the legal system to harass critics of its security operation. In July local authorities arrested a doctor who documented alleged human rights abuses by security forces. Authorities charged him in

Bungoma with providing false information to a public official of the KNCHR. They also charged him with two counts of illegally running an unlicensed private hospital, which the court later dismissed. Also in July authorities charged the director of the Mwathiko Torture Survivors Organization (MTSO) with disorderly conduct. It also deregistered MTSO as a community-based organization. Both cases were ongoing at year's end.

The March and April escalation of the conflict caused a new round of displacement. NGOs active in the area reported that the March security operation displaced approximately 45,000 persons. In September the government reported that approximately 4,263 persons remained displaced in Mount Elgon; however, NGOs estimated a much higher figure.

Local NGOs reported that during the year the SLDF engaged in torture, killings, and rape as a tactic in the conflict, and maimed persons who did not support the militia. Western Kenya Human Rights Watch documented 615 SLDF killings since 2006. A local NGO also reported that the SLDF forcibly recruited at least 650 children.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press, but the government sometimes restricted these rights. During the year security forces harassed, beat, and arrested members of the media. Journalists practiced self-censorship. In December parliament passed amendments to the Communications Act which permits intrusive government regulation of the media and allows the information minister to assert undue political influence on the media licensing body, the Communications Commission of Kenya. On December 30, President Kibaki signed the bill into law.

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

Generally the media remained independent despite attempts at intimidation by officials and security forces. In October 2007 parliament passed a Media Act which created the 13-member Media Council of Kenya (MCK) to monitor and regulate the media, with authority to grant and withdraw the accreditation of journalists. In January the government announced the formation of a taskforce to investigate the media's behavior during the postelection violence and also threatened to withdraw funding from the MCK.

The mainstream print media included four daily newspapers that reported on national politics and regularly criticized the government. There also were numerous independent tabloid periodicals that appeared irregularly and were highly critical of the government.

Of the several television stations operating in Nairobi, the government-owned Kenya Broadcasting Corporation (KBC) was the only station with a national network of broadcast and cable television, AM and FM radio, and short-wave transmission. Although KBC coverage 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 run-up to the December 2007 general elections. Stations owned by other media companies, including 12 radio stations, operated primarily along the country's central corridor and more densely populated adjacent regions.

The international media operated freely; 120 international correspondents worked in the country, and

approximately 100 media organizations reported from Nairobi. There were four international FM broadcasters in Nairobi: Radio France International, Voice of America, the British Broadcasting Corporation, and China Radio International.

During the year officials repeatedly accused local media of being irresponsible and disseminating misinformation. Journalists continued to be susceptible to harassment, intimidation, and arrest. In December several journalists were arrested in front of parliament for illegal assembly while protesting the passage of amendments to the Kenya Communications Act.

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

Journalists occasionally practiced self-censorship due to pressure and bribes from officials and other influential persons wishing to prevent reporting on issues that could harm their interests or expose their wrongdoings. There also were credible reports that journalists accepted payments to report certain stories, some fabricated.

Unlike in 2007, there were no reports that individuals associated with officials used criminal libel laws to intimidate journalists and publications. However, there were reports that defamation cases were used to intimidate journalists and media outlets. In August the Law Society of Kenya reported that judges often awarded exorbitant damages against media outlets in defamation cases.

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

Internet Freedom

There were no government restrictions on access to the Internet. However, the government monitored Internet content during the postelection violence. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet service was limited in rural areas due to lack of infrastructure.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The constitution and law provide for freedom of assembly, but reports that the government restricted this right increased.

Organizers must notify local police in advance of public meetings. According to 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.

In December 2007 the government banned rallies by opposition parties to protest the results of the presidential election. Civil society groups noted that when they tried to comply with the licensing policy, police often refused to issue permits in a timely manner.

There was an increase in incidents of police forcibly dispersing demonstrators, particularly during the postelection crisis.

For example, in January police used teargas canisters, batons, and live ammunition to disperse forcibly opposition supporters in Nairobi's Kibera slum. In May civil society activists gathered in front of parliament to protest food price increases. Police claimed they did not have a permit and forcibly dispersed the group, arresting six activists. In June human rights activists gathered to commemorate International Day in Support of Torture Victims at a site used to detain and torture opponents of the previous regime. The activists obtained permission to enter the building to hold a commemoration for torture victims, but police used tear gas to disperse the group as they waited to enter. Police claimed the group did not have a permit to assemble in front of the building while awaiting entry. The group eventually held the event as planned.

There were no reported actions taken against police who used live ammunition to disperse demonstrators in December 2007.

Freedom of Association

The constitution and law provide for freedom of association, and the government generally respected this right. The Societies Act requires that every association be registered or exempted from registration by the registrar of societies. In all, 138 political parties contested the December 2007 general elections, and parties reported little or no difficulty registering. However, civil society groups reported that the government's banning of public demonstrations during the postelection crisis restricted the right of association in practice. For example, in the aftermath of the 2007 presidential election results, supporters of the Orange Democratic Movement party were prevented from gathering at Uhuru Park in Nairobi to demonstrate against the results.

The 2002 ban on membership in the Mungiki criminal organization remained in effect. In previous years the Mungiki espoused political views and cultural practices that were controversial in mainstream society; 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, 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 December police in Lamu arrested an imam on suspicions of aiding paramilitary training of youths. The case was

pending at year's end.

Witchcraft was illegal but still practiced, and mobs sometimes killed alleged witches.

During the year tensions between Muslim and Christian groups occasionally resulted in violence. For example, in late September a group of Muslim youth in Garissa attacked Christian worshippers in a church which was located on a plot of land that the Muslim community claimed was intended for construction of a mosque.

The media reported in December that police prevented hundreds of practitioners of an indigenous religion from traveling to Mount Kenya to pray.

Societal Abuses and Discrimination

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

For a more detailed discussion, see the 2008 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.

In 2007 the government began the issuance of identification documents to urban refugee populations. The government also registered refugees in Dadaab camps, located in the northeastern part of the country; however, these refugees had not received their identity documents by year's end.

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

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

The law prohibits forced exile and the government did not use it. John Githongo, who resigned in 2005 as the highest anticorruption official and went into self-imposed exile, returned in August.

Internally Displaced Persons (IDPs)

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

In January and February approximately 500,000 people fled their homes in Rift Valley Province, Central Province, Nairobi, and other sections of the country as a result of postelection interethnic violence. The government provided shelter, food, and transport to approximately 350,000 IDPs, and coordinated support services with NGOs, particularly the Kenya Red Cross Society (KRCS), and faith-based charities. The government and the KRCS

established schools in most camps to allow children to continue their education, although the postelection violence disrupted many children's ability to sit for exams. There were reports that ethnic-based militias recruited youth in IDP camps. The East African newspaper reported in March that the Mungiki gang and other ethnic-based militias were actively recruiting youth living in IDP camps.

In May 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 year's end the government had closed all IDP camps, while KRCS reported a further 99,198 IDPs resided in transit sites. By mid-September the government had registered 130,000 IDP households as eligible to receive cash assistance of 10,000 shillings (approximately \$130) to assist them in returning home; 86,000 people received payment prior to departing the camps. Some IDP associations complained that the government distributed assistance in a nontransparent manner or did not deliver it at all. In May the Representative of the UN Secretary General for the Human Rights of IDPs visited the country and concluded that the returns of some IDPs were not voluntary and based on informed choices.

Rapes allegedly perpetrated by residents of camps, local residents, and sometimes by police personnel occurred in IDP camps. From January through March mobile clinics in IDP camps examined 2,812 sexually assaulted women.

During the year there were many other causes of displacement, from land disputes to flash floods. In September local NGOs in Samburu and Isiolo reported that hundreds of pastoralists were displaced in conflicts over pasture and watering holes. During the year Karamojong from Uganda engaged in cross-border cattle raids in Western Rift Valley Province, causing death and displacement among the Pokot and Turkana tribes. In November the media reported a cross-border raid resulted in the deaths of 13 persons in Longirir, Turkana District.

A joint military-police security operation in the Mount Elgon region from March through September resulted in numerous IDPs(see section 1.g.).

Protection of Refugees

The law provides for the granting of asylum and refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol. The government provided some protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened; 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 reported paid approximately 7,500 shillings (\$100) per family in bribes and transportation costs to travel from the Kenya-Somalia border to the Dadaab camps.

The government permitted the Office of the UN High Commissioner for Refugees (UNHCR) to register and assist new arrivals who successfully made their way to one of the three Dadaab refugee camps. UNHCR registered 34,000 new arrivals in the Dadaab camps between January and July, increasing the camp size to more than 230,000. In July UNHCR requested government permission to build a fourth camp in Dadaab due to severe overcrowding (the three camps were designed to accommodate 90,000 refugees); however, the government denied the request.

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

The government required all refugees to remain at UNHCR camps, 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. Approximately 55,000 refugees resided in Nairobi at year's end; however, UNHCR provided assistance to these refugees only in exceptional cases. The government did not provide opportunities for local integration; however, it worked closely with 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. Between 2007 and the end of the year, 77 refugees were killed in Kakuma, a significant increase over the 84 deaths registered from 2003-06. During the year 287 crimes were reported at the Dadaab camp, including physical assault, theft, robbery, rape, attempted rape, and defilement. 212 crimes were reported at the Kakuma camp during the year. There were no reported cases of sexual assault by police in either camp.

Other security and human rights problems affecting refugees included persecution of Muslim converts to Christianity, community pressure against opponents of FGM, forced marriage, particularly of young Sudanese and Somali girls, and family objections to out-of-clan marriage. At times these resulted in the kidnapping of spouses and children. UNHCR requested increased police presence in the identified troubled areas, as well as increased patrolling within the refugee camps. However, the request was not granted.

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

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

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

Stateless Persons

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. UNHCR also reported that the Nubians should have been granted 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 they filed a memorandum of admissibility with the African Commission on Human and Peoples' Rights (ACHPR) under the African Charter on Human Rights. In 2007 the ACHPR 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. The 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. In all, 117 parties contested local elections, presenting 15,332 candidates. A total of 138 parties contested parliamentary elections, putting forth 2,548 candidates. Nine parties nominated presidential candidates.

To prepare for the 2007 general elections, the Electoral Commission of Kenya (ECK) initiated nationwide voter registration. While nearly 14.3 million citizens registered to vote, the independent review commission concluded that voter rolls contained the names of approximately 1.3 million deceased persons.

The election campaign was generally free and fair, although there were instances of violence between supporters of rival parties, especially among progovernment parties. Police generally reacted professionally to instances of campaign violence. During the campaign SMS messages, pamphlets, and Web logs were sometimes used to disseminate 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 in the election campaign.

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

Voter turnout was approximately 65 percent, the highest level in the country's history. Voting and counting at polling stations was generally conducted in accordance with democratic standards, although there were irregularities in strongholds of both the opposition and progovernment parties. International observers concluded that the tallying irregularities by the ECK in Nairobi undermined the credibility of the ECK. On December 30, 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.

In 2007 parliament passed the Political Parties Act to reduce the number of political parties, to promote political stability and party accountability. During the year a registrar for political parties, called for by the act, was established. At year's end the registrar had granted registration certificates to 38 parties which had complied with the Act's stringent membership and organizational requirements. Another 10 applications for registration were pending at year's end. The act also provides for public financing for registered parties, but by year's end the fund had not been established.

Women's participation in electoral politics remained low; however, a record number of female candidates ran for parliament and for local office in 2007. Nevertheless, 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.

During the previous year female parliamentary candidates were harassed and attacked.

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

this provision is left to the nominating political parties and the ECK.

Government Corruption and Transparency

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

Frequent press reports of incidents of government corruption fueled a widespread public perception that large-scale corruption up to the highest levels of the government and in parliament persisted, and that little official action had been taken against the most corrupt. According to the Mars Group, an anticorruption think tank, 25 members of the 42-member cabinet were criticized in parliamentary inquiries into corruption. The World Bank's 2007 Worldwide Governance Indicators reflected that corruption was a severe problem.

In 2003 the government created the Kenya AntiCorruption Commission (KACC) and in 2004 appointed a director and other staff. Local anticorruption watchdog groups continued to claim that the KACC had accomplished little, despite significant financial support provided by the government. Some civil society organizations reported that the government also used the anticorruption commission to harass critics. In 2007 both the NGO 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 2006 Goldenberg and Anglo Leasing scandals. The KACC director told the media he had forwarded 284 cases to the attorney general for prosecution. During President Kibaki's first term no top officials were charged with corruption, despite numerous scandals.

In December the KACC sued seven current and former members of parliament for making fraudulent reimbursement claims for allowances totaling 20 million shillings (\$250,000). Among those accused was Information Minister Samuel Poghiso, who denied taking 2.8 million shillings (\$37,000) in 2006 and 2007. The case was pending at year's end.

In September 2007 the findings of the Kroll Report were leaked. In 2003 the incoming Kibaki government had commissioned the Kroll Report, an investigation into stolen state assets. The report provided evidence indicating that former president Daniel arap Moi, his family, and his associates stole more than two billion shillings (\$30 million) of state revenues. However, the government indicated it would not attempt to recover the assets, claiming a lack of substantial evidence in the report. It also blamed developed countries for allowing stolen money to be deposited in their banks.

The Public Officers and Ethics Act requires 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. In March parliamentary debate was televised live for the first time. Beginning in June radio stations regularly broadcasted parliamentary proceedings.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. With the exception of the police, government

officials were usually cooperative and responsive to the queries of these groups. However, there were reports that officials also intimidated NGOs and threatened to disrupt their activities, and that less-established NGOs (particularly in rural areas) were subjected to interference from provincial administrators and security forces. For example, in January human rights activists claimed that individuals affiliated with government officials threatened them because they questioned the presidential election results. The human rights activists also claimed that security agencies conducted surveillance of their activities.

For example, local authorities filed criminal charges against two persons who helped document allegations of human rights abuses against security forces in the Mount Elgon region. The government restricted access to the region for one humanitarian NGO active in the Mount Elgon area (see section 1.g.).

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

NGOs monitored the December 2007 general elections in cooperation with the electoral commission, the KNCHR, and foreign diplomatic missions.

A number of human rights organizations, including the Kenya Human Rights Commission, IMLU, and the KNCHR, produced reports cataloguing human rights abuses. The KNCHR has the status of an appeals court and can issue summonses, order the release of prisoners, and require compensation for human rights abuses. In 2006 the organization's first human rights tribunal ordered the government to pay journalist Peter Makori approximately 5,053,671 shillings (\$70,000) for police abuse and illegal detention in 2003; however, it was not known whether payment was made.

In November 2007 the UN Special Rapporteur for Extrajudicial Killings requested permission to visit the country to investigate the killings of suspected Mungiki members; the government approved the request in July, but the visit had not taken place by year's end.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

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

Women

The law criminalizes rape, defilement, sex tourism, and sexual harassment; however, implementation remained limited, and sexual offenses remained largely underreported. 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.

NGOs reported an increase in rape--including rape committed by members of the security forces--during the postelection period(see section 1.c.). From January to March the Nairobi Women's Hospital and a partner hospital received 939 cases of sexual violence; 95 percent of the victims were women, 17 percent below the age of nine. There were also reports of sexual assault in IDP camps (see section 2.d.). In July the Nairobi police commissioner testified before an inquiry on postelection violence that police did not keep statistics on the incidence of gender-based violence during the postelection period. Official police statistics showed a decrease in reported rape cases to 627 during the year, down from 841 in 2007. However, human rights groups estimated that more than 16,000 rapes were perpetrated annually. The rate of reporting and prosecution of rape remained low because of 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. However, some NGOs reported that courts gave increasingly harsh sentences to those convicted of rape, especially cases involving minors. For example, in July a court in Nyahururu sentenced a man to 10 years' imprisonment for defiling his daughter. In September a court in TransMara district sentenced another man to 20 years for defilement.

In 2007 Coast General Hospital in Mombasa opened the first postrape treatment center outside Nairobi.

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 2005 Kenya Demographic and Health Survey revealed that more than half of women had experienced domestic violence after the age of 15. In July a court of appeal overturned the murder conviction of a man who killed his wife in 2004, ruling that the man's intoxication negated his ability to form the intent to murder. The court convicted him of manslaughter and reduced his sentence by three years. In August police arrested a man in Homa Bay and charged him with murdering his wife because she refused to have sex with him. The case was ongoing at year's end. 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. On December 31, police raided a Nairobi strip club and arrested women accused of prostitution, but did not arrest the owners of the club.

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.

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 September 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

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

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

Primary education was tuition-free; however, classes were overcrowded due to insufficient teachers and an inadequate budget. Boys outnumbered girls in secondary education by nearly 25,000 students. Rural families were more reluctant to invest in educating girls than boys, particularly at higher levels. In February 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. The Ministry of Education estimated that 80,000 children dropped out of school annually due to forced marriages and child labor. For example, the newspaper The Nation reported in July that a six-year old girl in Isiolo was forced to marry a 54 year-old man. The children's officer in Isiolo reported that 20 girls between the ages of nine and 14 in the district were married off each year. Cherish Others, a local NGO, reported 21 cases of child marriage in TransMara district during the year. UNICEF also reported that nine out of 10 children from poor households failed to complete primary education. Approximately 40 percent of university students were female.

During the year the government implemented a program to subsidize secondary education; however, the government only paid for the subsidy to schools with a minimum class size of 40 students.

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. In August an assistant chief in Garissa district ordered police to arrest the parents of a girl for forcing her to drop out of school.

Despite calls for reinstatement of corporal punishment after a wave of student violence struck schools throughout the country during the year, the government continued its ban. 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 still 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. 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, 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. In September the government launched a National FGM Coordinating Committee to provide guidance to organizations fighting FGM.

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.

In December more than 100 girls in Bomet district were subjected to FGM, causing the district commissioner to instruct police to arrest anyone perpetrating FGM. The media also reported in December that more than 200 girls in Marakwet District were forcibly subjected to FGM. However, no arrests were reported in either Bomet or Marakwet.

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

Child rape and molestation continued to be serious problems. Police reported that 1,626 children were defiled during the year. 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 people 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 aged three to eight. Most child abusers were neighbors, fathers, and other relatives. In October a judge in Nairobi sentenced a man to 10 years in prison for attempting to defile his seven-year-old daughter.

Teachers were the worst perpetrators in the professional category, with pastors and police officers following closely. In 2007 the Ministry of Education dismissed 76 teachers for having inappropriate sexual relations with students, although NGOs reported that accused teachers were generally transferred to different schools rather than dismissed and prosecuted. In July the newspaper the Daily Nation reported that Homa Bay education officials were investigating allegations that one teacher had impregnated four primary school students. However, no charges were expected to be filed.

In August a high court in Kisumu sentenced a man to 20 years in jail for defiling a 13-year-old girl at knifepoint. In September police arrested a teacher in Nairobi for defiling a two-year-old boy. The case was ongoing at year's end.

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 (MMDA) allows Muslim girls to marry at puberty. If a marriage is entered into under the provisions of the MMDA, any court hearing matters related to the marriage will apply the provisions of the MMDA when deciding the case.

In September the media reported that a local chief rescued a 13-year-old female orphan and a 15-year-old girl in Kisumu East from forced marriages arranged by their guardians. Police arrested the guardians and the case was ongoing at year's end.

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. The newspaper Daily Nation reported in 2007 that between 10,000 to 30,000 children engaged in prostitution, mostly in tourist areas.

In 2006 the director of children's services announced that, through a justice sector reform program, children's officers, probation officers, and provincial administrators had received training on children's rights, and 80 chief children's officers had been appointed to the Department of Children's Services. In 2007 the government converted a former prison house in Naivasha into a shelter for abused children operated by a local NGO. During the year the children's services department hired 160 new children's officers, bringing the number to 333.

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 children's rights NGO, African Network for the Prevention and Protection Against Child Abuse and Neglect, estimated that 750,000 children lived on the streets. Street children faced harassment and physical and sexual abuse from police and others, and within the juvenile justice system.

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

There were reports of children joining gangs and militia, and of the Mungiki gang recruiting young boys from schools (see section 1.g.).

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.

The country was a source, transit, and destination country for men, women, and children trafficked for forced labor and commercial sexual exploitation. Children were trafficked within the country for domestic servitude, street vending, agricultural labor, and commercial sexual exploitation, including in the coastal sex tourism industry. During the year there were reports that ethnic-based militia were recruiting youth, including those in IDP camps (see section 1.g.). Men, women, and girls were trafficked to the Middle East, other African nations, Europe, and North America for domestic servitude, enslavement in massage parlors and brothels, and forced manual labor. Foreign employment agencies facilitated and profited from the trafficking of Kenyan nationals to Middle Eastern nations, notably Saudi Arabia, the United Arab Emirates, and Lebanon, as well as to Germany. Chinese, Indian, and Pakistani women reportedly transited Nairobi en route to exploitation in Europe's commercial sex trade. Brothels and massage parlors in Nairobi employed foreign women, some of whom were likely trafficked. Asian nationals were trafficked into the country and coerced into bonded labor. According to the 2006 UNICEF/Ministry of Home Affairs research report, 10,000 to 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-olds living in these areas.

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

Victims trafficked abroad generally were recruited through employment agencies under false pretenses. Domestic trafficking victims were often lured by friends and relatives, who offered them false promises of marriage, good employment, or access to education. Poor families were misled into believing that their child was gaining the opportunity for a better life. The NGO Behavioural Change Plus Care of Humanity reported that traffickers targeted poor and illiterate girls in slum areas to work for little or no pay. For example, during the year a local NGO rescued six girls from Western and Nyanza provinces who had been lured to Nairobi to work as domestic servants.

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. In May The Standard newspaper reported that police arrested 15 Indian nationals who had been trafficked to the country. They were subsequently deported. In November the newspaper The Nation quoted an immigration officer saying that approximately 80 trafficked foreigners were repatriated monthly.

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). However, fines in practice were limited, and jail time was rarely imposed. Laws prohibiting the forcible detention of women for prostitution, child labor, transportation of children for sale, and the commercial sexual exploitation of children can also be used to prosecute trafficking-related offenses. In 2007 the National Steering Committee to Combat Human Trafficking, chaired by the vice president's office and the Ministry of Home Affairs permanent secretary, selected a task force of government agencies, NGOs, and UN agencies to draft a national plan of action and a smaller group to serve as a secretariat.

During the year, police assisted with international trafficking in persons investigations in other countries. 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. In 2007, 14 community policing and child protection police units were established. However, police had limited capacity to track data on trafficking arrests, and no year-end statistics were available.

In April police arrested a Congolese national for running a trafficking ring based in Nairobi. In May Nairobi police arrested two persons for running an international trafficking ring. These cases were ongoing at year's end. In May the media reported that police closed a children's home in Kajiado for trafficking a child to the United Kingdom.

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, especially the government-owned Kenya Broadcasting Corporation, reported cases of suspected human trafficking.

At year's end six people were on trial for trafficking 14 children--aged six months to 12 years--in Bomet and Nandi districts.

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.

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 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 more than 40 ethnic groups, among whom discrimination and occasional violence were frequent. The 1999 census indicated that Bantu ethnic groups constituted approximately 67 percent of the population, of which the Kikuyu and closely related Embu and Meru accounted for 32 percent, the Luhya 16 percent, and the Kamba 10 percent; Nilotic groups constituted 30 percent, of which the Kalenjin accounted for 12 percent and the Luo 11 percent; and Cushitic groups--mainly Somalis--constituted 3 percent of the population. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their 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.

The conflict between two Cushitic groups in the far northeast continued, with each group accusing the other of maintaining militias and receiving armed support from their ethnic kinsmen across the border in Ethiopia and Somalia to harass, intimidate, and kill members of the other group. In October the government sent a joint force of police and military personnel to interdict illegal weapons fueling the conflict. During the operation, security forces forcibly detained males in El Wak, Garri, and Mandera town. KNCHR accused police personnel of engaging in torture by whipping men with electrical cables and subjecting them to beatings while demanding that they surrender illegal weapons.

During the year postelection violence often had an ethnic component. Interethnic violence increased during the year after the December 2007 announcement of the presidential election results. In January mobs in opposition strongholds, such as the Rift Valley and the western provinces, violently targeted ethnic Kikuyu and others suspected of supporting the incumbent president. In retaliation, Kikuyu mobs perpetrated vigilante attacks on nonKikuyu residents in Central Province, Nakuru, Naivasha, and areas of Nairobi. The violence continued until the signing of a political power-sharing agreement in late February.

For example, in early January, a mob set fire to a church where Kikuyu residents sought sanctuary, killing 35 people, mostly women and children. On January 4, a Kikuyu mob stopped and burned a bus traveling to the western region of the country, killing all the passengers. The passengers were members of a tribe that supported the opposition. In late January Kikuyu mobs in Nakuru and Naivasha attacked non-Kikuyu residents of the town, killing 90 persons. NGOs and the media estimated that a total of 1,500 persons were killed, and the UN estimated that 500,000 persons were displaced during the postelection violence. In September KNCHR issued a report which concluded that much of the violence was organized and financed by politicians.

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. During the year NGOs and church organizations were also involved in attempts to reconcile communities affected by postelection violence. Land conflicts during the year took place between the Maasai and Kipsigis in southern Rift Valley Province in June and between Maasai and Kikuyu in Naivasha in September.

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.

Other Societal Abuses and Discrimination

There was societal discrimination based on sexual orientation. 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.

There was societal discrimination against homosexuals and persons with HIV/AIDS during the year. The common view of HIV/AIDS as a stigma made it difficult for many families to acknowledge that a member was HIV-positive, and to date no socially or politically prominent individual has admitted being HIV-positive. However, there were fewer reports of violence against persons with HIV/AIDS. During the year courts awarded legal judgments which recognized discrimination against persons with HIV. For example, in July a Nairobi high court awarded 2.2 million shillings (\$28,000) to a woman who had been wrongfully discharged from her job due to her HIV-positive status.

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. During the year, the number of people with knowledge of their HIV status and those able to achieve improved health if found to be infected more than doubled. These developments were seen as key to reducing stigma and discrimination.

Organizations representing persons with albinism claimed that they suffered widespread discrimination. On December 25, a child with albinism was killed in Namangan because the perpetrators believed that the death of a person with albinism would bring wealth and fortune. By year's end the investigation was still ongoing.

Section 6 Worker Rights

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 42 unions representing an estimated 500,000 workers, approximately one-third of the formal sector work force. The law allows unions to conduct their activities without government inference, 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. For example, in 2006 the Universities Academic Staff Union (UASU) sought wage rises varying from 298 to 520 percent. In 2006 the government referred the dispute to the Industrial Court, which awarded UASU a 30 percent pay rise in September 2008.

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

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.

During the year the government strengthened the labor dispute system by giving the Industrial Court the ability to enforce its decisions. However, 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 5.).

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. The Ministry of Labor and Human Resources Development nominally enforced the minimum age statute.

The law defines child labor, and the worst forms of child labor can be prosecuted, both under the Children's Act, which prohibits child sexual exploitation, and under the penal code. The Employment Act of 2007 also 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, includes fines 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. Persons under 18 may not be employed in any industrial undertaking at night, employment should not cause children to reside away from parents without their approval, and permission to work in a bar, hotel, or restaurant requires annually-renewed consent from the labor commissioner. Children under 13 are prohibited from working; also, children between 13 and 16 years of age may only perform "light work" which 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.

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. 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 that ethnic-based militia recruited children.

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 (ECPAT). In 2006, 30 hotels on the coast signed the ECPAT code of conduct. The Ministry of Tourism and Wildlife's campaign to register villas and cottages and impose the same requirements as on hotels resulted in an estimated 1,200 registrations. In 2007, 20 more hotels had signed the code of conduct; by year's end 10 additional hotels had signed the code of conduct.

During the year the Child Protection Department of the Ministry of Gender and Child Services hired 150 new children's officers. This followed the hiring of an additional 160 officers in 2007. The government's cash transfer program for orphans and vulnerable children (partially funded by UNICEF) expanded during the year to reach more than 25,000 children in 17 districts, providing approximately 500-1,000 shillings (\$8-\$15) per child per month to help fund basic needs, including school costs, so that the children would not have to work.

e. Acceptable Conditions of Work

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, during the year employers challenged these provisions in court. At year's end the case was ongoing.

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.

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 had 75 inspectors, an increase of 25 from the 2006-07 fiscal year, but far short of the 168 reportedly needed to inspect factories adequately and enforce its safety and health orders. 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. DOHSS prosecuted 29 firms for violating occupational health and safety regulations during the same period. Labor unions and NGOs continued to criticize health and safety conditions in the EPZs and other sectors, such as small horticultural producers.

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

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