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2020 Trafficking in Persons Report: Kenya

KENYA: Tier 2

The Government of Kenya does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period; therefore Kenya remained on Tier 2. These efforts included significantly increasing the number of victims identified, utilizing the victim assistance fund, launching a cybercrime center to investigate child sexual exploitation and child sex trafficking cases, enhancing law enforcement coordination with other countries on trafficking cases, and improving efforts to regulate recruitment agencies and support and protect migrant workers. However, the government did not meet the minimum standards in several key areas. The government reported a decrease in investigations, prosecutions, and convictions. Kenyan authorities continued to treat some victims as criminals and the availability of protective services for adult and foreign national victims remained inadequate, which contributed to quick repatriation of foreign victims due to lack of available shelters. The government also sometimes tried trafficking cases as immigration or labor law violations rather than crimes under the anti-trafficking law, which resulted in traffickers receiving less stringent sentences. The Counter-Trafficking in Persons Act continued to allow fines in lieu of imprisonment for sex trafficking offenses which remained incommensurate with other serious crimes.

PRIORITIZED RECOMMENDATIONS:

Increase investigations, prosecutions, and convictions of trafficking offenses, including of allegedly complicit officials. • Ensure protective services are available to adult trafficking victims, including foreign nationals. • Increase data collection and data sharing among relevant agencies on law enforcement and victim identification efforts. • Strengthen coordination between government agencies on efforts to combat trafficking and implement a new national action plan. • Fully implement the formal process for law enforcement officials to refer trafficking victims for assistance, including adult trafficking victims and Kenyans repatriated from abroad. • Fully implement a screening mechanism to prevent the penalization of potential trafficking victims. • Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking offenses. • Fully implement and promote victim protection procedures and services during legal proceedings. • Expand training to all levels of the government, specifically to law enforcement personnel and local authorities in rural and coastal regions, on identifying, investigating, and managing trafficking cases. • Sentence convicted traffickers to adequate penalties, which should involve significant prison terms. • Continue to regulate enforcement of oversight of overseas recruitment agencies. • Continue to conduct awareness campaigns throughout the country, focusing substantially on rural and coastal areas.

PROSECUTION

The government maintained uneven law enforcement efforts. The Counter-Trafficking in Persons Act of 2010 criminalized sex trafficking and labor trafficking and prescribed penalties of 30 years’ to life imprisonment, a fine of not less than 30 million Kenyan shillings ($296,300), or both. These penalties were sufficiently stringent. However, by allowing for a fine in lieu of imprisonment for sex trafficking, these penalties were not commensurate with those for other serious crimes, such as rape. Sections 14 and 15 of the Sexual Offenses Act of 2006 criminalized the facilitation of child sex tourism and “child prostitution” and prescribed punishment of no less than 10 years’ imprisonment, two million shillings ($19,750). The government’s overall data collection and reporting on anti-trafficking law enforcement efforts remained weak. Observers reported a lack of data sharing and input from relevant agencies likely led to underreporting of trafficking cases in 2019. In 2019, the government reported six new trafficking cases for investigation, including one sex trafficking case and five forced labor cases, involving at least 128 individuals, compared with at least 33 trafficking cases and 25 trafficking-related cases in 2018. The government reported five trafficking investigations from previous years were ongoing. The government reported arresting at least 42 people under the trafficking law in 2019. The government prosecuted at least 22 individuals under the trafficking law in 2019, compared with at least 33 individuals for trafficking and 25 individuals for trafficking-related crimes in 2018. Prosecutions of at least 38 defendants from prior years remained ongoing at the end of the reporting period. Courts convicted at least three defendants under the Counter Trafficking in Persons Act and sentenced them to 1.3 million shillings ($12,840) fine or 15 years’ imprisonment, 2.3 million shillings ($22,720) fine or 30 years’ imprisonment, and 3.4 million shillings ($33,580) fine or 30 years’ imprisonment. This was a decrease from courts convicting seven defendants for trafficking and 12 defendants for trafficking-related crimes in 2018.

The government increased collaboration with foreign governments, international organizations, and NGOs on law enforcement efforts. The government partnered with the Government of Uganda to rescue 96 Ugandan victims exploited in Kenya and arrested an alleged trafficker responsible. An NGO assisted during the criminal proceedings of six cases; one case involving five minors whose family member coerced them to beg resulted in courts convicting two traffickers; one was sentenced to 15 months’ imprisonment for harboring the victims and an additional 15 months for immigration violations, the other to 60 years and five months’ imprisonment for harboring, trafficking, and immigration violations. NGOs reported sentences for trafficking offenses sometimes did not align with the penalties outlined in the anti-trafficking act; NGOs also reported many arrests did not result in prosecution. In November 2019, media reported authorities arrested seven suspected traffickers, three Ethiopians and four Kenyans, along the Isiolo-Moyale highway. Authorities charged four of the seven with trafficking; the case remained ongoing at the end of the reporting period. The government increased the investigative capacity of the Directorate of Criminal Investigation’s (DCI) Anti-Human Trafficking and Child Protect Unit (AHTCPU) by opening a new office in Mombasa and increasing its personnel from 20 to 33—26 in Nairobi and 7 in Mombasa—and in collaboration with donors, provided the Mombasa office with vehicles, including a mobile laboratory. In April 2019, in collaboration with foreign governments and international organizations, AHTCPU opened a cyber-center in Nairobi to increase investigation of cases involving online child exploitation; the center reportedly received tips related to child exploitation and trafficking and referred the information to officers for action.

Officials reported porous borders between Kenya and neighboring countries, difficulties coordinating between local and national law enforcement, a lack of adherence to the national referral mechanism guidelines, and a shortage of interpreters inhibited efforts to investigate trafficking cases. NGOs reported police did not always gather evidence or take statements from victims. The government reported a general lack of awareness of trafficking crimes across the police force and conflation between trafficking and smuggling. Officials sometimes charged trafficking suspects under other crimes such as immigration or labor violations. The government collaborated with various NGOs and international organizations to provide training and technical support for investigators, prosecutors, judges, immigration officers, and other government officials on identifying and assisting trafficking victims, investigating and prosecuting trafficking cases, handling criminal evidence for investigations, the anti-trafficking law’s legal framework, operationalization of the national referral mechanism, and detection of fraudulent documents. The government provided varying degrees of logistical support and facilitated many of these trainings.

Corruption remained endemic across the government. Police at times took bribes to warn traffickers of impending operations and investigations, particularly along the coast, and observers reported perpetrators sometimes escaped conviction by bribing magistrates and court officials, or intimidating and paying witnesses to make false statements. In late 2018 and early 2019, media and NGOs reported an investigation of a cabinet-level official who reportedly signed special sports and cultural work permits for women to dance in a *mujra* club notorious for exploitative practices; authorities removed the official from office after the allegations surfaced, but the status of investigations into the official’s conduct remained unclear at the close of the reporting period. Traffickers sometimes fraudulently obtained identity documents from complicit officials. In 2019, the government reported an unspecified number of investigations into law enforcement officials who allegedly facilitated trafficking, but the government did not report any prosecutions or convictions of complicit officials involved with trafficking. The government reported it took measures to prevent corruption at border checkpoints by introducing cashless payment systems, using electronic document verification systems, vetting border officers, and conducting public awareness campaigns.

PROTECTION

The government maintained uneven protection efforts. The government reported identifying 853 victims of trafficking—275 adult females, 351 girls, and 227 boys—a significant increase compared with at least 400 identified victims in 2018. The majority of victims were subjected to forced labor in 2019. The government did not report identifying any adult male victims in 2019. Officials publicized government-operated trafficking support resources. Utilizing the government’s national referral mechanism and standard operating procedures, the government referred 78 victims (40 children and 38 women) to shelter services. DCI’s Transnational Organized Crime Unit (TOCU) proactively identified 144 trafficking victims during raids and encounters with commercial sex establishments. In April 2019, media reported TOCU raided a restaurant in Mombasa, identified 12 Nepali girls as victims of sex trafficking, and arrested the business owner. Anti-Human Trafficking and Child Protection Unit (AHTCPU) identified child victims were placed in government-run child institutions under the Department of Children’s Services and provided with food, shelter, clothing, and psycho-social care. AHTCPU reported referring some victims to health facilities for medical assistance. NGOs reported the government’s victim support and assistance remained limited and inconsistent.

Victim care varied in quality depending on the age, gender, nationality, and location of the victim. Victims generally had their choice of shelters, except when their security was at risk. The government relied on NGOs to run all safe houses and shelters used to house trafficking victims, with the exception of five government-run child rescue centers to facilitate the support for children who are victims of crimes, including trafficking. Services continued to consist of medical care, psycho-social counseling, rehabilitation and reintegration support, food and clothing, legal aid, and transportation. The government and NGOs across Kenya jointly provided these protective provisions, although sometimes NGOs acted alone when the government was slow or did not respond. NGOs reported limited shelter options for adults and foreign nationals, and those that existed were often ad hoc. The national referral mechanism (NRM) authorized foreign national victims to stay in a shelter up to 90 days. Alternatively, longer-term shelter services required authorization by the Cabinet Secretary; the government did not report providing long-term shelter to foreign victims, but cases awaited consideration at the end of the reporting period. Immigration officials reported repatriating trafficking victims to their countries quickly due to limited availability of shelters and other services. In 2019, an NGO reported providing shelter and legal assistance for 12 Nepali women who were victims of sex trafficking while law enforcement provided security during court proceedings. The government reported assisting in the repatriation of 142 foreign victims. Victim care remained inadequate in the coastal region due to lack of training and resources; NGOs and government officials worked in tandem there to provide trauma counseling, medical services, shelter, and reintegration support for trafficking victims returning from Somalia—some of whom left or fled al-Shabaab—and the Arabian Gulf. NGOs and officials reported that when shelters were limited, law enforcement sometimes housed victims in police stations or other remand homes and shelters.

During the 2019-2020 fiscal year, the National Treasury allocated 20 million Kenyan shillings ($197,530) to the National Assistance Trust Fund for Assisting Victims of Trafficking; however, stakeholders expressed concerns regarding the lack of framework for the fund’s disbursement and that the first disbursement to victims was the outcome of a lawsuit. Overall the government reported a lack of funding inhibited victim protection efforts. Some police officers reported using their personal vehicles for transport to investigations or their personal funds to provide support for identified victims. The government partnered with an NGO to identify and refer to care three children that were victims of sexual exploitation and forced labor in domestic service in Mombasa and Kilifi; the organization then collaborated with the government to reunite the children with their families. Stakeholders working on the NRM’s identification and referral provisions reported a lack of full implementation during the reporting period. The majority of local officials and civil society that received training on the NRM in coastal counties reported better skills in victim identification and referral, and the government reported an increase in referrals between partners. NGOs received referrals from victims or concerned witnesses, police during investigations, and via calls to the national gender-based violence and NGO-run child hotlines. The two national hotlines were operational 24 hours per day, year round. A NGO-run hotline received 11 calls regarding trafficking in 2019.

The government took significant steps to protect and assist Kenyan victims abroad. The government reported facilitating repatriations and providing psycho-social counseling and medical checkups to Kenyan citizens identified as victims abroad. To continue addressing the exploitation of Kenyan nationals abroad, Ministry of Labour and Social Protection (MOL)-assigned labor attachés continued to work in Kenyan diplomatic missions in Qatar, United Arab Emirates (UAE), and Saudi Arabia, and assisted an unreported number of citizens employed there. Reportedly, the attachés advocated for Kenyan workers’ rights with host governments, helped identify trafficking victims, resolved workplace disputes, provided identity documents, and partnered with licensed employment agencies to find legitimate work opportunities for Kenyans. The government continued to provide ad hoc monetary and logistical support for repatriation of its citizens subjected to trafficking outside Kenya; more often it relied upon NGOs and international organizations to coordinate and fund the repatriation. Observers noted many victims and their families funded their return rather than wait for the government’s repatriation assistance. In 2019, NGOs assisted the government in the repatriation of Kenyan women who were victims of forced labor in the Middle East and India.

Authorities reportedly penalized victims for unlawful acts traffickers compelled them to commit. Although the government reported screening vulnerable groups, especially children and women, for trafficking indicators during law enforcement raids or encounters with commercial sex establishments, NGOs across Kenya reported potential victims were sometimes charged with commercial sex crimes or labor violations. Observers reported that, in 2019, 10 victims of sex trafficking were charged for publishing pornographic materials in Mombasa. Authorities punished foreign national trafficking victims for violating immigration laws, often detaining them for deportation. The Counter-Trafficking in Persons Act required a victim to give consent for their trafficking case and throughout each step of the investigation and criminal proceedings. The government had formal procedures to encourage victims’ cooperation in the investigation and prosecution of trafficking crimes, but did not report how many victims utilized the victim witness protection program. Victims had access to courtrooms fitted with equipment to protect the victim’s identity. Victims also had the ability to leave the country, be employed, and move freely within the country pending trial proceedings after they testified. Even though victims’ benefits were not linked to a foreign victim’s law enforcement participation or whether the trafficker was convicted, officials noted the lack of victim services as a barrier to court cases and due to repatriation, victims often could not serve as witnesses. NGOs reported witnesses appeared to have been intimidated, disappeared, or did not appear in court for fear of re-victimization. In August 2019, an NGO sued the government for failing to provide adequate care and protection to five foreign nationals. The NGO also sued the government for forcing victims to testify in court or face deportation, failing to provide NGOs reimbursement for victim care, and not providing adequate shelter and protection to victims and social service personnel; at the end of December 2019, the government agreed to pay to repatriate the five victims following mediation. Under the Counter-Trafficking in Persons Act, officials may grant permission for foreign trafficking victims to remain indefinitely in Kenya if it is believed they would face hardship or retribution upon repatriation; the government did not report using this provision during the reporting period and an NGO reported the government requested victims apply for asylum instead. NGOs reported the government sometimes placed victims in refugee camps. Sometimes authorities obtained protective custodial orders for victims from courts to formalize protection service provisions pending repatriation. Under the Employment Act, trafficking victims could file civil suits against traffickers for damages; however, no suits were reported in 2019.

PREVENTION

The government increased efforts to prevent trafficking. Although authorities continued to implement the 2013-2017 national action plan during the reporting period, the government, with the support of international organizations and other stakeholders, finalized the 2019-2022 national action plan in fall 2019. The government, however, had yet to validate and allocate funding for the national action plan at the end of the reporting period. The government also noted that although government agencies responsible for combating trafficking received allotted funding, funding was inadequate and inhibited government efforts to combat trafficking. Observers also noted the Counter-Trafficking In Persons Secretariat did not have sufficient staff or training to adequately coordinate government activities. Under the Counter-Trafficking In Persons Act, the Counter-Trafficking in Persons Advisory Committee must issue an annual report on functions relating to the act; however, the committee had not published a report at the end of the reporting period. The government reported monitoring its anti-trafficking efforts quarterly, but did not provide any of these assessments during the reporting period. The government and civil society organizations continued to promote anti-trafficking awareness at high-level events, emphasizing the prevention of child sex trafficking, labor trafficking, and migrant workers’ rights. The government included input from survivors when drafting anti-trafficking regulations, policies, and initiatives.

The government, in coordination with international organizations, funded and provided training for law enforcement officials from the Horn and East Africa as well as Sudan and South Sudan. The government, in collaboration with the MOL, hosted a regional ministerial forum on harmonizing labor migration policies in East and the Horn of Africa countries in Kenya in January 2020. The governments discussed developing a united approach on safe, regular, and humane labor migration, which communally, the governments drafted and began negotiating bilateral labor migration agreements. Kenya’s National Coordination Mechanism (NCM) also implemented a framework to coordinate data collection from all institutions and agencies dealing with migration-related matters in the country. NCM held quarterly meetings where members discussed migration, trafficking, and smuggling matters. In 2019, the government began negotiations on a bilateral labor agreement with Uganda, adding to pending negotiations with Bahrain, Lebanon, Oman, Jordan, and Kuwait. During the reporting period, the government maintained bilateral labor agreements with UAE, Saudi Arabia, and Qatar to coordinate efforts to reduce cases of exploitative labor and other abuses against Kenyans abroad, including trafficking. Officials noted the bilateral agreements did not outline terms and conditions of service including conditions of work, exit clauses, and restitution and compensation mechanisms. Observers also reported Kenyan officials negotiated a pay rate lower than the Saudi Arabian minimum wage predisposing Kenyan workers to exploitation. In 2019, the government launched a website for migrant workers seeking employment in the Middle East providing information on safe migration and where to seek assistance from Kenyan embassies in the region.

In May 2019, the government launched the National Employment Authority (NEA) with the mandate to regulate labor migration and other labor-related matters; however, officials noted a lack of leadership and capacity hindered NEA. During the reporting period, the government allowed registered private employment agencies to resume recruitment for domestic workers in Middle Eastern countries; NGOs reported the new regularized and structured recruitment process improved the safety of migrant workers. NEA published accredited and vetted recruitment agencies that successfully obtained proper licensing on its website. NEA registered 284 private employment agencies, up from 69 during the previous reporting period, while prohibiting hundreds of others from recruiting in Kenya. The government enforced regulations on agencies that placed Kenyans in work abroad; these requirements included informing Kenyan employees seeking work abroad about their prospective wages, visa fees, airfare, medical examinations, and specifying that any administrative costs imposed on the employee should not exceed one month’s salary, and collecting a security bond intended to cover workers’ airfare in case workers need to be repatriated. MOL required contracts be signed in the presence of a labor ministry officer and required applicants to register with the Kenyan embassy upon arrival in the host country. NEA reported utilizing an e-platform for recruitment and placement of Kenyans migrating to Saudi Arabia, which promoted a safe migration process. At the end of the reporting period, 40,592 Kenyans, the majority of which were women, registered to migrate to Saudi Arabia while 3,903 registered for other Middle East countries. The government continued to train thousands of migrant workers on trafficking and migrant rights before their departure; NEA provided homecare management training to support domestic workers to be effective in their new positions. NGOs reported the new regulations improved protections for migrant workers, but gaps remained. Although the government made efforts to vet recruitment agencies, numerous illegal, unregistered agencies remained in operation. Observers continued to report that migrant workers’ salaries were withheld until the completion of their contract period to coerce them to stay longer. NGOs reported recruitment agencies bribed labor officials to bypass required procedures including allowing recruitment agents to sign the contract on the worker’s behalf when the worker did not appear in person. Some observers noted gaps in legal protections and regulatory frameworks helped to perpetuate traffickers’ exploitive tactics.

The government continued to implement the National Plan of Action Against Sexual Exploitation of Children 2018-2022. The government reported exclusively working with companies that signed the Code of Conduct for the Protection of Children from Sexual Exploitation, an agreement signed by companies that promised to train staff on the identification of child exploitation among guests and create an awareness within their facilities. While government efforts to curb child sex tourism continued during the year, local reports claimed these efforts largely involved prohibiting the entry of perpetrators at immigration checkpoints rather than arrests and prosecutions. The government made efforts to reduce the demand for commercial sex. The government did not report training its peacekeepers during the reporting period.

TRAFFICKING PROFILE

As reported over the past five years, human traffickers exploit domestic and foreign victims in Kenya, and traffickers exploit victims from Kenya abroad. Within the country, traffickers exploit children through forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Additionally, traffickers exploit teenage boys from nomadic tribes into cattle rustling. Traffickers also exploit girls and boys in commercial sex throughout Kenya, including in sex tourism on the coast in Nairobi and Kisumu, particularly in informal settlements; at times, family members facilitate their exploitation. Children are also exploited in sex trafficking by people working in *khat* cultivation areas and near gold mines in western Kenya, truck drivers along major highways, and fishermen on Lake Victoria. NGOs reported that internally displaced persons, particularly those who live close to a major highway or local trading center, are more vulnerable to trafficking than persons in settled communities. Kenyans are recruited by legal or illegal employment agencies or voluntarily migrate to Europe, Northern Africa, North America, Central and Southeast Asia, and the Middle East—particularly Saudi Arabia, Lebanon, Kuwait, Qatar, UAE, Bahrain, Iran, Iraq, and Oman—in search of employment, where, at times, they are exploited in massage parlors and brothels, or in forced manual labor or domestic service. Nairobi-based labor recruiters maintain networks in Uganda and Ethiopia that recruit Rwandan, Ethiopian, and Ugandan workers through fraudulent offers of employment in the Middle East and Asia. Kenya continues to serve as a transit point for Ethiopians and other East Africans seeking work in South Africa. Ugandan and Nigerian traffickers exploit Kenyan women in sex trafficking in Thailand. Young Kenyan men and women are lured to Somalia to join criminal and terrorist networks, sometimes with fraudulent promises of lucrative employment elsewhere. Authorities reported an increase in Ugandan girls subjected to trafficking in Kenya, specifically in Nairobi’s Eastleigh neighborhood where business owners and employers often exploit them sexually and in forced labor. Observers have reported traffickers transport girls to Somalia for exploitation in sex trafficking.

Kenya hosts approximately 492,802 refugees and asylum-seekers, primarily located in two camps: Kakuma Refugee Camp and Dadaab Refugee Complex. Refugees are generally required to live within the camps and have limited access to education and livelihood opportunities, therefore increasing their vulnerability to abuse and exploitation, including sex trafficking. Children from East Africa, South Sudan, and Nepal are exploited in forced labor and sex trafficking in Kenya. Stakeholders assert domestic workers from Uganda, pastoralists from Ethiopia, and others from Somalia, South Sudan, and Burundi are subjected to forced labor in Kenya when Kenyan youth vacate jobs to be educated and business owners need employees quickly; however, this trend has reportedly waned. Recruiters use debt-based coercion to force Nepali, Indian, and Pakistani women to work in *mujra* dance clubs in Nairobi and Mombasa, where they are forced to pay off the debt by dancing and through exploitation in the commercial sex industry. Increasingly, traffickers are bringing children and persons with physical disabilities from Tanzania and other neighboring countries to engage in forced begging and foreign victims are coerced to serve as facilitators and middlemen to further trafficking schemes. In 2019, due to increased oversight of recruitment agencies and enforcement of labor regulations, traffickers increasingly utilized online recruitment and relative referrals. Traffickers shifted targeting from coastal regions to vulnerable youth in rural areas and remote villages in Kenya. Increased awareness campaigns, trainings, and law enforcement efforts in the coastal region and in hotels and resorts have shifted the location of sex trafficking of minors to private hotels and short-term rentals.

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