2021 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, considering the impact of the COVID-19 pandemic on its anti-trafficking capacity; therefore Kenya remained on Tier 2. These efforts included increasing the number of investigations and prosecutions of trafficking crimes; convicting more traffickers; increasing personnel dedicated to specialized anti-trafficking police units; and launching a new hotline to report trafficking crimes. However, the government did not meet the minimum standards in several key areas. The government identified significantly fewer trafficking victims, and protection services for identified victims, particularly adults, remained limited and inconsistent in quality. Despite sustained concerns of official complicity in trafficking crimes, which hindered both law enforcement efforts and victim identification during the reporting period, the government did not report any law enforcement action against allegedly complicit officials. The government often tried trafficking cases as immigration or labor law violations rather than crimes under the anti-trafficking law, which resulted in suspected traffickers receiving less stringent sentences. Additionally, because of the lack of screening among migrants, authorities reportedly detained and deported potential trafficking victims for suspected violation of immigration laws. Observers reported the Counter Trafficking in Persons Secretariat remained without sufficient staffing or funding, hindering overall progress on anti-trafficking efforts.

PRIORITIZED RECOMMENDATIONS:

Increase efforts to vigorously investigate, prosecute, and convict traffickers, including complicit officials, and sentence convicted traffickers to adequate penalties, which should involve significant prison terms. • Ensure protection services are available for all victims, including adult victims and foreign nationals. • Fully implement the national referral mechanism and encourage law enforcement officials to formally refer trafficking victims for assistance. • Systematically and proactively identify trafficking victims by screening vulnerable populations, such as refugees, asylum-seekers, individuals in commercial sex, and all foreign workers, including Ethiopians, Ugandans, Cuban medical professionals, and North Koreans, for trafficking indicators and refer all victims to appropriate services. • Increase protective services for victims participating in the criminal justice process to prevent re-traumatization. • Establish a shelter dedicated for trafficking victims to receive specialized care or provide funding or in-kind resources to NGO-run shelters. • Increase data collection and data sharing among relevant agencies to synthesize and analyze nationwide law enforcement and victim protection data related to trafficking crimes. • Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking offenses. • Develop, adopt, and implement an updated national action plan to combat trafficking. • 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. • Continue to regulate and oversee overseas recruitment agencies and train inspectors to report potential violations to the appropriate officials.

PROSECUTION

The government maintained law enforcement efforts but did not take adequate steps to address official complicity in trafficking crimes, which remained pervasive. 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 ($274,980), 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 and a fine of 2 million shillings ($18,330).

The government's overall data collection and reporting on anti-trafficking law enforcement efforts remained weak; additionally, the government provided some data that fell outside of the current reporting period without a mechanism to disaggregate. In 2020, the government reported initiating investigations of 18 trafficking cases, including at least four child sex trafficking cases, one child labor trafficking case, and one adult labor trafficking case, compared with six trafficking investigations initiated in 2019. The government reported that five trafficking investigations from previous years remained ongoing; however, the government did not provide an update on these cases. The government reported arresting 11 alleged traffickers in 2020, a decrease from at least 42 arrests in 2019. Arrests included a German national involved in child sex tourism and six Kenyan nationals for exploiting Ethiopian victims in forced labor; other arrests included charges of child sex trafficking and child labor trafficking, but the government did not provide further information on these cases. The government reported prosecuting 46 individuals under the 2010 anti-trafficking law between July 2019 and June 2020, compared with at least 22 individuals prosecuted in 2019; however, some of the prosecution data provided fell outside of the current reporting period. Prosecutions of at least three defendants from prior years remained ongoing at the end of the reporting period. At the end of the previous reporting period, at least 38 prosecutions remained ongoing; however, the government did not report updates on these cases. Courts convicted at least six traffickers under the 2010 anti-trafficking law—two for child forced begging, two for sex trafficking, one for child trafficking, and one for an unspecified trafficking crime; this compared with at least three convictions in 2019. Courts sentenced convicted traffickers to varying degrees of punishment but did not provide sentencing data for all convictions; in one case, a judge issued a ruling of a fine of 400,000 shillings ($3,670) or four years' imprisonment, while another court sentenced a trafficker to 65 years' imprisonment. Courts acquitted two suspected traffickers during the reporting period for unspecified reasons. In response to the pandemic, courts nationwide operated virtually from March 2020 to June 2020; gradual re-openings began in June 2020, but operations remained limited due to differing protocols among various courts. While anti-trafficking specific law enforcement units continued to operate throughout the pandemic, the government reported that pandemic-related restrictions, such as office closures, national curfew, and social distancing requirements created operational challenges to law enforcement actions. In addition to pandemic-related challenges, officials also reported that law enforcement action under the 2010 anti-trafficking law remained minimal for various reasons, including: limited police awareness about evidence collection and its use in proving a trafficking crime; corruption; the increased challenges of pursuing a trafficking prosecution instead of treating incidents as immigration violations; and the complexity of proving all the elements of trafficking.

The government did not report any investigations, prosecutions, or convictions of government employees complicit in human trafficking offenses; however, corruption and official complicity in trafficking crimes remained significant concerns, inhibiting law enforcement action during the year. 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 unreported for the third consecutive reporting period. Police officers continued to accept bribes to warn traffickers of impending operations and investigations, particularly along the coast, and officials reported perpetrators sometimes escaped conviction by bribing magistrates and court officials or intimidating or paying witnesses to make false statements. During the reporting period, observers alleged that criminal syndicates colluded with various law enforcement and immigration departments to transport trafficking victims in Kenya. Traffickers continued to easily obtain fraudulent identity documents from complicit officials, particularly at border checkpoints. Due to pandemic-related travel restrictions and border closures, the government did not report efforts to prevent corruption on the border unlike in the previous reporting period.

The government continued to enhance the investigative capacity of the Directorate of Criminal Investigation's (DCI) Anti-Human Trafficking and Child Protection Unit (AHTCPU) by increasing its personnel from 33 to 37 officers—27 in Nairobi and 10 in Mombasa—and planning to open a third office in Kisumu. The DCI's Transnational Organization Crime Unit (TOCU), mandated to investigate adult trafficking cases, had 32 officers—25 in Nairobi and 7 in Mombasa. During the reporting period, the government continued to collaborate with the Government of Uganda on a case identified during the previous reporting period and began working with the Government of Tanzania and the Government of Burundi on forced labor cases; however, observers reported the government continued inadequate efforts to pursue international trafficking cases involving Kenyan victims in foreign countries. In 2020, NGOs and international organizations provided regular trainings to several hundred prosecutorial and judicial officials, border guards, police officers, and immigration agents on how to detect and respond to trafficking crimes in their respective capacities; the government provided varying degrees of logistical support for these training endeavors.

PROTECTION

The government decreased victim protection efforts. The government reported identifying 383 victims of trafficking—51 adult males, 176 adult females, 104 boys, and 52 girls—a significant decrease compared with identifying 853 victims in 2019. Of the 227 adult victims identified, 150 were Kenyans exploited in or in transit to Middle East countries, including Iraq, or India. Other adult victims included Kenyans and foreign nationals, primarily from Ethiopia, Uganda, and Burundi, exploited within the country. In 2019, TOCU proactively identified 144 trafficking victims during raids of commercial sex establishments; however, the government did not report taking such actions during the reporting period. NGOs reported identifying at least 363 victims during the reporting period. The government maintained a national referral mechanism (NRM) that outlined guidelines for victim identification and referral to services and reported regularly screening returnees from Gulf states; however, the government did not fully implement the NRM, and local authorities continued to bypass the NRM and directly contact NGOs to provide victim assistance.

The government reported partnering with various NGOs to offer routine assistance to 134 victims (77 adults and 57 children), including medical care, psycho-social counseling, reintegration support, and legal assistance; however, NGOs reported that, in some cases, the government acted too slowly or not at all, necessitating action solely by NGOs. The government referred 112 victims (37 adults and 75 children) to shelter services, compared with 78 victims referred to shelter in 2019. The government did not operate any trafficking-specific shelters and continued to rely on NGOs to provide this service during the reporting period. The government continued to operate five child protection centers throughout the country, but it did not report if these centers housed trafficking victims during the reporting period. Protection services for adult victims remained scarce, and NGOs reported that the government's overall victim assistance remained limited and inconsistent in quality. NGOs and government officials in coastal regions partnered 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 Gulf states; however, victim care remained scarce in coastal regions due to a lack of training and resources. In response to the pandemic, some NGO shelters and government-run centers acted as quarantine or testing centers or had limited capacity due to social distancing measures; the government reported this decreased its ability to refer all victims to care. The government also reported pandemic-related measures, such as travel restrictions, mandatory quarantine and testing, social distancing, and curfews, decreased the ability for the government to provide in-person care. However, NGOs expressed concern over long-standing protection gaps made worse by the pandemic, inhibiting the government from providing appropriate care to victims during the reporting period. Despite reliance on civil society organizations to provide victim services, the government did not report providing financial or in-kind support to such organizations. Officials noted that overall funding to combat trafficking remained inadequate, alleging that officers sometimes used their personal funds to provide support to victims. During the 2020-2021 fiscal year, the National Treasury allocated 20 million Kenyan shillings ($183,320) to the National Assistance Trust Fund for Assisting Victims of Trafficking, the same amount as the previous fiscal year. The government reported dispersing 1.8 million Kenyan shillings ($16,500) from the fund to screen 314 Kenyan migrant workers repatriated from the Middle East; the government also used the fund to provide counseling and other protection services to at least 80 victims identified through the screening process. While courts ordered payments to victims from the fund for the first time in December 2019, stakeholders reported the government did not utilize the fund to provide direct payments to victims during the reporting period.

To address the exploitation of Kenyan nationals abroad, the Ministry of Labor and Social Protection (MOL) continued to employ labor attachés in Kenyan diplomatic missions in Qatar, United Arab Emirates (UAE), and Saudi Arabia. Reportedly, the attachés advocated for Kenyan workers' rights with host governments, screened workers for trafficking indicators, resolved workplace disputes, provided identity documents, and partnered with licensed employment agencies to find legitimate work opportunities for Kenyans; the government reported the attachés coordinated with the MOL, National Employment Authority (NEA), and Ministry of Foreign Affairs to assist in victim identification and repatriation during the reporting period. In 2020, media reported that numerous Kenyan women employed as domestic workers in Lebanon may have been victims of trafficking; the Ministry of Foreign Affairs reportedly sent a fact-finding mission to investigate the allegations, but the government did report any findings or specific actions taken. In 2020, NGOs assisted the government to repatriate Kenyan trafficking victims exploited in Bahrain, Tanzania, Saudi Arabia, and Uganda. The government provided foreign victims of trafficking with similar protective services as Kenyan nationals, particularly immediate needs like shelter and counseling; however, authorities did not provide longer-term shelter or residency benefits to foreign victims. Senior officials reported that authorities often quickly returned trafficking victims to their countries of origin due to the limited availability of shelters and other services. The law allowed officials to grant permission for foreign trafficking victims to remain indefinitely in Kenya if they would face hardship or retribution upon repatriation; the government did not report using this provision during the reporting period. NGOs reported the government sometimes placed victims in refugee camps, where their freedom of movement was restricted. Authorities sometimes obtained protective custodial orders for victims from courts to formalize protection service provisions pending repatriation. In 2020, the government reported assisting in the repatriation of at least 113 foreign victims, compared with 142 repatriations in 2019.

The government maintained a Witness Protection Agency that offered protection to victims participating in investigations and prosecutions, and the government did not report providing this support to trafficking victims during the reporting period. Additionally, contrary to previous reporting, the government did not have formal procedures to encourage victims' voluntary participations in investigations and prosecutions. Some courtrooms had facilities or equipment that allowed victims to provide testimony via video, one-way glass, or written statements; however, these services were not available in all courtrooms. Foreign victims had the ability to leave the country, seek employment, and move freely within the country pending trial proceedings after they testified. Even though victims' benefits were not linked to 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 frequent repatriation or deportation, victims often could not serve as witnesses. Under the Employment Act and the 2010 anti-trafficking law, trafficking victims could file civil suits against traffickers for damages; however, the government did not report any civil suits filed in 2020.

Authorities reportedly penalized victims for unlawful acts traffickers compelled them to commit. NGOs across Kenya continued to report that potential victims within vulnerable groups, particularly adults in commercial sex, were sometimes charged with commercial sex crimes or labor violations. In recent years, authorities punished foreign national trafficking victims for violating immigration laws, often detaining or deporting them without screening for trafficking indicators; however, immigration officials reported enhancing coordination between national officials and local authorities to protect potential trafficking victim from penalization. NGOs reported witnesses appeared to have been intimidated, disappeared, or did not appear in court for fear of re-victimization. In 2020, an independent institution reported that authorities detained more than a third of migrants for being in the country without proper documentation; under this approach, officials sometimes detained potential trafficking victims without proper screening or provision of assistance. The same report alleged the government regularly held potential victims awaiting repatriation in detention. Officials and NGOs reported the government often placed adult trafficking victims in prisons or detention centers due to the lack of shelters available for adult victims; authorities sometimes placed child victims in centers for juvenile offenders until officials found a shelter or safe house with space available. In August 2019, an NGO sued the government for failing to meet its international and national obligations to protect victims of human trafficking; the case remained ongoing at the end of the reporting period.

PREVENTION

The government maintained efforts to prevent trafficking. The Counter Trafficking in Persons Secretariat (CTiP Secretariat), the operational arm of the Counter Trafficking in Persons Advisory Committee, continued to spearhead government efforts to combat trafficking. The CTiP Secretariat reportedly had dedicated funding in the national budget, but the government did not provide the total amount of anti-trafficking funding allocated for the fiscal year. Civil society and other stakeholders reported the CTiP Secretariat engaged them more regularly than in prior reporting periods, when the Secretariat primarily engaged stakeholders through standing quarterly meetings; however, observers noted that the CTiP Secretariat did not have sufficient staffing or funding, hindering progress on new anti-trafficking efforts and publication of required reporting on government efforts. The National Coordination Mechanism on Migration (NCM), chaired by the Department of Immigration, maintained responsibility for managing national coordination on migration issues, including addressing allegations of forced labor of Kenyans abroad, and held quarterly meetings to discuss migration, trafficking, and smuggling matters. While the CTiP Secretariat and NCM regularly coordinated, some stakeholders reported the two groups had overlapping mandates, which created confusion and discrepancies on which mechanisms were most effective. Officials continued to operate under the 2013-2017 national action plan (NAP), although it formally expired in 2018. In 2019, the government, in partnership with international organizations and civil society, drafted a 2019-2022 NAP; however, in 2020, observers reported the government found unspecified deficiencies in the draft NAP and planned to make amendments to the draft before finalizing the plan. The government continued to implement the National Plan of Action Against Sexual Exploitation of Children 2018-2022, which included efforts to prevent child sex trafficking. The government, in partnership with civil society organizations, continued to conduct various awareness-raising campaigns, primarily online in light of the pandemic, emphasizing the prevention of online child sexual exploitation, resources to report child trafficking, and emerging trends as a result of the pandemic. The government, in partnership with an NGO, continued to operate a 24-hour hotline to report child abuse and exploitation, including child trafficking; in 2020, the government reported identifying at least 16 cases of suspected child trafficking through the hotline, compared with 11 cases identified in 2019. In December 2020, the DCI launched a new call center for the public to report crimes, including human trafficking; authorities reported identifying one potential trafficking case through the hotline during the reporting period, while two other potential trafficking crimes remained under investigation.

The NEA continued to regulate labor migration and other labor-related matters, including labor trafficking, during the reporting period; however, officials noted a lack of leadership, uneven regulation enforcement, and corruption hindered NEA operations. As in previous years, the NEA published on its website a list of accredited and vetted recruitment agencies that successfully obtained proper licensing. The NEA had 320 registered private employment agencies, an increase compared with 284 during the previous reporting period; the NEA continued to prohibit hundreds of agencies from recruiting in Kenya. The NEA maintained a security bond intended to cover airfare for Kenyan migrant workers, including potential trafficking victims, in need of repatriation due exploitative situations. The government did not report approving any such requests during the reporting period, despite observers alleging the number of victims in precarious employment situations overseas increased during the pandemic. As in previous years, NEA utilized an e-platform for recruitment and placement of Kenyans migrating to Saudi Arabia to promote a safe migration process; however, observers continued to report that Kenyan officials negotiated a pay rate lower than the Saudi Arabian minimum wage, making Kenyan migrant workers vulnerable to trafficking. The government required migrant workers to attend a pre-departure training course that included information on human trafficking and migrant rights; it also included specific homecare management training for domestic workers. However, some prospective domestic workers reported there were not sufficient slots in training schools to meet training demands during the reporting period. Observers continued to report that foreign employers held migrant workers' salaries until the completion of their contract period to coerce them to stay longer, and in some cases, employers sold migrant workers to another employer without a legal change in the employment contract. 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. Although the government made efforts to vet recruitment agencies, numerous illegal and unregistered agencies remained in operation. The government did not make efforts to reduce the demand for commercial sex or child sex tourism.

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. Traffickers exploit children through forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Traffickers exploit women and children in commercial sex, often facilitated by family members in informal settings, throughout Kenya, including in sex tourism in Nairobi, Mombasa, and Kisumu. In 2020, an international NGO reported there are between 35,000 and 40,000 victims of commercial sex, including child sex tourism, in Kenya, of which approximately 19,000 are children; most perpetrators are Kenyan and, to a lesser extent, foreign tourists. Workers in *khat* cultivation areas and near gold mines in western Kenya, truck drivers along major highways, and fishermen on Lake Victoria also exploit children in sex trafficking. NGOs report that IDPs, particularly those who live close to a major highway or local trading center, are more vulnerable to trafficking than persons in settled communities. During the pandemic, school closures from March 2020 to January 2021, family economic challenges, curfews, and travel restrictions left children more vulnerable to trafficking, particularly online sexual exploitation and forced labor in domestic work and forced begging. Observers reported that measures to mitigate the pandemic resulted in the confinement of some victims of sex trafficking, particularly women and children, to the same location as their trafficker, which exacerbated their exploitation. Employment agencies, both legal and fraudulent, recruit Kenyans to work in the Middle East (particularly Saudi Arabia, Lebanon, Kuwait, Qatar, UAE, Bahrain, Iran, Iraq, and Oman), Central and Southeast Asia, Europe, Northern Africa, and North America, where, at times, traffickers exploit them in massage parlors, brothels, domestic servitude, or manual labor; Kenyans who voluntarily migrate in search of employment opportunities are also vulnerable to exploitative conditions. NGOs reported that economic loss due to the pandemic, coupled with border closures, increased the number of Kenyans migrating via irregular routes; these populations were particularly vulnerable to trafficking. Criminals involved in terrorist networks lure and recruit Kenyan adults and children to join non-state armed groups, primarily al-Shabaab, in Somalia, sometimes with fraudulent promises of lucrative employment.

Kenya hosts more than 500,000 refugees and asylum-seekers, primarily located in Kakuma Refugee Camp, Kalobeyei Integrated Settlement, and Dadaab Refugee Complex. Refugees are generally required to live within the camps with restricted movement and limited access to education and livelihood opportunities, increasing their vulnerability to labor and sex trafficking; children and LGBTQI+ persons in refugee camps are especially vulnerable. Nairobi-based labor recruiters maintain networks in Uganda and Ethiopia that recruit Burundian, Ethiopian, Rwandan, and Ugandan workers through fraudulent offers of employment in the Middle East and Asia. Kenya continues to serve as a transit point for migrants seeking work in South Africa, leaving these populations vulnerable to exploitation; traffickers exploit transient Ethiopians in forced labor and Burundian and Rwandan women in domestic servitude. Ugandan and Nigerian traffickers exploit Kenyan women in sex trafficking in Thailand. Authorities reported business owners and employers exploited Ugandan girls in sex trafficking and forced labor, specifically in Nairobi's Eastleigh neighborhood. Traffickers exploit children from neighboring East African countries in forced labor and sex trafficking in Kenya. Cuban medical professionals and North Korean nationals working in Kenya may have been forced to work by the Cuban and North Korean governments, respectively. Recruiters use debt-based coercion to force Nepali, Indian, and Pakistani women to work in *mujra* dance clubs in Nairobi and Mombasa, where traffickers force them to pay off debts by engaging in commercial sex. Traffickers have increasingly exploited Somali women and girls in sex trafficking in brothels in Nairobi and Mombasa. Increasingly, traffickers bring children and individuals with physical disabilities from Tanzania and other neighboring countries to exploit them in forced begging; traffickers often coerce foreign victims to serve as facilitators to further such trafficking schemes.