2018 Trafficking in Persons Report - Kenya

Publisher	United States Department of State
Publication Date	28 June 2018
Cite as	United States Department of State, *2018 Trafficking in Persons Report - Kenya*, 28 June 2018, available at: https://www.refworld.org/docid/5b3e0b074.html [accessed 14 February 2019]

KENYA: TIER 2

The Government of Kenya does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated increasing efforts compared to the previous reporting period; therefore Kenya remained on Tier 2. The government demonstrated increasing efforts by commencing digital law enforcement data tracking on a monthly basis, fully implementing its national referral mechanism, and vetting 45 recruitment agencies in compliance with registration requirements and a code of conduct. In addition, officials allocated funding for its victim assistance fund for the first time since 2015. Labor attaches to Kenyan missions in Qatar, the United Arab Emirates (UAE), and Saudi Arabia became fully operational to protect citizens employed in those countries. However, the government did not meet the minimum standards in several key areas. Kenyan authorities continued to treat some victims as criminals, and the availability of protective services for adult victims remained negligible. There were no investigations into official complicity despite credible reports of traffickers obtaining fraudulent identity documents from corrupt officials. The government also routinely tried trafficking crimes as immigration or labor law violations rather than under the anti-trafficking law, which resulted in traffickers receiving less stringent sentences.

RECOMMENDATIONS FOR KENYA

Increase protective services available to adult trafficking victims, particularly those identified and repatriated from overseas; ensure potential victims are not inappropriately penalized for crimes committed as a direct result of their being subjected to trafficking; vigorously investigate and prosecute trafficking offenses and convict and punish traffickers, including forced labor cases; amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment; strengthen implementation of the formal process for law enforcement officials to refer trafficking victims for assistance, including adult trafficking victims and repatriated Kenyans; expand training to all levels of the government, particularly front-line responders, on identifying and handling trafficking crimes; continue to expand oversight of overseas recruitment agencies; and conduct awareness campaigns throughout the country, focusing substantially on rural coastal areas.

PROSECUTION

The government maintained law enforcement efforts, but incomplete data from the government made it difficult to fully assess those efforts. Section 1 of the Counter-Trafficking in Persons Act of 2010 criminalized sex and labor trafficking and prescribed a sufficiently stringent punishment of no less than 30 years imprisonment or a fine of not less than 30 million Kenyan shillings ($290,700). 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, penalties that were sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. During the reporting period, the government reported an increase in the number of cases it prosecuted under the anti-trafficking law compared to previous years in which it more commonly utilized the 2006 Sexual Offenses Act, exhibiting a stronger understanding of how to effectively employ the anti-trafficking law.

During the reporting year, the government began tracking law enforcement data digitally and collecting it on a monthly basis from local police offices in order to ensure its anti-trafficking statistics were accurate, complete, and wholly representative of all 47 counties in Kenya. However, as the government had only begun to implement this change in data collection, it reported partial data from only some regions for the current year. It reported 35 investigations of potential trafficking cases in 2017, compared to 530 in 2016 of which many included smuggling and other trafficking-related crimes. From official data derived from an unknown number of counties in Kenya, the government reported initiating nine sex trafficking prosecutions under the anti-trafficking law; during the previous reporting period, it completed 281 prosecutions, many of which were for smuggling vice trafficking crimes and prosecuted under other laws. At the close of the reported period, the government did not report any trafficking convictions, and the nine prosecutions remained ongoing, compared with 105 convictions in 2016. Prosecutors continued to charge some defendants with immigration violations or labor exploitation vice human trafficking, as the former crimes were deemed easier to prove and less financially costly than the latter. The government did not report the number of prosecutions or convictions it attained under the Sexual Offense Act or the number of those for forced labor; however, various stakeholders reported at least 300 trafficking-related prosecutions during the year, although the government was unable to provide conviction and sentencing details for such crimes.

Corruption remained endemic at all levels of government, and traffickers were able to fraudulently obtain identity documents from complicit officials, and police often took bribes to warn traffickers of impending operations and investigations. The government did not report any investigations, prosecutions, or convictions of government employees involved in human trafficking. The national police service, in partnership with an international organization, included content on human trafficking and the anti-trafficking law in its basic training curricula. In 2017, two Kenyan NGOs provided training for an unknown number of police officers and prosecutors in the six coastal counties on how to differentiate between trafficking and smuggling crimes, and multiple international organizations and stakeholders trained an unknown number of immigration officials and airport contractors on how to detect trafficking crimes; the government provided logistical support for these training endeavors. During the reporting period, Kenya Airways – of which the government is the largest shareholder – coded plane tickets to highlight suspected trafficking cases and flagged those for government officials to intercept during transit at the Kenya International Airport; it did not report how many cases were investigated as a result of this initiative.

PROTECTION

The government demonstrated uneven protection efforts as it improved identification of and institutional protections for children domestically and adults abroad; however, such services for adult victims in-country remained negligible. Authorities reported identifying and referring to care at least 352 trafficking victims in 2017, of which the vast majority – 267 – were subjected to forced labor, seven to sexual exploitation, and the remainder unknown; this was compared with its identification and protection of 530 victims in 2016, although many were likely involved in smuggling. During the reporting period, the government provided 60 million Kenyan shillings ($581,400) from the federal budget for anti-trafficking efforts, including implementation of the National Referral Mechanism (NRM) and the victim assistance fund, which is a marked increase from no funds provided during the previous period. By the end of 2017, the government fully implemented the NRM and trained relevant stakeholders on its identification and referral provisions. According to multiple government and civil society stakeholders, identification of child trafficking victims remained stronger than for adults. Identification sources included direct referrals to NGOs from victims or witnesses; reactively by police during investigations; or calls to the government-operated, gender-based violence or NGO-run hotlines. The two national hotlines were operational 24 hours per day, year round; however, unlike the previous two years, the government did not report how many calls either line received during the reporting period. Victim care varied in quality and services consisted of medical care, psycho-social counseling, rehabilitation and reintegration support, food and clothing supply, legal aid, and transportation. The government and NGOs across Kenya jointly provided these protective provisions, although sometimes NGOs acted alone when the government was too slow or neglected to respond. The government placed some child victims in child-specific rescue centers, supported the familial reunification of others, and assisted with the repatriation of non-Kenyan nationals. It operated drop-in referral centers in Mombasa (Likoni), Malindi, Nyeri, Machakos, Meru, Kakamega, Kisumu, Nyamira, Nakuru, Eldoret, Kericho, and Muranga, and four rescue centers in Garissa, Nairobi, Thika, and Machakos, where child victims of violence, including trafficking victims, could stay for up to three months before returning home or being referred to NGO facilities.

To continue addressing the exploitation of Kenyan nationals in Arabian Gulf States, in addition to the Ministry of Labor (MOL)-assigned labor attaches already working in Kenyan missions in Qatar and Saudi Arabia, attaches began working in the UAE during the reporting period to assist citizens employed there. The government also concluded bilateral labor agreements with Saudi Arabia and Qatar to coordinate efforts to reduce cases of exploitative labor and other abuses against Kenyans abroad, to include trafficking; it was under negotiations for such agreements with the UAE and Kuwait at the close of the reporting period. It provided ad hoc monetary and logistical assistance for repatriation of its citizens subjected to trafficking outside Kenya. In some cases, NGOs and destination-country governments coordinated and funded the repatriation of Kenyan nationals without government support. Officials assisted more than 70 Kenyans with their return in 2017, mostly due to poor labor conditions, and an NGO and an international organization reported repatriating 46 Kenyan nationals from Gulf States.

Some officials continued to conflate smuggling with trafficking and arrested, without screening, potential trafficking victims for contravening immigration laws. Reports also alleged authorities treated some victims as criminals, particularly women in prostitution, sometimes charging them with labor violations. The government had formal procedures to encourage victims' cooperation in the investigation and prosecution of trafficking crimes, and during the reporting period seven victims utilized the government's victim-witness protection program. Under the anti-trafficking 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.

PREVENTION

The government increased efforts to prevent trafficking. Authorities continued to implement the 2013-2017 national action plan through capacity building for officials and employment of the referral mechanism; it commenced development of an updated 2018-2022 version. The advisory committee – the governing body for anti-trafficking efforts – convened quarterly during the reporting period. The advisory committee and other government officials continued to promote anti-trafficking awareness, particularly targeting the prevention of child sex and labor trafficking. The government also launched a campaign centered on Human Trafficking Awareness Day using highway billboards and community outreach programs. Two NGOs organized campaigns via radio interviews, public fora, and conferences with local governments, effectively reaching around 70,000 people in critical coastal regions. However, the government's anti-trafficking awareness efforts were largely limited due to resource constraints.

In 2017, the government fully implemented the rules published the year prior, which outlined registration requirements for hundreds of private employment agencies that place Kenyans in work abroad. These requirements included informing Kenyan employees seeking work abroad about their prospective wages, visa fees, airfare, and medical examinations, and specifying that any administrative costs imposed on the employee should not exceed one month's salary. The MOL required contracts deemed credible to be signed in the presence of a labor ministry officer, and required applicants to register with the Kenyan embassy in the host country. During the reporting period, the MOL approved registration for 45 private employment agencies – up from 25 the previous reporting period – and prohibited hundreds of others from recruiting in Kenya; however, the list of vetted employment agencies registered by the MOL was not readily accessible and numerous illegal, unregistered agencies remained in operation. The government reported working only with travel and tourism companies that were part of a Code of Conduct consortium, which was an industry-driven responsible tourism initiative intended to provide awareness, tools, and support to the tourism sector to prevent the sexual exploitation of children. The code was an agreement signed by companies that committed their staff to training on the identification of child exploitation among foreigners and created a general awareness within their facilities. While government efforts to curb child sex tourism improved during the year, local reports claimed most government efforts involved prohibiting the entry of perpetrators into the country rather than arrests and prosecutions. The Ministry of Foreign Affairs provided anti-trafficking training for all newly posted diplomatic personnel and vetted employment contracts between Kenyan diplomats posted abroad and their domestic workers to ensure their legality. The government's training for troops deployed overseas on international peacekeeping missions included a module that addressed human trafficking.

TRAFFICKING PROFILE

As reported over the past five years, Kenya is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking. Within the country, children are subjected to forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Girls and boys are exploited in commercial sex throughout Kenya, including in sex tourism in Nairobi, Kisumu, and on the coast, particularly in informal settlements; at times, their exploitation is facilitated by family members. Children are also exploited in sex trafficking by people working in *khat* (a mild narcotic) cultivation areas, near gold mines in western Kenya, by truck drivers along major highways, and by fishermen on Lake Victoria. Kenyans are recruited by legal or illegal employment agencies or voluntarily migrate to Europe, the United States, Southeast Asia, and the Middle East – particularly Saudi Arabia, Lebanon, Kuwait, Qatar, the UAE, and Oman – in search of employment, where at times they are exploited in domestic servitude, massage parlors and brothels, or forced manual labor. 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. 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, impeding Kenyan authorities' ability to differentiate between trafficking and smuggling. Kenyan women are subjected to forced prostitution in Thailand by Ugandan and Nigerian traffickers. Men and boys are lured to Somalia to join criminal and terrorist networks, sometimes with fraudulent promises of lucrative employment elsewhere.

Kenya's largest refugee camp complex, Dadaab, hosts approximately 230,000 refugees and asylum-seekers, and at times the security situation inhibits some humanitarian access, assistance, and protective services. Some children in Dadaab and Kakuma refugee camps may be subjected to sex trafficking, while others are taken from the camps and forced to work elsewhere. Children from East Africa are subjected to 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 to work in jobs vacated by Kenyan youth who are being educated; however, this trend is reportedly waning. Nepalese and Indian women recruited to work in *mujra* dance clubs in Nairobi and Mombasa face debt bondage, which they are forced to pay off by dancing and forced prostitution.