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2019 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 achieving more prosecutions and convictions of traffickers, investigating allegations of official complicity in trafficking crimes, and allocating new funding for its victim assistance fund. The government also expanded its dedicated Child Protection Unit to include cyber protection against child exploitation. In addition, officials vetted 69 recruitment agencies in compliance with registration requirements and a code of conduct, and concluded one bilateral labor agreement and continued to negotiate several others to protect citizens employed abroad. 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. The government also routinely 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.

PRIORITIZED RECOMMENDATIONS

Ensure protective services are available to adult trafficking victims. • Fully implement a screening mechanism to prevent the penalization of potential trafficking victims. • Increase investigations and prosecutions of trafficking offenses and convictions of traffickers. • Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking offenses. • Fully implement the formal process for law enforcement officials to refer trafficking victims for assistance, including adult trafficking victims and Kenyans repatriated from abroad. • Expand training to all levels of the government, specifically to law enforcement personnel and local authorities in the coastal region, on identifying, investigating, and managing trafficking cases. • Regulate enforcement of oversight of overseas recruitment agencies. • Conduct awareness campaigns throughout the country, focusing substantially on rural coastal areas.

PROSECUTION

The government increased law enforcement efforts. Incomplete data from the government made assessment difficult, but the government continued efforts to improve centralized data collection. The Counter-Trafficking in Persons Act of 2010 criminalized sex trafficking and labor trafficking and prescribed penalties of 15 years to life imprisonment, a fine of not less than 5 million Kenyan shillings (\$49,120), 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; these penalties were sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape.

The government continued to improve its centralized data collection capabilities, through increased inter-ministerial cooperation and data sharing, to ensure its anti-trafficking statistics were representative of all 47 counties; however, as in previous years, it reported partial data from only some regions. It reported at least 142 investigations of potential trafficking, compared to at least 148 investigations in 2017. From official data derived from an unknown number of counties, through mid-November 2018, the government reported 142 trafficking-related prosecutions—including 19 for adult trafficking and eight for child trafficking—and 98 convictions. This is compared to 148 trafficking-related prosecutions and 61 convictions it achieved in 2017. The government was unable to provide disaggregated data or details regarding the sentences administered to convicted trafficking offenders. Media reported judicial officials administered 30 year prison sentences each to two convicted child traffickers during the reporting period. Prosecutors continued to charge some defendants with immigration violations or labor exploitation vice human trafficking, as law enforcement deemed these crimes easier to prove and less costly and time-intensive to investigate. Given the general lack of awareness of trafficking crimes across the police force, and the tendency to conflate trafficking and smuggling, prosecutors often had insufficient evidence to file trafficking charges. Consequently, officials indicted most suspected trafficking offenders under other laws, such as the Sexual Offenses, Refugee, or Immigration Acts, and acquitted an unknown number of those suspected traffickers.

Corruption remained endemic across the government. Traffickers sometimes fraudulently obtained identity documents from complicit officials, and police often took bribes to warn traffickers of impending operations and investigations, particularly along the coast. The government reported an unspecified number of investigations into law enforcement officials who allegedly facilitated trafficking, although it did not report any successful prosecutions or convictions. In one example, 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 shortly after the allegations surfaced, but investigations into the official’s conduct remained ongoing at the close of the reporting period. In 2018, various NGOs and international organizations provided regular trainings reaching 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 demonstrated uneven protection efforts as services for adult victims in-country remained negligible, whereas it continued to make improvements for domestic child victims and victims abroad. In conjunction with NGOs, authorities reported identifying and referring to care at least 400 trafficking victims (adults and children) during the reporting period, of which the majority were subjected to forced labor. During the reporting period, the government provided 60 million Kenyan shillings (\$589,390) from the federal budget for anti-trafficking efforts, including implementation of the National Referral Mechanism (NRM) and the victim assistance fund, which was a steady allocation from the previous year. Though the government trained relevant stakeholders on the NRM's identification and referral provisions, the mechanism was not fully functional or widely implemented; local authorities continued to bypass the NRM and directly contact NGOs to provide assistance to victims, although NGOs reported strong working partnerships with key ministries. In 2018, the government funded the National Assistance Trust Fund for Victims of Trafficking and gazetted the board members; however, the authorities did not distribute the available funds to any trafficking victims during the reporting year. According to multiple government and civil society stakeholders, identification of child trafficking victims remained stronger than for adults, and the issue of forced prostitution was largely ignored. There were direct referrals to NGOs from victims or concerned witnesses; police during investigations; or via calls to the government-operated gender-based violence or NGO-run hotlines. The two national hotlines were operational 24 hours per day, year round. The government did not report how many trafficking-related calls either line received during the reporting period.

Victim care varied in quality across the country. Services consisted 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 failed to respond. Victim care was particularly challenging in the coastal region, due to lack of training and resources, where NGOs and government officials worked in tandem 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. In 2018, the local police began providing complimentary overnight security to shelters in this region.

To continue addressing the exploitation of Kenyan nationals in Arabian Gulf States, Ministry of Labor (MOL)-assigned labor attachés continued to work in Kenyan missions in Qatar, Saudi Arabia, and the UAE 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, and partnered with licensed employment agencies to find legitimate work opportunities for

Kenyans. The government concluded a bilateral labor agreement with the UAE during the reporting period, adding to previously concluded agreements with Saudi Arabia and Qatar to coordinate efforts to reduce cases of exploitative labor and other abuses against Kenyans abroad, to include trafficking. Also in 2018, officials commenced negotiations on bilateral labor agreements with Jordan, Lebanon, and Oman, and engaged in ongoing negotiations with Kuwait. It provided ad hoc monetary and logistical support 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 with partial government support. Officials assisted 71 Kenyans with their return in 2018, the vast majority of whom were Kenyan laborers with unresolved workplace grievances in the Arabian Gulf States.

Authorities reportedly penalized victims for crimes traffickers compelled them to commit, due to inadequate screening for trafficking indicators among vulnerable groups. NGOs across Kenya alleged the government charged an unspecified number of trafficking victims for contravening immigration laws as some officials continued to conflate smuggling with trafficking. Reports also alleged that some authorities treated potential victims as criminals, particularly women in prostitution. 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 government's victim-witness protection program in 2018; it reported seven victims used the program in 2017. 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. In some cases, authorities obtained protective custodial orders for victims from courts to formalize provision of protection services pending repatriation. However, the government continued to initially misidentify foreign trafficking victims as violators of immigration law and consequently held them for deportation.

PREVENTION

The government marginally improved efforts to prevent trafficking. Authorities continued to operate under the auspices of the 2013-2017 national action plan and worked with international organizations and other stakeholders to finalize an updated 2018-2022 national action plan. In conjunction with a foreign government entity, the government expanded its police Child Protection Unit to include an online/cyber-crimes unit in August 2018 to exclusively monitor and arrest suspected perpetrators of child abuse and exploitation. The cyber-crimes unit conducted its first trafficking-related arrest during the reporting period. The government and civil society organizations continued to promote anti-trafficking awareness, particularly the prevention of child sex trafficking and labor trafficking. In 2018, the quasi-governmental commission on human rights held three public meetings on the dangers of child sex trafficking in the coastal region in conjunction with NGOs, and local commissioners in Mombasa and Kilifi mobilized several hundred participants for these events. Officials also hosted 21 train-the-trainer sessions for coastal community leaders to promote trafficking awareness among their respective populaces. One Kenyan NGO supported 11 trainings, funded by

a foreign government and supported in-kind by several official Kenyan entities, in three counties, for an unknown number of media personnel, law enforcement officials, village elders, and child services officials on how to effectively and accurately employ the NRM. A dearth of government resources remained an impediment to regular, nation-wide anti-trafficking campaigns.

The MOL unevenly enforced registration 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, 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 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. During the reporting period, the MOL approved registration for 69 private employment agencies—up from 45 and 25 in 2017 and 2016 respectively—and prohibited hundreds of others from recruiting in Kenya. Labor officials made the list of approved agencies for overseas employment publicly available on the Kenya Labor Market Information System website; however, 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. Officials arranged anti-trafficking trainings during the reporting period for signatories to the Code. While government efforts to curb child sex tourism continued to improve during the year, local reports claimed these efforts largely involved prohibiting the entry of perpetrators at immigration check-points rather than arrests and prosecutions. The government made efforts to reduce the demand for commercial sex acts and forced labor. The Ministry of Foreign Affairs (MFA) 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 the legality of the domestic workers. The MFA provided all diplomats with an employment contract template for use with their domestic workers abroad. 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, human traffickers exploit domestic and foreign victims in Kenya, and traffickers exploit victims from Kenya abroad. Within the country, children are subjected to forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Girls and boys are also exploited in commercial sex throughout Kenya, including in sex tourism on the coast, in Nairobi and Kisumu, 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 IDPs, 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 Ethiopia and Uganda that recruit 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 Ethiopians and other East Africans seeking work in South Africa. Kenyan women are subjected to forced prostitution in Thailand by Ugandan and Nigerian traffickers. Young Kenyan men and women are lured to Somalia to join criminal and terrorist networks, sometimes with fraudulent promises of lucrative employment elsewhere.

Kenya hosts approximately 470,000 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 and South Sudan are subjected to forced labor and sex trafficking in Kenya. Stakeholders assert domestic workers from Uganda, pastoralists from Ethiopia, and others from Burundi, Somalia, and South Sudan are subjected to forced labor in Kenya to work in jobs vacated by Kenyan youth who are being educated; however, this trend has reportedly waned. Nepalese, Indian, and Pakistani 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 through exploitation in forced prostitution.

ecoi.net summary:

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