

2023 Country Report on Human Rights Practices: Kenya

EXECUTIVE SUMMARY

There were no significant changes in the human rights situation in Kenya during the year.

Significant human rights issues included credible reports of: arbitrary or unlawful killings, including extrajudicial killings; enforced disappearances; torture or cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; arbitrary or unlawful interference with privacy; serious restrictions on freedom of expression and media freedom, including violence or threats of violence against journalists and censorship; substantial interference with the freedom of peaceful assembly and freedom of association; serious government corruption; serious government restrictions on or harassment of domestic and international human rights organizations; extensive gender-based violence, including domestic or intimate partner violence, sexual violence, female genital mutilation/cutting, and other forms of such violence; laws criminalizing consensual same-sex sexual conduct between adults, although there were no reports of the law being enforced; and the existence of the worst forms of child labor.

The government took credible steps to identify and punish officials who may have committed human rights abuses, but impunity was a problem at all levels of government.

Section 1.

Respect for the Integrity of the Person

A. ARBITRARY DEPRIVATION OF LIFE AND OTHER UNLAWFUL OR POLITICALLY MOTIVATED KILLINGS

There were numerous reports the government or its agents committed arbitrary or unlawful killings, including extrajudicial killings, during the year, particularly of antigovernment demonstrators in protests that took place between March and July. Nongovernmental organizations (NGOs) such as Human Rights Watch and Amnesty International alleged excessive and unlawful police action led to the deaths of at least 30 persons through suffocation from teargas and fatal shootings during opposition-led protests. The government-mandated Kenya National Commission on Human Rights (KNCHR) recorded 24 deaths during the protests.

The human rights NGO Independent Medico-Legal Unit (IMLU) documented 111 cases of alleged extrajudicial killings between January and September and implicated 99 police stations. For example, Erick Omondi Abok was shot in the head during demonstrations in Kisumu on July 20, and IMLU reported the autopsy indicated the shot was fired from a high-caliber weapon at distance. The youngest victim, a boy age three, died from teargas suffocation while playing outside his home in one of Nairobi's informal settlements.

Some groups alleged authorities significantly underestimated the number of extrajudicial killings by security forces, including due to underreporting of such killings in informal settlements, particularly in dense urban areas. During antigovernment demonstrations, media alleged police and

medical practitioners who treated wounded protesters received orders not to report deaths resulting from the crackdown.

Al-Shabaab terrorists conducted deadly attacks in areas close to the border with Somalia, targeting both security forces and civilians. In August, the Interior Ministry cabinet secretary reported al-Shabaab terrorists attacked travelers in Lamu County, killing two and injuring 10.

B. DISAPPEARANCE

There were reports of disappearances by or on behalf of government authorities. Observers and NGOs alleged members of the security forces and extremist groups were culpable of enforced disappearances. Human rights groups noted many unlawful killings first materialized as enforced disappearances. The IMLU documented three alleged enforced disappearances during the year.

On September 6, antiterror police in Mombasa reportedly arrested Zakaria Kamal Abashiekh, according to the NGO Muslims for Human Rights. Several weeks later, Somalia's National Intelligence and Security Agency announced Abashiekh was in Somalia facing charges of supplying weapons to al-Shabaab, leading to media speculation of extrajudicial rendition by authorities. The government neither officially acknowledged Abashiekh was missing nor complied with a court order to produce him in court. Al-Shabaab and other extremist groups reportedly abducted civilians in areas bordering Somalia. In September media reported the abduction of Abdirashid Hassan Hashi, brother to a local chief in Garissa who was reportedly pursued by al-Shabaab militants.

C. TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT, AND OTHER RELATED ABUSES

The constitution and law prohibited such practices, but there were credible reports government officials employed them. Human rights NGOs received reports of torture and other inhuman or degrading treatment by security forces. The IMLU alleged 419 cases of torture between January and September, noting most of the cases resulted from the police crackdown on antigovernment protests with most abuses taking place in opposition-leaning regions of Nairobi and Kisumu. Amnesty International Kenya and the NGO Law Society also documented incidents involving police use of live ammunition and tear gas during protests in July.

Police and prison officials reportedly used torture and violence during interrogations and to punish pretrial detainees and convicted prisoners. According to human rights NGOs, physical battery, bondage in painful positions, and electric shock were the most common methods used by police. A range of human rights organizations and media reported police committed indiscriminate violence with impunity against poor persons and ethnic minorities. Media reported police used excessive force in some cases when making arrests. NGOs reported police violence was especially prevalent in informal settlements and often involved arrests and beatings of poor young men profiled as criminals.

Impunity was a serious problem across law enforcement agencies. NGOs noted the government neither acknowledged police abuses nor held any police officers accountable for actions in the antigovernment demonstrations from March to July.

Police officials at times resisted investigations and detained some human rights activists who publicly registered complaints against government abuses. Human rights NGOs reported police used disciplinary transfers of officers to hide their identities and frustrate investigations into their alleged crimes.

Prison and Detention Center Conditions

Human rights organizations reported prison, detention center, and police station conditions were sometimes harsh and life threatening due to gross overcrowding, food and water shortages, and inadequate sanitary conditions and medical care.

Abusive Physical Conditions: As of December, the government estimated the country's prison population at 60,000 including pretrial detainees, in a system with a capacity of 34,000.

Prisoners generally received three hot meals a day, but portions were inadequate. Access to drinking water was a problem at some facilities. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks. The prison commissioner reported the prison system faced serious health problems due to communicable diseases such as tuberculosis.

Administration: The prison services conducted investigations into credible allegations of mistreatment.

Independent Monitoring: The government permitted prison visits by independent nongovernmental observers and foreign diplomats. The KNCHR reported improved access to prisons and detention facilities to monitor human rights standards.

D. ARBITRARY ARREST OR DETENTION

The law prohibited arbitrary arrest and detention and provided for the right of any person to challenge in court the lawfulness of their arrest or detention, but the government did not always observe these requirements.

Arrest Procedures and Treatment of Detainees

The law provided police with broad powers of arrest. Police officers were able to make arrests without a warrant if they suspected a crime had occurred, was happening, or was about to occur.

The constitution provided significant legal protections, including requiring arrested persons to be arraigned, charged, informed of the reason for continuing their detention, or released within 24 hours of their arrest, as well as provisions requiring the issuance of a writ of habeas corpus to allow a court to determine the lawfulness of detention. In many cases, however, authorities did not follow the prescribed time limits. While authorities released detainees held longer than the prescribed period, some cases did not result in an acquittal, and authorities provided no compensation for time served in pretrial detention.

The constitution established the right of suspects to bail unless there were compelling reasons against release. There was a functioning bail system, and all suspects, including those accused of capital offenses, were eligible for bail. Due to overcrowding in prisons, courts rarely denied bail, even when the circumstances warranted denial. For example, NGOs working with survivors of sexual assault complained that authorities granted bail to suspects even when there was evidence the suspect posed a continuing threat to survivors.

Although the law provided pretrial detainees with the right to access family members and attorneys, family members of detainees frequently complained authorities permitted access only upon payment of bribes. When detainees could afford counsel, police generally permitted access to attorneys.

Arbitrary Arrest: NGOs reported police arbitrarily arrested and detained persons, particularly poor young men living in informal settlements, as well as activists, journalists, and bloggers. In August unknown men abducted prominent businessman Jaswant Singh Rai and held him incommunicado for a week. Police were investigating the detention, which some suspected was carried out by security agents over allegations Rai was sabotaging government efforts to reform the sugar industry.

Human rights organizations reported police often arrested and detained persons on charges designed to mask underlying police abuses or accused them of more severe crimes than they committed.

Pretrial Detention: Lengthy pretrial detention was a serious problem and contributed significantly to prison overcrowding. During the year, more than 40 percent of inmates were pretrial detainees. Authorities held some defendants in pretrial detention longer than the statutory maximum term of imprisonment for the crime for which they were charged. The government claimed the average time spent in pretrial detention was 14 days, but there were reports many detainees spent two to three years in prison before their trials were completed. Frequent police failure to transport detainees from prison to court for scheduled hearings was a factor in trial delays.

E. DENIAL OF FAIR PUBLIC TRIAL

The constitution provided for an independent judiciary, although the government did not always respect judicial impartiality. The government sometimes undermined the independence of the judiciary and at times did not respect court orders, but the outcomes of trials did not appear predetermined.

Trial Procedures

The law provided for the right to a fair and public trial, and the judiciary generally enforced this right. The law also provided defendants the right to receive prompt and detailed information on the charges against them, although authorities did not always provide the information.

There was no government-sponsored public defenders service with sufficient funding to meet the demand, and courts tried most defendants without representation because they could not afford legal counsel.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

F. TRANSNATIONAL REPRESSION

Not applicable.

G. PROPERTY SEIZURE AND RESTITUTION

The government used forced eviction and demolition to regain what it claimed was illegally occupied public land. In October and November, activists reported authorities destroyed dozens of homes belonging to the Indigenous Ogiek community, leaving up to 700 persons homeless. In 2022 and 2017, the African Union Court on Human and Peoples' Rights ruled in favor of the Ogiek community's right to live in the Mau Forest, following their eviction in 2009. Authorities claimed the eviction actions targeted non-Ogiek persons who had settled in the Mau Forest illegally.

H. ARBITRARY OR UNLAWFUL INTERFERENCE WITH PRIVACY, FAMILY, HOME, OR CORRESPONDENCE

The constitution and law prohibited arbitrary or unlawful interference, except "to promote public benefit," but authorities sometimes infringed on citizens' privacy rights. The law permitted police to

enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants during large-scale security sweeps to apprehend suspected criminals or to seize property believed stolen.

Human rights organizations reported police officers raided homes in informal settlements in Nairobi and other urban centers, including during opposition-led protests. The organizations documented numerous cases in which plainclothes police officers searched residences without a warrant and household goods were confiscated when residents were unable to provide receipts of purchase on demand.

Section 2.

Respect for Civil Liberties

A. FREEDOM OF EXPRESSION, INCLUDING FOR MEMBERS OF THE PRESS AND OTHER MEDIA

The law provided for freedom of expression, including for members of the press and other media, but the government sometimes restricted this right.

Freedom of Expression: The constitution and the law prohibited hate speech and incitement to violence. The Judicial Service Commission, however, reported many such cases were withdrawn due to failure of witnesses to appear in court or to facilitate mediation. Cases that did proceed often failed to meet evidentiary requirements.

Violence and Harassment: Journalists alleged security forces or supporters of politicians at the national and county levels sometimes harassed and physically assaulted them. The government at times failed to investigate allegations of harassment, threats, and physical attacks on members of the media or failed to provide victims access to information regarding their cases. Attacks included threats, intimidation, online and offline harassment, invasion of media houses, and physical assaults resulting in some journalists seeking self-exile or engaging in self-censorship.

Human rights and media NGOs documented numerous attacks against local and foreign journalists during antigovernment protests, and media reported Nairobi police fired tear gas into a vehicle carrying journalists in March, hitting a camera operator in the face.

Censorship or Content Restrictions for Members of the Press and Other Media, Including Online Media: Mainstream media were generally independent, but there were reports government officials pressured journalists to avoid certain topics or intimidated them if their reporting was deemed overly critical of the government. Some journalists practiced self-censorship and avoided reporting on topics they believed their editors would reject due to direct or indirect government pressure. In September, *The Daily Nation*, the country's largest newspaper by circulation, removed an entire edition from its website without explanation, and many media observers claimed the government forced the decision because of a front-page article critical of the president.

The government occasionally interpreted laws to restrict freedom of expression for members of the press, and officials occasionally accused international media of publishing stories and engaging in activities that could incite violence. The law gave the government oversight of media by creating a complaints tribunal with expansive authority, including the power to revoke journalists' credentials and levy debilitating fines.

Nongovernmental Impact: During antigovernment protests in March, looters threw stones at a cameraman in Kisumu, seriously injuring him.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content. Authorities, however, monitored websites for violations of hate speech laws. According to Freedom House's *Freedom on the Net* report for 2023, authorities used laws on hate speech and defamation to prosecute online critics of the government. The report further stated that while censorship was not widespread, the government sought to remove online content considered immoral or defamatory. In July, prominent opposition blogger Pauline Njoroge was arrested and detained for several days after criticizing police brutality on antigovernment protesters. Media reported police charged her with inciteful messages and false publication. In February, Netflix signed an agreement to restrict lesbian, gay, bisexual, transgender, or queer content in the country and to classify content according to a government ratings system, and in October, the government worked with social media company TikTok to remove same-sex content from its platform.

By law, mobile telephone service providers could block mass messages they judged could incite violence. The National Cohesion and Integration Commission tracked bloggers and social media users accused of spreading hate speech.

Privacy International reported the National Intelligence Service had direct access to the country's telecommunications networks that allowed for the interception of communications data. Furthermore, Privacy International alleged police also had electronic surveillance powers, and Freedom House reported authorities used various types of surveillance technologies to monitor citizens. In April, the Supreme Court allowed the Communications Authority to use a device that gave it access to personal customer data from service providers.

The government sought to protect personal information by regulating data processing, strengthening the right to privacy of individuals, establishing an Office of the Data Commissioner, and codifying data processors and controllers' legal responsibilities.

B. FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION

Although the constitution and law provided for the freedoms of assembly and association, the government sometimes restricted these rights. Government failure to investigate or prosecute allegations of excessive use of police force against protesters had a chilling effect on freedom of assembly and association.

Freedom of Peaceful Assembly

The constitution and law provided for freedom of assembly, but the government sometimes restricted this right. Organizers were required to notify local police in advance of public meetings, which could proceed unless police notified organizers otherwise. By law, authorities could prohibit gatherings only if another meeting had already been scheduled at the same time and venue, or in case of a specific security threat. Police, however, routinely denied requests for meetings filed by human rights activists and opposition politicians, and authorities reportedly broke up unauthorized meetings. In March, the government declared opposition-led protests illegal, though protests occurred in June and July.

Media reported police at times used excessive force, including live rounds and tear gas, to disperse demonstrators. For example, during the antigovernment protests, the KNCHR recorded 157 cases of government abuses from March to June, including multiple deaths.

Freedom of Association

The constitution and law provided for freedom of association, and the government generally respected this right, but there were reports authorities arbitrarily denied this right. NGOs expressed concerns regarding reprisals faced by numerous human rights defenders and communities in the form of intimidation, termination of employment, beatings, and arrests and threats of malicious prosecution. Human rights groups alleged activists faced increased attacks in a climate of police impunity (see section 5).

There were reports of restrictions on workers' freedom of association (see section 7.a.).

C. FREEDOM OF RELIGION

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

D. FREEDOM OF MOVEMENT AND THE RIGHT TO LEAVE THE COUNTRY

The law provided for freedom of internal movement, foreign travel, emigration, and repatriation for citizens, and the government generally respected these rights.

In-country Movement: Refugees and asylum seekers were required to register with the Interior Ministry's Department of Refugee Services, and the government enforced the encampment policy requiring all refugees and asylum seekers to reside in designated refugee camps, despite a 2017 Court of Appeal decision to the contrary. Although there were no restrictions on movements of internally displaced persons (IDPs), stateless persons in the country faced restrictions on their movement.

E. PROTECTION OF REFUGEES

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees and asylum seekers, as well as other persons of concern, such as stateless individuals. The government's insistence on maintaining a strict encampment policy, however, presented an obstacle to effective refugee integration and progress toward self-reliance.

Access to Asylum: The law provided for the granting of asylum or refugee status, and the government had an established system for providing protection to refugees. The government generally coordinated with UNHCR to assist and protect refugees in the Dadaab and Kakuma refugee camps and urban areas. The government began registering Somali asylum seekers after a ban of several years, but periodically suspended registration activities in the field due to limited government resources. The law provided for the granting of asylum on the basis of persecution related to a person's sexual orientation or gender identity, but the government generally did not complete case processing of lesbian, gay, bisexual, transgender, and queer asylum seekers.

Abuse of Refugees and Asylum Seekers: Abuse by police, including detention of asylum seekers and refugees, occurred, often due to lack of awareness and understanding of the rights afforded to those holding refugee or asylum seeker documentation or those who entered the country and were apprehended before obtaining asylum seeker documents. Most detainees were released after a court appearance or intervention by local legal aid organizations such as the Refugee Consortium or Kituo Cha Sheria.

Gender-based violence against refugees and asylum seekers was a problem, particularly for vulnerable populations, including women, children, and lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, female genital mutilation/cutting (FGM/C), and early and forced marriage, particularly of Sudanese, South Sudanese, and Somali girls. Most urban refugees resided in informal settlements, where insecurity and gender-based violence were rampant.

Although there was increased community engagement to reduce gender-based violence and strengthen partnerships, including with local authorities, women in woman-headed households, young girls separated from families due to conflict, and women and girls of lower social and economic status were most at risk. Girls and boys out of school were at risk of abuse, survival sex, and early marriage. Despite awareness programs in the camps, underreporting persisted due to community preference for *maslaha*, a traditional form of jurisprudence prevalent in the region, as an alternative dispute resolution mechanism; shortages of woman law enforcement officers; limited awareness of what constituted gender-based violence among vulnerable populations; and barriers to meeting the medical forensic requirements for trying alleged rape cases.

Freedom of Movement: Refugees' freedom of movement was significantly restricted due to the country's encampment policies.

Employment: There were credible reports the government imposed restrictions on refugees' ability to work after their status as refugees was official.

Access to Basic Services: Many refugees resided in urban areas, even though they lacked documentation authorizing them to do so. This affected their access to basic government services, including the National Hospital Insurance Fund, education, employment, business licenses, financial institutions, mobile telephones, and related services.

Durable Solutions: During the year UNHCR assisted refugees with voluntary repatriation.

F. STATUS AND TREATMENT OF INTERNALLY DISPLACED PERSONS (IDPS)

The NGO Internal Displacement Monitoring Center estimated in its 2023 annual report there were 30,000 IDPs in the country at the end of 2022, mostly due to natural disasters such as drought and flooding, as well as urban construction projects led by state and private actors, usually during the construction of dams, railways, and roads. Some persons were displaced by conflict, and some remained displaced due to land tenure disputes, particularly in or around natural reserves. According to the UN Office for the Coordination of Humanitarian Affairs, many IDPs were pastoralists who periodically moved in search of water and pasture. The government had policies in place for IDPs, but they were rarely implemented.

For further information concerning IDPs in the country, please see the materials of the Internal Displacement Monitoring Center: <https://www.internal-displacement.org> https://.

G. STATELESS PERSONS

The constitution and law provided for the protection of stateless persons and for legal avenues for eligible stateless persons to apply for citizenship. In 2022 UNHCR estimated 15,500 stateless persons were registered in the country, and the government worked to reduce the numbers.

Stateless persons had limited legal protection, and many faced social exclusion. Others encountered travel restrictions and heightened vulnerability to gender-based violence, exploitation, forced displacement, and other abuses. UNHCR reported stateless persons faced restrictions on internal movement and limited access to basic services, property ownership, and registration of births,

marriages, and deaths. Inadequate documentation sometimes resulted in targeted harassment and extortion by officials and exploitation and forced labor in the informal labor sector.

National registration policies required citizens age 18 and older to obtain national identification documents from the National Registration Bureau. Groups with historical or ethnic ties to other countries faced higher burdens of proof in the registration process. During the participatory assessments UNHCR conducted in 2018 and 2019, stateless persons stated they could not easily register their children at birth or access birth certificates because they lacked supporting documents. The lack of permanent registration offices near refugee camps made it more difficult for refugees to register births, leading to an increased risk of statelessness. UNHCR and NGO partners worked with the government to facilitate regular missions to the camps by government officials to conduct birth registrations and resolve the backlog of older cases. During the year, refugees were able to register births within six months.

Formal employment opportunities, access to financial services, and freedom of movement were out of reach for stateless persons due to lack of national identity cards. Stateless persons without identity cards could not access the National Hospital Insurance Fund, locking them out of access to subsidized health services, including maternity coverage.

Section 3.

Freedom to Participate in the Political Process

The constitution and law provided citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

ELECTIONS AND POLITICAL PARTICIPATION

Abuses or Irregularities in Recent Elections: National elections, last conducted in 2022, were widely reported to be fair and free of abuses and irregularities.

Participation of Women and Members of Marginalized or Vulnerable Groups: Women leaders and advocacy groups cited inadequate support from their political parties, particularly in the primaries; lack of financial resources; gender-based violence, including rape; sexual harassment; cyber bullying; verbal abuse and hate speech; gender stereotyping; and patriarchal structures across society as significant barriers to women's participation in political processes.

Section 4.

Corruption in Government

The law provided criminal penalties for corruption by officials, but the government did not implement the law effectively. There were numerous reports of government corruption.

Corruption: Officials frequently engaged in allegedly corrupt practices with impunity. In October, the former chairman of the Bureau of Standards Board reached a plea deal with the government anti-corruption commission, an independent agency, for his alleged graft as a supervisor at the Revenue Authority between 2015 and 2021. In August, the commission reported 21 open investigations of sitting and former regional governors for corruption and economic crimes.

Police corruption was a significant problem. Human rights NGOs reported police often stopped and arrested citizens on trumped-up charges to extort bribes or beat those who could not pay the bribes. The judiciary and National Police Service implemented measures to reform the handling of traffic

cases by police and courts, streamlining the management of traffic offenses to curb corruption. Despite this progress, no senior police official was convicted or jailed for corruption-related offenses during the year.

For additional information concerning corruption in the country, please see the Department of State's *Investment Climate Statement* for the country and the Department of State's *International Narcotics Control Strategy Report*, which includes information on financial crimes.

Section 5.

Governmental Posture Towards International and Nongovernmental Monitoring and Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction to monitor or investigate human rights cases and publish their findings, although some groups reported experiencing government harassment. Officials were sometimes cooperative and responsive to the queries of these groups, but the government did not implement recommendations by human rights groups if such recommendations were contrary to its policies.

Retribution against Human Rights Defenders: There were reports officials intimidated NGOs and threatened to disrupt their activities. Less-established NGOs, particularly in rural areas, reported harassment and threats by county officials and security forces. Human rights activists claimed security forces conducted surveillance of their activities.

There were also reports government officials and police officers threatened activists who demanded justice for police killings and other serious abuses. The intimidation included threats of arrest, warnings not to post information concerning police brutality, home and office raids, and confiscation of laptops and other equipment.

Government Human Rights Bodies: The constitution established the KNCHR to promote and protect human rights in the country, but it was understaffed and underfunded by the government, forcing it to seek program funding from development partners. The KNCHR reported security agencies denied it full access to case-specific information and facilities to conduct investigations of human rights abuses as the constitution required, but it noted improved access to detention facilities.

The Office of the Director of Public Prosecution was empowered to direct the police inspector general to investigate allegations of criminal conduct and to institute criminal proceedings in police abuse or corruption cases.

The Internal Affairs Unit, which reported directly to the National Police Service inspector general, conducted investigations into police misconduct, including criminal offenses not covered by the Independent Policing Oversight Authority (IPOA). The anti-corruption commission investigated cases involving police corruption.

The IPOA, which received numerous complaints during the year, generally investigated complaints of police abuse related to crimes such as murder, torture, rape, and serious injury. Human rights organizations claimed the IPOA was not effective in investigating complaints of police brutality against protesters.

Section 6.

Discrimination and Societal Abuses

WOMEN

Rape and Domestic Violence: The law criminalized rape of all persons, defilement (statutory rape), domestic violence, and sex tourism, but enforcement was limited. The law's definition of domestic violence included sexual violence within marriage, early and forced marriage, FGM/C, forced wife "inheritance," or any other conduct that harmed or could cause imminent harm to a person. The law did not explicitly criminalize spousal rape. Insulting the modesty of another person by intruding upon that person's privacy or stripping them of clothing was a criminal offense punishable by imprisonment for up to 20 years.

The law provided a maximum penalty of life imprisonment for rape when the survivor was older than 18, although sentences were at the discretion of the judge and usually no longer than the minimum of 10 years. According to human rights groups, the government often did not enforce the law effectively, especially in poor or rural areas. Citizens frequently used traditional dispute resolution mechanisms to address sexual offenses, with village elders assessing financial compensation for the survivors or their families. A lack of coordination among government agencies and ineffective implementation of the law often left victims of sexual assault without recourse or in direct contact with the perpetrator.

NGOs reported arrests and prosecutions of sexual violence cases were low, even in cases in which survivors identified perpetrators, due to limited police resources to conduct investigations, insufficient evidence collection and handling mechanisms, and lengthy court proceedings, making it difficult and expensive for survivors to pursue cases.

Although police did not require physicians to examine survivors, physicians needed to complete official forms reporting rape. Rural areas generally had no police physician, and Nairobi had only three. NGOs reported police stations often but inconsistently accepted the examination report of clinical physicians who initially treated rape survivors.

Authorities cited domestic violence as the leading cause of preventable, nonaccidental death for women. Except in cases of death, police officers generally refrained from investigating domestic violence, which they considered a private family matter.

Female Genital Mutilation/Cutting (FGM/C): The law made it illegal to practice FGM/C, procure the services of someone who practiced FGM/C, or send a person out of the country to undergo the procedure. The law also made it illegal to make derogatory remarks concerning a woman who had not undergone FGM/C. Government officials often participated in public awareness programs to prevent the practice. Nevertheless, some communities practiced FGM/C widely, particularly in rural areas. According to UNICEF, despite the legal prohibition and progress made by the government in eliminating the practice, myths supporting the practice of FGM/C were deeply rooted in some local cultures. The practice was heavily concentrated in a few communities, including the Maasai, Samburu, and Somali.

The Ministry of Public Service, Youth, and Gender Affairs worked with county officials and nonstate actors to improve enforcement of the FGM/C law through education and advocacy efforts, as well as prosecutions of those violating the law. Media reported arrests of perpetrators and parents who agreed to FGM/C, but parents in regions with a high prevalence of FGM/C frequently bribed police to allow the practice. There were also reports FGM/C increasingly occurred in secret to avoid prosecution. County officials in areas with a high prevalence of FGM/C noted many cases targeted infants.

Other Forms of Gender-based Violence or Harassment: According to the KNCHR, women and girls experienced sexual and gender-based violence and harassment. Media reported women working in tea and flower farms were often coerced to exchange sexual favors for employment opportunities.

Certain communities practiced wife inheritance, in which a man inherited the widow of a brother or other close relative, regardless of the widow's wishes. The practice was more likely in cases of poor women with limited access to education and living outside of major cities.

Discrimination: The constitution provided equal rights for men and women and specifically prohibited discrimination on the basis of gender. Nevertheless, the justice system widely applied customary laws that discriminated against women, limiting their political and economic rights.

The constitution gave women equal rights regarding property ownership and inheritance. The law also protected the right of women to matrimonial property during and upon termination of a marriage. According to civil society groups, the government did not always effectively enforce the law. Women faced institutional and legal barriers that hindered their fair share of matrimonial property upon marriage dissolution. Additionally, many women did not know the details of inheritance law, so many inheritances passed from fathers to sons only.

Gender-based discrimination in employment and occupation occurred, although the law mandated nondiscrimination based on gender in hiring. The average monthly income of women was approximately two-thirds that of men. Women had difficulty working in nontraditional fields, received slower promotions, and were more likely to be dismissed. According to a World Bank report, both men and women experienced sexual harassment in job recruitment, but it was more frequently experienced by women. Human rights organizations reported women frequently faced barriers to accessing equal rights in traditional, rural, and poor areas. Women members of specific groups, including persons with disabilities, LGBTQI+ persons, and Muslims, experienced discrimination based on male-dominated social norms.

Reproductive Rights: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities during the year, but in September a court ruled two hospitals had previously violated the rights of women living with HIV when they performed sterilization without informed consent. The court awarded the women three million shillings (\$22,000) in damages.

Barriers to sexual and reproductive health access included the prohibitive cost of contraception for poor persons, limited availability of information and services, and cultural and religious norms in some areas that discouraged the use of modern contraceptives and gave men decision-making authority over women. Subsidized contraception options, including condoms, birth control pills, and long acting or permanent methods, were available to both men and women, although access was more difficult in rural areas. Emergency contraception was available in both public and private facilities, but occasional lack of supply in public facilities limited access. NGOs reported it was more difficult for marginalized groups, including LGBTQI+ persons, women with disabilities, displaced persons, and persons with HIV, to access reproductive health information and services.

The adolescent birth rate was 81 per 1,000 girls between ages 15 and 19, according to the FP2030 Track20 Family Planning Estimation Tool. Access to sexual and reproductive health information by adolescents was a problem due to lack of comprehensive sexuality education in schools, low coverage of youth-friendly services, and lack of adequate stocks of contraceptives in public hospitals.

Skilled obstetric, prenatal, and postpartum care was available in major hospitals, but some women could not access or afford these services. Skilled health-care personnel attended an estimated 89 percent of births, according to the Bureau of Statistic's 2022 *Demographic and Health Survey*. The government provided access to sexual and reproductive health services for survivors of sexual violence.

Maternity services were free of charge in all public health institutions in the country. The government's Linda Mama program, a free health insurance plan covering the pregnancy period and up to three months postdelivery, targeted women in rural and low-income areas. There were no documented barriers for survivors of sexual violence who became pregnant. Survivors, however, faced barriers because they did not know where to access services and care.

The maternal mortality rate was 355 per 100,000 live births, according to the 2019 national census. Unsafe abortion, complications during pregnancy and childbirth, poor quality of care, limited access to health services, and harmful practices were cited as among the main causes of maternal death and morbidity. The UN Population Fund reported the maternal mortality rate in Mandera County was 3,795 deaths per 100,000 live births – the highest in the country – partially due to harmful practices such as FGM/C and limited access to health services. The KNCHR reported some women experienced long wait times for often poor quality obstetric services, signed consent forms under duress, and faced invasive procedures and denial of birth companions.

The law provided pregnant girls the right to continue their education until and after giving birth, but NGOs reported schools often did not respect this right. Human rights organizations reported teenage pregnancy often led girls to drop out of school without a safety net or plan for continued education after giving birth.

SYSTEMIC RACIAL OR ETHNIC VIOLENCE AND DISCRIMINATION

The constitution prohibited discrimination against any person based on race, but enforcement of laws prohibiting discrimination was inadequate, according to human rights groups. Societal discrimination against persons of different racial and ethnic groups was common.

Ethnic differences caused several discriminatory employment practices. In both private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of members of the same group.

CHILDREN

Birth Registration: The Department of Civil Registration Services required nurses administering immunizations to register the births of unregistered children. The KNCHR reported intersex children faced challenges with birth registration. Lack of an official birth certificate resulted in denial of services such as health care, education, voting, banking, and mobile phone services.

Education: There were media reports that boarding school administrators sometimes expelled LGBTQI+ students. While the law provided pregnant girls the right to continue their education until and after giving birth, NGOs reported schools did not always respect this right. School administrators sometimes expelled pregnant girls or transferred them to other schools.

Child Abuse: The law criminalized several forms of violence that affected children, including early and child marriage, FGM/C, incest, and physical, verbal, and sexual abuse. The minimum sentence for conviction of statutory rape was life imprisonment if the survivor was younger than age 11; 20 years in prison if the survivor was between ages 11 and 15; and 10 years' imprisonment if the survivor was age 16 or 17. The government did not always effectively enforce laws preventing child abuse. Although exact numbers were unavailable, during the year media reported several statutory rape convictions. Violence against children, particularly in poor and rural communities, was reportedly common, and child abuse, including sexual abuse, occurred frequently.

According to the national prosecutor's office, child abuse cases were often dropped because the perpetrators were close family members who denied the allegations or prevented the child from appearing or speaking in court. Many cases went unreported, especially those involving incest and sexual violence. Police reported difficulties investigating cases such as child rape, since some communities defended the perpetrators and preferred to settle cases through traditional mechanisms.

The government banned corporal punishment in schools, but there were reports corporal punishment occurred.

Child, Early, and Forced Marriage: The minimum age for marriage was 18 for women and men. According to UNICEF, 25 percent of girls were married by age 18. Media occasionally reported early and forced marriage was common among some ethnic groups.

Sexual Exploitation of Children: The law criminalized sexual exploitation of children, including prohibiting procurement of a child younger than 18 for unlawful sexual relations. The law also prohibited internal and transnational trafficking or the recruitment, harboring, transportation, transfer, or receipt of children up to age 18 to produce pornography or for pornographic performances. Provisions applied equally to girls and boys. The law had provisions regarding child trafficking, child sex tourism, child sexual exploitation, and child pornography. The minimum age for consensual sex was 18. Nevertheless, according to human rights organizations, children were sexually exploited and victims of trafficking. Authorities did enforce laws against child pornography and online sexual exploitation, but implementation was not always effective.

ANTISEMITISM

The Jewish community was small, and there were no known reports of antisemitic incidents.

TRAFFICKING IN PERSONS

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

ACTS OF VIOLENCE, CRIMINALIZATION, AND OTHER ABUSES BASED ON SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR SEX CHARACTERISTICS

Criminalization: The penal code criminalized “carnal knowledge against the order of nature,” which was interpreted to prohibit consensual same-sex sexual conduct, and it specified a maximum penalty of 14 years’ imprisonment if convicted, as well as seven years for “attempting” such conduct. The law criminalized acts of “gross indecency” between men, whether in public or in private, with five years’ imprisonment. Police detained persons under these laws, particularly persons suspected of working in commercial sex, but released them shortly afterward.

LGBTQI+ organizations reported police more frequently used general public order laws (for example, disturbing the peace) to arrest or harass LGBTQI+ individuals. NGOs reported police frequently harassed, intimidated, or physically abused LGBTQI+ individuals in custody. They also reported police threatened gay men while in custody with forced anal examinations, a medically discredited practice with no evidentiary value that was outlawed in 2018.

Violence and Harassment: LGBTQI+ organizations reported police failed to prevent harassment against LGBTQI+ individuals during March anti-LGBTQI+ protests in coastal communities. They also reported some elected politicians and religious leaders incited violence and harassment against LGBTQI+ individuals in public statements and on social media during the year.

Nonstate actor violence against LGBTQI+ individuals was widespread. The KNCHR received at least 60 reports from LGBTQI+ persons who believed they were at risk of being attacked during protests in March and September. Civil society organizations reported evictions of LGBTQI+ persons following anti-LGBTQI+ protests. For the 2022 killing of Sheila Adhiambo Lumumba, a nonbinary member of the LGBTQI+ community, police charged a suspect who pleaded guilty.

Discrimination: The law did not explicitly protect LGBTQI+ persons from discrimination based on sexual orientation, gender identity or expression, or sex characteristics, and it did not recognize LGBTQI+ individuals, couples, or their families. The law did not specifically recognize or protect

the rights of LGBTQI+ persons in housing, employment, education, or health care. LGBTQI+ organizations reported their caseload increased four-fold during the year as LGBTQI+ persons faced harassment, discrimination, evictions, blackmail, and extortion following a backlash spurred by the February Supreme Court ruling affirming the right of LGBTQI+ groups to associate. LGBTQI+ persons reportedly faced discrimination in the workplace.

Although the country granted refugee status to persons who were persecuted due to sexual orientation or gender expression, some LGBTQI+ refugees faced stigma and discrimination, as well as delays in processing their asylum applications. They were often compelled to hide their sexual orientation or gender identity to protect themselves, especially among Somali refugee communities in Dadaab. National organizations working with LGBTQI+ persons offered support to refugees who were LGBTQI+, including access to safety networks and specialized health facilities. There were reports of community violence and intimidation against LGBTQI+ refugees during the year. UNHCR and NGO partners provided medical and other assistance for LGBTQI+ refugees when necessary, but legal accountability for perpetrators was lacking overall.

Availability of Legal Gender Recognition: The law allowed intersex persons to formally identify “intersex” or “I” as the third gender, but the law did not otherwise cover or normalize gender-nonconformity or nonbinary designations.

Involuntary or Coercive Medical or Psychological Practices: LGBTQI+ rights organizations reported an increase in so-called conversion therapy and corrective rape practices, including forced marriage, exorcism, physical violence, psychological violence, or detainment.

According to the KNCHR, intersex infants and children were subjected to harmful medical practices in an attempt to “normalize” them. In 2022 the country amended the Children’s Rights Act protecting children from unnecessary harmful genital surgeries. The KNCHR reported it received two complaints of harmful medical practices on intersex children during the year.

Restrictions of Freedom of Expression, Association, or Peaceful Assembly: Authorities permitted LGBTQI+ advocacy organizations to register and conduct activities. In February, the Supreme Court struck down a lower court ruling that denied LGBTQI+ organizations the right to register as NGOs and upheld its decision in September, thus affirming the groups’ constitutional right of association.

Authorities restricted freedom of expression for LGBTQI+ content through a law that regulated distribution and broadcasting of content to the public. In April, parliament passed a non-binding motion banning discussion and debate of LGBTQI+ matters.

PERSONS WITH DISABILITIES

Persons with disabilities could not access education, health services, public buildings, and transportation on an equal basis with others. The law provided persons with disabilities access to public buildings, and some buildings in major cities had wheelchair ramps and modified elevators and restrooms. The government did not enforce the law, however, and new construction often did not include specific accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible to persons with disabilities. According to NGOs, police stations were largely inaccessible to persons with mobility and other physical disabilities. Most common forms of public transportation, all of which were privately operated, were difficult for persons with physical disabilities to use due to accessibility challenges and crowding. According to the KNCHR, the government generally provided signed interpretation for deaf persons, but there were limited formats for persons with different disabilities including braille for blind persons.

The constitution stated every person had the right to education, yet NGOs reported persons with disabilities had limited opportunities to obtain education and job training at any level due to lack of accessibility of facilities and resistance by school officials and parents to devoting resources to students with disabilities. Obtaining employment was also difficult.

The law prohibited discrimination against persons with disabilities, but the government did not effectively enforce these provisions. Several laws limited the rights of persons with disabilities, including laws limiting the rights of persons with mental disabilities to marry, and restricting the rights of persons with disabilities to inheritance. Persons with disabilities faced significant barriers to accessing health care. Although the law provided protection for persons with disabilities against employment discrimination, many employers discriminated against persons with disabilities during the hiring process.

Few facilities provided interpreters or other accommodations to persons with hearing disabilities. The government assigned each region a sign language interpreter for court proceedings. Authorities often delayed or adjourned cases involving persons with hearing disabilities due to a lack of standby interpreters, according to NGO reports. Disability advocate groups reported persons with disabilities often did not receive the procedural or other accommodations needed to participate equally in criminal justice processes as victims of crime. The KNCHR noted that the absence of ballot papers in braille or large font in the 2022 elections limited participation for persons with visual impairment, and polling booths were mostly not accessible to persons with disabilities.

OTHER SOCIETAL VIOLENCE OR DISCRIMINATION

The government, along with international and NGO partners, made progress to reduce the social stigma of HIV and AIDS and to provide HIV information and services, but persons with HIV and AIDS faced discrimination and harassment.

Persons with albinism were historically targets of discrimination and human rights abuses. Due to societal discrimination, employment opportunities were limited for persons with albinism.

Mob violence and vigilante action were common in areas where the populace lacked confidence in the criminal justice system. For example, in September a mob stoned to death a suspected chicken thief in Kirinyaga County. The social acceptability of mob violence also provided cover for acts of personal vengeance. Police frequently failed to act to stop mob violence. Witch hunts were common in parts of the country, and media reported lynchings of elderly women suspected of performing witchcraft.

Section 7.

Worker Rights

A. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

The law provided for the right of workers, including those in export processing zones, to form and join trade unions, bargain collectively, and conduct and participate in lawful strikes. The law prohibited antiunion discrimination and provided for reinstatement of workers dismissed for union activity.

Legal restrictions limited worker rights to establish a union, bargain collectively, and conduct legal strikes. For example, members of the armed forces, prisons service, and police were not allowed to form or join trade unions. The Registrar of Trade Unions could refuse to register a union if a similar union already existed, and union membership was granted only to persons employed in the sector for which the trade union was registered. The law permitted the Salaries and Remuneration Commission to intervene in collective bargaining to determine fiscal sustainability of union

proposals, and it provided government officials with authority to intervene in union election processes.

The law permitted the government to deny workers the right to strike under certain conditions. For example, the government prohibited workers providing essential services, such as members of the military, police, prison guards, and the National Youth Service, from striking.

The constitution allowed trade unions to undertake activities without government interference, and the government generally respected this right. The government enforced laws protecting the right of workers to unionize, collectively bargain, and participate in lawful strikes.

Labor laws applied to all groups of workers. Penalties for labor law violations were sometimes applied to violators but were not commensurate with those for similar violations. The government enforced the decisions of the Employment and Labor Relations Court inconsistently, and many employers did not comply with reinstatement orders.

Civil society organizations and trade unions criticized the government for not doing enough to protect migrant workers' rights and failing to repatriate citizens working overseas under what they described as abusive conditions.

B. PROHIBITION OF FORCED OR COMPULSORY LABOR

See the Department of State's annual *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

C. PROHIBITION OF CHILD LABOR AND MINIMUM AGE FOR EMPLOYMENT

See the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

D. DISCRIMINATION (SEE SECTION 6)

E. ACCEPTABLE CONDITIONS OF WORK

Wage and Hour Laws: The law provided for a national minimum wage for all sectors of the economy, and the minimum wage for all occupations exceeded the World Bank poverty rate. The law established regulation of wages, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category.

The law limited the normal workweek to 52 hours (60 hours for night workers and some categories of agricultural employees); most categories of workers had lower limits. It entitled employees in the nonagricultural sector to one rest day per week and not less than 21 days of annual leave. The law entitled employees to seven days of sick leave with full pay and a further seven days of sick leave with half pay. The law also required total hours worked (regular time plus overtime) in any two-week period not to exceed 116 hours (144 hours for night workers) and provided premium pay for overtime.

Trade unions reported cases of wage, workweek, and overtime violations with domestic workers and workers in the informal sector. Hotel industry workers were usually paid the minimum statutory wage, but employees worked long hours without compensation.

Occupational Safety and Health: The law detailed environmental, health, and occupational safety standards applicable to all workplaces. The law required registration of workplaces, preparation of a safety and health policy statement, and an annual safety and health audit of workplaces.

Inspectors from the Ministry of Labour's Directorate of Occupational Health and Safety Services could issue notices against employers for practices or activities that involved a risk of serious personal injury. Employers could appeal such notices to the Factories Appeals Court, a body of four members, one of whom needed to be a High Court judge. The law stipulated factories employing 20 or more persons needed an internal health and safety committee with representation from workers. The directorate's health and safety inspectors did not proactively identify unsafe conditions in workplaces.

Workers, including foreigners and immigrants, had the legal right to remove themselves from situations that endangered health or safety without jeopardy to their employment. The Ministry of Labour did not effectively enforce these regulations, and workers were reluctant to remove themselves due to the risk of losing their jobs. The Ministry of Labour sometimes responded to occupational safety and health complaints (OSH) by workers. The Federation of Kenya Employers provided training and auditing of workplaces for health and safety practices.

Trade unions reported widespread cases of workplace safety violations in the form of nonprovision of personal protective equipment in the construction sector, as well as carpentry and metalwork activities in the informal sector.

Wage, Hour, and OSH Enforcement: The Ministry of Labour did not effectively enforce wage, hour, overtime, and OSH laws. Penalties for labor violations were not commensurate with those for comparable violations, and fines were generally insufficient to deter violations.

The Directorate of Occupational Health and Safety Services had the authority to inspect factories and work sites but employed an insufficient number of labor inspectors to conduct regular inspections. The directorate did not have a presence in all counties, and the same inspectors were responsible for wage and hour enforcement. According to the directorate, formal employers mostly complied with workplace safety measures. Enforcement in the informal sector, however, was a problem. The law allowed OSH inspectors to conduct unannounced inspections. In 2020 the public prosecutor assumed the mandate for labor relations violations litigation and penalty assessment with guidance from OSH inspectors. The Ministry of Labour, however, reported there was a delay in prosecuting labor-related violations, leading to a backlog of cases. The law allowed OSH inspectors to destroy hazardous materials and issue prohibition notices of any activity that posed a risk of serious personal injury in the workplace.

More than 80 percent of employees worked in the informal sector, according to World Bank data. Informal sector operations cut across all sectors of the economy and sustained a majority of households, with predominant work sectors in order of prevalence including agriculture and livestock, wholesale and retail trade, repair of vehicles and motorcycles, small-scale and home-based manufacturing and production, and accommodation and food service activities.

The law provided social protections for workers employed in the formal and informal sectors. Informal workers organized into associations, cooperatives, and unions. Informal workers worked long hours, with a high mean of 60 weekly working hours. Although informal-sector and part-time workers were covered by wage, hour, and OSH law, the government did not inspect or enforce violations in the informal sector. Local authorities often harassed home-based and microenterprises, which often operated without license due to lack of business premises. Workers in these enterprises were unable or unlikely to receive help from local authorities to enforce workplace protections and were inhibited from making complaints due to fear of losing their sole livelihood.

The constitution provided everyone a right to social security, and the government had a social protection policy for income security, social health protection, and shock responsive social protection. Most informal workers did not benefit from the program because they or their employers did not make required financial contributions.

