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2011 Country Reports on Human Rights Practices - Kenya

EXECUTIVE SUMMARY

Kenya is a republic with an institutionally strong president and a prime minister with unclearly defined executive powers. There is a unicameral national assembly. In 2007 the government held local, parliamentary, and presidential elections. Observers judged the parliamentary and local elections to be generally free and fair. In the presidential election, incumbent Mwai Kibaki was proclaimed the winner by a narrow margin under controversial circumstances. Serious irregularities undermined the integrity of the presidential election results. Raila Odinga, the main opposition candidate, disputed the results, and violence erupted in sections of Nairobi and opposition strongholds in Nyanza, Rift Valley, Western, and Coast provinces. Approximately 1,150 persons were killed and more than 350,000 displaced between December 2007 and February 2008, when the two sides agreed to form a coalition government as a result of international mediation. Under the terms of the agreement, President Kibaki retained his office, and Odinga was appointed to a newly created position of prime minister. The parties also agreed to undertake a series of constitutional, electoral, institutional, and land reforms to address underlying causes of the crisis. In August 2010 citizens approved a new constitution in a national referendum, widely considered to be free and fair. The new constitution includes significant institutional and structural changes to the government. There were instances in which elements of the security forces acted independently of civilian control.

The most serious human rights problems were abuses by the security forces, including unlawful killings, torture, rape, and use of excessive force; mob violence; and the abridgement of the right of citizens to change their government in the 2007 election.

Other human rights problems included police corruption; harsh and life-threatening prison conditions; arbitrary arrest and detention; prolonged pretrial detention; executive influence on the judiciary and judicial corruption; arbitrary interference with the home and infringement on citizens' privacy; restrictions on freedom of speech, press, and assembly; abuse and forced resettlement of internally displaced persons (IDPs); abuse of refugees, including killing and rape; official corruption; violence and discrimination against women; violence against children, including female genital mutilation (FGM); child prostitution; trafficking in persons; discrimination against persons with disabilities; interethnic violence; discrimination based on ethnicity, sexual orientation, and HIV/AIDS status; lack of enforcement of workers' rights; forced and bonded labor, including of children; and child labor.

Widespread impunity at all levels of government continued to be a serious problem. The government took only limited action against security forces suspected of unlawful

killings, and impunity in cases of corruption was common. Although the government took action in some cases to prosecute officials who committed abuses, impunity – particularly in connection with human rights abuses connected to post-2007 election violence – was pervasive.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were several reports that the government or its agents committed arbitrary and unlawful killings. The government took only limited action in holding accountable security forces suspected of unlawfully killing citizens.

Police killed two persons in June while quelling a riot in a refugee camp (see section 2.d.).

Police killed numerous criminal suspects, often claiming that the suspects violently resisted arrest or were armed. For example, on January 19, in the middle of a busy Nairobi highway, three police officers shot and killed three suspected carjackers who already had surrendered. Authorities suspended the police officers and placed them under investigation. At year's end the investigation continued.

On November 3, police reportedly shot and killed five suspected robbers sitting in a car in traffic in Nairobi. Police claimed that one of the suspects drew a pistol after officers ordered them to surrender, prompting police to open fire on the car.

On November 4, the Kenyan navy attacked a fishing boat near the Somali border, resulting in the death of four Kenyan fishermen. The government claimed the boat refused to stop for inspection. Survivors asserted that the boat was anchored offshore when the attack occurred and that the attack was unprovoked. Human Rights Watch (HRW) reported that military personnel beat survivors of the incident who swam to shore. As of year's end, the government had not initiated an investigation.

There were reports that persons died while in police custody or shortly thereafter, some as a result of torture. For example, on September 16, a 16-year-old boy died at the Kabete police station, hours after being arrested in connection with a robbery. A family member who viewed the body saw multiple injuries. The Independent Medico-Legal Unit (IMLU), a credible human rights nongovernmental organization (NGO), conducted a postmortem of the body and established that the young man died of blows and associated trauma. Police did not conduct any investigation into the death by year's end.

In 2008 the government formed the Commission of Inquiry into Postelection Violence as part of the internationally mediated political settlement. In 2008 the final commission report recommended that the government establish a special tribunal to investigate individuals suspected of such violence; however, no local tribunal was established, and the government did not conduct any investigation. As a result of government inaction, in December 2010 the International Criminal Court (ICC) chief prosecutor opened an investigation and subsequently announced that he had asked a pretrial chamber to issue summonses for six former government officials on charges of crimes against humanity. Summonses were issued in March. On August 30, the ICC dismissed an appeal by the government that challenged the admissibility of the cases against the six. The ICC appeals chamber ruled that no legal, factual, or procedural error could be discerned in the pretrial chamber's decisions in May to proceed with the cases. Specifically, the appeals chamber found that the government had failed to provide sufficient evidence to prove that it was conducting its own investigation of the six suspects. The six individuals were Uhuru Muigai Kenyatta, deputy prime minister and minister of finance; William Samoei Ruto, former minister of higher education, science, and technology; Henry Kiprono Kosgey, former minister of industrialization; Joshua Arap Sang, former head of operations for KASS FM radio station; Francis Kirimi Muthaura, head of the public service and secretary to the cabinet; and Mohamed Hussein Ali, police commissioner at the time of the violence. An ICC decision on whether to confirm charges and proceed to trial against some or all of the suspects was expected in early 2012.

b. Disappearance

There were no reports of disappearances or politically motivated abductions during the year.

In October HRW released the report *Hold Your Heart – Waiting for Justice in Kenya's Mt. Elgon Region*, regarding the human rights abuses perpetrated between 2006 and 2008 by government security forces and the Sabaot Land Defense Force (SLDF), a militia group operating in the Mount Elgon region of western Kenya. During this period both government security forces and the SLDF committed atrocities, including hundreds of killings, the detention of more than 3,000 men, forced disappearances, torture, and rape. The report, which focused on unresolved abductions by SLDF militia and enforced disappearances by security forces, criticized the government for not effectively investigating such abuses or assisting families with death certificates or official recognition of the missing.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution and law prohibit such practices; however, the legal code does not define torture and provides no sentencing guidelines, which functionally bars prosecution for torture. Police reportedly used violence and torture frequently during interrogations and as punishment of pretrial detainees and convicted prisoners. According to IMLU, physical battery was the most common method of torture used by the police.

Human rights organizations, churches, and the press reported numerous cases of torture and indiscriminate police beatings.

In November, following two grenade attacks on civilian targets in Garissa and an improvised explosive device attack on a military convoy in Mandera, police and soldiers rounded up hundreds of suspects in both towns. HRW reported that some of these persons suffered broken limbs from beatings by police and soldiers. In the days following the attacks, suspects were arrested at random. HRW interviewed individuals who were taken to a Garissa military camp and forced to do exercises, such as standing on their heads, and were beaten if they could not comply.

As of September IMLU received 218 cases of alleged torture by security forces, 28 of them resulting in death.

IMLU's *National Torture Prevalence Survey Report 2011 for Kenya*, released in November, detailed the results of a nationwide survey on the prevalence of torture, the definition of which included psychological torture – such as harassment, threats, and forcing victims to make impossible choices – as well as physical abuse by the police and other security forces. Data was collected in interviews with members of public and private organizations and a national survey of 1,200 randomly selected respondents. In the survey, 23 percent of respondents reported that they had been tortured, and 29 percent claimed to know someone who had been tortured. Of victims who reported torture, only 25 percent claimed that action was being taken on their complaints. IMLU noted that psychological techniques, as opposed to physical torture techniques, were gaining in prominence.

Due to a shortage of civilian state prosecutors in the legal system (72 civilian prosecutors nationwide compared to 315 police prosecutors), police were responsible for investigating and prosecuting all crimes at the magistrate court level. Civilian prosecutors handled cases at the high court level. Police routinely ignored evidence of security force torture provided by IMLU and other human rights organizations. In most cases authorities did not fully investigate allegations of torture and did not charge perpetrators.

Police use of excessive force to disperse demonstrators resulted in injuries (see section 2.b.).

There were allegations that security forces raped female inmates, IDPs, refugees, and asylum seekers crossing into the country from Somalia (see section 2.d.).

Police harassed and physically and sexually abused street children (see section 6, Children).

The Truth, Justice, and Reconciliation Commission, whose mandate included the investigation of alleged cases of torture since independence, collected statements and held public hearings across the country. A report of its findings was expected in 2012.

In October 2010 IMLU filed a case against the government at the East Africa Court of Justice, seeking redress for Mount Elgon residents tortured during military operations in 2008 (see section 1.b.). In December the government filed an appeal with the appellate section of the court disputing the jurisdiction of the court in human rights matters and the timeliness of the case's filing. The government's appeal remained pending at year's end. Despite evidence of torture documented by IMLU and HRW from the Mount Elgon and El Wak security operations in 2008, the government denied that security forces engaged in torture and refused to prosecute individuals who allegedly participated in torture during the two operations.

Prison and Detention Center Conditions

Prison and detention center conditions continued to be harsh and life threatening. A 2009 prison assessment by the Kenya National Commission on Human Rights (KNCHR) concluded that torture, degrading and inhuman treatment, unsanitary conditions, and extreme overcrowding were endemic in prisons. Prison staff routinely beat and assaulted prisoners. According to media reports, prison officials also raped female inmates. Fellow inmates also committed rapes. Prisoners sometimes were kept in solitary confinement far longer than the legal maximum of 90 days.

As of October the Legal Resource Foundation (LRF) reported a total prison population of 50,608, including 2,672 women and 47,936 men. The country's 89 prisons had a designed capacity of 22,000 inmates.

In 2010 the LRF attributed poor prison conditions to lack of funding, overcrowding, inadequate staff training, and poor management. Prison officers, who received little applicable training, discriminated against prisoners with mental problems and transgender prisoners.

Prisoners generally received three meals a day, but portions were inadequate, and sometimes portions were halved as punishment. Water shortages, an issue outside prisons as well, continued to be a problem. Sanitary facilities were inadequate. Medical care was poor, particularly for those with tuberculosis or HIV/AIDS. Supplies of antiretroviral drugs and other medications were inadequate, and insufficient food lessened the effectiveness of available medicine. Prison hospitals could not meet the needs of prisoners. Many inmates petitioned the courts for transfer to outside hospitals, but administrative delays, such as lack of transport, often delayed court-ordered hospital attention. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cell blocks. This was especially true for the one-third of prisoners awaiting trial, as they were not engaged in any work programs that would allow them to leave their cells.

According to the government, 187 prisoners died during the year, the majority from infections or other generally preventable causes. Overcrowding, unhygienic conditions, and inadequate medical treatment contributed to prisoner deaths.

Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who wanted to visit prisoners commonly reported bureaucratic and physical obstacles that generally required a bribe to resolve. According to the LRF, prisoners had reasonable access to legal counsel and other official visitors, although there was insufficient space to meet with visitors in private and conduct confidential conversations.

In 2010 the LRF reported that prisoners were able to make complaints to the courts and had the ability to send letters written by paralegals to the court without appearing personally. There were no prison ombudsmen to handle prisoner complaints, but some prisons had paralegal clinics, which appeared to decrease the incidence of abuse (see section 5). Some magistrates and judges also made prison visits during the year, providing another avenue for prisoners to raise grievances. In August a group of senior judges, including a deputy chief justice of the Supreme Court, visited a prison in Mombasa. Inmates were permitted to address the delegation and raise grievances and

request leniency. The KNCHR had a mandate to visit prisons and investigate allegations of inhumane conditions. According to the commissioner of prisons, human rights training took place in prisons during the year. The Department of Prisons had imbedded intelligence officers in the prisons to report on conditions and any abuse.

In small jails female prisoners were not always separated from males. Conditions for female inmates in small, particularly rural, facilities were worse than for men. Female prisoners were often not provided with sanitary towels and underwear. Civil society activists witnessed young children, women, and men sharing the same cells. There were 344 children accompanying their mothers or guardians in pretrial detention. Convicted mothers were not allowed to keep their children unless they were nursing. The LRF reported that prisons did not have facilities, lessons, beds, or special food for children, nor did children have access to medical care. Children born to women in custody had difficulty obtaining birth certificates.

Minors were generally separated from the adult population, except during the initial detention period at police stations, when adults and minors of both sexes were often held in a single cell. A 2008 government report on prison conditions noted that underage female offenders, who were ineligible for transfer to a minimum security training school, were often housed with adult female prisoners.

Political prisoners and detainees were held with the general prison population and under the same conditions.

The government permitted prison visits by local human rights groups during the year.

During the year noncustodial community service programs were instituted to alleviate prison overcrowding. In addition new prison facilities and housing for prison staff were built, mental health facilities for offenders were refurbished, and bedding and meals for inmates improved, although they still were considered inadequate by human rights groups.

d. Arbitrary Arrest or Detention

The law prohibits arrest or detention without a court order unless there are reasonable grounds for believing a suspect has committed or is about to commit a criminal offense; however, police frequently arrested and detained citizens arbitrarily.

Role of the Police and Security Apparatus

There was a large internal security apparatus that included the Kenyan National Police Service (KNPS), its Criminal Investigation Department, which was responsible for criminal investigations, and the Antiterrorism Police Unit. The Kenya Administration Police (KAP), which has a strong rural presence throughout the country, provides security for the civilian provincial administration structure and has the mandate for border security. The Kenya Wildlife Service is responsible for security and counterpoaching operations within the national parks, and the paramilitary General Services Unit (GSU) is responsible for countering uprisings and guarding high-security facilities. The National Security Intelligence Service (NSIS) collects intelligence. The KNPS, KAP, and GSU are under the authority of the Ministry of State for Provincial Administration and Internal Security. The NSIS is under the direct authority of the president.

Military forces, including the army, navy, and air force, are responsible for the external defense of the country and support civilian organizations in the maintenance of order. They are under the authority of the minister of state for defense.

Police were ineffective and corrupt, and impunity was a problem. There was a public perception that police often were complicit in criminal activity. In 2008 the Oscar Foundation Free Legal Aid Clinic Kenya noted that bribery in police recruitment was a problem. Police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations.

Police often stopped and arrested citizens to extort bribes. Press and civil society groups reported that police continued to resort to illegal confinement, extortion, physical

abuse, and fabrication of charges to accomplish law enforcement objectives, as well as to facilitate illegal activities. Police often failed to enter detainees into police custody records, making it difficult to locate them. The police practice of requiring an examination and testimony by a single police physician in the case of victims of sexual assault resulted in substantial barriers to the investigation and prosecution of sexual violence cases (see section 6, Women).

Instances of witness harassment and resultant witness insecurity continued to inhibit severely the investigation and prosecution of major crimes. The Witness Protection Agency was inadequately funded, and doubts about its independence were common.

Impunity was a major problem. Police officers rarely were arrested and prosecuted for criminal activities, corruption, or using excessive force. Authorities sometimes attributed the failure to investigate a case of police corruption or unlawful killing to the failure of citizens to file official complaints. However, the required complaint form was available only at police stations, and there was considerable public skepticism regarding a process that assigned the investigation of police abuse to the police themselves.

Effective mechanisms to independently investigate security force abuses did not exist. A 2009 High Court injunction prevents the KNCHR from exercising court powers (for example, the power to summon witnesses) in investigating cases of police and judicial misconduct. The ban remained in effect at year's end.

The government took some steps to curb police abuse. In June a panel drawn from the Public Service Commission, Police Reform Implementation Committee, Kenya Anti-Corruption Commission (KACC), and NSIS conducted an integrity test of 2,000 senior police officials on issues related to corruption, mental fitness, and implementation of the constitution. The test was based on criteria established by the KACC and NSIS. Results were not made public, and it was unclear whether any action was taken to remove unfit officers.

In September the government passed legislation to establish a National Police Services Commission under the authority of an inspector general of police. In October a seven-member panel began the process of selecting commission members, who then were to select a police inspector general and two deputy inspectors general.

There were numerous instances in which police failed to prevent societal violence. For example, on July 13, police failed to prevent a mob from killing a man who attempted to hijack a bus.

Arrest Procedures and Treatment While in Detention

The law provides police with broad powers of arrest. Police may make arrests without a warrant if they suspect a crime occurred, is happening, or is imminent. Detainees in noncapital cases must be brought before a judge within 24 hours (or up to 72 hours if the arrest occurs on a weekend), and detainees in capital cases must be brought before a judge within 14 days. Nevertheless, authorities frequently did not respect these rights. The courts dealt with this shortcoming by considering whether the extent of the denial of constitutional rights of the accused warranted dismissal of pending charges. In many cases accused persons, including some charged with murder, were released because they had been held longer than the prescribed period.

Although the law provides pretrial detainees with the right of access to family members and attorneys, family members of detainees frequently complained that access was permitted only on payment of bribes. When detainees could afford counsel, police generally permitted access to attorneys, but often refused such access otherwise. There is a functioning bail system, although many suspects remained in jail for months pending trial because of their inability to post bail. Individuals charged with offenses that were deemed serious and with capital offenses are not eligible for bail pending trial.

Arbitrary Arrest: During the year police in Eastleigh routinely targeted Somali youths, threatening to send them to jail or refugee camps if they did not pay a bribe. Since few could afford even a modest bribe, many were arrested and remained in jail unless family or friends raised the bribe money demanded by police.

Muslim leaders claimed that police indiscriminately arrested Muslims on suspicion of terrorism and that some suspects subsequently disappeared. Police denied the allegations.

In September Ugandan prosecutors dropped murder and terrorism charges against Kenyan human rights activist Al-Amin Kimathi and released him from custody. In September of the previous year, the Ugandan government arrested and detained Kimathi and Kenyan attorney Mbuga Mureithi in connection with the July 2010 Kampala bombings. Kimathi and Mureithi had travelled to Uganda to visit Kenyans who were in jail after being extradited to Uganda by the Kenyan government in connection with the bombings. Authorities detained Kimathi in Uganda for more than a year; they released Mureithi without charge a few days after his arrest and deported him back to Kenya. Kimathi claimed that the Kenyan government colluded with the government of Uganda to detain him in Uganda without due cause. Some Muslims claimed that the arrests were motivated by Kimathi and Mureithi's religion and intended to intimidate Muslims.

Pretrial Detention: Lengthy pretrial detention continued to be a serious problem and contributed to overcrowding in prisons. Approximately 36 percent of inmates were pretrial detainees. The government claimed that the average time spent in pretrial detention on capital charges was 16 months; however, there were reports that many detainees spent two to three years in prison before their trials were completed. Police from the arresting location are responsible for serving court summonses and picking up detainees from the prison each time a court schedules a hearing on a case. Due to a shortage of manpower and resources, however, police often failed to appear or lacked the means to transport detainees, who then were forced to await the next hearing of their cases. According to the judiciary, approximately 800,000 pretrial detainees were awaiting trial, including both civil and criminal cases.

Amnesty: The president released petty offenders periodically, with the largest amnesty occurring on December 12, Independence Day. During the year the president pardoned approximately 7,000 persons. In August, 158 inmates were released from a Mombasa prison under the auspices of a court commutation of sentences to community service. In October the chief justice ordered the release of an additional 270 inmates throughout the country.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary; however, the executive branch sometimes exercised political influence over the judiciary. The judiciary was corrupt at all levels.

The president historically had extensive powers over appointments, including the positions of attorney general, chief justice, and appellate and high court judges. However, the new constitution provides that key appointments, including those of chief justice and attorney general, require the approval of parliament. The Judicial Services Commission is responsible for making recommendations for the appointment of judges.

The constitution provides for Kadhi's courts and states that the "jurisdiction of a Kadhi's court shall be limited to ... questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's court." There were no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in personal matters, as long as it did not conflict with statutory law. Use of traditional law occurred most often in cases of marriage, death, and inheritance in which there was an original contract based on traditional law. Citizens may choose between national and traditional law when they enter into marriage or other contracts; however, the courts determine which kind of law governs the enforcement of the contract. Some women's organizations sought to eliminate traditional law, which often favored men.

The government occasionally used the legal system to harass critics. Local authorities continued to prosecute a 2008 case against a physician who helped document allegations of human rights abuses in the Mount Elgon region.

Trial Procedures

Civilians are tried publicly, although some testimony may be given in closed session. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence in their defense. A defendant's right to consult with an attorney in a timely manner generally was respected. However, the vast majority of defendants could not afford representation and were tried without legal counsel. Indigent defendants do not have the right to government-provided legal counsel except in capital cases. The lack of a formal legal aid system seriously hampered the ability of many poor defendants to mount an adequate defense. Legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers (FIDA), provided it.

Discovery laws are not defined clearly, further handicapping defense lawyers. Implementation of the high court ruling that written statements be provided to the defense before trial was slow. Often defense lawyers did not have access to government-held evidence before a trial. The government sometimes invoked the Official Secrets Act as a basis for withholding evidence. Defendants can appeal a verdict to the High Court and ultimately to the Court of Appeals, and, for some matters, to the Supreme Court. The legal system does not provide for trial by jury; judges try all cases.

In treason and murder cases, the deputy registrar of the High Court can appoint three assessors, who are lay citizens, to sit with a high court judge. Although assessors render verdicts, their judgments are not binding, and the practice was being phased out. Defendants' lawyers can object to the appointment of particular assessors. A shortage of appropriate assessors frequently led to long delays in hearing cases.

The police practice of requiring an exam and testimony by the country's single police physician in cases of victims of sexual assault resulted in substantial barriers to the investigation and prosecution of such cases (see section 6, Women).

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

The KNCHR attempted to assert some of the powers of a court, issuing summonses, ordering the release of prisoners or detainees, requiring payment of compensation, or providing other legal remedies; however, the government continued to ignore such summonses and orders. The police routinely refused to release suspects when ordered to do so by the KNCHR. In 2009 the attorney general filed a brief with the High Court arguing that the KNCHR should be stripped of judicial powers. While the court had not issued a final ruling by year's end, it issued an injunction barring the KNCHR from convening investigatory panels with court powers. As a result the KNCHR had no effective means to investigate cases of police and judicial misconduct. The new constitution provides that the KNCHR be succeeded by a new entity, the Kenya National Human Rights and Equality Commission (KNHREC). The authority and powers of the KNHREC remained undefined at year's end.

The civil court system can be used to seek damages for victims of human rights violations, but in practice corruption, political influence over the civil court system, and chronic backlogs of cases limited access by victims to this remedy.

Widespread corruption existed at all levels of the civil legal system. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases.

Court fees for filing and hearing civil cases effectively barred many citizens from gaining access to the courts.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit such actions, except "to promote public benefit"; however, authorities sometimes infringed on citizens' privacy rights. The law permits 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 to apprehend suspected criminals or to seize property believed stolen.

During the year police raided dozens of homes in the Nairobi slums in search of suspected members of the banned Mungiki criminal organization.

City council officers and police officers also frequently raided, evicted, or destroyed the homes and businesses of citizens in slums or other areas where residents did not hold proper legal title. Residents complained that these actions often were intended to extort bribes.

In 2009 the government evicted more than 2,000 residents in the Mau Forest from their homes. Evictees alleged that security forces destroyed property and that the government failed to provide adequate emergency shelter or promised compensation. Residents holding title deeds are entitled to compensation. By year's end many Mau Forest evictees had not been resettled and still were living in extremely poor conditions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Status of Freedom of Speech and Press

The constitution provides for freedom of speech and press, but the government sometimes restricted these rights.

Freedom of Speech: The government occasionally interpreted laws in such a way as to restrict freedom of expression. The government monitored many types of civil society meetings, and individuals were not always allowed to criticize the government publicly without reprisal. The Ministry of Education, for example, intimidated reporters and potential whistleblowers during the year to quash allegations of missing, and likely stolen, funds allocated for free primary education.

Freedom of Press: The mainstream print media generally remained independent despite attempts at intimidation by officials and security forces. The mainstream print media included four daily newspapers, one business-focused daily newspaper, and numerous regional weekly newspapers with national distribution. There also were numerous independent tabloid periodicals that appeared irregularly and were highly critical of the government.

The government occasionally interpreted laws to restrict press freedom, and officials regularly accused the media of being irresponsible and disseminating misinformation. There were also reports that politicians paid journalists to avoid negative coverage or to plant negative coverage of a political opponent.

Of the several television stations operating in Nairobi, the government-owned Kenya Broadcasting Corporation (KBC) was the only station with a national network of broadcast and cable television, AM and FM radio, and shortwave transmission. Although KBC coverage generally was viewed as balanced, its monopoly on national broadcasting limited the ability of critics of the government to communicate with the electorate. The disadvantage to government critics posed by the KBC monopoly on national broadcasting was particularly pronounced in the period prior to the 2007 general elections.

Violence and Harassment: Security forces harassed members of the media. For example, in June four state employees working for Wajir District Hospital attacked Wajir Community Radio journalist Abdi Hassan Hussein for interviewing patients who complained of poor treatment at the facility.

On August 7, prison guards at Eldoret GK Prison attacked three journalists from the private broadcaster Nation Television (NTV). The journalists were covering an escape attempt by six inmates. One of the guards shot at cameraman James Ng'ang'a, destroying his camera equipment and injuring two of his fingers. Ng'ang'a was filming prison guards beating NTV reporters Jared Nyataya and Barnabas Bii. The reporters were covering attempts to recapture the escaped inmates, who had hidden in a nearby church. The attack occurred despite orders from a senior prison officer to allow the journalists to

carry out their work. Authorities did not conduct any investigation into the incident by year's end.

Censorship or Content Restrictions: Government harassment of journalists resulted in self-censorship, particularly with respect to stories associated with corruption, drug trafficking, and crime in which government officials applied pressure to protect implicated individuals.

Libel Laws/National Security: The government cited national or public security as grounds to suppress views that were politically embarrassing. According to the Kenya National Dialogue and Reconciliation Monitoring Project, government officials often intimidated journalists reporting on the security sector and requested that they reveal sources. During the year, for example, the government asserted national security as a basis to pressure journalists reporting on alleged corruption at the Port of Mombasa. Also, editors at the *Star* newspaper were reportedly harassed by officials of the Anti-Terrorism Unit after the newspaper reported on problems with the unit's terrorism investigations. No formal charges were pursued by the government.

Internet Freedom

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the expression of views via the Internet, including by e-mail.

In 2009 the government announced that all cell phone users had to provide the government with their name and identification number for each line owned. This announcement also affected citizens who accessed the Internet through cell-phone-based modems, potentially enabling the government to monitor Internet use.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

Unlike in previous years, no publications were known to be banned by the government.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

Although the constitution and law provide for freedom of assembly, the government sometimes restricted this right in practice. Organizers must notify local police in advance of public meetings, which may proceed unless police notify organizers that the meeting is prohibited. According to the law, authorities may prohibit such gatherings only if there are simultaneous meetings previously scheduled for the same venue or if there is a perceived, specific security threat. In the past, however, police routinely denied requests for meetings filed by human rights activists and dispersed meetings for which no prohibition had been issued. Civil society groups noted that when they tried to comply with the licensing policy, police often refused to issue permits in a timely manner.

Police forcibly dispersed demonstrators. For example, in October the *Standard* newspaper reported that administrative police attacked more than 100 protesters peacefully demonstrating against insecurity in the Longonot area of the Rift Valley, and numerous persons were injured. Authorities reportedly dismissed one of the officers who was caught on camera beating an elderly woman into unconsciousness.

Freedom of Association

The constitution and law provide for freedom of association, and the government generally respected this right. The Societies Act requires that every association be registered or exempted from registration by the registrar of societies.

The 2002 ban on membership in the Mungiki criminal organization remained in effect. The Mungiki espoused political views and cultural practices that were controversial in mainstream society. The government declared the group a criminal organization in 2002 because it ran protection rackets, particularly in the public transportation sector, and

harassed and intimidated residents. The Mungiki had a significant following among the poor and unemployed. Other prohibited criminal organizations with political or cultural trappings included the Kamjesh, Chinkororo, Baghdad Boys, Jeshi la Embakasi, Jeshi la Mzee, Amachuma, Sungu Sungu, the Mombasa Republican Council (MRC), and a local group called "the Taliban."

In October the General Services Unit, administrative police, and regular police officers raided MRC oath-taking and ritual ceremonies, arresting 18 MRC members. Observers noted that raids against the MRC, which advocates for secession of Coast Province, were motivated by political as well as law enforcement reasons.

c. Freedom of Religion

See the Department of State's *2010 International Religious Freedom Report*.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to IDPs, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

In-country Movement: Police routinely stopped vehicles throughout the country and often solicited bribes. Police frequently required ethnic Somalis to provide additional identification.

Foreign Travel: Civil servants and members of parliament must obtain government permission for international travel, which generally was granted.

Internally Displaced Persons (IDPs)

A large number of IDPs still had not returned home after being displaced in previous years. According to the Kenya Human Rights Commission, approximately 50,000 IDPs displaced due to ethnic and election-related violence in the 1990s had not returned home due to fear of renewed violence. Between 200,000 and 250,000 of the 350,000 persons who fled their homes in Rift Valley Province, Central Province, Nairobi, and other sections of the country as a result of 2008 postelection interethnic violence also had not returned home, according to the Internal Displacement Monitoring Center. The government's eviction and destruction of homes in low income areas during the year resulted in hundreds of additional IDPs. For example, in October the Kenyan Airport Authority ordered the bulldozing of homes adjacent to Jomo Kenyatta International Airport in Nairobi, displacing approximately 500 residents. Flash floods and land disputes during the year also resulted in more IDPs. IDPs were concentrated in informal settlements and camps, with many of those dislocated as the result of 2008 postelection violence concentrated in the Eldoret and Naivasha areas. Living conditions in such settlements and camps were poor with rudimentary housing and little public infrastructure or service.

Rapes allegedly perpetrated by IDPs, local residents, and sometimes by police personnel occurred in IDP camps.

In September UN Special Rapporteur Chaloka Beyani commended the government for developing a draft IDP policy and for the return and resettlement of some IDPs affected by postelection violence. Beyani urged the government to adopt the IDP policy and address the "dire" living conditions and human rights of IDPs, including persons displaced by the 2007-08 postelection violence and those displaced by natural disasters and environmental conservation projects.

The government continued to pressure IDPs to return to their homes. In 2008 the representative of the UN secretary-general for the human rights of IDPs visited the country and concluded that some returns were not voluntary or based on informed

choices. In a 2008 report the KNCHR found that the government had used intimidation and force to remove IDPs from camps and had failed to provide housing, food, and clean water to resettled camp residents. The KNCHR also found that resettled residents were exposed to sexual violence and harassment.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status for those claiming asylum, and the government coordinated with the UNHCR to provide assistance and protection to refugees. Drought, famine, and conflict in Somalia, however, resulted in a massive influx of refugees into the country during the year. The refugee influx and security threats emanating from Somalia, particularly those associated with the Dadaab refugee camps, severely strained the government's ability to provide security, which impeded the efforts of the UNHCR and other humanitarian organizations to assist and protect refugees and asylum seekers.

Although the border with Somalia remained officially closed throughout the year, the monthly rate of Somali new arrivals into Kenya peaked at approximately 37,000 in August. As of late November, the UNHCR registered more than 176,000 new refugees, 154,000 of whom settled in the Dadaab refugee camps. The UNHCR estimated the total number of refugees in the country at more than 600,000, including more than 463,000 at Dadaab, more than 84,000 at the Kakuma refugee camp, and more than 53,000 in urban areas throughout the country, including Nairobi.

For several months the government allowed the International Organization for Migration (IOM) to transport refugees from the border town of Liboi to Dadaab, which helped to prevent extortion and attacks on refugees. On October 17, however, the government reiterated that the border was closed, tightened enforcement measures, stopped registering new refugees at Dadaab, and ordered the IOM to stop transporting refugees from the border. The government's actions followed a series of security incidents and the commencement of the government's military incursion into Somalia.

In accordance with the law, which provides for the government to assume responsibility from the UNHCR for the administration of refugee affairs, in March the Department of Refugee Affairs (DRA) assumed responsibility for registering asylum seekers in Dadaab, Kakuma, and Nairobi. The DRA expanded its registration activities to Malindi and Mombasa later in the year. A significant registration backlog developed in Dadaab, however, with the influx of refugees from Somalia. This backlog was eliminated by September, but the government suspended all registration activities in October. Unrelated to the registration backlog in Dadaab, in Kakuma there remained a significant backlog in refugee status determination for all nationalities except Sudanese. The government recognizes Somalis from south and central Somalia as refugees on a prima facie basis and therefore does not require a refugee status determination.

During the year the government announced a mass distribution of refugee identification cards but did not complete the distribution by year's end. The government planned to take responsibility for refugee status determination from the UNHCR as well, although it had not done so by year's end.

During the year the government permitted the opening of two additional camps in the Dadaab area, bringing to five the number of camps comprising the refugee complex. Despite the additional facilities, overcrowding remained a problem. The government did not open the Liboi registration center for Somali asylum seekers, despite multiple promises to the contrary. Although the government allowed both the Ifo 2 and Kambioos camps to receive refugees, it refused to provide official recognition and support to the Kambioos facility. The UNHCR moved refugees from the outskirts of the existing camps to plots in the new camps. This process stopped in late October, following security incidents. Cholera, meningitis, and measles outbreaks were reported in Dadaab. Malnutrition rates in the camps increased during the year due to the arrival of famine-affected refugees.

Despite government policy that all refugees must reside in camps, 12,501 newly arriving refugees were registered in Nairobi during the year, bringing the officially registered Nairobi refugee population to slightly more than 53,000 persons. Urban refugees

remained vulnerable populations. While assistance programs for urban refugees increased during the year, there remained little possibility for local integration.

Nonrefoulement: Unlike in the previous year, there were no confirmed reports of refoulement; in 2010 HRW reported that hundreds of Somali asylum seekers were deported back to Somalia. However, in January the government ordered NGOs to cease services to Somalis who fled to Mandera, in order to create conditions more conducive for them to return home.

Refugee Abuse: On June 30, police shot and killed two refugees and injured numerous others while using live ammunition to quell a riot in the Dagahaley refugee camp, one of the camps in the Dadaab complex. The refugees were gathered to protest an attempt to demolish illegal structures around a food distribution point, according to the UNHCR.

Sexual and gender-based violence (SGBV) remained problems at both the Dadaab and Kakuma refugee camps. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, and forced marriage, particularly of young Sudanese and Somali girls. Refugee communities sometimes targeted opponents of FGM. Health and social workers in Kakuma refugee camp reported that due to strong rape awareness programs in the camp, victims increasingly reported such incidents, resulting in improved access to counseling. In Dadaab, however, the government's limited ability and UNHCR's restricted access and limited ability to provide refugee services or protection resulted in numerous SGBV cases and the underreporting of crimes and abuse. Between January and November, for example, 361 SGBV incidents were reported in Dadaab and 114 in Nairobi. Between January and August, 217 SGBV incidents were reported in Kakuma.

Mobile court judiciary officials associated with the camps reportedly directed imams not to officiate weddings of girls under the age of 18 in an effort to reduce the occurrence of coerced, underage marriages.

Other security problems in refugee camps included banditry, ethnic-based violence, and the harassment of Muslim converts to Christianity.

In April the UNHCR and the government signed a memorandum of understanding to reinforce security in Kakuma and Dadaab refugee camps by increasing police, procuring additional equipment for police, and establishing a screening center at Liboi. In November, 92 officers (of 200 requested) were deployed to Dadaab to reinforce the 349 officers already there.

Mobile courts continued to serve the camp populations and were instrumental in curbing crime and violence when cases were reported; however, most crimes went unreported. In September the magistrate with jurisdiction over Dadaab reported that despite the massive influx of refugees, there was no corresponding increase in new cases reported to the mobile courts.

Refugees' freedom of movement remained severely restricted. The government required all refugees to remain at UNHCR camps unless granted permission by the government to attend higher education institutions, receive specialized medical care outside the camp, or leave to avoid security threats. In September the government reported that 70 percent of refugees who were granted movement passes did not return to the camps.

Numerous refugees were arrested for violating movement restrictions. According to the UNHCR, between January and November, 1,453 refugees from Dadaab were detained for unauthorized movement outside the camp; of those, 330 were minors who were handed over to the UNHCR. In Kakuma, during the same period, 148 persons were detained, of whom only seven were registered refugees. In Nairobi, also between January and November, 464 individuals were detained for movement violations; half of whom turned out to be asylum seekers, including numerous Ethiopian nationals transiting Kenya. Asylum seekers were generally released to either the DRA or UNHCR for registration.

Stateless Persons

According to the UNHCR, approximately 20,000 stateless Sudanese Nubians, reportedly the descendants of Sudanese forcibly conscripted by the British in the early 1900s, lived in the country. Sudanese Nubians were not granted citizenship or identification documents, despite the UNHCR's conclusion that the Nubians qualified for citizenship under the prevailing nationality law. In 2003 the Nubians sought judicial relief from the Constitutional Court to be declared citizens by birth. Citizenship is determined by parentage, but the law also provides citizenship for Africans brought to the country by colonial authorities. In 2005 the Nubians filed a memorandum of admissibility with the African Commission on Human and Peoples' Rights under the African Charter on Human Rights. In 2007 the commission heard arguments on the admissibility of the case. The government presented its arguments and filed a brief on the merits of the case. No further information on the case was available at year's end.

According to the UNHCR, an unknown number of descendants of mixed Eritrean-Ethiopian marriages also were stateless. They were unable to obtain citizenship in either of those countries due to strong nationalist prejudices. Their lack of proper documentation resulted in difficulties in finding employment.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The constitution and law provide citizens the right to change their government through free and fair multiparty elections, and in 2007 citizens exercised this right through generally free and fair local and legislative elections held on the basis of universal suffrage. However, the manner in which the 2007 presidential election results were tallied raised serious doubts as to whether this right was respected at the presidential level.

In a peaceful August 2010 referendum, 67 percent of voters approved a new constitution, which provides for a bill of rights and reforms the electoral system, administration of land, and judiciary. The new constitution provides parliamentary representation for women, youth, persons with disabilities, ethnic minorities, and marginalized communities. Implementation of constitutional reforms continued during the year, although full implementation was expected to take years.

Elections and Political Participation

Recent Elections: In 2007 the country held local, parliamentary, and presidential elections. Observers judged the parliamentary and local elections to be generally free and fair. In the presidential election, incumbent Mwai Kibaki was proclaimed the winner by a narrow margin under controversial circumstances. Serious irregularities undermined the integrity of the presidential election results. Raila Odinga, the main opposition candidate, disputed the results, and violence erupted in sections of Nairobi and opposition strongholds in Nyanza, Rift Valley, Western, and Coast provinces. Approximately 1,150 persons were killed and more than 350,000 displaced between December 2007 and February 2008.

A mixed Kenyan-international commission appointed in 2008 to evaluate the elections found that the results were "irretrievably polluted." The commission also reported that the election results, and especially the presidential election results, lacked integrity. While nearly 14.3 million citizens registered to vote, an independent review commission concluded that voter rolls contained the names of approximately 1.3 million deceased persons.

Voting and counting at polling stations for the 2007 elections generally were conducted in accordance with democratic standards, although there were irregularities in both opposition and progovernment strongholds. International observers concluded that tallying irregularities by the Election Commission of Kenya (ECK) in Nairobi undermined the credibility of the ECK.

During the campaign there were instances of violence between supporters of rival parties, especially among progovernment parties. Although the government required parties to register prior to political rallies, the government generally did not interfere with party campaign activities. Text messages, pamphlets, and Web logs sometimes were

used to disseminate hate speech that was banned under the election code of conduct. The KNCHR and other civil society organizations accused the government of misusing state resources by providing transport and funding rallies and election materials for some candidates in the election campaign. In accordance with the National Accord, the ECK was abolished in 2008 and replaced in 2009 by the Interim Independent Electoral Commission (IIEC). In 2009 the IIEC conducted two parliamentary by-elections, which international observers deemed free and fair, although there were problems with the voter registry and bribery of voters.

During the year several by-elections were held, all of which were peaceful and undisputed.

Political Parties: There were numerous political parties. In the 2007 elections, 117 parties with 15,332 candidates competed in local elections; 138 parties with 2,548 candidates competed in parliamentary elections; and nine parties nominated presidential candidates. The Political Parties Act, which came into effect in November 2010, sets stringent conditions for political parties but does not discriminate against any particular party.

Participation of Women and Minorities: Women's participation in electoral politics remained low; however, a record number of female candidates ran for parliament and local office in 2007, despite harassment and attacks. Women constituted 10 percent of all parliamentary candidates.

The new constitution provides for the representation in parliament of ethnic minorities; however, implementation posed hazards. The political system was characterized by alliances and hardened divisions among ethnic groups and subgroups. A political gain by one group was often perceived as a loss by other ethnic groups and, as evidenced by the postelection violence in 2007 and 2008, could trigger violence.

Section 4. Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. Since President Kibaki assumed office in 2002, despite numerous scandals, no top officials have been prosecuted successfully for corruption. The World Bank's 2010 Worldwide Governance Indicators indicated that corruption was a severe problem.

In September President Kibaki signed into law the Ethics and Anti-Corruption Commission Act, which replaced the KACC with the Ethics and Anti-Corruption Commission (EACC). The new law expands the mandate of the EACC from investigation of corruption to developing and enforcing a code of ethics for public officials. Both the KACC and the EACC attracted significant public attention to corruption issues, but without complementary actions to punish perpetrators. Critics charged that despite significant financial support from the government, the KACC accomplished little and sometimes was used by the government to harass critics. By contrast, other observers believed the KACC was replaced by the EACC (and its director Patrick Lumumba abruptly dismissed) because the KACC was too aggressive in its investigations of high-level corruption. Like the KACC, the EACC lacked prosecutorial authority, which remained with the director of public prosecutions, whose office became independent of the Office of the Attorney General as a result of the new law. At year's end the EACC had not finalized recruitment of its senior leadership, effectively halting ongoing investigations by its staff.

Between July 2010 and June 30, the KACC recommended 113 cases for prosecution to the attorney general, who accepted the recommendation in 95 of these cases. Most of these cases involved mid- or low-level officials, reinforcing the notion that corruption at the highest levels went unchecked. Of 7,106 reports of alleged corruption reviewed by the KACC, 1 percent involved ministers or assistant ministers, and 6 percent involved senior officials such as permanent secretaries.

Widespread corruption existed at all levels of the legal system. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases.

Although police corruption was endemic, authorities rarely arrested and prosecuted officers for corruption or criminal activities. During the year the KACC investigated police officers suspected of accepting bribes, benefiting from fraudulent expense reports at a training college, and participating in multiple irregular land acquisitions. There were no reported arrests by year's end. The KACC participated in a vetting panel for police officers in July. It was unclear whether the new EACC would continue to play a role in monitoring recruitment and supervision of police officers.

In July the auditor general reported that approximately seven billion shillings (\$82 million) was unaccounted for in government ministries. The Ministry of Public Health and Sanitation topped the list, with nearly 3.7 billion shillings (\$43 million) in unsupported expenditures. The Mars Group Kenya, a local anticorruption NGO, joined the KACC during the year to assist in the investigation of revenue leakages.

In September prosecutors charged eight persons – including the son-in-law of Charity Ngilu, the minister of water and irrigation, and the husband of Cecily Mbarire, the assistant minister of tourism – with embezzling 26 million shillings (\$300,000) from the Ministry of Water and Irrigation through irregular procurement practices.

An internal forensic audit of the Ministry of Education during the year indicated that it had misappropriated 4.2 billion shillings (\$46 million), including some donor funds meant for the country's free primary education program. The KACC completed investigations into embezzlement and irregular disbursements by several ministry officials, including former permanent secretary Karega Mutahi. In July the Police Criminal Investigation Department launched an investigation, although no charges had been announced by year's end.

There were ongoing corruption investigations at the ministries of Roads, Energy, Immigration, Sports and Youth Affairs, Special Programs, Land, and the Constituency Development Funds.

There were developments in corruption cases from previous years.

In April the Parliamentary Committee on Lands and Natural Resources exonerated Minister Ngilu of allegations of corruption and nepotism leveled by a former assistant minister.

In August William Ruto, a former minister of higher education, was cleared of charges when many of the prosecution's witnesses failed to appear. The KACC continued to investigate the acquisition of land for a Kenyan embassy in Tokyo and cooperated with the Japanese government to collect documentary evidence.

The new constitution provides citizens with access to information held by the state and requires the state to publish and publicize important information affecting the nation, and the government took steps to implement those provisions during the year. In June the government launched Kenya Open Data, a Web site containing selected data from the national census and on government expenditures, parliamentary proceedings, and public service locations. The government spokesman's briefings were televised, and parliamentary debates were broadcast live on television and radio. Nevertheless, important reports regarding major corruption scandals from the last decade were not released to the public, and it was unclear how the public would be included in the process of crafting the national budget, as required by the new constitution.

There is no freedom of information law, but some government information was available on the Internet.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. With the exception of the police, government officials were usually cooperative and responsive to the queries of these groups; however, the government generally ignored the recommendations of the UN, other international bodies, and NGOs if such

recommendations were contrary to government policies. There were reports that officials intimidated NGOs and threatened to disrupt their activities, and that provincial administrators and security forces interfered with less-established NGOs, particularly in rural areas. Human rights activists claimed that security agencies conducted surveillance of their activities.

Approximately 15 domestic organizations advocated for human rights in the country, 14 of which were independent of the government. The Kenya Human Rights Commission and IMLU produced reports cataloguing human rights abuses.

Several NGOs maintained comprehensive files on local human rights abuses. A number of attorneys represented human rights advocates without compensation, although they were concentrated in urban areas and could handle the cases of only a small percentage of those who needed assistance. The government sometimes allowed human rights organizations to witness autopsies of persons who died in police custody. The government also permitted NGOs to provide paralegal services to prisoners. The KNCHR noted that reports of human rights abuses decreased in prisons with resident paralegals.

In May Ken Wafula, a human rights activist and director of the Center for Human Rights and Democracy, was released from custody for lack of evidence. Wafula had been charged with disobedience and publishing inciting materials for his 2009 reporting on the clandestine arming of communities in the Rift Valley with the support of government officials.

Human rights workers were abducted during the year. For example, in September a Kenyan driver for the NGO CARE was abducted from the outskirts of the Hagadera camp and taken to Somalia, where he remained in custody at year's end.

According to the *2011 Annual Report of the Observatory for the Protection of Human Rights Defenders*, since December 2010 at least five human rights defenders who assisted with the ICC investigation into postelection violence were forced to relocate after being threatened. A sixth received anonymous telephone threats during the year. The observatory added that the offices of human rights organizations that provided information to assist with the ICC investigation were vandalized. In some cases computers and hard drives were stolen. Starting from mid-2010, human rights defenders working on other human rights issues also were targeted and accused of working for the ICC, even if it was not the case.

Information surfaced during the year that in April 2010 four persons in civilian clothes arrested Kenneth Kirimi Mbae, a member of the civil society organization Bunge la Mwananchi and local NGO Release Political Prisoners (RPP). Until his release four days later, Mbae was detained in an isolated house in Narok District, where he was interrogated and beaten. The perpetrators also threatened sexual violence against Mbae's wife. Mbae, whose injuries required medical treatment, was interrogated about extrajudicial killings, RPP activities with regard to Mount Elgon military operations, and the sharing of information in 2009 with the UN special rapporteur (see section 1.a.).

According to a separate report received during the year, in April 2010 George Nyongesa, a community organizer who worked for Bunge la Mwananchi's Web site, received an anonymous telephone call threatening to silence him if he did not close the Web site. Lawrence Maina, Web site manager of the organization, received two similar phone calls.

In another report made available during the year, police in May 2010 dispersed approximately 200 persons attending a Bunge la Mwananchi meeting being held in the Jeevanjee Garden in Nairobi. Four participants were arrested but released without charge after arriving at the police station.

UN and Other International Bodies: The government permitted visits by representatives of the UN and other international organizations in connection with the investigation of abuses or monitoring of human rights problems in the country.

Government Human Rights Bodies: The KNCHR, which also produced reports cataloguing human rights abuses, has in the past asserted certain juridical powers by issuing summonses, ordering the release of prisoners, and requiring compensation for human

rights abuses. However, the government routinely ignored the KNCHR's summonses and orders (see section 1.e.).

The Truth, Justice, and Reconciliation Commission, established in 2009 to investigate politically and ethnically motivated human rights abuses since independence, collected statements and held public hearings across the country during the year (see section 1.c.).

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The constitution and law prohibit discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth. Government authorities did not enforce effectively many of these provisions, and discrimination against women, lesbian, gay, bisexual and transgender (LGBT) persons, individuals with HIV/AIDS, persons with disabilities, ethnic groups, and persons suspected of witchcraft was a problem. There was also evidence that some government and opposition officials tolerated, and in some instances instigated, ethnic violence. The law criminalizes homosexual activity.

Women

Rape and Domestic Violence: The law criminalizes rape, defilement, and sex tourism; however, implementation remained limited, and as many as 95 percent of sexual offenses were not reported to the police. The law does not specifically prohibit spousal rape.

The law provides a maximum penalty of life imprisonment for rape, although sentences usually were no longer than the minimum of 10 years. NGO activists complained that a provision in the law that criminalizes false claims of sexual assault deterred the reporting of sexual offenses.

Police statistics for 2010 indicated 3,200 cases of gender-based violence, including 785 rapes, up from 2,800 cases reported in 2008; statistics for 2009 were unavailable. Human rights groups, however, estimated that the actual number of rapes and other cases of gender-based violence was much higher. The rate of reporting and prosecution of rape remained low because of the police practice requiring that victims be examined by a police physician; cultural inhibitions against publicly discussing sex, particularly sexual violence; survivors' fear of retribution; police reluctance to intervene, especially in cases where family members, friends, or acquaintances were accused of committing the rape; poor training of prosecutors; and the unavailability of doctors who might provide the evidence necessary for conviction.

National guidelines on the management of sexual violence – including the handling of forensic evidence, postrape care, and victim support – were promulgated in 2009, but implementation mechanisms remained weak.

Police procedures in handling cases of rape and sexual assault created substantial barriers to the investigation and prosecution of suspected perpetrators. In addition to requiring those who allegedly experienced sexual assault to be examined by a police physician prior to the initiation of an investigation, police prosecutors also required the same physician to testify during trial. However, there was only one police physician in Nairobi, and police physicians were generally not present in rural areas. The police physician in Nairobi frequently issued examination reports that conflicted with the findings of other medical professionals, was often unavailable to conduct exams, and frequently failed to appear in court. Police also lacked the facilities to preserve forensic evidence. As a result numerous alleged cases of sexual violence were not investigated by the police, and numerous cases were dismissed from court due to the absence of a police physician.

The government did not investigate or prosecute reported incidents of widespread sexual violence following the disputed election in 2008.

Domestic violence against women was widespread but often condoned by society and seldom addressed in the courts. The penal code does not contain specific provisions against domestic violence but treats it as assault. Police generally refrained from

investigating cases of domestic violence, which they considered a private family matter. NGOs, including the Law Society of Kenya and FIDA, provided free legal assistance to some victims of domestic violence. In 2010 FIDA reported that 83 percent of women and girls in the country reported one or more episodes of physical abuse.

Harmful Traditional Practices: Certain communities commonly practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. Other forced marriages were also common. Although poor and uneducated women were more likely to be inherited, prominent and educated women sometimes were victims.

Sexual Harassment: The law prohibits sexual harassment; however, sexual harassment continued to be a problem. It was often not reported and rarely resulted in charges being filed.

Reproductive Rights: Subsidized contraception options, including condoms, birth control pills, and long-acting or permanent methods, were widely available to both men and women throughout the country, although access was more difficult in rural areas. An estimated 30 percent of women between the ages of 15 and 49 used a modern method of contraception. Skilled obstetric, prenatal, and postpartum care was available in major hospitals, but many women were unable to access or afford these services. In 2009 an estimated 44 percent of births were attended by skilled health personnel. According to UN estimates, the maternal mortality ratio in 2009 was 488 deaths per 100,000 live births. Access to family planning and reproductive health services was impeded by sociocultural beliefs and practices, lack of female empowerment, lack of male involvement, poverty, and poor health management systems.

The government and private organizations supported a network of more than 8,000 counseling and testing centers providing free HIV/AIDS diagnosis. Diagnosis of other sexually transmitted infections was available through hospitals and clinics throughout the country. HIV/AIDS carried social stigma, and many citizens avoided testing due to social pressure.

Discrimination: The law provides equal rights to men and women and specifically prohibits discrimination on grounds of gender; however, women experienced a wide range of discrimination in matrimonial rights, property ownership, and inheritance rights. The average monthly income of women was approximately two-thirds that of men. Women held only 6 percent of land titles. Under traditional law women in many ethnic groups could not own land. Women had difficulty moving into nontraditional fields, were promoted more slowly, and were more likely to be laid off. Societal discrimination was most apparent in rural areas. Women also faced discrimination in access to employment and to credit. The justice system – particularly customary law – often discriminated against women, limiting their political and economic rights and relegating them to second-class citizenship.

The Law of Succession, which governs inheritance rights, provides for equal consideration of male and female children but terminates the inheritance rights of widows if they remarry. Moreover, a widow cannot be the sole administrator of her husband's estate unless she has her children's consent. Even prominent and educated women sometimes suffered from property and inheritance discrimination. The law also allows the Ministry of Justice to exempt certain communities from the law in deference to tradition, which in some cases provides for equal distribution of a man's property only among his sons.

Children

Birth Registration: Citizenship is determined by the citizenship of the parents, and either parent may transmit citizenship. Births often were not registered in rural areas, where community elders rather than official entities were considered the legitimate authorities in family matters. Lack of official birth certificates resulted in discrimination in delivery of public services, such as education and health care.

Citizens are required to obtain identity cards when they turn 18 years of age. Identity cards are required to obtain public services and exercise voting rights. Since identity card applications require tracing lineage through male relatives, children born out of

wedlock – and children born of married mothers who retained their maiden names – had difficulty obtaining identity cards unless they could provide the identity documents of a male relative.

Education: Education was free and compulsory through age 13. Secondary enrollment was limited to students who obtained high scores on standardized primary exams. Rural families were more reluctant to invest in educating girls than boys, particularly at higher levels. Between the ages of 12 and 14, girls generally dropped out of school at a higher rate than boys due to the lack of sanitary facilities at schools and the general family preference to focus limited resources on the education of sons. In 2008 UNICEF reported that nine of 10 children from poor households failed to complete primary education. In 2008 the Ministry of Education estimated that 80,000 children dropped out of school annually due to forced marriages and child labor. The government ordered provincial administrators to arrest parents who did not send their children to school. However, this law was not enforced uniformly.

In 2008 the Center for the Study of Adolescence reported that between 10,000 and 13,000 girls dropped out of school annually due to pregnancy. While the law provides pregnant girls the right to continue their education until and after giving birth, NGOs reported that schools often did not respect this right and that schoolmasters sometimes expelled pregnant girls or transferred them to other schools.

Child Abuse: Violence against children, particularly in poor and rural communities, was a common occurrence, and child abuse, particularly sexual abuse, was a problem. Child rape and molestation continued to be serious problems. Police reported that 1,626 children were defiled (defined as a sexual act with a child involving penetration) in 2008. The law establishes a minimum sentence for defilement of life imprisonment if the child is less than 11 years old, 20 years in prison if the child is between ages 11 and 16, and 10 years if the child is between ages 16 and 18. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy. In 2006 the NGOs The CRADLE and Care Kenya reported an increase in child sexual abuse and a decrease in the age of the youngest victims. The most vulnerable victims were girls under age 18 and boys ages three to eight. Most child abusers were neighbors, fathers, and other relatives. Teachers were the most frequent perpetrators by profession, with pastors and police officers following closely.

The Teachers Service Commission reported that more than 160 cases of sexual misconduct were filed against teachers across the country for a reporting period ending in 2011; however, cases prosecuted were considered a fraction of actual abuses. A report released in 2009 by the Teachers Service Commission found that 12,660 female students were sexually abused by teachers from 2003 to 2007.

The government has banned corporal punishment in schools; however, there were reports that corporal punishment occurred throughout the year.

Child Marriage: Newspapers frequently highlighted the problem of child marriage, which was commonly practiced among some ethnic groups. According to UNICEF, 25 percent of young women were children when they married. The Marriage Act forbids marriage under the age of 16, but the Mohammedan Marriage and Divorce Act allows Muslim girls to marry at puberty. If a marriage is entered into under the provisions of the act, any court hearing matters related to the marriage applies the provisions of that act when deciding the case.

Harmful Traditional Practices: In September the government passed a law making it illegal to practice FGM, procure the services of someone who practices FGM, or send a person out of the country to undergo the procedure. The new law also makes it illegal to make derogatory remarks about a woman who has not undergone FGM. Although the new law was praised by NGOs and others opposed to FGM, FGM was practiced widely, particularly in rural areas. FGM usually was performed at an early age. According to UNICEF, one-third of women and girls between the ages of 15 and 49 had undergone FGM. Of the country's 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana, who together constituted approximately 25 percent of the population) did not traditionally practice FGM. In 2008 the Ministry of Gender and Children's Affairs reported that 90 percent of girls among Somali, Kisii, Kuria, and Maasai communities had

undergone the procedure. The rates among other communities were: Taita Taveta (62 percent); Kalenjin (48 percent); Embu (44 percent); Meru (42 percent); Kamba (37 percent); and Kikuyu (34 percent). Government officials often participated in public awareness programs to prevent the practice.

Some churches and NGOs provided shelter to girls who fled their homes to avoid FGM, but community elders frequently interfered with attempts to stop the practice. Various communities and NGOs instituted "no cut" initiation rites for girls as an alternative to FGM.

Media reports indicated that discrimination against uncircumcised boys continued.

Sexual Exploitation of Children: The penal code prohibits procurement of a girl under age 21 for unlawful sexual relations and criminalizes child commercial sexual exploitation, child labor, and the transport of children for sale. Nevertheless, children were subject to sexual exploitation and were victims of trafficking.

The Ministry of Gender, Children's Affairs, and Social Development and the NGO Eradicate Child Prostitution in Kenya estimated that 30,000 children were exploited in the sex industry every day. Prostitution sometimes was initiated by parents.

Child prostitution has increased in recent years due to poverty and the increase in the number of children orphaned by HIV/AIDS. Strong growth in the tourism industry also led to a large increase in foreign and domestic tourists seeking sex with underage girls and boys. Political leaders expressed concern that minors in drought-affected communities were leaving school and being lured to prostitution to address their basic needs. Child prostitution was prevalent in Nairobi, Kisumu, Eldoret, Nyeri, and the coastal areas. UNICEF estimated that between 10,000 and 15,000 girls were engaged in prostitution in the coastal areas alone. UNICEF, the Ministry of Tourism and Wildlife, the World Tourism Organization, and NGOs continued to work with the Kenya Association of Hotelkeepers and Caterers, a representative body of hotels and tour operators, to increase their awareness of child prostitution and sex tourism. The association encouraged all hospitality-sector businesses to adopt and implement the code of conduct developed by the NGO End Child Prostitution and Child Pornography and Trafficking of Children for Sexual Purposes. During the year the majority of hotels on the coast continued to uphold the NGOs code of conduct and continued to self-regulate through the Kenya Association of Hotelkeepers and Caterers. The Ministry of Tourism and Wildlife continued to register villas and cottages and impose the same requirements as on hotels. As part of a new tourism bill, the Tourism Regulatory Authority was established in September to oversee hotels, villas, and cottages, ensuring their adherence to the code of conduct.

Child Soldiers: Although there were no reports that the government recruited child soldiers, there were reports that children participated in ethnically based militia activity perpetrated by groups such as al-Shabaab. There also were reports that the Mungiki gang recruited young boys from schools.

Displaced Children: Poverty and the spread of HIV/AIDS continued to intensify the problem of child homelessness. Street children faced harassment and physical and sexual abuse from police and others, and within the juvenile justice system. The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to girls abused in, and street children exploited in, the commercial sex industry. During the year the government's cash transfer program for orphans and vulnerable children expanded to cover 47 districts and to reach an estimated 100,000 beneficiaries. Each beneficiary received 3,000 shillings (\$34) per month.

International Child Abductions: Kenya is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

The Jewish community was very small, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *2011 Trafficking in Persons Report*.

Persons with Disabilities

The law prohibits discrimination against persons with physical or mental disabilities in employment, education, access to health care, or the provision of other state services; however, the government did not effectively enforce these provisions. The law provides that persons with disabilities should have access to public buildings, and some buildings had wheelchair ramps and modified elevators and restrooms; however, the government did not enforce the law, and new construction often did not include accommodations for persons with disabilities.

There was limited societal awareness regarding persons with disabilities and significant stigma attached to disability. Learning and other disabilities not readily apparent were not widely recognized. NGOs reported that persons with disabilities had limited opportunity to obtain education and job training at all levels due to lack of accessibility to facilities and resistance on the part of school officials and parents to devoting resources to students with disabilities. The KNCHR reported that fewer than 10 percent of children with special needs were enrolled in school and that no curriculum existed for teaching children with learning disabilities.

The KNCHR charged that the Kenya National Examination Council failed to provide adequate testing facilities and resources for students with disabilities. The council claimed that it provided exams in Braille and in large print for visually impaired candidates and gave them extra time to complete exams. The government was developing disability-specific curricula, but the process was slow because the government failed to allocate sufficient resources and staff.

There were significant barriers to accessing health care by persons with disabilities. They had difficulty obtaining HIV testing and contraceptive services, due to the perception that they did not or should not engage in sexual activity.

According to testimony provided to the KNCHR in Embu town during the year, pregnant women with disabilities encountered harsh treatment in maternity wards. Nurses demanded to know how they became impregnated and questioned their right to bear children. Mute mothers claimed that hospital staffs ignored them during delivery. Other unconfirmed reports indicated that hospital staffs performed – or tried to perform – tubal ligations on mothers with disabilities without informing them. Other expectant mothers with disabilities were sent away from hospitals for not having pads, cotton wool, or the fee of 2,000 shillings (\$23) required for delivery.

Few facilities provided interpreters or other accommodations to the deaf or those with hearing disabilities. The government assigned each region a sign-language interpreter for court proceedings. Nevertheless, cases of persons who were deaf or had hearing disabilities were often delayed or forced to adjourn due to the lack of standby interpreters, according to an official with the Deaf Outreach Program.

During the year the Kenya Society for the Mentally Handicapped (KSMH) sued the government for improperly excluding persons with mental disabilities from the most recent budget allocations for persons with disabilities. In August a court temporarily halted the allocation of such funds as a consequence of the lawsuit, and the case continued at year's end.

Not all polling stations were equipped with accommodations for persons with disabilities. However, during the most recent by-elections KSMH and the Disabled Voters of Kenya Alliance worked closely with the IIEC to ensure that all persons were able to cast their votes.

The Ministry of Gender, Children, and Social Development is the lead ministry for implementation of the law to protect persons with disabilities. The parastatal National Council for Persons with Disabilities assisted the ministry. Neither entity received sufficient resources to effectively address issues related to persons with disabilities.

Societal discrimination continued against persons with albinism, many of whom left their home villages due to fear of persecution and moved to urban areas where they believed they were safer. According to the International Federation for the Red Cross and Red Crescent Societies, numerous persons with albinism abandoned their villages and went into hiding between 2007 and 2009. Persons with albinism were attacked for their body parts, which were thought by some to confer magical powers and which could be sold for significant sums. Since 2007 at least seven persons with albinism were killed, the most recent killing occurring in December 2010. In August 2010 a man was arrested for attempting to sell a person with albinism for \$250,000. In 2010 the minister of planning promised to carry out a census of persons with albinism and provide them with sunscreen. However, the government offered little health care or other support. Due to societal discrimination, employment opportunities for persons with albinism were limited.

National/Racial/Ethnic Minorities

The population is divided into approximately 42 ethnic groups, among which discrimination and occasional violence were frequent. The 2009 census released in August 2010 revealed that the major ethnic communities were: Kikuyu, 6.6 million; Luhya, 5.3 million; Kalenjin, 5 million; Luo, 4 million; Kamba, 3.9 million; Kenyan Somali, 2.3 million; Kisii, 2.2 million; and Mijikenda, 1.9 million. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups. The numerically small and shrinking South Asian community controlled a disproportionate share of commerce.

Many factors contributed to interethnic conflicts: long-standing grievances over land tenure policies and competition for scarce agricultural land, the proliferation of guns, the commercialization of traditional cattle rustling, the growth of a modern warrior/bandit culture (distinct from traditional culture), ineffective local political leadership, diminished economic prospects for groups affected by a severe regional drought, political rivalries, and the inability of security forces to adequately quell violence. Conflict between land owners and squatters was particularly severe in Rift Valley and Coast provinces, while competition for water and pasturage was especially serious in the northern districts of Rift Valley and Eastern provinces and in North Eastern Province.

In private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of other members of the same group. Some neighborhoods, particularly in slum areas of the capital, tended to be segregated ethnically, although interethnic marriage has become fairly common in urban areas.

There was frequent conflict, banditry, and cattle rustling among Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and Pokot ethnic groups in arid regions located in North Eastern, Eastern, and Rift Valley provinces, which at times resulted in death. For example, during the year cattle rustling was rampant, and several persons were killed in Isiolo and Turkana in connection with cattle raids and counterattacks.

Between October 13 and 18, at least 14 persons were killed as a result of interethnic fighting in Isiolo over pasture and water. On October 14, seven persons were shot and killed in Tractor village, Ngaremara Division, in Isiolo. According to local media reports, the dead included two 12-year-old children, who were dragged out of their huts and shot as their parents watched. Insecurity in the region resulted in the closure of at least six schools. Several teachers from the Borana, Somali, and Meru communities in Isiolo received death threats and were transferred. In response the government deployed hundreds of security officers to the area in pursuit of the attackers, but no arrests were made by year's end.

In response to armed incursions and kidnappings conducted from Somali territory, in October Kenyan military forces entered southern Somalia to conduct operations against al-Shabaab forces. In conjunction with these operations, the government launched internal security measures inside Kenya to counter suspected al-Shabaab militants and sympathizers. Kenyan citizens, including Muslims and those of Somali ethnic origin, were generally supportive of these efforts; however, abuses occurred. For example, HRW

reported that on November 11, after an attack by suspected al-Shabaab militants in Garissa, security forces picked up people who looked Somali, beat them, and forced them to sit in dirty water while interrogating them. After an improvised explosive device exploded in the same area on December 12, police and soldiers rounded up and beat Kenyans of Somali origin over the next three days, according to HRW. After grenade attacks occurred at a bus stop and bar in Nairobi in October, general public hostility against urban Somali refugees in Nairobi and Kenyans of Somali ethnic origin increased. The perception that Kenyan citizens of Somali origin were disproportionately successful in business contributed to public hostility.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

The penal code criminalizes "carnal knowledge against the order of nature," which is interpreted to prohibit consensual same-sex sexual activity and specifies a maximum penalty of 14 years' imprisonment. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years' imprisonment. Police detained persons under these laws, particularly suspected sex workers, but released them shortly afterward. There were no reported prosecutions of individuals for same-sex sexual activity during the year.

LGBT advocacy organizations, such as the Gay and Lesbian Coalition of Kenya (GALCK), were permitted to register and conduct activities. However, societal discrimination based on sexual orientation was widespread and resulted in loss of employment and educational opportunities. Violence against the LGBT community also occurred, particularly in rural areas and among refugees. NGO groups reported that police intervened to stop attacks but were not generally sympathetic to LGBT individuals or concerns.

During the year an LGBT group in Mombasa relocated its offices to a more secure location and advised its members to maintain a low profile when coming to the group's office to avoid attack.

According to the 2011 Annual Report of the Observatory, in February 2010 religious leaders in Mtwapa issued antigay statements and demanded the closure of the Kenya Medical Research Institute, which conducts research and provides treatment to persons with HIV/AIDS. Crowds subsequently attacked the center and beat one of its volunteers. Other volunteers were taken into police protective custody. All were released without charge, but none of the attackers was arrested.

On two occasions in 2010, Denis Karimi Nzioka, GALCK's public relations officer and a writer on LGBT issues, was forced to move from his home by neighbors who said they knew he was gay. Nzioka was also targeted by unknown persons on the streets who threatened him with violence or death.

Unlike in previous years, no anti-LGBT publicity campaigns were conducted; however, sensational reporting often inflamed societal prejudices.

Other Societal Violence or Discrimination

Societal discrimination against persons with HIV/AIDS was a problem. Stigmatization of HIV/AIDS made it difficult for many families to acknowledge that a member was HIV-positive, and no socially or politically prominent individual admitted being HIV-positive. Violence against persons with HIV/AIDS occurred.

The government worked in cooperation with international donors on programs for HIV/AIDS prevention and treatment. This cooperation enabled a continued expansion of counseling and testing as well as care and treatment. These developments were seen as key to reducing stigma and discrimination.

Mob violence and vigilante action were common and resulted in numerous deaths. Most victims were persons suspected of criminal activities, including theft, robbery, killings, cattle rustling, and membership in criminal or terrorist gangs. Human rights observers attributed vigilante violence to a lack of public confidence in police and the criminal

justice system, in which assailants evaded arrest or bribed their way out of jail. The social acceptability of mob violence also provided cover for acts of personal vengeance, including settling land disputes.

On September 27, a mob killed three men who had failed in a robbery attempt.

Mobs also attacked persons suspected of witchcraft or participation in ritual killings, particularly in Kisii district and Nyanza and Western provinces. Although local officials spoke out against witch burning and increased police patrols to discourage the practice, human rights NGOs noted public reluctance to report such cases due to fear of retribution.

In May a mob killed a man and his wife and burned their home in Nyahera Village after the mutilated body of a boy was found, and the mob attributed the death to the couple's suspected involvement in witchcraft. Police at the scene did not intervene to prevent the attack. No action was taken by year's end.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides that all workers, including those in the export processing zones (EPZs), are free to form and join unions of their choice. Any seven or more workers in an enterprise have the right to form a union by registering with the trade union registrar. If the registrar denies registration, a union may appeal to the courts. The new constitution no longer explicitly prohibits members of the armed forces, police, prisons service, and the administration police from forming or joining unions. However, it permits legislation that does so, a reference to the 2007 Labor Relations Act which continued in effect.

The law permits workers in collective bargaining disputes to strike but requires the exhaustion of formal conciliation procedures and seven days' notice to both the government and the employer. The law permits the government to deny workers the right to strike under certain conditions. For example, members of the military, police, prison guards, and the National Youth Service are prohibited from striking. Other civil servants are allowed to strike following the seven-day notice period. The Ministry of Labor typically referred disputes to mediation, fact-finding, or binding arbitration at the Industrial Court, a body of up to five judges appointed by the president. During mediation any strike is illegal, thus removing legal prohibitions on employer retaliation against strikers. In addition a Ministry of Labor referral of a dispute to the conciliation process nullifies the right to strike.

The law provides the right of collective bargaining to every trade union, employer's organization, and employer. Workers in the military, prisons, and the National Youth Service, however, do not have this right. The law also provides that collective labor disputes must first undergo conciliation, although conciliation is not compulsory in individual employment matters. Security forces cannot bargain collectively but have an internal board that reviews salaries. Other groups that cannot bargain collectively, such as health sector workers, have associations, rather than unions, which negotiate wages and conditions that match the government's minimum wage guidelines.

The law allows employers in some industries to dismiss workers regardless of the provisions of their collective bargaining agreements. The new constitution's bill of rights allows trade unions to undertake their activities without government interference.

Except for the Factories Act, all labor laws apply in the EPZs; however, the EPZ Authority and the government granted many exemptions to applicable laws. For example, the government waived a provision of the law that prevents women from working in industrial activities at night. The Tailors and Textiles Workers Union claimed that a number of garment producers in the EPZs refused to recognize the union and resisted its efforts to organize their workers.

The law prohibits antiunion discrimination and provides for reinstatement for workers dismissed for union activity. The Industrial Court can order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities. All labor

laws are supposed to apply to all groups of workers. In practice, however, migrant workers often lacked formal organization and consequently missed the benefits of collective bargaining. Similarly, domestic workers, commercial sex workers, and others who operated in private spaces were vulnerable to exclusion from legal protections.

The government voiced its support for union rights as mandated in the constitution. However, because of human and material resource constraints, it did not effectively protect these rights. Freedom of association and the right to collective bargaining were generally respected in practice. Worker organizations were independent of both the government and political parties. Civil servants were active members of worker organizations. During the year police arrested union leaders and threatened them for defending the rights of workers on tea plantations. At year's end none of the country's security forces had joined unions, although the Central Organization of Trade Unions (COTU) continued to advocate on their behalf for this right. Some unions complained that employers resisted efforts to establish unions in their factories, even where most workers indicated a desire for union membership, and that the Industrial Court and Ministry of Labor were ineffective in compelling employers to comply with the law. The government continued to encourage a strengthened labor dispute system, but the decisions of the Industrial Court were not consistently enforced. The Industrial Court moved very slowly and the number of cases filed increased, as a result of the new labor laws. The result was a significant backlog that prevented timely decisions in the majority of cases. This resulted in fewer cases being referred to the Ministry of Labor. In any event, union leaders reported that employers did not comply with the court's reinstatement orders, and workers accepted a payment in lieu of reinstatement. In several cases employers successfully appealed the industrial court's decisions to the High Court. The enforcement mechanisms of the Industrial Court remained weak. The majority of cases were filed directly by the parties without referring them to the Ministry of Labor for conciliation.

Some antiunion discrimination occurred, including in garment plants in the EPZs. Employers fired workers for participating in trade union activities, especially in EPZs. The COTU reported more than 1,000 cases across various sectors in which employers fired workers for participating in union activities. Discrimination also occurred outside EPZs, especially in urban areas, although there were also reports that managers on flower farms fired workers and insisted that they not join unions. There were also many reports that workers in Nairobi's industrial zone were arbitrarily dismissed.

During the year NGOs and trade unionists reported a growing trend toward the elimination of permanent positions in favor of casual or contract labor, especially in the EPZ, agricultural, and manufacturing sectors. In many cases the job was permanent, but an employer staffed it with rotating contract workers. This practice occurred at the management level as well, where employers hired individuals as management trainees and kept them in this position for the maximum permitted period of three years. Then, instead of converting the worker to permanent staff, the person was then replaced by another trainee. In the banking sector and other commercial industries, there were reports that casual workers were replaced when they expressed interest in joining a union. Casual employment continued to grow, accounting for 32 percent of total wage employment for the most recent period for which figures were available. This trend continued to increase across sectors.

The majority of strikes were in the plantation and agricultural sectors, due to issues related to delay in collective bargaining agreements, deduction of bonuses, salary increments, and other grievances. The other sectors affected were engineering, food manufacturing, shipping, and warehousing.

On February 28, police used tear gas to disperse hundreds of protesting dock workers who threatened to disrupt a workshop on the privatization of the Kenya Ports Authority. The Dockworker's Union was demanding the preservation of key jobs for its members and the surrounding coastal communities. The union was also demanding the firing of the minister of transportation and adequate consultation among all stakeholders to inform the privatization process. Grievances included employers' failure to apply a mandated wage increase, a lack of employer-provided protective gear, denial of maternity leave, poor working conditions, and long working hours without transportation to residential areas.

b. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit forced labor, bonded labor, slavery, and indentured servitude, including by children. However, such forced labor practices occurred. During the year there were reports of forced labor and forced child labor in domestic service, street vending, child prostitution, subsistence and commercial agriculture, and mining. Forced child labor primarily occurred in the informal sector. Some children were subjected to debt bondage or prostitution and were trafficked for commercial sexual exploitation and labor. Women and men also were trafficked for commercial sexual exploitation and labor. Commercial sexual exploitation was widespread, particularly in the coastal areas.

Also see the Department of State's *2011 Trafficking in Persons Report*.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the employment of a child (defined as a person under age 18) in any activity that constitutes a worst form of child labor or that would prevent children under age 16 from attending school. Children under age 13 are prohibited from working, and the government's policy of free and compulsory education through age 13 continued to be one of the most successful means to combat child labor. Children between ages 13 and 16 may perform only "light work" that is not harmful to their health or development and does not interfere with their schooling. However, the law does not apply minimum age restrictions to children serving as apprentices under the terms of the Industrial Training Act. Persons under age 18 may not be employed in any industrial undertaking at night, employment should not cause children to reside away from home without parental approval, and permission to work in a bar, hotel, or restaurant requires renewed consent annually from the labor commissioner. The law provides fines of up to 200,000 shillings (\$2,350) and/or imprisonment for up to 12 months for employing children in such activities.

Despite legal restrictions, child labor was widespread, particularly in the informal sector, where children often worked in hazardous conditions, including in subsistence agriculture, fishing, and on small-holder and family farms. Child labor was no longer widespread on commercial farms. Children also worked as domestic servants. An estimated one million children between five and 17 years of age – most between ages 13 and 17 – worked.

The 2005 Kenya Integrated Household Budget survey indicated that 951,273 children under age 18 were employed: 79.9 percent worked in agriculture (coffee, tea, rice, sisal, sugar, tobacco, and miraa – a stimulant plant) and 11.6 percent worked in domestic services. While there were no recent official statistics, the Ministry of Gender, Children, and Social Development and NGOs focused on child labor problems. There was increased attention to this problem after the number of children engaged in child labor rose sharply to an estimated 2 million children. Anecdotal evidence suggested that with the difficult economic times, child labor increased in 2011. The increase was attributed to increasing economic hardship, with families relying more on children to earn wages to support the household. During the year drought, inflation, and other economic conditions continued to drive children into the labor market. The employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Children worked primarily in the informal sector, which was difficult to monitor and control.

Many children worked on family plots or in family units on tea, coffee, sugar, sisal, tobacco, and rice plantations. Children also were used in the production of flowers and miraa. Children also worked in mining, including abandoned gold mines and small quarries, breaking rocks and sifting through tailings. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestics. Parents sometimes initiated forced or compulsory labor by children, such as agricultural labor, prostitution, and domestic servitude. During the year there were reports that children participated in ethnic-based militia activity (see section 6).

The Ministry of Labor nominally enforced the minimum age statute. The ministry remained committed to enforcing the statute, but implementation remained problematic due to resource constraints.

The government worked closely with the COTU and the International Labor Organization to eliminate child labor. The government continued to use its practical guide to labor inspection and trained labor inspectors and occupational health and safety officers to report on child labor. The National Steering Committee on the Elimination of Child Labor, which includes the attorney general, eight ministries, representatives of child welfare organizations, other NGOs, unions, and employers continued to operate and met quarterly. The Interministerial Coordination Committee on Child Labor, chaired by the minister for gender, children, and social development, was responsible for setting general policy.

Many NGOs were active on child labor issues and assisted in the return to school of child laborers. During the year the government continued to implement a multitude of programs for the elimination of child labor with dozens of partner agencies. The partners placed the children in schools, vocational training institutions, and apprenticeships, and supported income-generating activities for thousands of parents. Partners also provided support to schools for income-generating activities to help keep children from poor families in school.

In 2010 the Child Protection Department employed a total of 500 children's officers, including 50 new officers. During the year the government continued to increase the number of such officers, yet its protection capacity remained limited. Fifty new officers were hired during the 2010-11 fiscal year. The government's cash transfer program for orphans and vulnerable children covered 47 districts and reached an estimated 100,000 beneficiaries. It was cofunded by the government and development partners. The beneficiaries each received 3,000 shillings (\$34) per month. There were an average of three orphans and vulnerable children in each beneficiary household who directly benefitted from the program.

Also see the Department of Labor's *2010 Findings on the Worst Forms of Child Labor*.

d. Acceptable Conditions of Work

Regulation of wages is part of the Labor Institutions Act, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category.

During the year the Productivity Center of Kenya, a tripartite institution including the Ministry of Labor, the Federation of Kenyan Employers, and the COTU, continued to set wage guidelines for various sectors based on productivity, inflation, and cost of living indices. While the center continued to set guidelines, it did not have personnel with sufficient expertise to gain the respect of industry. On May 1, the government raised the minimum wage by 12.5 percent. In many industries workers were paid the legal minimum wage; however, in most cases these wages were far outpaced by the cost of living. The lowest legal urban minimum wage was increased to 7,586 shillings (\$85) per month, and the lowest agricultural minimum wage for unskilled employees was increased to 3,765 shillings (\$44) per month, excluding housing allowances. Many employers did not follow the authority's recommendations. Most workers relied on second jobs, subsistence farming, other informal work, or the extended family for additional support. A large percentage of the labor force worked in the informal sector and was not covered by these provisions.

The law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. The law specifically excludes agricultural workers from such limitations. An employee in the nonagricultural sector is entitled to one rest day per week and 21 days of combined annual and sick leave. The law also requires that total hours worked (regular time plus overtime) in any two-week period not exceed 120 hours (144 hours for night workers). Labor laws require two weeks' paternity leave, three months' maternity leave with full pay, and compensation for both public and private employees for work-related injuries and diseases.

While employees in the public sector enjoyed the benefits of paternity/maternity leave and workplace compensation, those in the private sector did not fully enjoy such benefits. Many employers did not allow paternity leave, but most respected the maternity leave provisions of the law. However, in 2008 private employers challenged the workers' compensation provisions in court. At year's end the case continued.

Workweek and overtime violations also were reported during the year. Workers in some enterprises, particularly in the EPZs and road construction, claimed that employers forced them to work extra hours without overtime pay to meet production targets. In addition employers often did not provide nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment. During the year trade unionists complained that employers bribed some government labor inspectors to avoid penalties for labor violations. The extremely low salaries and the lack of vehicles, fuel, and other resources made it very difficult for labor inspectors to do their work and left them vulnerable to bribes and other forms of corruption. Employers in all sectors routinely bribed labor inspectors to prevent them from reporting infractions, especially in the area of child labor.

The law details environmental, health, and safety standards. Fines generally were too low to deter unsafe practices. EPZs are excluded from the Factory Act's provisions. The Ministry of Labor's Directorate of Occupational Health and Safety Services (DOHSS) has the authority to inspect factories and work sites, except in the EPZs. DOHSS health and safety inspectors can issue notices against employers for practices or activities that involve a risk of serious personal injury. Such notices can be appealed to the Factories Appeals Court, a body of four members, one of whom must be a high court judge. The law stipulates that factories employing 20 or more persons have an internal health and safety committee with representation from workers. Workers, including foreigners and immigrants, theoretically have the right to remove themselves from situations that endanger health or safety without jeopardy to their employment. The Ministry of Labor did not effectively enforce these regulations, and despite the law, workers were reluctant to remove themselves from working conditions that endangered their health or safety due to risk of losing their jobs.

The DOHSS employed 79 inspectors, far short of the 168 reportedly needed to inspect factories adequately and enforce its safety and health orders. No new inspectors reportedly have been hired since 2007. There continued to be widespread hazards, such as lack of basic safety equipment and emergency escape routes in many companies. During the year violations of health and safety conditions were found routinely in the EPZs and other sectors, such as small horticultural producers.

According to the government, many of the largest factories had instituted health and safety committees by year's end.
