Home Office
UK Border Agency

KENYA

COUNTRY OF ORIGIN INFORMATION (COI) REPORT

COI Service

22 May 2013

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Preface

i This Country of Origin Information (COI) report has been produced by the COI Service, Home Office, for use by officials involved in the asylum/human rights determination process. The report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom. The main body of the report includes information available up to 22 April 2013, while the annexes contain information up to 15 May 2013. The report was issued on 22 May 2013.

ii The report is compiled wholly from material produced by a wide range of external information sources and does not contain any Home Office opinion or policy. All information in the report is attributed, throughout the text, to the original source material, which is made available to those working in the asylum/human rights determination process.

iii The report aims to provide a compilation of extracts from the source material identified, focusing on the main issues raised in asylum and human rights applications. In some sections where the topics covered arise infrequently in asylum/human rights claims only web links may be provided. It is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.

iv The structure and format of the report reflects the way it is used by Home Office decision makers and appeals presenting officers, who require quick electronic access to information on specific issues and use the contents page to go directly to the subject required. Key issues are usually covered in some depth within a dedicated section, but may also be referred to briefly in several other sections. Some repetition is therefore inherent in the structure of the report.

v The information included in this report is limited to that which can be identified from source documents. While every effort is made to cover all relevant aspects of a particular topic it is not always possible to obtain the information concerned. For this reason, it is important to note that information included in the report should not be taken to imply anything beyond what is actually stated. For example, if it is stated that a particular law has been passed, this should not be taken to imply that it has been effectively implemented unless stated. Similarly, the absence of information does not necessarily mean that, for example, a particular event or action did not occur.

vi As noted above, the report is a compilation of extracts produced by a number of information sources. In compiling the report no attempt has been made to resolve discrepancies between information provided in different source documents though COI Service will bring the discrepancies together and aim to provide a range of sources, where available, to ensure that a balanced picture is presented. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties, etc. Reports do not aim to bring consistency of spelling but to reflect faithfully the spellings used in the original source documents. Similarly, figures given in different source documents sometimes vary and these are simply quoted as per the original text. The term ‘sic’ has been used in this document only to denote incorrect spellings or typographical errors in quoted text; its use is not intended to imply any comment on the content of the material.

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vii The report is based substantially upon source documents issued during the previous two years. However, some older source documents may have been included because they contain relevant information not available in more recent documents. All sources contain information considered relevant at the time this report was issued.

viii This report and the accompanying source material are public documents. All reports are published on the Home Office website and the great majority of the source material for the report is readily available in the public domain. Where the source documents identified are available in electronic form, the relevant weblink has been included, together with the date that the link was accessed. Copies of less accessible source documents, such as those provided by government offices or subscription services, are available from COI Service upon request.

ix Reports are published regularly on the top 20 asylum intake countries. Reports on countries outside the top 20 countries may also be produced if there is a particular operational need. Home Office officials also have access to an information request service for specific enquiries.

x In producing this report, COI Service has sought to provide an accurate, up to date, balanced and impartial compilation of extracts of the available source material. Any comments regarding this report or suggestions for additional source material are very welcome and should be submitted to COI Service as below.

Country of Origin Information Service
Lunar House
40 Wellesley Road
Croydon, CR9 2BY
United Kingdom
Email: cois@homeoffice.gsi.gov.uk
Website: http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

INDEPENDENT ADVISORY GROUP ON COUNTRY INFORMATION

xi The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback the Home Office's COI Reports and other COI material. Information about the IAGCI's work can be found on the Independent Chief Inspector's website at http://icinspector.independent.gov.uk/country-information-reviews/

xii In the course of its work the IAGCI reviews the content of selected Home Office COI documents and makes recommendations specific to those documents and of a more general nature. A list of the reports and other documents which have been reviewed by the IAGCI or the Advisory Panel on Country Information (the independent organisation which monitored the Home Office's COI material from September 2003 to October 2008) is available at http://icinspector.independent.gov.uk/country-information-reviews/

xiii Please note: it is not the function of the IAGCI to endorse any Home Office material or procedures. Some of the material examined by the Group relates to countries designated or proposed for designation to the Non-Suspensive Appeals (NSA) list. In such cases, the Group's work should not be taken to imply any endorsement of the

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decision or proposal to designate a particular country for NSA, nor of the NSA process itself. The IAGCI can be contacted at:

Independent Advisory Group on Country Information
Independent Chief Inspector of Borders and Immigration
5th Floor, Globe House
89 Eccleston Square
London, SW1V 1PN
Email: chiefinspectorukba@icinspector.gsi.gov.uk
Website: http://icinspector.independent.gov.uk/country-information-reviews/

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Useful news sources for further information

A list of news sources with weblinks is provided below, which may be useful if additional up to date information is required to supplement that provided in this report. The full list of sources used in this report can be found in Annex E – References to source material.

AllAfrica http://allafrica.com/kenya/
AlertNet (Thomson Reuters) http://www.alertnet.org/thenews/newsdesk/index.htm?news=all
British Broadcasting Corporation (BBC) http://news.bbc.co.uk
Cable News Network (CNN) http://edition.cnn.com/WORLD/?fbid=i0gUtrVnUAy
Daily Nation http://www.nation.co.ke/-/1148/1148/-/xvvu7uz/-/index.html
Integrated Regional Information Networks (IRIN) http://www.irinnews.org/
UNHCR RefWorld http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain
Ecoi.net www.ecoi.net

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Background Information

1. GEOGRAPHY

1.01 The total area of Kenya is 580,367 sq km, with 569,140 sq km as land and 11,227 sq km as water. (Central Intelligence Agency (CIA), World Factbook, Kenya, updated 18 March 2013). **[3a]**. The results of the 2009 census recorded the population of Kenya to be 38,610,097 (Kenya National Bureau of Statistics 2009 Population and Housing Census Results, 31 August 2010 - (2009 census)). **[7b]**. However, the Daily Nation reported on 28 September 2010 that the census results were cancelled in northern Kenya in the districts of Mandera Central, Mandera East, Mandera West, Lagdera and Wajir East, Turkana Central, Turkana South and Turkana North because actual figures were almost a million higher than projections (2.3 million against expected number of 1.4 million). **[16h]**. The CIA World Factbook, Kenya, updated 18 March 2013, recorded the population of Kenya to be 44,037,656 (July 2013 est.). **[3a]**

1.02 The results of the 2009 census gave the following population numbers by province:

Province	Population	Households
Nairobi	3,138,369	985,016
Central	4,383,743	1,224,742
Coast	3,325,307	731,199
Eastern	5,668,123	1,284,838
North Eastern	2,310,757	312,661
Nyanza	5,442,711	1,188,287
Rift Valley	10,006,805	2,137,136
Western	4,334,282	904,075

(Kenya National Bureau of Statistics 2009 Population and House Results, 31 August 2009) **[7b]**

1.03 The City Population website, dated 25 September 2010, listed the capitals of the provinces (cited first) as: Central – Nyeri; Coast – Mombasa; Eastern – Embu; Nairobi – Nairobi; North Eastern – Garissa; Nyanza – Kisumu; Rift Valley – Nakuru; Western – Kakamega. **[58a]**. The 2009 census gave the population of Mombasa district as 523,183 and Nakuru as 473,288 **[7b]**.

1.04 The CIA World Factbook, updated 18 March 2013, listed the following ethnic groups: Kikuyu (22% of population), Luhya (14%), Luo (13%), Kalenjin (12%), Kamba (11%), Kisii (6%), Meru (6%), other African (15%), non-African (Asian, European, and Arab) (1%). **[3a]**. However, the 2009 census provided different numbers, which were: Kikuyu 17.2%, Luhya 13.8%, Luo 10.5%, Kalenjin 12.9%, Kamba 10.1%, Kisii 5.7% and Meru

4.3%. **[7b]**. The CIA World Factbook stated that the official languages are English and Kiswahili. **[3a]**

For further detail on Ethnic Groups see the section of the same name.

1.05 The CIA World Factbook gave the following breakdown of religious beliefs in Kenya: 'Protestant 45%, Roman Catholic 33%, Muslim 10%, indigenous beliefs 10%, other 2%'. **[3a]**

For further demographic data on Kenya, please see the Kenya National Bureau of Statistics Demographic and Health Survey 2008-09.

1.06 The public holidays in Kenya for 2013 are: 1 January (New Year's Day); 29 March – 1 April (Easter); 1 May (Labour Day); 1 June (Madaraka Day); 8 August (Id al Fitr, end of Ramadan); 10 October (Moi Day); 20 October (Kenyatta Day); 12 December (Independence Day); 25 December (Christmas); 26 December (Boxing Day) (WordTravels, undated, accessed on 17 January 2013). **[59a] (Kenya Public Holidays)**

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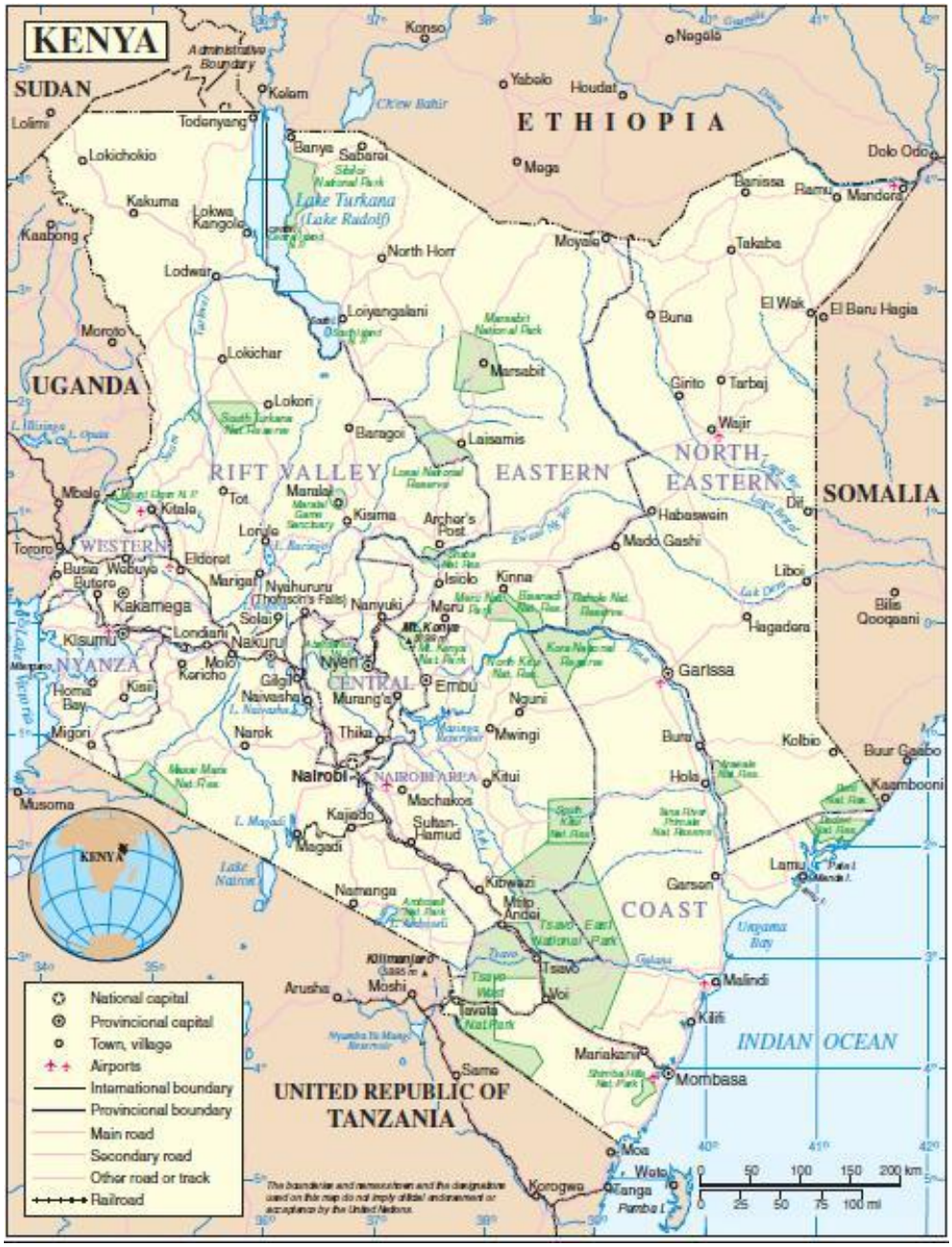
MAP

1.07 Map of Kenya, from the United Nations Cartographic Section. **[56a]**



For further maps, see also the Perry-Castañeda Library and ReliefWeb.

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2. ECONOMY

2.01 The Central Intelligence Agency (CIA) World Factbook, Kenya, updated 18 March 2013, stated that: 'Although the regional hub for trade and finance in East Africa, Kenya has been hampered by corruption and by reliance upon several primary goods whose prices

have remained low. Low infrastructure investment threatens Kenya's long-term position as the largest East African economy.' **[3a]**

2.02 According to the www.xe.com website, accessed on 12 April 2013, the currency is the Kenyan Shilling (KSh). As of 12 April 2013, the exchange rate was KSh 128.6 per pound sterling; KSh 83.7 per US dollar, and KSh 109.5 per Euro. **[60a]**

2.03 A Business Daily report, 'New Income Bands Spark Wage Rate War', dated 4 March 2010, stated that: 'At least 72 per cent of Kenyans belong to the bottom band of the income bracket…[earning] from Sh10,000 per month to Sh23,671 per month [around £80 to £190 as of January 2011]'. The report further stated that: '… all Kenyans earning between Sh23,672 and Sh119,999 [around £190 to £954] belong to the middle income band and account for 24 per cent of the population while the top earners take home more than Sh120,000 [around £954]'. **[20b]**. The CIA World Factbook, updated 18 March 2013, gave a 2011 estimate of unemployment in Kenya as 14 per cent. **[3a]**

2.04 The 'Kenya Overview - Economy' section of the World Bank website, updated May 2013, stated that:

'Kenya entered 2013 from an improving economic position with low inflation and stable interest rates. By end-February, inflation was down to 4.5%, from a high of 18% in early 2012, and the shilling remained stable (at Sh85=US$1) against major trading currencies. This enabled the Central Bank to lower interest rates to 9.5%, compared to a peak of 20% in mid-2012. Peaceful national elections in March 2013 and a smooth transition of power renewed business confidence, strengthening prospects for the economy to achieve a growth rate of five percent in 2013, compared to 4.3% in 2012.

'But Kenya is still underperforming its peers and the economy remains out of balance with sharp differences in sectoral performance, says the latest World Bank economic analysis. Macroeconomic management, the financial sector and the Information and Communications Technology (ICT) sectors remain very strong, but the port of Mombasa and agriculture are weak, says the Bank analysis in February 2013, which builds on the key findings of the Bank's December 2012 Kenya Economic Update. The economy remains vulnerable to external shocks, as the current account deficit is above 10% of gross domestic product (GDP), despite global fuel prices moderating in recent months. Service exports have increased but goods exports remain weak. Short-term capital inflows have helped stabilize the exchange rate, but heightened vulnerability to external shocks. Moreover, the real exchange rate is 34% stronger than a decade ago, constraining economic competitiveness.

'Growth in 2013 will mainly be driven by recovery in agriculture and more stable energy supplies due to good rains, compensating a slowdown in tourism. Energizing Kenya's export engine will be key to creating jobs for the 800,000 Kenyans who enter the labor force every year. Bank analysis shows that Kenya is undergoing a long-term shift out of family farming, with less than half of working Kenyans being engaged on family farms today compared to two-thirds two decades ago. With the formal sector creating only 50,000 jobs, most jobs will need to be generated by the informal sector. Stronger job growth, the Bank says, will result only if Kenya improves infrastructure and business climate environment for export industries and boosts household productivity by accepting informal businesses as legitimate parts of the economy.' **[54]**

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2.05 A xinhuanet.com report, 'Kenya economy to perform better in 2013', dated 13 February 2013, stated that:

'Kenya's economy will perform better in 2013 compared to growth in 2012 because of the continuing drop in interest rates, an economic analyst from global investment bank Renaissance Capital Yvonne Mhango has said.

'"We expect stronger economic growth of 4.3 percent in 2013, up from 4 percent in 2012, with lower interest rates likely to spur a recovery in credit growth that will support a pick-up in economic activity, particularly in the financial intermediation, wholesale and retail trade, transport and communication, real estate and construction sectors," said Mhango in the bank's most recent update received on Tuesday.

'According to the Renaissance Capital's monitoring of local economy, credit growth began to respond to falling interest rates in late 2012 when it bottomed in October at 8.5 percent and picked up thereafter.

'"On the demand side, we expect household consumption to strengthen and demand for consumer durables to increase. Lower interest rates are also positive for fixed investment; however, its recovery may be tempered by the dampening effect of elections," she said.

'Renaissance Capital said the risks to growth outlook are the elections and poor rainfall. Growth may also surprise on the upside if the elections go smoothly and private investment picks up significantly thereafter.

'"While we expect an increase in inflation in 2013, partially due to a pick-up in food prices, we expect this to be moderate. We think further monetary policy easing will help strengthen credit growth, and by implication economic growth, but will be negative for the shilling," said Mhango.

'"We believe the upside risks to our inflation outlook include a poor long rains season of March-May; high global food prices; a rush of election-related spending in the first half of 2013, particularly if there is a second round held; and a sharp increase in the oil price," she added.' **[46]**

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3. HISTORY (1963 TO 2011)

This section provides a brief history of events since independence from the United Kingdom from 1963 to 2011, with the focus on recent events. For more details, see the BBC Kenya Profile - Timeline, updated on 31 March 2013. **[10c]**. Also see Annex A: chronology of major events.

POST-INDEPENDENCE AND THE ONE-PARTY STATE

3.01 The Kenya section of Europa World Plus, undated, accessed on 11 April 2013, stated that:

'Formerly a British colony (inland) and protectorate (along the coast), Kenya became independent, within the Commonwealth, on 12 December 1963, and a republic exactly one year later. Jomo Kenyatta, a Kikuyu, and leader of the Kenya African National Union (KANU), was appointed Prime Minister in June 1963 and became the country's first President in December 1964. (He was subsequently re-elected to the presidency, unopposed, in 1969 and 1974.)

'Kenyatta died in August 1978; the Vice-President, Daniel arap Moi, was proclaimed President in October, and was the sole candidate at a presidential election held (concurrently with a KANU-only general election) in November 1979. In June 1982 the National Assembly officially declared Kenya a one-party state. Moi was returned unopposed in presidential elections in 1983 and 1988.

'By the early 1990s pressure for political reform had grown and in November 1991 several members of the Forum for the Restoration of Democracy (FORD), an outlawed political movement, were arrested prior to a planned pro-democracy rally in Nairobi, which was suppressed by the security forces. The Kenyan authorities were condemned internationally and bilateral and multilateral creditors suspended aid to Kenya indefinitely, pending the acceleration of both economic and political reforms.' **[12]**

MULTI-PARTY POLITICAL SYSTEM

3.02 The Kenya section of Europa World Plus, undated, accessed on 11 April 2013, stated that:

'In December [1991] a special conference of KANU delegates acceded to the demands for reform, resolving to introduce a multi-party political system. The National Assembly subsequently endorsed appropriate amendments to the Constitution. Former Vice-President Mwai Kibaki resigned as Minister of Health later in the month, in protest against alleged electoral malpractice by KANU, and founded the Democratic Party (DP)…In March the Government banned all political rallies, and restrictions were placed on the activities of the press. Following a two-day general strike in April, organized by FORD, the Government ended the ban on political rallies. In August FORD split into two opposing factions, which were registered in October as separate political parties, FORD -Asili and FORD-Kenya, respectively led by Kenneth Matiba and Oginga Odinga.

'At multi-party presidential and legislative elections held in December 1992 Moi was elected for a fourth term of office as President, winning 36.3% of the votes cast, ahead of Matiba (26.0%), Kibaki (19.5%) and Odinga (17.5%). Of the 188 elective seats in the National Assembly, KANU won 100 (including 16 uncontested); FORD—Asili and FORD—Kenya secured 31 seats each, and the DP took 23. Votes were cast predominantly in accordance with ethnic affiliations, with the two largest tribes, the Kikuyu and Luo, overwhelmingly rejecting KANU...During the mid-1990s Kenya's human rights record came under intense domestic and international scrutiny. In April 1995 the country's Roman Catholic bishops accused the Government of eroding judicial independence and of condoning police brutality and endemic corruption…Divisions within opposition parties continued to undermine efforts to present a cohesive challenge to Moi and KANU prior to the 1997 elections. A renewed attempt to establish a coalition of opposition organizations, initiated in November 1995, was short-lived. Meanwhile, following an unsuccessful attempt to assume the leadership of FORD—Kenya, Raila Odinga (the son of Oginga Odinga, who died in January 1994, and a prominent opposition activist) left that party and subsequently became leader of the National

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Development Party (NDP). In October 1997 Matiba's faction of FORD—Asili registered as an independent party, the Forum for the Restoration of Democracy for the People (FORD—People). During the mid-1990s several opposition deputies, disaffected by these internal rivalries, defected to KANU. Within KANU itself divisions also began to emerge, not least because the Constitution permitted Moi to stand for only one further term as President.

'In August 1997 the IMF suspended assistance to Kenya, pending the implementation of decisive action to eliminate official corruption and to improve the system of revenue collection; the Government consequently announced the inauguration of an anti-corruption body. In the following month the National Assembly approved legislation that amended the Constitution with the stated aim of ensuring free and fair democratic elections. All political parties were granted equal access to the media, and detention without trial was prohibited. In addition, the new legislation enabled the opposition to participate in selecting the 12 nominated members of the National Assembly and 10 of the 12 members of the supervisory Electoral Commission.

'The presidential and legislative elections, which took place concurrently on 29 December 1997, were undermined by allegations of widespread fraud, as well as by logistical difficulties. Moi was re-elected President, winning 40.6% of the valid votes cast, while Kibaki came second, with 31.5% of the votes. KANU secured 107 of the 210 elected seats in the enlarged National Assembly, and the remainder were divided between nine opposition parties, with the DP taking 39 seats, the NDP 21, FORD—Kenya 17 and the Social Democratic Party 15. Moi was inaugurated for a fifth (and final) term as President in January 1998. Shortly afterwards Moi appointed a new Cabinet. …In January 2001 Odinga, on behalf of the Luo-dominated NDP, signed a memorandum of understanding with KANU, which allowed Moi to appoint ministers from the NDP. In June Moi reorganized the Cabinet and appointed Odinga as Minister of Energy, thereby creating the first coalition Government in Kenya's history. Moi reshuffled the Cabinet again in November, introducing younger KANU ministers in an apparent attempt to provide suitable candidates for his succession; most notably Uhuru Kenyatta (son of the late President Jomo Kenyatta) was appointed as Minister for Local Government.

'The NDP was dissolved and absorbed into KANU in mid-March 2002, despite opposition from elements within both parties; Moi was elected as party Chairman, while Odinga became Secretary-General. In July some 12 opposition parties, including the DP, FORD—Kenya and the National Party of Kenya, formed an electoral alliance, the National Alliance Party of Kenya (NAK).' **[12]**

3.03 The same source further stated:

'In August 2002 Moi publicly announced that he favoured Uhuru Kenyatta as KANU's presidential candidate. However, several senior KANU members, including the Vice-President, Prof. George Saitoti, and Odinga, subsequently announced their intention to seek the party's presidential nomination and formed the Rainbow Alliance (RA) to campaign within KANU for a democratic vote to select its candidate. Moi responded by dismissing Saitoti. In mid-October, in protest against Moi's attempts to impose his preferred successor, members of the RA resigned from their posts in the Government and from KANU, together with some 30 KANU deputies. The RA subsequently boycotted the KANU conference, at which Kenyatta's presidential candidacy was

endorsed. Later in October the RA established a new party, the Liberal Democratic Party (LDP), and joined with the NAK to form the National Rainbow Coalition (NARC), with Kibaki as its presidential candidate.

'At the presidential and legislative elections, held concurrently on 27 December 2002, the opposition secured an emphatic victory, with Kibaki winning 62.3% of the votes cast in the presidential election, and the NARC securing 125 of the 210 elected seats in the National Assembly, while Kenyatta received 31.2% of the votes cast for the presidency, and KANU won 64 seats in the legislature. The NARC was allocated a further seven appointed seats, increasing their representation to 132, and KANU a further four seats, bringing their total to 68. The electoral turn-out was 56.1%.

'Following his inauguration as President on 30 December 2002, Kibaki promised reforms, including the adoption of a new constitution, under which certain powers would be transferred from the President to the legislature, the adoption of anti-corruption legislation, the privatization of state-owned companies and the dismissal of corrupt civil servants. In January 2003 Kibaki appointed a new Cabinet; however, divisions within the ruling coalition soon became apparent, as a group of 25 LDP deputies accused Kibaki of breaching a power-sharing agreement signed by the constituent parties of the NARC prior to the elections. In May the Anti-Corruption and Economic Crimes Act, which provided for the establishment of the Kenya Anti-Corruption Commission (KACC), and the Public Service (Code of Conduct and Ethics) Act, requiring elected officials and senior civil servants to declare their wealth, came into effect…Meanwhile, a constitutional review conference opened in April 2003, but divisions persisted over the proposed post of Prime Minister. The LDP advocated an executive Prime Minister with powers to appoint the Cabinet, while Kibaki and his supporters sought to maintain a strong presidency. The ensuing tensions between the NAK and LDP factions of the NARC threatened to split the ruling coalition…In March 2004 the constitutional review conference voted to reduce the powers vested in the presidency and to create the new post of executive Prime Minister following the next elections, which were scheduled to be held in December 2007. Under the recommendations adopted by the conference, greater power was to be accorded to the National Assembly. The Government withdrew from the conference in protest; however, the draft constitution was successfully presented to the Attorney-General, after which it was to be considered by the National Assembly. The High Court subsequently ruled that the document required the endorsement of a simple majority at a referendum. The draft constitution, which was approved by the National Assembly in July 2005, confirmed the retention of the executive functions of the President, who would have the power to appoint and dismiss a non-executive Prime Minister. Devolution was to be on two levels (national and provincial), rather than the four levels originally envisaged, while the National Assembly was to remain unicameral.

'Several months of campaigning, punctuated by often violent demonstrations, ensued. Seven ministers announced their opposition to the proposed new constitution, including, most notably, Raila Odinga, whose LDP split from the NARC coalition and joined with KANU to form the Orange Democratic Movement (ODM). At the referendum, held on 21 November 2005, the draft constitution was rejected by 58.1% of voters. Some 53% of the electorate participated in the poll. Kibaki conceded defeat but ignored demands from Odinga and the ODM to hold legislative elections. Instead Kibaki moved swiftly to dismiss the entire Cabinet, and in early December he announced a new administration, from which those ministers who had opposed the draft constitution were removed. Those NARC members who maintained their support for Kibaki subsequently formed a

16 The main text of this COI Report contains the most up to date publicly available information as at 22 April 2013.

new coalition party, the National Rainbow Coalition—Kenya (NARC—Kenya), to contest the 2007 elections.' **[12]**

2007 ELECTIONS, POST-ELECTION VIOLENCE AND A NEW CONSTITUTION

3.04 The Kenya section of Europa World Plus, accessed on 11 April 2013, stated that:

'At the legislative elections, held on 27 December 2007, the ODM secured 99 of the 210 seats in the National Assembly, the PNU won 43, the ODM—Kenya, which had broken away from the main party in August, 16 and KANU 14. Results in three constituencies were not released. The presidential election was held concurrently and the Electoral Commission of Kenya (ECK) announced that, despite indications prior to the vote that Odinga had garnered greater popular support, Kibaki had narrowly been re-elected to the presidency with 4,584,721 votes; Odinga was reported to have secured 4,352,993 votes. Odinga and other opposition candidates vehemently denounced the results, while independent international observers expressed scepticism regarding the credibility of the election, which had taken place amid allegations of widespread procedural violations. The results led to an upsurge in tribal conflict between Kibaki's Kikuyu supporters and Odinga's Luo followers. Nevertheless, on 30 December Kibaki was sworn in for a second term.

'By mid-January 2008 some 600 people were reported to have been killed and more than 250,000 displaced, as a result of the unrest. A mediation effort undertaken from 8 January by President John Kufuor of Ghana, in his capacity as Chairperson of the African Union (AU) Assembly, failed to bring about direct talks between Kibaki and Odinga. On that day Kibaki had announced the partial composition of his new Cabinet; despite the ODM having secured the largest number of seats in the legislature, no representatives from that party were included in the new Government. Further proposed AU-sponsored mediation was rejected by the Kenyan Government, and on 16 January the ODM, defying a ban on public demonstrations, commenced nation-wide protests scheduled to last for three days. These were violently dispersed by the security forces, resulting in additional fatalities.

'On 29 January 2008 the former UN Secretary-General, Kofi Annan, formally launched a further round of negotiations. However, ethnic fighting intensified and two senior ODM officials were killed. As a result Annan suspended discussions temporarily and the ODM appealed for calm. Following the resumption of talks in early February, a proposal was made regarding the establishment of a power-sharing transitional government; on 28 February Kibaki and Odinga signed an agreement on the division of power and the creation of the posts of Prime Minister and two Deputy Prime Ministers, pending a full constitutional review to be carried out within 12 months. Odinga conceded the presidency to Kibaki and accepted the role of Prime Minister. Despite the agreement, attacks were carried out in early March ahead of the opening of a new parliamentary session during which members were to debate the legislation required to legalize the power-sharing agreement. The National Accord and Reconciliation Act, which provided, inter alia, for the creation of the position of Prime Minister and allowed a new coalition government to begin to implement a recovery programme and to assist the numerous internally displaced persons (IDPs) across the country in returning to their homes, was ratified by the National Assembly later that month…Meanwhile, following prolonged negotiations, in mid-April 2008 Kibaki named a new coalition Government, comprising members of the PNU, the ODM and ODM—Kenya, including Kenyatta as Deputy Prime

Minister and Minister of Trade and Wycliffe Musalia Mudavadi as Deputy Prime Minister and Minister of Local Government; Stephen Kalonzo Musyoka, who had been appointed as Vice-President and Minister of Home Affairs in January, and Moses Wetangula, who assumed responsibility for the foreign affairs portfolio at the same time, retained their positions in the new 40-member Cabinet. It was agreed that a commission of inquiry to investigate the causes and perpetrators of the post-election violence should be established with immediate effect, which would be chaired by Appellate Judge Philip Waki.' **[12]**

3.05 The Human Rights Watch report, 'Establishing a Special Tribunal for Kenya and the Role of the International Criminal Court', dated 25 March 2009, noted that:

'The Commission of Inquiry on Post-Election Violence (Waki Commission) was set up by the Kenyan coalition government of national unity as part of the peace and reconciliation mediation process that brought the violence of early 2008 under control. The commission reported in October [2008], recommending a series of reforms and establishment of a special tribunal of international and Kenyan judges to investigate and prosecute those most responsible for the violence. The Waki report contained a strict timeline for setting up the tribunal and putting it to work, which, if breached, would require the mediator-Kofi Annan-to pass a sealed envelope with the names of chief suspects to the International Criminal Court (ICC).

'On February 12 [2009], the Kenyan parliament voted against a constitutional amendment bill establishing the proposed tribunal made up of Kenyan and international judges. The Waki Commission had set a deadline of January 30 [2009] to pass the legislation but on February 24 [2009], Annan granted the government of Kenya more time to re-introduce the bills. Some within Kenyan civil society, however, have called for Annan to hand over the sealed envelope to the ICC now, or for a treaty between Kenya and the United Nations (UN) establishing a tribunal modeled on the Special Court for Sierra Leone.' **[9a]**

3.06 The International Criminal Court reported that: '…on 31 March 2010, Pre-Trial Chamber II, by majority, granted the Prosecutor's request to commence an investigation on crimes against humanity allegedly committed in the Republic of Kenya.' **[11a]**. BBC News further reported on 12 May 2010 that the: 'International Criminal Court's chief prosecutor has said his case against perpetrators of Kenya's post-election violence is "unstoppable". Luis Moreno Ocampo told the BBC his investigation would last about six months and he intended to prosecute up to six suspects in two separate trials.' **[10d]**

3.07 A BBC News report, 'Kenyans back change to constitution in referendum', dated 5 August 2010, stated that in the referendum held on 4 August 2010, '67% had voted in favour of the introduction of a new constitution'. **[10a]**. Another BBC News report, 'Kenya president ratifies new constitution', dated 27 August 2010, stated that on 27 August 2010: 'Tens of thousands of people watched as President Mwai Kibaki signed the document into law at a large ceremony in the capital, Nairobi'. **[10b]**

See following section for text of the Constitution.

3.08 The International Criminal Court (ICC) stated in a press release published on 15 December 2010:

'ICC Prosecutor Luis Moreno-Ocampo today requested the International Criminal Court to issue summonses to appear against six Kenyan citizens to face justice for massive crimes committed during the post-election violence (PEV) in Kenya.

'The Prosecutor has concluded there are reasonable grounds to believe crimes against humanity were committed, in the first Prosecution case, by:

'1. William Samoei Ruto - currently: Minister of Higher Education, Science and Technology (suspended), MP for Eldoret North and during the PEV, MP for Eldoret North. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters;

'2. Henry Kiprono Kosgey - currently: Minister of Industrialization, MP for Tinderet Constituency, ODM Chairman and during the PEV: MP for Tinderet. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters; and

'3. Joshua Arap Sang - currently Head of Operations, KASS FM and during the PEV: Radio broadcaster. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters.

'And in the second Prosecution case, by:

'4. Francis Kirimi Muthaura - during the PEV and to date: Head of the Public Service and Secretary to the Cabinet and Chairman of the National Security Advisory Committee. The Prosecution considers that he authorized the Police to use excessive force against ODM supporters and to facilitate attacks against ODM supporters.

'5. Uhuru Muigai Kenyatta - currently: Deputy Prime Minister and Minister of Finance. The Prosecution considers that during the PEV he helped to mobilize the Mungiki criminal organization to attack ODM supporters; and

'6. Mohamed Hussein Ali - currently: Chief Executive of the Postal Corporation of Kenya and during the PEV he was Commissioner of the Kenya Police. The Prosecution considers that during the PEV he authorized the use of excessive force against ODM supporters and facilitated attacks against ODM supporters.' **[11b]**

3.09 The BBC News report, 'Kenya's Uhuru Kenyatta appears at ICC in the Hague', dated 8 April 2011, stated that:

'Kenya's Deputy Prime Minister Uhuru Kenyatta and two others have appeared at the International Criminal Court in The Hague, accused of links to 2007-8 post-election violence.

'The three are seen as allies of President Mwai Kibaki.

'Three suspects connected to Mr Kibaki's rival, Prime Minister Raila Odinga, appeared on Thursday [7 April 2011].

'All six are accused of crimes against humanity during the violence in which some 1,000 people died…Mr Kenyatta, who is also finance minister and the son of Kenya's founding

president, is accused of organising a vigilante group which carried out attacks after the disputed election.

'Alongside Mr Kenyatta were secretary to the cabinet Francis Kirimi Muthaura and former police chief Mohammed Hussein Ali, who were also accused of organising attacks on those seen as supporters of Mr Odinga.

'They were not formally charged but face allegations of murder, deportation, persecutions and rape.' **[10o]**

3.10 The BBC News report, 'Kenya post-election violence: ICC rejects appeal', dated 30 August 2011, stated that:

'The International Criminal Court has rejected an appeal by Kenya's government to stop it putting on trial six people accused of links to 2008 post-election violence.

'The six include the deputy prime minister, two former ministers and an ex-police chief.

'They are accused of murder, deportations and persecutions by ICC chief prosecutor Luis Moreno-Ocampo.

'Some 1,200 died and more than 500,000 fled their homes in the violence.

'The case is now due to open on Thursday [1 September 2011].

'In the peace deal that followed in early 2008 it was agreed that those accused of crimes would face justice in Kenya or at the ICC in The Hague.

'After Kenyan MPs blocked moves to set up a local tribunal, the ICC's chief prosecutor named the six high-profile Kenyans in December 2010.

'Eight months on, Kenya's government failed to convince a majority of the ICC judges that it had now started its own investigations into the violence.

'One judge did, however, side with Kenya in its last-ditch effort to get the case abandoned.' **[10e]**

3.11 The Daily Nation report, 'ODM Rebels Dropped in Cabinet Reshuffle', dated 24 August 2011, stated that:

'Prime Minister Raila Odinga has finally replaced Orange Democratic Movement (ODM) rebel MPs in new Cabinet changes announced [on] Wednesday [24 August].

'Mr Odinga axed suspended Higher Education minister William Ruto, East African Community minister Hellen Sambili and assistant Livestock minister Aden Duale from his side of the coalition in a mini reshuffle.

'Mr Ruto's portfolio was taken over by Prof Margaret Kamar while nominated MP Musa Sirma replaces Prof Sambili at the East African Community Ministry.

'Voi MP Dan Mwazo replaces Mr Duale as Livestock assistant minister.

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'Sirisia MP Moses Wetang'ula was given back his old job as Foreign Affairs minister. He had stepped aside to allow investigations on the Tokyo embassy saga.

'The changes were contained in an emailed statement from the Presidental [sic] Press Service that said the appointments were made following consultations between President Kibaki and Mr Odinga[.]

'"These decisions take effect immediately," said the statement.

'In other changes, Waji North MP Mohamed Gabbow was named Special Programmes assistant minister while Manson Nyamweya was appointed Trade assistant minister.

'Julius Murgor was named Environment and Mineral Resources assistant minister and takes over from Prof Kamar.' **[16s]**

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4. RECENT DEVELOPMENTS (JANUARY 2012 TO APRIL 2013)

4.01 A Daily Nation report, 'Kenya polls body sets March elections date', dated 17 March 2012, stated:

'The Independent Electoral and Boundaries Commission (IEBC) has announced that the next General Election will be held in March 2013.

'IEBC chairman Issack Hassan said that his Commission has been "compelled" to set the March 4 date since President Kibaki and Prime Minister Raila Odinga have failed to agree on a date as set out in a court ruling..."the Commission hereby announces that the general elections will be held on Monday, March 4, 2013," said Mr Hassan during a news conference at Laico Regency Hotel, Nairobi Saturday.

'He said before setting the date, the IEBC had consulted widely including approaching the principals with a view to them agreeing, in writing, to dissolve the Coalition Government and precipitate an election within 60 days. However, Mr Hassan said, the President and Mr Odinga differed.

'"The Commission has consulted widely within and without, and in particular, it has consulted the two Principals with a view to actualise Option A of the Court Judgement," said the IEBC boss.

'"It should be understood that this Commission has repeatedly stated that it is ready to conduct the general elections in December 2012. However, after these consultations, it has become clear to the Commission that there is no agreement between the Principals as required by the Court Judgement under Option A."

'"In the circumstances, the Commission is therefore compelled to proceed with Option B of the Court Judgement which requires that we fix an election date within 60 days from the expiry of the term of the 10th Parliament," said Mr Hassan.

'He said in setting the March date, the Commission had considered several electoral processes including requirement that political parties comply with the Political Parties Act 2011 by April; need for public officers intending to contest in the polls to resign at least eight months before elections; mapping of new electoral units; voter education; inspection of voters' register and procurement of electoral material.' **[16p]**

4.02 An Aljazeera report, 'Dozens killed in Kenya clashes', dated 23 August 2012, reported that:

'At least 48 people are reported to have been killed in clashes over grazing land pasture between pastoral and farming communities in southeast Kenya.

'Joseph Kavoo, Tana river district police chief, said Wednesday's fighting saw people burnt in their houses, hacked to death, or shot with arrows.

'"They [attackers] were armed with crude weapons: machetes, bows and arrows and spears. Some had guns. As a result we have lost 31 women, 11 children and six men, all totalling to 48. Sixty cattle were also killed," Robert Kitur, the deputy police chief of the coastal region, told Reuters news agency by telephone.

'Wednesday's clashes in the Reketa area of Tarassa, 300km from the capital Nairobi, mark the worst single attack since deadly post-election violence four years ago, police said.

'The two communities have clashed before over the use of land and water resources, but the scale and intensity of the killings were unprecedented.

'Al Jazeera's Peter Greste, reporting from Nairobi, said the attack took place in a region with a "very complicated mix of ethnicity, politics, land and resource" issues.

'Said Mgeni, an area resident, told the Associated Press news agency that the attacks began at dawn when a group of about 200 people belonging to the farming Pokomo ethnic group raided a village in the Riketa area and torched all the houses belonging to the Orma, a pastoralist community.

'Cattle rustling and clashes over grazing and farming land and water are relatively common among pastoralist communities in the arid patches of east Africa and often escalate into revenge attacks.

'Last week the Orma attacked the Pokomo.' **[6a]**

4.03 An Aljazeera report, 'Deaths reported in Kenya bus blast', dated 18 November 2012, reported that:

'At least five people have been killed after a grenade destroyed a minibus in a Somali-dominated part of Nairobi, Kenyan security officials say…Moses Ombati, Nairobi regional police commander, said a grenade had been thrown into the minibus, commonly referred to as matatus in Kenya.

'He confirmed that five people had been killed, while the Kenya Red Cross said on its Twitter account that seven people had died and 24 had been taken to hospital.

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'There was no immediate claim of responsibility for the attack…Kenya has suffered a string of deadly attacks in Nairobi, the southern port city of Mombasa as well as the eastern garrison town of Garissa over the past year.

'The attacks have been blamed on Somali groups and their sympathisers in retaliation for Kenya's decision to send troops into Somalia last year to drive out al-Qaeda-linked fighters which Kenya has blamed for attacks on its territory.' **[6b]**

4.04 A BBC News report, 'Kenya election: Uhuru Kenyatta wins presidency', dated 9 March 2013, reported on the results of the presidential election:

'Kenya's Deputy Prime Minister Uhuru Kenyatta has been confirmed as the winner of the presidential election, and vowed to work with his rivals.

'He won 50.07% of the vote, officials said, narrowly avoiding a run-off.

'But his main challenger, Raila Odinga, alleged massive fraud and said he would challenge the results of the "tainted election" in the Supreme Court.

'Mr Kenyatta is set to face trial at the International Criminal Court over violence that followed the 2007 polls.

'He is accused of fuelling the communal violence that saw more than 1,000 people killed and 600,000 forced from their homes.

'After the results were announced, Mr Kenyatta told cheering supporters he would serve all Kenyans "without fear or favour".

'Speaking at the Catholic University in Nairobi, he called on Mr Odinga and other leaders to "join us in moving our nation forward."

'Earlier, the Independent Electoral and Boundaries Commission (IEBC) said the latest elections had been complex, but also credible and transparent.

'It said the turnout, at 86%, was the largest ever.'

'IEBC chairman Issack Hassan praised the candidates who had already conceded victory and urged others to follow suit.

'However, Mr Odinga, the current prime minister, said the electoral commission had "failed Kenyans" and that democracy itself was "on trial".

'But after announcing his Supreme Court challenge, he also appealed for calm, saying: "Any violence could destroy this nation forever."

'The BBC's Gabriel Gatehouse in Nairobi says this was the tightest of races with the narrowest of margins.

'He says that how Mr Odinga now handles his supporters will determine whether his dispute stays in the courts or spills out on the streets.

'Mr Kenyatta's Jubilee Coalition party said it was "proud and honoured for the trust" bestowed on it, adding that it had taken a message to the people and that "we are grateful to the people of Kenya for accepting this message".

'Early on Saturday [9 March 2013], small groups of Kenyatta supporters celebrated in Nairobi, hooting car horns and singing.

'But the newly confirmed president could face difficult relations with Western countries.

'In July [2013], he is due to go on trial at the International Criminal Court (ICC) in The Hague for alleged crimes against humanity.

'Mr Kenyatta's running mate, William Ruto, also faces similar charges. Both men deny the accusations.

'In his victory speech, Mr Kenyatta restated his promise to co-operate "with all nations and international institutions".

'The ICC has agreed to postpone Mr Ruto's trial by a month until May [2013] after his lawyers complained of not having enough time to prepare his defence.' **[10p]**

4.05 A BBC News report, 'Kenya Supreme Court upholds Uhuru Kenyatta election win', dated 30 March 2013, reported on the Supreme Court judgment regarding the presidential result:

'Kenya's Supreme Court has upheld Uhuru Kenyatta's election as president, rejecting challenges to the vote.

'Chief Justice Willy Mutunga announced the decision, which was unanimous, saying the poll was free and fair.

'Mr Kenyatta vowed to serve all Kenyans, while his main challenger Prime Minister Raila Odinga, who lodged the appeal, pledged to respect the verdict…Outside the courthouse itself, police used tear gas to chase away people protesting against the ruling but the area became quiet after the court session ended…Supporters of Mr Kenyatta took to the streets of central Nairobi after the verdict, tooting their horns, blowing on vuvuzelas and chanting…Petitions had been filed to the court by the prime minister and by civil society groups, who claimed irregularities had affected the election result and called for fresh elections.

'In a news conference after the verdict, Mr Odinga expressed "dismay" at the conduct of the election and said that he did not regret making the challenge, but that he fully respected the decision.' **[10q]**

4.06 A BBC News report, 'Uhuru Kenyatta sworn in as Kenyan president', dated 9 April 2013, reported on the inauguration ceremony that took place on 9 April 2013:

'Uhuru Kenyatta has been sworn in as Kenya's new president, following his victory in March against Raila Odinga.

'Dignitaries and tens of thousands of people witnessed the inauguration at a stadium in the capital, Nairobi.

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'Mr Odinga did not attend the ceremony after his attempt to overturn Mr Kenyatta's victory in court failed…Mr Kenyatta is the son of Kenya's founding father, Jomo Kenyatta, and is heir to one of the largest fortunes in Kenya.

'As Uhuru Kenyatta took the oath of office it was both a new beginning and, in a sense, a continuation of the past.

'He is the first president to be elected under Kenya's new constitution, which it is hoped, will put an end to the fierce tribalism that has bedevilled Kenyan politics. The fact that last month's poll passed off largely peacefully is perhaps a sign of its success.

'But Mr Kenyatta is also very much of the established order, the son of Kenya's founding father, and one of the country's richest men. His challenge will be to persuade the nation that he will govern for "all Kenyans," and not just an ethnically based elite…He served as deputy prime minister, minister for trade, and finance minister under outgoing President Mwai Kibaki

'The crowd, waving Kenyan flags, burst into rapturous welcome as the 51 year old took the oath of office, becoming Kenya's youngest president.

'In his inaugural address, Mr Kenyatta said he would govern for all Kenyans.' **[10n]**

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5. CONSTITUTION

5.01 The new Constitution was signed into law on 27 August 2010 following a debate which had 'lasted 20 years' (BBC News, 'Kenya president ratifies new constitution', 27 August 2010). **[10b]**.

5.02 Amnesty International observed in a public statement, dated 13 August 2010, that the new Constitution:

'…more comprehensively recognize[s] and protect[s] human rights compared to the previous Constitution. The Constitution also introduces changes to Kenya's political and governance structure, entrenching the principle of checks and balances by delineating the roles and powers of the Executive, Legislature and Judiciary. There are provisions to check the exercise of presidential and other executive powers. It also introduces a devolution structure that seeks to ensure that public resources are equitably distributed across regional government units.

'In keeping with Kenya's obligations under international human rights law the Bill of Rights under the new Constitution (Chapter 4) guarantees economic, social and cultural rights – including the rights to food, housing, sanitation, water, health (including reproductive health care), education, social security as enforceable rights, alongside civil and political rights – including rights to life, liberty and security of person, privacy, freedom of conscience, religion, belief and opinion, freedom of expression and freedom of association. In addition the Bill of Rights provides for other rights including equality and the freedom from discrimination and includes specific provisions on the rights of minorities, persons with disabilities, older members of society, youth and children. It also recognizes the right to pursue action in the courts in the event of denial of any of

these rights. The inclusion of enforceable social and economic rights in the Bill of Rights will, for the first time in Kenya, ensure access to legal remedies and allow people to hold the government accountable for violations of these rights.

'The Constitution also places an obligation on the state to 'observe, respect, promote and fulfil' the rights and freedoms in the Bill of Rights and to enact and implement legislation to fulfil its international obligations in respect of human rights and freedoms (Article 21).' **[15b]**

5.03 In the same statement, however, Amnesty International expressed its concern about a number of provisions (or their absence), including that:

- '…the Constitution does not abolish the death penalty.
- 'The provision in Article 26(2)) which provides that 'life begins at conception', and prohibits abortion 'unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if (abortion) is permitted by any other written law'. This provision could be interpreted restrictively, and lead to investigation and prosecution of women who have had a miscarriage; bans on some contraceptive methods; and restrict the scope of sex education…Article 24(4) of the Constitution which limits the guarantee of the right to equality 'to the extent necessary for the application of Muslim law before Kadhi courts'. This provision should be revised to ensure that decisions of Kadhi courts conform to the equality provisions of the Constitution.
- 'The failure to explicitly include gender identity and sexual orientation in the prohibited grounds of discrimination in Article 27(4) of the Constitution.' **[15b]**

5.04 The Amnesty International 2012 Annual Report, Kenya section, published on 24 May 2012, stated: 'The Commission on the Implementation of the Constitution, established to advise on and oversee the process of implementing the 2010 Constitution, started functioning on 4 January [2011].' **[15a]**

5.05 The Freedom House 'Freedom in the World Report 2012', published on 17 August 2012, stated:

'Under the new constitution, which entered into force in August 2010, the president is still elected for up to two five-year terms. However, following the next elections, the post of prime minister - created as part of the 2008 compromise - will be abolished, and a new position of deputy president will be established. The unicameral National Assembly, which consists of 210 members elected for five-year terms, 12 members appointed by the president based on each party's share of the popular vote, and 2 ex-officio members, is set to be replaced by a bicameral legislature. The upper house, the Senate, will have at least 60 members, while the lower house is expected to number about 290 members. Ministers may not serve in the parliament, which will have the authority to approve or reject cabinet appointments. Local authorities are to be granted heightened powers. The country will be divided into 47 counties, each of which will have a directly elected governor and assembly.' **[18a]**

The Constitution of Kenya can be accessed here. **[22a]**

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6. POLITICAL SYSTEM

6.01 The United States State Department (USSD) '2012 Human Rights Report: Kenya', published on 19 April 2013, stated that: 'Kenya is a republic with an institutionally strong president and a prime minister with unclearly defined executive powers. There is a unicameral national assembly.' **[4b] (Executive Summary)**. However, the Central Intelligence Agency World Factbook (CIA World Factbook), updated 18 March 2013, noted that, 'the new constitution abolishes the position of prime minister and establishes a bicameral legislature; many details have yet to be finalized and will require significant legislative action'. **[3a]**

6.02 The Kenya at the United Nations website, undated, accessed on 18 January 2013, provided more information about the political system:

'The Executive power is held by the President who is elected by direct popular vote for 5 years. The President is usually assisted by an appointed Vice-President and a Cabinet. The winning candidate at Presidential elections must receive no less that 25% of the votes in at least five of Kenya's eight Provinces…In Kenya, Legislative power is vested in the unicameral National Assembly with 224 members (210 elected by universal adult suffrage, 12 nominated, the Attorney-General, and the House Speaker as ex-officio members). They serve a term of 5 years, subject to dissolution of parliament.

'The maximum term of the National Assembly is five years but can be extended. The President can dissolve it at any time. The National Assembly may also force its own dissolution by a vote 2/3 majority vote…Kenya has a multi-party political system with over 40 registered political parties. Kenya became a one party state in 1982 through an amendment of the constitution. However, in 1992 Section 2A of the constitution was repealed to pave way for the re-introduction of multi-party politics in the country.' **[2]**

6.03 Amnesty International observed in a public statement dated 13 August 2010 that the new Constitution [signed into law on 27 August 2010 (BBC News, 27 August 2010)] **[10b]**:

'The Constitution also introduces changes to Kenya's political and governance structure, entrenching the principle of checks and balances by delineating the roles and powers of the Executive, Legislature and Judiciary. There are provisions to check the exercise of presidential and other executive powers. It also introduces a devolution structure that seeks to ensure that public resources are equitably distributed across regional government units.' **[15b]**

For information on political rights in practice, see Political affiliation and Freedom of speech and media.

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Human Rights

7. INTRODUCTION

7.01 The Human Rights Watch 'World Report 2013', covering events in 2012, published on 31January 2013, stated:

'Politically instigated violence broke out in various parts of the country in 2012. In Isiolo and Moyale counties, at least 21 people were killed and at least 20,000 displaced in inter-clan violence that persisted for weeks without decisive government intervention. The government eventually arrested at least 26 people and charged them with participating in the violence. Police initially suggested that a member of parliament was implicated in the violence and would be apprehended. No such arrest had been made at this writing.

'Between April [2012] and August [2012], in Mandera, over 30 people were killed and thousands temporarily displaced over the border into Ethiopia in clashes between different clans competing for control of districts and constituencies ahead of the elections.

'Ongoing tensions since January erupted in August in Tana River, when over 100 people were killed and 200,000 displaced following a series of retaliatory politically motivated attacks. Dhadho Godhana, a member of parliament, was charged with incitement, while other politicians were also believed to be involved in this particular violence.

'Since late 2011, unknown people believed to be sympathizers of al-Shabaab, the armed Islamist group fighting the Somali government and allied forces in Somalia, carried out terrorist attacks on civilian targets and security forces in North Eastern Province bordering Somalia, and in Mombasa and the capital, Nairobi.

'In the most serious attack, gunmen opened fire and hurled grenades killing 17 and injuring 60 during services at two churches in Garissa on July 1. In Mombasa, gunmen opened fire on a restaurant, a church, and a bar in three separate attacks. Police posts, patrols, and vehicles belonging to government agencies, including the army, were attacked with landmines and improvised explosive devices across North Eastern province, in Wajir, Mandera, Dadaab refugee camps, and at the Liboi border. Two refugees in Dadaab were assassinated in separate attacks at the start of the year.

'There were numerous cases where Kenyan security forces responded to the attacks by abusing civilians. Documented abuses included rape and attempted sexual assault; beatings; arbitrary detention; extortion; the looting and destruction of property; and various forms of physical mistreatment, including forcing victims to sit in water, to roll on the ground in baking temperatures, or to carry heavy loads while standing on one spot or while walking around for extended periods. Despite government promises to investigate, there have been no investigations and no security official has faced disciplinary action in relation to the abuses.' **[9b]**

7.02 The United States State Department '2012 Human Rights Report: Kenya', published on 19 April 2013, stated:

 The main text of this COI Report contains the most up to date publicly available information as at 22 April 2013.

'The most serious human rights problems were abuses by the security forces, including unlawful killings, forced disappearances, torture, rape, and use of excessive force; interethnic violence; and widespread corruption and impunity throughout the government.

'Other human rights problems included police corruption; harsh and life-threatening prison conditions; arbitrary arrest and detention; prolonged pretrial detention; some 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; abridgement of the right of citizens to change their government; violence and discrimination against women; violence against children, including female genital mutilation/cutting (FGM/C); child marriage and forced marriage; child prostitution; trafficking in persons; discrimination against persons with disabilities and albinism; discrimination based on ethnicity, sexual orientation, and HIV/AIDS status; violence against persons with HIV/AIDS; mob violence; lack of enforcement of workers' rights; forced and bonded labor, including of children; and child labor.'
[4b] (Executive Summary)

7.03 The UN Treaty Collections, Chapter IV: Human Rights, database lists the various UN conventions and treaties, and their signatories.

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8. SECURITY FORCES

POLICE

8.01 The United States State Department (USSD) '2012 Human Rights Report: Kenya', published on 19 April 2013, stated the following about the security forces:

'There was a large internal security apparatus that included the Kenya Police Service (KPS) and the Administration Police Service (APS), the Antiterrorism Police Unit, and the Criminal Investigation Department (CID), an autonomous subunit under the KPS responsible for criminal investigations. The APS, which has a strong rural presence throughout the country, provided security for the civilian population within the 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 KPS, APS, CID, 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 Ministry of State for Defense.' **[4b] (section 1d)**

8.02 The Daily Nation reported on 6 May 2010 that: 'Kenya's 40,000-strong force is heavily strained. International standards stipulate one police officer for every 400 people.

Kenya's ratio of one officer for every 900 is far from the ideal.' **[16r]**. Jane's Sentinel Kenya Country Risk Assessment, section on Security and Foreign forces, updated on 13 March 2013, stated that:

'The Kenyan police force has operated according to a structure modified from British colonial practice. The civilian police force is based in administrative centres and divided into a number of separate operational units including a Criminal Investigation Department (CID) intelligence division, an air wing and a port police for patrol of harbours on the Indian Ocean and Lake Victoria. Reporting to the CID director is an Anti-Corruption Unit, created in August 2001. The Police General Service Unit (GSU) is a more mobile autonomous paramilitary force for internal security duties. There is also, for example, a Tourism Police Unit to provide security for tourists as well as a semi-independent security detail operating as part of the Kenya Wildlife Service.' **[14b]**

8.03 The United States State Department '2012 Human Rights Report: Kenya' noted that the: 'Police were ineffective and corrupt, and impunity was a problem. There was a public perception that police often were complicit in criminal activity. Police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations. Police incompetence and complicity in criminal activity contributed to an increase in crime, especially in Nairobi, where crime rose 40 percent in 2011, according to police reports.' **[4b] (section 1d)**. In the UN's Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Ashton, (UN SR Report 2009) following a visit undertaken in February 2009, dated 26 May 2009, the special rapporteur, Professor Alston, identified six primary factors why the police were able to 'kill at will' (see subsection on Extra judicial killings for the full list). The list included the observation that the 'police force lacks sufficient training, discipline and professionalism.' **[61a] (p6-7, paras 5-6)**

8.04 A note by the Secretariat of the General Assembly titled, Information submitted by the Kenya National Commission on Human Rights, submitted to the UN Human Rights Council, (KNCHR Submission 2009) dated 2 June 2009, stated that:

'In Kenya, like in many other developing countries and emerging democracies, the challenges of insecurity are very real. The lack of technical capacity and resources to deal with crises of such magnitude by the security agencies including the National Security Intelligence Service (NSIS) is glaring. Intermittent emergence of organized criminal groups such as the Mungiki, Sabaot Land Defence Force among others, causing mayhem in various parts of the country has had many citizens questioning the capability of the State to ensure their security.' **[61b] (p2)**

8.05 The Concluding observations of the [UN] Committee against Torture: Kenya, dated 19 January 2009 (UN CAT Report 2009) stated that: 'While acknowledging the existing training programmes on human rights for law enforcement personnel, the Committee remains concerned that such trainings do not include the prohibition of torture as specific crime of grave nature and do not reach all relevant personnel who are in direct contact with detainees, including police officers, prison staff, judges and, including the military and health personnel. (art. 10).' **[62a] (p6, para 18)**

8.06 On 26 August 2010, the official Kenyan Government website reported that President Kibaki had "received the Interim Report of the National Task Force on Police reforms". The website went on to state that:

 The main text of this COI Report contains the most up to date publicly available information as at 22 April 2013.

'Some of the recommendations in the Interim Report include:

'1. Change of name from Kenya Police Force to Kenya Police Service.
2. Establishment of a Police Service Commission
3. Creation of an Independent Civilian Police oversight Authority.
4. Recommendations on Police welfare and service conditions, including;
* Audit of Police housing projects and broader review of housing conditions for the Police.
* Introduction of Special Police Allowance.
* Introduction of a comprehensive medical and insurance scheme.
5. Establishment of a Police Reforms Implementation Commission.' **[63a]**

8.07 However the pace of police reform remained slow. The Kenya National Dialogue and Reconciliation (KNDR) Monitoring, Review Report October 2010, covering the period July to September 2010, observed:

'The re-invention of illegal groups, the return of macabre killings and the resurgence of extra-judicial killings point to the needy for urgency in reforming the police and other institutions. More than two years after the signing of the National Accord and Reconciliation agreement, is a sufficient period to determine that police and other institutional reforms have been too slow to have the desired impact. Going into another election without the required police reforms is highly inadvisable. The New Constitution alone cannot guarantee stability; only commitment to the spirit and letter of the new constitution can do this. To show the new will, radical police reforms must be speeded up.

'Introducing the legislation without reforming the police force, will not achieve the desired results. In fact, the need to reform the police force remains urgent, given the prevalence of internal wrangles, allegations of involvement in crime and conflicts between different organs. The Police Reforms Implementation Committee that oversees actualisation of the recommendations of the Task Force on Police Reforms has drafted a number of legislation to anchor police reforms in law. These include the Independent Policing Oversight Authority Bill, which is intended to establish a police oversight body; the National Police Service Bill which merges the Kenya Police and the Administration Police; and the National Police Service Commission Bill, which will be responsible for the management of the police force[.] The provisions in these Bills are consistent with Chapter 14 of the Constitution. Passing the Bills and enforcing them should be considered a matter of urgency.' **[64a] (p14-15; paras 28-29)**

8.08 On 3 November 2010, the Kenya Government's Official Website stated that President Mwai Kibaki and Prime Minister Raila Odinga had received the final report of the National Task Force on Police reforms. The recommendations of the report included the following:

'1. The report advised against merger of the two police forces [the Kenya Police and the Administration Police] for now and instead recommended the creation of a National Policing Council that would ensure proper representations of all police formations. The National Policing Council should be chaired by the Permanent Secretary in-charge of police services and would be responsible for budgeting and resource allocation.

'2. In this regard there will be established the Kenya Police Service to be headed by an Inspector General and the Administration Police Service to be headed by a Commandant General.

'3. Establishment of an Independent Policing Oversight Authority charged with investigations on all public complaints against the police service. The Oversight Authority should be chaired by a person of the rank of Judge of the High Court and members be drawn from fields such as human resource, financial management, corporate management and religious organizations and other relevant fields. It will also be responsible for conducting independent investigations on public complaints and to hold the police force accountable.

'4. Establishment of a Police Service Commission which would be responsible for transfers, recruitment and promotions of police officers. This would require a constitutional amendment since police would now report to a body separate from the Public Service Commission.

'5. Establishment of the Police reforms Implementation Committee in order to institutionalize the necessary administrative, policy, legal and constitutional reforms advocated in the report.

'6. In order to fight corruption, the report recommends establishment of a clear code of ethics to be subscribed to by all police officers. Police officers will be prohibited from engaging in businesses that amount to conflict of interest especially matatu and towing businesses.

'7. There shall be established the Pay and Benefits Review Commission to look into the welfare of the police. This will lead to among other issues, implementation of a comprehensive medical insurance scheme that will be established immediately.

'8. The taskforce advocated for improved working conditions for police officers in terms of allowances such as medical, insurance and housing as part of changing the policing culture and building greater confidence for the law enforcers. In this regard a comprehensive police housing expansion program that had begun will be fast tracked. The government will also target over a period of time to provide enough transport facilities for all police stations.

'9. Implementation of a National Policing Policy.

'10. Implementation of a National Security Policy.' **[63b]**

8.09 The same website went on to state that: '…after receiving the report President Kibaki ordered the immediate payment of outstanding payments for police officers in regard to transfer and security operations allowances. These had accumulated to over Kshs 400 million.' **[63b]**

8.10 The Kenya National Dialogue and Reconciliation Monitoring Project, in its October 2010 Review Report, gave the following recommendation:

'Need for urgency in undertaking institutional reforms: The re-invention of illegal groups, the return of macabre killings and the resurgence of extra-judicial killings point to the needy for urgency in reforming the police and other institutions. More than two years after the signing of the National Accord and Reconciliation agreement, is a sufficient

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period to determine that police and other institutional reforms have been too slow to have the desired impact. Going into another election without the required police reforms is highly inadvisable. The New Constitution alone cannot guarantee stability; only commitment to the spirit and letter of the new constitution can do this. To show the new will, radical police reforms must be speeded up.

'Introducing the legislation without reforming the police force, will not achieve the desired results. In fact, the need to reform the police force remains urgent, given the prevalence of internal wrangles, allegations of involvement in crime and conflicts between different organs. The Police Reforms Implementation Committee that oversees actualisation of the recommendations of the Task Force on Police Reforms has drafted a number of legislation to anchor police reforms in law. These include the Independent Policing Oversight Authority Bill, which is intended to establish a police oversight body; the National Police Service Bill which merges the Kenya Police and the Administration Police; and the National Police Service Commission Bill, which will be responsible for the management of the police force. The provisions in these Bills are consistent with Chapter 14 of the Constitution. Passing the Bills and enforcing them should be considered a matter of urgency.'
[64a] (Illegal groups and security sector reforms, p14-15, para 28-29)

8.11 The Kenya National Dialogue and Reconciliation Monitoring Project, in its October 2011 Progress in Implementation of the Constitution and other reforms Review Report, stated:

'During this quarter [July - September 2011], two police Bills were passed by Parliament and enacted – the National Police Service Act and the National Police Service Commission Act. The National Police Service Act is a critical law because it addresses many important elements of policing identified in both report by the Philip Ransley-led Taskforce on Police Reforms and the new Constitution. These include internal discipline, capacity, community policing, and the creation of the Kenya Police Service. It will also guide the recruitment of the Inspector General of Police, vetting of all police officers to determine whether they are going to continue serving. In addition, a policy on community policing has been finalised, and is expected to be devolved to the counties.

'Other reforms that have been effected include the implementation of a new training curriculum for the police, which emphasises, among others, the Bill of Rights and change of attitude of the police. It is expected that the curriculum will transform the work ethic in the police force. The length of police training has also been changed in line with the new curriculum - professional/graduate police officers are now being trained for 21 months while lower cadre non-professional police will be trained for 15 months. Initially, all police officers were trained for six months.

'The police service is also in the process of strengthening internal accountability systems, which will be boosted by the formation of an Independent Police Oversight Authority (IPOA). The oversight authority will ensure complaints against the police are handled efficiently. Bills on policing are being drafted by the Police Reforms Implementation Committee (PRIC), pending the establishment of the National Police Service Commission, which should facilitate the merging of the Regular and Administration Police into one National Police Service. The recruitment of the Inspector General is the function of the National Police Service Commission, which is yet to be established. The two Principals are yet to set up a selection panel to recruit

Commissioners to the National Police Service Commission. An Inspector General will head the National Police Service once it is put in place.' **[64b]**

8.12 The Amnesty International report, 'Police reform in Kenya: "A drop in the ocean"', published on 25 January 2013, noted that:

'Kenya is in the midst of an ambitious reform programme, including wholesale reform of its police force, and as the country approaches the March 2013 general elections, the sense of urgency around the implementation of police reform is palpable.

'Laws passed in 2011 contain an ambitious framework for police reform, which, if fully implemented would overhaul the structure of the police force to address shortcomings which permit and perpetuate impunity for police abuses, establish an independent police oversight authority for the first time and new standards of conduct for the police.

'However, while some measures have been undertaken, many of the most important reforms have yet to be carried forward raising concerns of a lack of political will to implement the reform agenda. The Acts guiding the police reform have not been put into practice in time for the general elections. As a result, the very same policing structures blamed by many for serious human rights violations during the 2007-2008 post-election violence remain in place for the 2013 elections.

'The lack of progress in implementing the reform agenda increases the risk of human rights abuses and limits the preparedness of the police to handle such abuses in a fair and effective manner. The police were incapable of preventing, containing and managing the 2007-2008 post-election violence and some police actively engaged in human rights violations.' **[15f]**

For information about abuses committed by the police see the Human rights violations by security forces subsection below. The subsection on Avenues of complaints provides information on how the police are held to account and the issues of prosecution and impunity in the police.

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Witness protection

8.13 The national report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, submitted as part of the UPR process and published on 22 February 2010, noted:

'An effective and efficient witness protection programme is a cornerstone of successful prosecution of cases. Kenya domesticated article 24 and 26 of the United Nations Convention against Organized Crime with the enactment of a Witness Protection Act in 2006. Kenya is the second country in Africa to have in place a witness protection programme. The operationalization of the programme is at an advanced stage with a fully fledged secretariat in place.

'The Witness Protection Bill is currently under review to delink the Unit from the Attorney General's office and thus ensure its independence.' **[61e] (p7, paras 35-36)**

8.14 The KNDR Review Report October 2010 stated:

'The prospect of prosecution by the ICC triggered the disappearance and intimidation of potential witnesses, giving rise to the need for an effective witness protection programme. In June 2010 the President assented to the Witness Protection (Amendment) Act, which paved the way for the establishment of an independent and autonomous Witness Protection Agency. A Witness Protection Advisory Board, chaired by the Attorney General was appointed amid concerns by the civil society that it is not neutral, considering state organs have been accused of perpetrating violations during the post-election violence. In June 2010 the Government signed commitments to protect all witnesses identified by the Chief Prosecutor. In its first meeting in September 2010, the Witness Protection Advisory Board approved the protection of 20 witnesses who have applied for cover, and the recruitment of directors and staff.

'In the meantime, about 70 witnesses are being protected by human rights NGOs within and outside the country. The ICC is protecting its own witnesses and does not depend on the Government or other witness protection programmes…Nonetheless, it has taken the Government inordinately long time to set up a credible witness protection unit. Because of this, some witnesses may have lost confidence and interest in witness protection. Some of those who left the country early, are allegedly losing interest in the prosecution citing fatigue and lack of commitment to address PEV cases.'
[64a] (p10-11, paragraph 12-13)

ARMED FORCES

8.15 The Central Intelligence Agency (CIA) World Factbook, Kenya, updated 18 March 2013, stated that the: 'Kenya Armed Forces are made up of Kenya Army, Kenya Navy and Kenya Air Force. The Armed Forces operate on a basis of voluntary service with a nine year obligation, and a minimum age of 18.' **[3a]**. Jane's, updated on 10 January 2013, reported that: 'Apart from an abortive coup attempt by the air force in 1982, the armed forces have been notable by their reluctance to intervene in Kenyan political life and the country has never been ruled by the military…By regional standards, the Kenyan military is relatively well trained, equipped and financed.'
[14a] (Armed Forces, Assessment)

HUMAN RIGHTS VIOLATIONS BY GOVERNMENT FORCES

8.16 The KNCHR Submission 2009 observed that:

'Insecurity has continually posed serious human rights concerns and challenges in Kenya…Blatant disregard for the rule of law and due process by security actors including the military, police and national intelligence has often times resulted in gross violation of fundamental human rights. Weak enforcement institutions, legislation and lack of oversight mechanisms create opportunities for security agents to act in a non-transparent manner, violating human rights with impunity.' **[61b] (p2)**

8.17 The UN SR Report 2009 stated that:

'The Special Rapporteur came to the conclusion that police in Kenya frequently execute individuals and that a climate of impunity prevails. Most troubling is the existence of police death squads operating on the orders of senior police officials and charged with eliminating suspected leaders and members of criminal organizations. Such groups harass and kill Kenyans, and strong policing is required to counter the threat. Carte

blanche killing by the police, however, does nothing to eradicate such criminality; rather, it perpetuates the sense that the police are good at killing and bad at law enforcement. For policing to truly create security, it must be conducted with respect for the human rights of all, including those of suspects and victims. A lack of police accountability for killings results from the absence of effective internal or external investigation or oversight mechanisms.

'The Special Rapporteur concludes that, in Mt. Elgon, both the Sabaot Land Defence Force militia and the Government's security forces are engaged in widespread brutality, including torture and unlawful killings, against Mt. Elgon's residents. Detailed reports from a broad range of sources documenting this abuse have not been seriously investigated by the police or the military. Both groups remain in denial of such abuses and their response to systematic civil society reporting has been to methodically intimidate human rights defenders and witnesses…Many of the human rights defenders who testified before the Special Rapporteur during his mission were threatened and harassed by members of the security forces and other Government officials. Two activists who had been particularly active in reporting on police death squads were murdered just two weeks after the mission ended. There has been a systematic attempt to silence criticism of Kenyan security forces.' **[61a] (Summary, p2-3)**

8.18 The UN Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, dated 26 February 2010 (UN SR report 2010) stated:

'The Special Rapporteur is seriously concerned about the lack of accountability in the criminal justice sector. While welcoming Kenya's plans to establish a Civilian Police Oversight Body in 2008, the Special Rapporteur regrets that no concrete steps have been taken. He notes with concern the lack of prompt and independent investigations against the perpetrators of torture and specialized procedures to lodge torture complaints. He further regrets that judges and magistrates continue to ignore torture complaints by defendants and the victims' limited access to medical examinations to document torture. Recognizing the important role of the Kenya National Commission on Human Rights in undertaking visits to places of detention, the Special Rapporteur is concerned that it lacks the necessary resources to fulfil its functions and regrets that it has been denied access to detention facilities in some cases. Equally, the judiciary falls short of visiting and inspecting prisons due to a lack of capacity or will. The Special Rapporteur strongly encourages the Government to ratify and implement the Optional Protocol to the Convention against Torture (OPCAT) and accept the individual complaints mechanism, in accordance with article 22 CAT.' **[61d] (p96, para 45)**

8.19 The USSD 2012 Human Rights Report stated that:

'Police often stopped and arrested citizens to extort bribes; those who could not pay were jailed on trumped-up charges (e.g., preparation to commit a felony) and beaten. Transparency International's 2012 "Bribery Index" concluded that police were extremely corrupt. The study noted that more than 60 per cent of respondents reported being forced to pay bribes to the police. 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 also reportedly accepted bribes to fabricate charges against individuals as a means of settling personal vendettas. Police often failed to enter detainees into police custody records, making it difficult to locate them.' **[4b] (section 1d)**

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For details of particular types of violation see the following subsections.

Arbitrary arrest and detention

8.20 The USSD 2012 Human Rights Report stated that: '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.' **[4b] (section 1d)**

8.21 The UN CAT Report 2009 stated that: 'The Committee is deeply concerned about the common practice of unlawful and arbitrary arrest by the police and the widespread corruption among police officers, which particularly affects the poor living in urban neighbourhoods. The Committee is also concerned about the bail system currently in place.' **[62a] (p3, para 12)**

See Arrest and detention – legal rights for information on laws codifying arrest and detention.

Torture and use of excessive force

8.22 The USSD 2012 Human Rights Report noted the following regarding torture and inhuman treatment:

'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 torture and violence 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. On May 11 [2012], two improvised explosive devices (IEDs) were discovered by police in Hagadera, one of five camps in the Dadaab refugee complex. HRW [Human Rights Watch] reported that police went house-to-house in Hagadera camp, indiscriminately beating residents while arresting others. The police made no distinction between men, women, and children, beating and detaining anyone they found and later requiring bribes in exchange for release of those who were arrested. Refugee leaders said that at least 70 individuals were detained, including three female minors. On May 15, an IED went off under a police car near the market in Dagahaley camp, killing one police officer and injuring two others. According to multiple eyewitnesses, police responded by attacking residents in the market and looting shops. The provincial police officer, Leo Nyongesa, contacted by HRW on May 21, claimed no knowledge of the detentions and denied reports of police abuse.

'In July [2012] two officers from the Tetu police post in Nyeri reportedly assaulted a man, beating him with batons in the street before taking him into custody and continuing the abuse inside a jail cell. The man was released several hours later with severe injuries to both legs; he was not charged with any crime. No action had been taken against the police officers as of year's end.

'On November 19 [2012], police and the KDF surrounded the town of Garissa following the killing of three KDF soldiers by unknown assailants. According to HRW, the security

forces shot individuals indiscriminately, raped women, and destroyed property. A parliamentary committee concluded that the military was responsible for the property damage, stating in its report that the government should compensate the people of Garissa. No further government action had been taken as of year's end.'
[4b] (section 1c)

8.23 The same source also noted that:

'There were reports that persons died while in police custody or shortly thereafter, some as a result of torture. For example, a British citizen died in police custody on May 19 [2012] after being arrested in Diani on suspicion of smoking cannabis. Police claimed that he died from a drug overdose, but a postmortem examination revealed that the death was caused by blunt force trauma to the head. No action had been taken against the officers at the station as of year's end.' **[4b] (section 1a)**

See also subsection on Extra-judicial killing below for further information on deaths in custody.

8.24 In the Compilation [of UN bodies] prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council, (UN UPR Compilation 2010) dated 16 February 2010, a contribution submitted to the Human Rights Council as part of the universal periodic review (UPR) of Kenya held in May 2010, it was noted by the UN Country Team in Kenya that: '… torture, detention without trial, ill treatment and massive violations of rights of detainees continued unabated.' **[61c] (p6, para 27)**

8.25 The UN CAT Report 2009 stated that:

'While taking note of the ongoing revision of the Administration Police Act, the Committee notes with deep concern the numerous and consistent allegations of widespread use of torture and ill-treatment of suspects in police custody. The Committee also notes with concern the challenges reported by the State party in providing people under arrest with the appropriate legal safeguards, including the right to access a lawyer, an independent medical examination and the right to contact family members. In this connection, the Committee regrets the lack of detailed statistical data disaggregated on the number of prosecutions and of criminal and disciplinary actions taken against law enforcement officials found guilty of torture and illtreatment. (arts. 2 and 11).' **[62a] (p4, para 13)**

See Avenues for complaint below for more information on how the security forces are held to account for violations of human rights.

8.26 Regarding disputes over land and forced eviction, the UN CAT Report 2009 stated that:

'While taking note of the inclusion of the issue of land reform in item 4 of the Kenya National Dialogue and Reconciliation Agenda, the Committee is concerned about the persistent linkage between widespread violence and torture by State agents and the problem of land in the State party. The lack of access to land, paired with other social and economic injustices, are frequently considered as root causes of torture and violence. In this connection, the Committee is deeply concerned about allegations of mass arrests, persecution, torture and unlawful killings by the military in the Mount Elgon region during the 'Operation Okoa Maisha' conducted in March 2008. (arts. 12 and 16)…The Committee is further concerned about reports of the use of excessive

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force, sometimes resulting in violent deaths, by the police during evictions, particularly in urban areas, which often result in the destruction of homes and other personal belongings. (arts. 12, 13 and 16).' **[62a] (p7, para 21-22)**

See also Prison conditions and subsection on Avenues for complaint below

Extra-judicial killings

8.27 In UN SR Report 2009, the Special Rapporteur, Professor Alston, observed that:

'Killings by the police are widespread. Some killings are opportunistic, reckless or personal. Many others are carefully planned. It is impossible to estimate reliably how many killings occur, because the police do not keep a centralized database. But police shootings are reported nearly every day of the week by the press and the total number is certainly unacceptably high. In just a five month period in 2007, the Kenya National Commission on Human Rights (KNCHR) documented approximately 500 people killed or disappeared.

'There are six primary factors which account for the frequency with which police can kill at will in Kenya: (i) official sanctioned targeted killings of suspected criminals; (ii) a dysfunctional criminal justice system incentivizes police to counter crime by killing suspected criminals, rather than arresting them; (iii) internal and external police accountability mechanisms are virtually non-existent; there is little check on, and virtually no independent investigations of, alleged police abuses; (iv) use of force laws are contradictory and overly permissive; (v) witnesses to abuse are often intimidated, and fear reporting or testifying; and (vi) the police force lacks sufficient training, discipline and professionalism.' **[61a] (p6-7, paras 5-6)**

8.28 Professor Alston further stated that:

'The Government has a clear obligation to protect citizens from Mungiki and other criminal violence, while respecting human rights, including the right to life. Suspects should be arrested, charged, tried and punished accordingly. In a context of violent criminality, police will inevitably be required to use force on occasion, and sometimes lethal force in order to protect life. The police, including the Police Commissioner, assured me that there have been no unlawful police killings. However… the evidence is compelling that the police respond - frequently - with unlawful force: murdering, rather than arresting suspects. Further, investigations by police are so deficient and compromised that claims by the police that all killings are lawful are inherently unreliable and unsustainable…death squads…exist within the police force in Kenya, and that these squads were set-up to eliminate the Mungiki and other high-profile suspected criminals, upon the orders of senior police officials. Detailed evidence…implicates the Commissioner of Police, and senior police officials from the Criminal Investigation Division, Special Crime Unit, and the Criminal Intelligence Unit.'
[61a] (p8-9, paras 9-10)

8.29 The Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum: Follow-up country recommendations – Kenya, published on 26 April 2011 (SR Report 2011), noted that: 'Following the visit by the Special Rapporteur, two human rights defenders, Oscar Kamau King'ara and John Paul Oulu, who met with him during his mission, were killed. During and after the visit by the

Special Rapporteur, human rights defenders were systematically intimidated by the police, military and Government officials.' **[61g] (p5)**

8.30 The SR Report 2011 noted that:

'Information received in the preparation of this report reveals that the number of extrajudicial executions perpetrated by the police has been reduced but not eliminated. Police personnel continue to use excessive force when arresting suspected criminals. The attacks are often unprovoked and force is used disproportionately. The police also continue to be accused of abductions and killings. Information made available to the Special Rapporteur indicates that, from January 2010 to April 2011, there have been 63 cases of alleged extrajudicial killings by the police although these figures may be high as some cases are not reported.' **[61g] (p6)**

8.31 The stakeholders' Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 (UPR Stakeholder Summary 2010), submitted as part of the universal periodic review process of states' human rights undertaken by the UN Human Rights Council, dated 5 February 2010, stated:

'[The] Society for Threatened People (STP) mentioned the reported unlawful killings and forced displacement in the Mount Elgon region during a joint police-military operation titled 'Operation Okoa Maisha' ('Operation Save Life') in March 2008. STP also indicated that, in 2008 alone, more than 450 members of the criminal Mungiki gang were extra-judicially killed in Nairobi. KNCHR reported that no adequate steps have been taken to stem extrajudicial killings.' **[61f] (p4, paragraph 19)**

8.32 The UN CAT Report 2009 noted that:

'The Committee is disturbed to learn about consistent allegations of ongoing extrajudicial killings and enforced disappearances by law enforcement personnel, particularly during special security operations, such as the 'Chunga Mpaka' Operation in the Mandera district in September 2008, and operations against criminal bands, such as the 'Mathare Operation' in June 2007. The Committee is further concerned about the lack of investigation and legal sanctions in connection with such allegations , as well as about information regarding impediments that non-governmental organizations face in their attempts to document cases of disappearance and death. (arts. 2, 11 and 12).' **[62a] (p6-7, paragraph 20)**

8.33 On 20 January 2011, the Daily Nation reported that:

'Three of the policemen caught on camera on Wednesday as they executed three suspects on Lang'ata Road in Nairobi [on 19 January 2011] have been interdicted…Internal Security minister Prof George Saitoti said on Thursday [20 January 2011] the three were temporarily relieved of their jobs to allow for investigations and possible prosecution…Any others found to have been involved in the incident captured on camera, and published by the Daily Nation, will also be dealt with in accordance with the law…The minister however warned criminals, saying the ministry would not relent in dealing with them firmly and in accordance with the law…He cited the recent spate of crimes against police officers; the shooting of a deputy Police boss in Shauri Moyo, grenade attacks on the District Commissioner's vehicle in Eastleigh and the shooting of two officer [sic] at a roadblock in Kasarani…"We have to admit there are a few rotten

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eggs there (in the Police Force) and we shall get rid of them," said Prof Saitoti…"Don't judge the police on the basis that two or so of them have misbehaved," he added, and encouraged Kenyans to submit more evidence of the wrongdoings of the police for action to be taken…Prof Saitoti said there is a great deal of advocacy and training for Police to understand and uphold the Bill of Rights, with numerous workshops and training on the matter.

'He said such incidents would in future be handled by the Police Oversight Authority, an independent body that would be established with the enactment of a Bill currently being handled by the Commission on the Implementation of the Constitution.' **[16o]**

8.34 On 20 January 2011, the Daily Nation reported that: 'Regarding deaths in custody, the UN UPR Compilation 2010 report noted that: 'The HR Committee was especially concerned at information about the extremely high number of deaths in custody.' **[61c] (p6, para 27)**.

8.35 The Amnesty International 2012 Annual Report, Kenya section, published on 24 May 2012, reported that:

'There were incidents of unlawful killing and torture and other ill-treatment by the police and other security personnel [in 2011].

- In January [2011], plain-clothes police officers shot dead three men in Nairobi after ordering them out of their car. According to eyewitnesses, the men had surrendered before being shot. After the incident the police claimed the men were armed criminals. Although the Minister of Internal Security announced that the officers involved had been suspended, the government did not specify any steps it had taken to bring them to justice.

'The authorities took no steps to bring to justice police officers and other security personnel who had reportedly carried out extrajudicial executions and other unlawful killings in recent years.

- Police halted their investigations into the 2009 killings of Oscar Kingara and Paul Oulu, two human rights activists, by unknown gunmen.' **[15a]**

8.36 The USSD 2012 Human Rights Report noted the following regarding extrajudicial killings:

'There were numerous reports that the government or its agents committed arbitrary and unlawful killings. Human rights groups estimated that police were responsible for approximately 1,000 extrajudicial killings between 2008 and 2012; in 200 of those cases, there was credible evidence of police involvement, according to civil society groups. The government took only limited action to hold accountable security forces suspected of unlawfully killing citizens. Authorities prosecuted few police officers for unlawful killings, including those committed during the 2007-08 postelection violence.

'On March 29 [2012], police officers in Isiolo shot and killed schoolteacher Saida Maalim Hussein. A postmortem report showed that she was shot at close range inside her home. Earlier in the day, the police officers had engaged in an armed confrontation with cattle rustlers approximately 12 miles from the site of the incident and reportedly took out their frustration by firing indiscriminately on homesteads in Hussein's village. The

government claimed to have opened an investigation, but no action had been taken against any police officer as of year's end.

'On April 21 [2012], police shot and killed three persons and injured two others while attempting to disperse a crowd in Dandora, one of Nairobi's suburbs. Two of the victims were young children. Police authorities suspended six officers for their role in the incident. The government promised an investigation but had not initiated criminal proceedings against the suspended officers as of year's end.

'In November 2011 police officers attached to the Muthangari police station shot and killed a man and his 12-year-old son outside their home in Kawangware, Nairobi. Eyewitness reports indicated that the son was shot while pleading for his father's life. Police officers threatened a reporter who arrived on the scene. Two police officers were suspended and charged with murder. As of year's end, no government witnesses had testified, and the case had been adjourned multiple times.

'Police killed numerous criminal suspects, often claiming that they violently resisted arrest or were armed. On March 25 [2012], police shot and killed four persons during an attempted robbery at a rural electrification authority facility in Nairobi. The suspects were allegedly part of a gang of 13 persons who were caught in the act of stealing cables. They were unarmed but were shot and killed when they attempted to flee the scene. There was no investigation, and no action had been taken against the officers as of year's end.' **[4b] (section 1a)**

The KCHR report, 'The Cry of Blood' Report on Extra-Judicial Killings and Disappearances, documents police involvement in extra-judicial killings in 2007. See also Prison conditions for additional information about deaths in custody.

AVENUES OF COMPLAINT

8.37 The UN CAT Report 2009 stated that: 'The Committee welcomes the efforts made by the State party to strengthen its legal and institutional framework to safeguard universal human rights protection…' These included:

'The establishment of the Kenya National Commission on Human Rights in 2003…The launch of the Governance, Justice, Law and Order Programme intended to reform the legal and justice sector…Recent establishment of the civilian independent Police Oversight Board…The Committee notes with satisfaction that relevant reports were submitted to the Committee by the Kenyan National Commission on Human Rights and that representatives from the Commission attended the meetings of the Committee and provided valuable information.' **[62a] (ps1-2, paras 4 and 6)**

8.38 The UN SR Report 2009 identified two oversight bodies 'designed to ensure police accountability': i) the Public Complaints Standing Committee; and ii) the Police Oversight Board. **[61a] (p17)**. The various oversight bodies are covered in further detail in following subsections.

8.39 The UN SR Report 2011 noted that:

'There has been extensive reform of the legislative framework governing the police. In the original report it was recommended that the Police Commissioner should be replaced; in September 2009 he was transferred to the Postal Corporation of Kenya. The 2010 Constitution reviewed the appointment procedure of the Police

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Commissioner. The Police Commissioner will now be appointed by the President with the approval of Parliament.' **[61g] (p7)**

8.40 The USSD 2012 Human Rights Report observed that:

'The civil court system can be used to seek damages for victims of human rights violations, and decisions can be appealed to the Supreme Court as well as the African Court of Justice and Human Rights. In practice corruption, political influence over the civil court system, and chronic backlogs of cases limited access by victims to this remedy. HRW [Human Rights Watch] reported that, as of 2011, at least 19 victims of police shootings had won civil suits, but the government had not paid the court-ordered compensation.' **[4b] (section 1e)**

8.41 With regard to oversight of the police and capacity of the judiciary to hold the state to account for human rights violations, the UN SR Report 2010 observed that:

'The Special Rapporteur is seriously concerned about the lack of accountability in the criminal justice sector. While welcoming Kenya's plans to establish a Civilian Police Oversight Body in 2008, the Special Rapporteur regrets that no concrete steps have been taken. He notes with concern the lack of prompt and independent investigations against the perpetrators of torture and specialized procedures to lodge torture complaints. He further regrets that judges and magistrates continue to ignore torture complaints by defendants and the victims' limited access to medical examinations to document torture. Recognizing the important role of the Kenya National Commission on Human Rights in undertaking visits to places of detention, the Special Rapporteur is concerned that it lacks the necessary resources to fulfil its functions and regrets that it has been denied access to detention facilities in some cases. Equally, the judiciary falls short of visiting and inspecting prisons due to a lack of capacity or will. The Special Rapporteur strongly encourages the Government to ratify and implement the Optional Protocol to the Convention against Torture (OPCAT) and accept the individual complaints mechanism, in accordance with article 22 CAT.' **[61d] (p96, paragraph 45)**

See also Prison conditions

8.42 The USSD 2012 Human Rights Report noted that:

'The government took some steps to curb police abuse and establish greater police accountability. In September 2011 the government passed legislation to establish a National Police Service Commission (NPSC), charged with appointing an inspector general and providing internal oversight of the police force. It also passed legislation to create the Independent Policing Oversight Authority (IPOA), the country's first civilian oversight board for police operations and misconduct. In September 2011 the president also signed into law the National Police Service Act, which established a unified national police service and set guidelines for its governance; however, the government was slow to implement the new police reform legislation, and some of the laws did not become operational until August.

'Despite the new legislation the government resisted implementing police reform. In February [2012] President Kibaki and Prime Minister Odinga agreed on nominees to serve on the NPSC, but parliament rejected the nominees on grounds of unsuitability. A new slate of nominees was approved in September. The NPSC worked quickly to

interview and shortlist candidates for the position of inspector general of police (IGP). David Kimaiyo, the new IGP, was sworn in on December 24 [2012].

'The Police Reform Implementation Committee operated to prioritize reforms of police operations and organization, without substantial progress. Its mandate ended in May [2012]. A nine-person board tasked with making the IPOA functional took office in June [2012] but had made little progress in increasing accountability of the police by year's end.' **[4b] (section 1d)**

8.43 The recommendations of the NTFPR included introducing an independent oversight body for the police (though at the time of writing the reforms remained unimplemented). As observed in the KNDR Review Report October 2010: 'The Police Reforms Implementation Committee that oversees actualisation of the recommendations of the Task Force on Police Reforms has drafted a number of legislation to anchor police reforms in law. These include the Independent Policing Oversight Authority Bill, which is intended to establish a police oversight body…' **[64a] (p14-15; paragraphs 28-29)**

See subsection on Impunity below for description of government inaction against perpetrators of human rights violations.

Public Complaints Standing Committee

8.44 The UN SR Report 2009 observed:

'A Public Complaints Standing Committee (PCSC) was set up on 21 June 2007. Its mandate is to receive complaints from the public against public servants, including the judiciary and police. I met with the PCSC, and its members are serious, and well-intentioned. However, the PCSC has no investigative capacity, and - short of the ability to receive complaints and channel them to the relevant Government department for response - no power. In fact, the PCSC often refers cases to the [Kenya National Commission on Human Rights] KNCHR because of the KNCHR's greater capacity to investigate and follow-up on cases. At the time of my visit to Kenya, the PCSC had three complaints of killings by police before it. The complainants conducted their own investigations. The PCSC brought the cases to the attention of the police, but no progress had been made. The PCSC clearly does not have the teeth necessary to bring to account police perpetrators of abuse.' **[61a] (p17, paragraph 35)**

8.45 The UN CAT Report 2009, following submissions made at the end of 2008, stated

'While acknowledging the recent establishment of a Public Complaints Standing Committee, the Committee is very concerned about the impediments faced by individuals who may have been subject to torture and ill-treatment to complain and have their cases promptly and impartially examined by the competent authorities. In this connection, while taking note that the complaint forms (including the 'P3 form') are now available free of charge on the website of the Kenyan police department as well as in public hospitals, the Committee is concerned that the practice of medical practitioners of charging fees for completing P3 forms may reduce the possibility of persons with limited economic resources to file and corroborate complaints. (arts.12 and 13).'
[62a] (p8, paragraph 24)

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Kenya National Commission on Human Rights (KNCHR)

8.46 The Freedom House, 'Countries at the Crossroads 2012, Country Report – Kenya' (FHCC Report 2012), released on 20 September 2012, observed:

'The autonomous Kenya National Commission on Human Rights (KNCHR) is widely perceived as independent, although the government has restricted its investigatory powers. The KNCHR serves as the primary rights watchdog and has the authority to review prison conditions and receive complaints regarding prison conditions. It is the source of redress for all Kenyan abuse victims. More than 700 prison officials have been trained since 2010, and "human rights desks" are operating in all prisons. The KNHCR has authority to order the release of detainees as well as compensation for rights abuse victims, but lacks prosecutorial powers.' **[18c] (Civil liberties)**

See Human rights institutions, organisations and activists for more information on the KNCHR.

Impunity

8.47 The SR Report 2011 noted that:

'Impunity for police killings continues to prevail. Despite the recommendations made in the original report, that extrajudicial killings by the police should be investigated and punished, no concrete measures have been taken in this regard. Past police killings documented in reports such as the Kenya National Commission on Human Rights have been ignored. From late 2010 to 2011, there has been an escalation in the number of alleged extrajudicial killings being committed by the police. There is a lack of investigations into killings being perpetrated by the police; this seems to be part of an endemic pattern as noted in the 2009 report.' **[61g] (p6)**

8.48 The USSD 2012 Human Rights Report stated:

'Due to a shortage of civilian state prosecutors in the legal system, police were responsible for investigating and prosecuting all crimes at the magistrate court level. Civilian prosecutors only handled murder cases at the High Court level. There were 83 civilian prosecutors nationwide, compared to approximately 300 police prosecutors. In July the government approved the recruitment of 106 additional civilian prosecutors, but the director of public prosecutions indicated that, despite this recruitment, his office remained more than 700 prosecutors short of the estimated need. 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.' **[4b] (section 1c)**

8.49 The UN CAT Report 2009 observed that:

'The Committee is concerned about the absence of a specific legal framework to ensure prompt and impartial investigations into acts of torture and other cruel, inhuman and degrading treatment or punishment committed by law enforcement personnel. The Committee is further concerned that acts of torture and ill-treatment are seldom investigated and prosecuted and that perpetrators are either rarely convicted or are sentenced to lenient penalties not in accordance with the grave nature of their crimes. In

this connection, the Committee expresses its concern over the culture of impunity for perpetrators of acts of torture and ill-treatment throughout the country. (arts. 2, 4 and 12).' **[62a] (p7, paragraph 23)**

8.50 The UN Special Rapporteur in his UN SR Report 2009 identified six primary factors why the police were able to 'kill at will' (see subsection on Extra-judicial killing for the full list). These included: 'internal and external police accountability mechanisms are virtually non-existent; there is little check on, and virtually no independent investigations of, alleged police abuses…witnesses to abuse are often intimidated, and fear reporting or testifying; and…the police force lacks sufficient training, discipline and professionalism.' **[61a] (p6-7, paragraphs 5-6)**

8.51 The UN UPR Compilation 2010 noted: 'UNCT indicated that there is general lack of respect for the rule of law, while the culture of impunity is prevalent and widespread. The OHCHR Mission reported that a lasting legacy of impunity contributed to and continues to foster the resurgence and persistence of violence and conflict.' **[61c] (p7, paragraph 36)**

8.52 The Daily Nation reported in an article of 6 May 2010 that:

'Kenya has come under fire at a United Nations forum for slow progress in checking impunity and a dismal human rights record.

'Representatives from the US, UK and a number of European Union countries accused the country Thursday of dragging its feet in addressing corruption, protecting post election violence witnesses and other human rights crusaders.

'The government was also hard-pressed to explain why it was taking too long to conduct fundamental reforms in the police and judiciary, with many of the countries expressing concern that this was a major impediment to the protection of human rights.

'On Thursday, the country's law enforcement agencies were particularly singled out for extra-judicial killings, conducting arbitrary arrest, extortion of bribes from innocent citizens and failure to observe the rule of law.' **[16a]**

8.53 The same report, however, stated that: 'Kenya Justice minister Mutula Kilonzo…put up a spirited defence of the country's its [sic] human rights record saying the government was doing all it could to eradicate any violations including supporting all initiatives and necessary reforms.' **[16a]**

8.54 The UN SR Report 2011 stated that: 'The reforms undertaken by the Government are to be commended. The Special Rapporteur is cognizant that realizing the reforms will not be instant; there has to be commitment to translate the laws into practice. The institutions will not change overnight, there has to be continued evaluation to assess progress being made.' **[61g] (p8)**

See also Judiciary for information on legal remedy, and Arrest and detention – legal rights. The section on Human rights institutions, organisations and activists provides further detail about the KNCHR.

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9. CRIME AND SECURITY

9.01 A Landinfo report, 'Mungiki: Abusers or abused?', dated January 2010 (Landinfo report 2010), observed in its introduction that:

'Several militant gangs and so-called vigilante movements operate throughout Kenya, particularly in urban environments and in Nairobi's large slum areas. They operate outside the law in poor, crime-infested neighbourhoods where the police has little authority, influence and, basically, little interest. Different gangs have been and are at war with each other over control of businesses, services and people in disputed areas, amongst them the Taliban, the Kosovo boys, the Baghdad boys, Chinkororo, the Kalenjin Warriors and Mungiki. In 2002, the Kenyan government prohibited such groups, the latter included.' **[65a] (p5)**

9.02 In the Report of the [UN] Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Ashton, (UN SR Report 2009) following a visit undertaken in February 2009, dated 26 May 2009, Professor Alston observed that: 'Kenyans are subjected to significant levels of both indiscriminate and organized violent criminality. Armed robbery, carjacking, and violent street crime are all common. In addition, criminal organizations exercise vicious control over significant geographical areas and infrastructure in slums in Nairobi and Central Province.' Professor Alston also stated that the Mungiki have become particularly prominent but there are many criminal groups, **[61a] (p7-8, paragraphs 7-8)** including: '… the Sungu Sungu, the Kisungu Sungu, and the Taliban (a predominantly ethnic Luo vigilante group, operating in slums in eastern Nairobi).' **[61a] (p7, footnote 8)**

9.03 In the Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council, (UN UPR Compilation 2010) dated 16 February 2010, a contribution submitted to the Human Rights Council as part of the universal periodic review (UPR) of Kenya held in May 2010, it was noted by the UN Country Team (UNCT) in Kenya that: 'urban crime, general insecurity and criminal activities by militia groups such as Mungiki and Kisungusungu, made up mainly of unemployed and disenfranchised youth, have been on the rise. UNCT suggested that a multi-pronged approach including ensuring arrested criminals face the law will be required in the long run.' **[61c] (p6, paragraph 26)**

9.04 The Kenya National Dialogue and Reconciliation (KNDR) Monitoring, Review Report October 2010, (KNDR Review Report October 2010) covering the period July to September 2010, observed:

'The last review report noted a reduction of violence, a situation attributed to the lull in activities of illegal groups and improved food security following the bumper harvest in the long rains season. The latest statistics from the Ministry of Internal Security show that overall, crime levels have gone down by 4 per cent. However, Nairobi province records the highest increase in crime, attributed to the influx of IDPs [internally displaced persons] who have fled the Rift Valley for the city, where they have boosted the ranks of extortion gangs.' **[64a] (p14; paragraph 25)**

9.05 The same report stated that:

'The government has enacted a new law [the Prevention of Organised Crimes Bill/Act] to deal with organised crimes and criminal groups. The law provides for stiff penalties for involvement in organised crime. Interestingly, the coming into force of the law coincided with the resumption of a nation-wide 'crackdown' on the Mungiki, an illegal group. In the past, such measures, which often resulted in human rights violations including extra-judicial killings, were employed for lack of a policy guideline and strategy to deal with organised criminal gangs. The Organised Crime Act focuses on the criminal dimension of illegal groups but does not address the socio-economical and political problems that promote their existence.' **[64a] (p14, paragraph 27)**

9.06 Peter Gastrow, director of programmes and senior fellow at the International Peace Institute (IPI), noted in his report, Termites at Work: Transnational Organized Crime and State Erosion in Kenya, published by the IPI in September, 2011, that:

'The levels of transnational organized crime in each of the six categories mentioned above (trafficking in drugs, counterfeit goods, wildlife products, humans, and small arms, as well as money laundering) have increased in Kenya and become more pervasive during the past ten years. Criminal networks have penetrated the political class and there are growing concerns about their ability to fund elections and to exercise influence in Parliament and in procurement processes.' **[86a] (p8)**

MUNGIKI

9.07 A BBC News article, dated 27 October 2009, described the Mungiki as '…a secretive sect mainly from Kenya's largest ethnic group, the Kikuyu" and that they '…are seen as Kenya's version of the mafia'. **[10f]**. The UN SR Report 2009 observed that:

'In many slums in and around Nairobi, there have historically been high levels of insecurity, and few state services. In the early 1990s, the Mungiki, initially a cultural-religious movement, began providing security and basic services in slums. While many of these activities were originally appreciated by slum residents, as the Mungiki grew, so did its level of control, and ruthless tactics were employed to preserve it. Today, the Mungiki are responsible for a large number of crimes, including murder. I spoke with many people who live and work in areas now controlled by the Mungiki. Residents and business owners are extorted for 'protection' fees. Matatu (bus) drivers are harassed on a daily basis. Those who resist organized criminal organizations are threatened, beaten or killed, often in an especially brutal manner, and residents are increasingly terrified of the progressively more violent criminal control of their neighborhoods.'
[61a] (p7-8, paras 7-8)

9.08 The same report observed that: 'Mungiki activities primarily affect those living in Nairobi and Central Province. According to information provided to me by provincial officials in Central Province, the areas most affected by Mungiki activities in Central Province are the districts of: Thika, Kiambu, Murang'a South, Nyandarua, and Murang'a North.'
[61a] (p8, footnote 10)

9.09 The Landinfo report 2010 stated that: 'Mungiki operates primarily in the Nairobi slums, in the Central Province and in the Rift Valley. Although Mungiki offers poor residents in slum areas protection and social services, extortion and violence tend to constitute their mode of operation. Gross human rights violations perpetrated against civilians, adversaries and defecting members are attributed to them.' **[65a] (p5)**

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9.10 A Daily Nation report, 'Uneasy calm as former turfs of Mungiki group regain life', dated 29 March 2010, stated that:

'Life is slowly returning to normal in a region ravaged by Mungiki in Murang'a [in Central Province]…Among the most affected were Kahatia, Kahuro, Mbari ya Hiti, Gitiri, Yamugwe and Murarandia areas.

'Even as Mr Chege says the situation is changing for the better, a good number of the area residents feel it is too early to be optimistic. Indeed, things are totally different in parts of Kigumo and Maragua, areas considered Mungiki strongholds. Matters have become even worse because other gangs have taken advantage of the situation to cause fear among residents…Contrary to the popular belief that the sect is no more, the sect has transformed itself and is now operating as a cartel, which controls economic activities in the area.

'Enquiring about the sect's activities in the area is asking for trouble. Residents fear that the group has a well-coordinated intelligence gathering system, which has its ear to the ground and will quickly pick up any reports about the sect.' **[16b]**

9.11 The Daily Nation report, 'Uneasy calm as former turfs of Mungiki group regain life', dated 29 March 2010, quoted in the previous paragraph, also stated that:

'Young men who refuse to join the sect are not spared, facing harassment from the Mungiki members over their stand.

'Hundreds of such young people in the affected areas have chosen to stay away from their rural homes for fear of attacks and forceful recruitment into the sects by their age-mates.

'Some people attribute the high rate of recruitment of young people into the sect to unemployment as the majority of those who are members of Mungiki are school dropouts.

'Boys as young as 16 have joined the gang while parents are unable to control their children once they join the sect as they tend to threaten them with death if they insist on discipline.' **[16b]**

9.12 A Daily Nation report, 'Residents fear over rise in phone threats', dated 16 August 2010, stated that:

'Arising [sic] number of Nyeri residents are receiving threatening text messages allegedly from people claiming to be members of the outlawed Mungiki sect.

'The anonymous callers threaten their victims with death and demand ransom to spare their lives.

'A Nyeri trader, who requested anonymity because of the sensitivity of the matter, said that he received a call from a man claiming to be the leader of the Mungiki, who went ahead to demand for a 'goat'.

'A goat, the caller told him, was equivalent to the Sh5,000 he was demanding so as to spare his life.

'"We wanted to kill you today, but we're giving you a second chance. We will sacrifice the goat and pour its blood (in a ritual) instead of yours,' the caller threatened and told him to send the money through M-Pesa. Shaken, the trader reported the incident to the police.

'The anonymous caller has already been traced by detectives who sent Sh100 to the number and received details on the identity of the owner of the SIM card.

'It is now mandatory for phone users to register with their service providers. The deadline for registration has been extended to August 31, after which those who will not have registered may lose their lines.' **[16c]**

POLICE RESPONSE

9.13 The Daily Nation report, 'Uneasy calm as former turfs of Mungiki group regain life', dated 29 March 2010, stated that:

'According to locals, the [Mungiki] sect members who operate in the area are well known by security officers, but no action is taken against them.

'Recently, the Provincial Administration in Kigumo ordered the vetting of all village elders after it emerged that security related matters were being leaked to Mungiki sect members.

'It is believed that some of the elders have sons who are members of the outlawed sect and to whom they leak details of what the security committee discusses at meetings.' **[16b]**

9.14 A Daily Nation report, 'Politicians and police "allies of violent gangs"', dated 21 July 2010, stated that there is some collusion with the Mungiki by the Kenyan authorities:

'An unholy alliance between criminal gangs, police and politicians has been exposed in a new report tabled in Parliament.

'It accuses the law enforcers and gang members of collusion in extortion. Politicians are blamed for financing proscribed groups, especially in election campaigns…The committee, chaired by Ndaragwa MP Jeremiah Kioni, identified Mungiki as the most organised and vicious group, followed by the Taliban.

'"The police have been slow in cracking them down and in some instances, they have been observed to even endorse them," the committee noted in minutes recorded in a meeting with human rights groups.

'Also in the extortion ring are the police and Nairobi City Council askaris. "Extortion is also not only perpetrated by unlawful groups, but also the police and City Council askaris," states the report…On politicians, the report said they form, finance and associate with unlawful groups.' **[16d]**

9.15 However, a Radio France International article, dated 6 July 2010, stated that the police in Nairobi were attempting to halt extortion by Mungiki members:

'Kenyan police has detained 120 suspected members of a sect accused of extorting money from Nairobi's minibus drivers. Kenyan media reports say authorities were

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ordered to crack down on members of the Mungiki and prevent demonstrations against the police.

'Police arrested many of the suspects at matatu (minibus) stations in Nairobi on Monday evening and Tuesday morning.

'"The suspects were arrested at matatu stages where they have been extorting money from matatu operators," police commander Antony Kibuchi told reporters.

'The suspects belong to a sect called the Mungiki, that blends Christian doctrines and traditional African practices. It has been blamed for macabre killings, abductions, and extortion and also controls several Muntatu lines in Nairobi.' **[17a]**

9.16 Further to this, a Daily Nation report, 'Ex-Mungiki boss is under police watch', dated 5 July 2010, stated that:

'Former Mungiki sect leader Maina Njenga has been put on a police watch list in connection with activities of the proscribed group.

'Mr Njenga is alleged to have met Mungiki members in Nairobi and funded demonstrations planned against the police.

'An intelligence report seen by the Daily Nation says the meeting was held at the offices of a political party in Hurlingham on June 16 [2010].

'The report - circulated to provincial police officers, their CID counterparts and divisional commanders - directs them to intensify crackdowns on the sect members and prevent the demonstrations…It further states that those who attended the meeting were from Nairobi's Dandora Phase 4 Estate and names a man who led the delegation to meet Mr Njenga.

'"The members expressed concern over police harassment which they claimed had led to the killing of one Kimani, their colleague, within Dandora on June 15 [2010]. Consequently, Mr Njenga is said to have advised them to organise demonstrations on an unspecified date...and also gave them money to facilitate the same," said the report.' **[16e]**

9.17 Another Daily Nation report, 'Police warn of new Mungiki violence plot', dated 3 June 2012, stated that:

'Police have been put on high alert following intelligence reports that the outlawed Mungiki sect has re-grouped and is planning a series of violent activities.

'A dispatch from police headquarters to provincial commanders warns that the group has appointed new coordinators and wants to revamp a squad blamed for numerous killings before police crushed it in 2007.

'However, the leader of the proscribed sect, Mr Maina Njenga, insists that he is a changed man, a born again Christian, and has led thousands of followers to his Hope International Church.'

'The communication seen by the Nation identifies the Mungiki unit as "Chapa Squad" and names a man from Nakuru who has been appointed its leader.

'"The squad has been tasked to revive its roles and collect information that will assist in the operations of the sect," reads part of the dispatch.

'According to Mr Njenga's lawyer, former Kikuyu MP Paul Muite, it is not Mungiki re-grouping or planning any violence, but the police preparing the ground for a fresh round of illegal executions.' **[16i]**

Further information on the Mungiki is available in the Landinfo report.

OTHER GROUPS

9.18 A Daily Nation report, 'Kenya militias turn into criminal gangs, pose threat', dated 27 February 2010, stated that other groups within Kenya had formed:

'Militias which perpetrated some of the worst violence in the last general election have transformed into criminal gangs and pose a grave threat to the nation's security.

'Most of them are taking advantage of the community policing project to claim legitimacy as community-based vigilante groups, according to the latest monitoring report commissioned by the Kofi Annan-led Panel of Eminent African Personalities that negotiated the end to the post-election violence. Some 1,300 people were killed and another 650,000 displaced in the violence.

'A move by the government to revamp the community policing project is reported to be yielding negative results. The project was revamped in 2005 and its budgetary allocation increased 20-fold to Sh84 million for the 2009/2010 financial year.

'"Community policing through vigilantes is turning into a source of insecurity for communities. Illegal groups as well as vigilantes demand payment for security in poor neighbourhoods,' reads part of the report.

'The report was compiled by consultancy firm South Consulting which did research in Nairobi, Central and Nyanza provinces towards the end of last year.

'A previous report commissioned by the Panel of Eminent Persons and done by the same firm between January 2008 and February 2009 warned that the security groups, commonly known as vigilantes, had been infiltrated by sacked police officers and transformed into criminal gangs.

'Police Spokesman Eric Kiraithe said the matter was taken seriously. He said that the emergence of criminal gangs was one of the reasons leading to the formation of a Criminal Intelligence Unit (CIU) within the police force. "We've penetrated almost all of them and the plan is to arrest and charge individual members with the crimes they committed," said Mr Kiraithe.

'The report identified 32 such groups, 20 of them in Nairobi. These exclude those well known like the Mungiki, Taliban, Sungu Sungu and Chinkororo.

'"Security has been commoditised. Individuals, households and businesses pay for personal safety and protection of property. Vigilantes, organised as security units, attack

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or destroy the property of individuals or households that are unwilling to pay," reads part of the report.

'The report identified new gangs preying on the transport sector in Kibera as Bumps Ahead, Karanja Youth and Kaberenge. The audit report also identifies more gangs in the same area including Yes We Can, 14 Gendarmerie, 12 Flamingos, 12 Disciples, Bunkers, Kosovo, Tuff Gong, Dego Youths, 40 Ndugus, ODM Youths, Darajani, Jipange and Super 14.

'In Nairobi North, the report identified Thaai and Wailer groups. The Hague, Kenda Kenda, Bantu and Ngoroko gangs were identified in Central. In Nyanza, there are Nyalenda Base, Chief Squad, Nyamasira Massive, Baghdad for Peace.' **[16f]**

9.19 The Kenya National Dialogue and Reconciliation (KNDR) Monitoring, Review Report October 2010, covering the period July to September 2010, observed:

'Illegal groups [are] re-inventing themselves: The past four months saw a lull in the activities of known illegal groups ostensibly because some of their leaders were seeking to shed the negative image and present themselves as candidates for public office. However, the rise of macabre murders in Nairobi, Central and Nyanza (Kisii area) regions has raised concerns about the possible resurgence of illegally armed groups. The proliferation of extortion gangs particularly in urban low income areas has continued to pose a serious threat to security. Interviews in Nairobi reveal extortion gangs have taken control of the public transport industry, and a culture of impunity has emboldened them…The government has enacted a new law to deal with organised crimes and criminal groups. The law provides for stiff penalties for involvement in organised crime. Interestingly, the coming into force of the law coincided with the resumption of a nation-wide "crackdown" on the Mungiki, an illegal group. In the past, such measures, which often resulted in human rights violations including extra-judicial killings, were employed for lack of a policy guideline and strategy to deal with organised criminal gangs. The Organised Crime Act focuses on the criminal dimension of illegal groups but does not address the socio-economical and political problems that promote their existence…The re-invention of illegal groups, the return of macabre killings and the resurgence of extra-judicial killings point to the needy for urgency in reforming the police and other institutions. More than two years after the signing of the National Accord and Reconciliation agreement, is a sufficient period to determine that police and other institutional reforms have been too slow to have the desired impact. Going into another election without the required police reforms is highly inadvisable. The New Constitution alone cannot guarantee stability; only commitment to the spirit and letter of the new constitution can do this. To show the new will, radical police reforms must be speeded up.' **[64a] (page 14, paragraphs 26-28)**

See also Security forces for more information about the government's reaction to the Mungiki and other criminal groups.

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10. JUDICIARY

ORGANISATION

10.01 The gabriellubale.com website provided the following information, dated 22 August 2012, about the structure and organisation of Kenya's courts:

'There are two levels of courts Superior Court (consist of Supreme Court, Court of Appeal and High Court) and Subordinate Courts (Resident Magistrate Court, Kadhi Courts, Court Martials, Tribunals, District Magistrate Courts Classes 1st, 2nd and 3rd.)…The Supreme Court of Kenya is established under Article 163 of the Constitution of Kenya. It comprises of 7 (Seven) Judges: the Chief Justice, who is the president of the Court, the Deputy Chief Justice, who is the deputy to the Chief Justice and the vice-president of the court and five other judges.

'The Supreme Court is properly constituted for purposes of its proceedings when it has a composition of five judges and has exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of President arising under Article 140 and subject to clause (4) and (5) of Article 163 of the Constitution, appellate jurisdiction to hear and determine appeals from the Court of Appeal and any other court or tribunal as prescribed by national legislation.

'Appeals from the Court of Appeal to the Supreme Court are as a matter of right in any case involving the interpretation or application of this Constitution and in any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved, subject to clause (5).

'The Supreme Court may review a certification by the Court of Appeal and either affirms, vary or overturn it.

'The Supreme Court may give an advisory opinion at the request of the national government, any State organ, or any county government with respect to any matter concerning county government.

'All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court.

'Establishment: The Court of Appeal is established under Article164 of the Constitution of Kenya 2010.

'Composition: The Court of Appeal consists of a number of judges, being not fewer than 12 (twelve), as may be prescribed by an Act of Parliament and the Court is to be organized and administered in the manner prescribed by an Act of Parliament. The Court comprises of a President of the Court of Appeal who is elected by the judges of the Court of Appeal from among themselves. The Court of Appeal Judges retire at the age of 74 years.

'Jurisdiction: The Court of Appeal is a superior court of record therefore it sets precedents. It has limited original jurisdiction. It was created to hear appeals from the High court.

'The only moment the Court Appeal can have original jurisdiction is in punishment for contempt of court, and when stating execution of orders of the High Court. Procedure: The practice and procedure of the court of appeal are regulated by the rules of court made by the Rules Committee constituted under the Appellate Jurisdiction Act (Cap. 9).

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The Act provides that an uneven number of at least three judges shall sit for the determination of any matter by the court. The decision of the court shall be according to the opinion of a majority of the judges who sat for the purposes of determining that matter.

'The court has powers to:

i Determine a case finally.

ii Order for a trial.

iii Order for a re-trial.

iv Frame issues for the determination of the High Court.

v Receive additional evidence or order that it be taken by another court.

'Establishment: The High Court is established under Article 165 and it consists of a number of judges to be prescribed by an Act of Parliament. The Court is organized and administered in the manner prescribed by an Act of Parliament. The Court has a Principal Judge, who is elected by the judges of the High Court from among themselves.

'Composition: Ordinarily, the High Court is duly constituted by one Judge sitting alone. However there are instances where two or more High Court Judges may be required to determine certain kinds of cases.

'Appointment of Judges: Are appointed by the President in accordance with the advice of Judicial Service Commission. They are laid down special qualifications required of a person to be eligible for appointment as a Judge, namely:

'He/she is or has been a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from such a Court or;

'He/she is an Advocate of the High Court of not less than seven years standing or;

'He/she holds and has held for a period of or periods amounting in aggregate to not less than seven years, one or other of the qualifications specified in Section 12 of the Advocates Act.

'Jurisdiction:

'The High Court has unlimited original jurisdiction in criminal and civil matters.

'ii The High Court has jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.

'iii The High Court has jurisdiction to hear an appeal from a decision of a tribunal appointed under the Constitution or national legislation to consider the removal of a person from office, other than a tribunal appointed under Article 144.

'iv The High Court has jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of: the question whether any law is inconsistent with or in contravention of the Constitution, the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of the Constitution, any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government, and a question relating to conflict of laws under Article 191;any other jurisdiction, original or appellate, conferred on it by legislation.

'v The High Court does not have jurisdiction in respect of matters reserved for the exclusive jurisdiction of the Supreme Court under this Constitution or falling within the jurisdiction of the courts contemplated in Article 162 (2).

'vi The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. Also being a Superior court of record means that the decisions of the High Court as precedents, are binding on the subordinate courts by the doctrine of stare decisis.

'vii Although High Court has unlimited original jurisdiction in civil and criminal cases in actual practice, it will hear those criminal cases which cannot be tried by the subordinate courts i.e. murder and treason whereas in civil cases, it has jurisdiction where the value of the subject matter, in dispute exceeds Kshs. 500,000.00. The High Court has power to pass any sentence authorized by law.

'viii In addition to the ordinary civil and criminal jurisdiction or the High Court, there are other matters, which can only be heard by the High Court.' **[29]**

10.02 The Freedom House, 'Countries at the Crossroads 2012, Country Report – Kenya' (FHCC Report 2012), released on 20 September 2012, observed:

'A new Supreme Court, Court of Appeal, and Constitutional Court have been established over the high courts and magistrate courts. A Land and Environment Court and a Labor Court are also new superior courts. Under the Judicial Service Act 2011, an independent eight-member Judicial Service Commission (JSC) is empowered by constitutional mandate to "promote and facilitate the independence and accountability" of the judiciary. The JSC will oversee vetting of all of Kenya's sitting judges as well as new appointments. The commission was praised in 2011 for its public interviews of nominees for chief justice and deputy chief justice.' **[18c] (Rule of Law)**

10.03 The USSD 2012 Human Rights Report stated that: 'The law provides for Qadi courts, which adjudicate Muslim personal law concerning marriage, divorce, and inheritance among Muslims. 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.' **[4b] (section 1e)**

INDEPENDENCE

10.04 The USSD 2012 Human Rights Report stated:

'The law provides for an independent judiciary, and the judiciary underwent significant reform and transformation during the year. In contrast to previous years, the judiciary

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asserted and maintained its independence, despite attempts by the executive branch to influence the outcome of judicial decisions.

'The president historically had extensive powers over appointments, including for the positions of attorney general, chief justice, and appellate and High Court judges. However, a new constitution, promulgated in 2010, vests responsibility for making recommendations for the appointment of judges in the Judicial Services Commission (JSC), which must publicly vet candidates. In May 2011 the JSC conducted a transparent vetting process, leading to the appointment of a well-respected reformer to serve as chief justice. During the year [2012] the government also began the process of vetting all sitting judges and magistrates. Of the nine judges on the court of appeals, four were declared unfit to continue serving…The government did not always respect judicial independence. In June [2012] President Kibaki ordered members of the Provincial Administration to disregard the High Court's ruling after the court declared their appointments unconstitutional.' **[4b] (Section 1e)**

FAIR TRIAL

10.05 The USSD 2012 Human Rights Report stated:

'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. The law also provides defendants with the right to be informed promptly and in detail of the charges, to a fair and public trial without undue delay, to access government-held evidence, and not to be compelled to testify or confess guilt. These rights were generally respected, although legal proceedings were frequently adjourned when witnesses did not present themselves to give testimony, resulting in undue delays. 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.' **[4b] (section 1e)**

10.06 The UPR Stakeholder Summary 2010 reported that:

'Eastern Paralegal Network (EPN) reported that access to justice is hampered by high costs in representation and court fees, distance of courts and police stations in the rural areas. It indicated that the court environment is hostile, strange and intimidating due to the complex language and procedures which the lay citizen does not understand due to their legal illiteracy and lack of formal education. This further erodes their confidence in the administration of justice.' **[61f] (p5, paragraph 28)**

10.07 The UN UPR Compilation 2010 reported that:

'The HR Committee expressed concern that most suspects do not have access to a lawyer during the initial stages of detention and that only individuals facing a capital murder charge benefit from a legal assistance scheme. CAT urged Kenya to ensure that

the lack of resources is not an obstacle to accessing justice and to urgently implement the national legal-aid scheme, which could be accompanied by the setting up of an Office of Public Defender.' **[61c] (p8, paragraph 40)**

10.08 The FHCC Report 2012 observed that:

'Kenyan law presumes innocence until proven guilty, guarantees a public hearing, and allows consultation with an attorney. The government provides attorneys only in capital cases. Most defendants cannot afford legal counsel and the scale of free legal aid services cannot meet the enormous need. The government and courts sometimes use secrecy laws to withhold evidence from defendants. Requirements that detainees must be charged within 24 hours or 14 days in non-capital and capital cases, respectively, are often not honored. Many suspects are held for months or years in pretrial detention under dreadful conditions despite provisions for their release on bail or bond. High court fees, poor knowledge of legal rights, language barriers, and, in many rural areas, lack of legal infrastructure also present grave obstacles to access to justice.'
[18c] (Rule of law)

PENAL CODE

10.09 The Penal Code of Kenya is available on the Kenya Law Reports website.

CODE OF CRIMINAL PROCEDURE

10.10 The Criminal Procedure Act is available on the Kenya Law Reports Website.

For further information on the police, see Security forces. For further information on pre- and post-trial detention, see Prison conditions. For further information on the Death penalty, please see the section of the same name. See Prison conditions and arrest and detention – legal rights

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11. ARREST AND DETENTION – LEGAL RIGHTS

11.01 The United States State Department '2012 Human Rights Report: Kenya' report, published on 19 April 2013, stated:

'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 must be brought before a judge within 24 hours. 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, and all suspects, including those accused of capital offenses, are eligible for bail. However, many suspects remained in jail for months

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pending trial because of their inability to post bail. Due to overcrowding in prisons, courts rarely denied bail to individuals who could pay it, even when the circumstances warranted denial. For example, an NGO that worked with child victims of sexual assault reported that suspects accused of sexually assaulting their female children frequently were released on nominal bail and allowed to return to their homes, even in cases when there was evidence that they had threatened their victims after arrest.' **[4b] (section 1d)**

11.02 Law on arrest and detention can be found in the Criminal Procedure Code, which is available on the Kenya Law Reports Website. Section 21 of the Act states:

'(1) In making an arrest the police officer or other person making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to custody by word or action.

'(2) If a person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the police officer or other person may use all means necessary to effect the arrest.

'(3) Nothing in this section shall justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.' **[22d] (Chapter 21)**

11.03 Section 29 of the act gives provisions for arrest without a warrant:

'A police officer may, without an order from a magistrate and without a warrant, arrest -

'(a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;

'(b) any person who commits a breach of the peace in his presence;

'(c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

'(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to that thing;

'(e) any person whom he suspects upon reasonable grounds of being a deserter from the armed forces;

'(f) any person whom he finds in a highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

'(g) any person whom he finds in a street or public place during the hours of darkness and whom he suspects upon reasonable grounds of being there for an illegal or disorderly purpose, or who is unable to give a satisfactory account of himself;

'(h) any person whom he suspects upon reasonable grounds of having been concerned in an act committed at a place out of Kenya which, if committed in Kenya, would have been punishable as an offence, and for which he is liable to be extradited under the

Extradition (Contiguous and Foreign Countries) Act or the Extradition (Commonwealth Countries) Act;

'(i) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on that person, any implement of housebreaking;

'(j) any released convict committing a breach of any provision prescribed by section 344 or of any rule made thereunder;

'(k) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.' **[22d] (Chapter 21)**

11.04 Article 49 of the Constitution of Kenya states that:

'(1) An arrested person has the right -

(a) to be informed promptly, in language that the person understands, of -

(i) the reason for the arrest;

(ii) the right to remain silent; and

(iii) the consequences of not remaining silent;

(b) to remain silent;

(c) to communicate with an advocate, and other persons whose assistance is necessary;

(d) not to be compelled to make any confession or admission that could be used in evidence against the person;

(e) to be held separately from persons who are serving a sentence;

(f) to be brought before a court as soon as reasonably possible, but not later than -

(i) twenty-four hours after being arrested; or

(ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;

(g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

'(2) A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.'
[22a] (Article 49)

For information about the application of arrest and detention rights in practice see Security forces.

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12. PRISON CONDITIONS

12.01 King's College London's International Centre for Prison Studies, Prison Brief for Kenya, webpage, undated, accessed on 11 April 2013, provided a statistical breakdown of Kenya prison estate and occupancy rates:

Country	KENYA
Ministry responsible	Ministry of Home Affairs, Heritage and Sports
Prison administration	Kenya Prisons Service
Contact address	P.O Box 30175, Nairobi, Kenya
Telephone/fax/website	tel: +254 2 722 668 or +254 2 722 9 fax: +254 2 727 329 or +254 2 714 7 web: www.homeaffairs.go.ke
Head of prison administration (and title)	Isaiah Samuel Osugo Commissioner of Prisons
Prison population total (including pre-trial detainees / remand prisoners)	52,000 at February 2012 (Ministry of Home Affairs)
Prison population rate (per 100,000 of national population)	126 based on an estimated national population of 41.2 million at February 2012 (from latest Census figures)
Pre-trial detainees / remand prisoners (percentage of prison population)	c.36% (October 2011)
Female prisoners (percentage of prison population)	5.3% (October 2011)
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	0.5% (5.6.2009 - under 18)
Foreign prisoners (percentage of prison population)	0.7% (5.6.2009)
Number of establishments / Institutions	99 (2011)
Official capacity of prison system	22,000 (February 2012)

Occupancy level (based on official capacity)	236.4% (February 2012)		
Recent prison population trend (year, prison population total, prison population rate)	1992	28,914	(115)
	1996	41,064	(144)
	1998	33,610	(113)
	2001	38,739	(120)
	2004	52,000	(149)
	2007	45,271	(118)
	2010	49,757	(120)

[72a]

12.02 The United States State Department '2012 Human Rights Practices: Kenya' report (USSD 2012 Human Rights Report), published on 19 April 2013, stated:

'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. The KNCHR and human rights groups noted that the Department of Prisons began implementing reforms after the KNCHR assessment, working with the KNCHR to train human rights workers and establish paralegal clinics in prisons to cut down on abuse. Pretrial detention in police stations continued to be harsh and life-threatening, with no evidence of improvement.

'As of October [2012] the Legal Resources Foundation (LRF) reported a total prison population of approximately 52,000, including 2,756 women and 49,244 men. Of these, 18,720 were in pretrial detention. The country's 108 prisons had a designed capacity of 25,000 inmates. 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 divided into two as punishment. Water shortages, a problem both inside and outside of prison, 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 problems, such as lack of transportation, often delayed court-ordered hospital attention. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks. This was especially true for the more than one-third of prisoners awaiting trial, as they were not engaged in any work programs that would allow them to leave their cells.

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'According to the government, 187 prisoners died in 2011, the majority from infections or other generally preventable causes. Overcrowding, unhygienic conditions, and inadequate medical treatment contributed to prisoner deaths.' **[4b] (Section 1c)**

12.03 The Human Rights Watch report, 'As Kenya Locks Up People Without Condoms, Aids and TB Are Breaking Out of Prisons', published on 7 June 2010, stated:

'As in many countries in Africa, conditions inside Kenya's prisons are dangerously unhealthy. In July 2008, a Ministry of Home Affairs report on prison conditions estimated that 46 inmates die every month because of dirty and crowded conditions and a lack of adequate health care…In Kenya, according to the Kenya Prisons Service, one in 10 prisoners is infected with HIV, and while TB rates are largely unmeasured, one recent study found that TB prevalence in one of Kenya's prisons was seven times higher than that of the general population…Kenya's national HIV strategy has identified prisoners as a vulnerable group, and Kenyan officials have acknowledged that sex occurs among prisoners and that a significant number of HIV infections are occurring inside prisons.

'Yet, the simplest solution - making condoms available - is not being implemented. The result is that people are becoming infected and dying.' **[9c]**

12.04 The Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, dated 26 February 2010 (UN SR report 2010) stated:

'Recognizing the important role of the Kenya National Commission on Human Rights in undertaking visits to places of detention, the Special Rapporteur is concerned that it lacks the necessary resources to fulfil its functions and regrets that it has been denied access to detention facilities in some cases. Equally, the judiciary falls short of visiting and inspecting prisons due to a lack of capacity or will. The Special Rapporteur strongly encourages the Government to ratify and implement the Optional Protocol to the Convention against Torture (OPCAT) and accept the individual complaints mechanism, in accordance with article 22 CAT…The Special Rapporteur is further worried about the unavailability of legal aid to the majority of persons in detention and urges the Government to proceed with the adoption of a legal aid scheme. He moreover regrets the lack of an enforceable right to adequate compensation for torture victims and the difficulties in obtaining it through civil litigation.' **[61d] (p96, para 45-46)**

12.05 The (Kenya government) National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, dated 22 February 2010 stated that reforms to prisons were underway:

'In recognition of the fact that a prisoner is entitled to the basic freedoms guaranteed by the constitution and other international human rights standards the government has revamped the Kenya Prison Service by putting in place programmes that focus on strategic issues that are human rights based, promote governance and democratic practices in prison management. This is already bearing fruit as evidenced by the fact the 2009 Outstanding Correctional Service Employee Global Award was given to a Kenyan. Plans are also underway to review the Borstal Act (cap 92) to synchronize it with the children's act in order to capture the multiple needs and challenges of juveniles in prison custody.

'The government has also embarked on structural development programmes for the prisons with a view to improving prisons condition through infrastructural upgrades and civil works in many prison facilities countrywide. These facilities will increase spaces for the accommodation of prisoners and therefore humanize the general prison conditions.' **[61e] (p7, para 40-41)**

VOTING RIGHTS

12.06 BBC News reported on 23 June 2010 that: 'A court in Kenya has ruled that prisoners will be allowed to vote in a referendum on a new constitution…The ruling applies only to voting in August's [2010] referendum, but correspondents say it may lead to further concessions for future elections.' **[10g]**

12.07 A Business Daily report, 'Court directs IEBC to allow prisoners vote in March elections', dated 21 January 2013, stated:

'Registered voters who are serving prison sentences will vote in the March 4 [2013] General Election after the High Court ordered the Independent Electoral and Boundaries Commission (IEBC) to facilitate their voting.

'High Court judge David Majanja also said prisoners should henceforth be allowed to register as voters because this was a constitutional right.

'The judge said he would have ordered for their registration for the next General Election were it not for the time constraint.

'"IEBC has an obligation to facilitate registration of voters. Prisoners who are registered to vote in the General Election should be enabled to vote and IEBC should register the prisoners for them to vote in future elections," ruled Mr Justice Majanja.

'Kituo cha Sheria, an NGO, moved to court seeking orders to compel the electoral commission to extend the voter registration deadline to facilitate prisoners' listing.

'The NGO argued that the Constitution, under Article 51, provides that inmates retain all the rights and fundamental freedom in the Bill of Rights and as such IEBC's action denies prisoners their right to participate in elections.

'"I find and uphold that respondent's (IEBC) action violated rights of the persons in prison," said Justice Majanja, adding that the responsibility of IEBC to register voters is not passive rather active one.

'Kituo cha Sheria said that the electoral commission had failed to respond to its letters in which it raised concerns over the commission's failure to register prisoners as voters.

'However, in its submission IEBC defended itself saying it established registration centres all over Kenya including near the prisons, and as such no person who presented himself or herself for registration was denied chance to enlist.' **[20a]**

CHILDREN IN PRISON

12.08 The USSD 2012 Human Rights Report stated:

'The LRF [Legal Resources Foundation] 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 generally were separated from the adult population, except during the initial detention period at police stations, when adults and minors of both sexes often were held in a single cell.' **[4b] (Section 1c)**

For more information on the legal process, see also Security Forces and Judiciary. For more information on the situation of children in Kenya generally, please see Children.

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13. DEATH PENALTY

13.01 The Constitution of Kenya guarantees the right to life in Article 26(1), however Article 26(3) gives the proviso that: 'A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.' **[22a]**

13.02 Kenya is described by the Amnesty International report 'Death Sentences and Executions 2012' (AI death sentences report 2012), published on 9 April 2013, as a country that that is 'abolitionist in practice'. The report explains that countries that are 'abolitionist in practice' are 'countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.' **[15e]**

13.03 On 30 July 2010, the Daily Nation reported on the decision of the Court of Appeal:

'Three judges of appeal on Friday declared the mandatory death sentence for murder unconstitutional.

'In a landmark decision, the three upheld a constitutional provision on protection against inhuman treatment and declared section 204 of the Penal Code, which stipulates death as the only sentence for murder, as inconsistent with the Constitution.

'But the death penalty will remain lawful until such a time when Kenyans decide to do away with it, the three judges said.

'The decision by justices Riaga Omollo, Philip Waki and Onyango Otieno gives the trial court the mandate to choose whether to impose the death penalty or vary it, depending on the merits of the case.' **[16g]**

13.04 Although the death penalty is no longer mandatory, Capital FM reported on 16 September 2010 that:

'A 40-year-old man has been sentenced to death for shooting and killing his wife and a butcher two years ago in Kiambu.

'High court judge Jessie Lessit sent Henry Karanja Muiru to the gallows after she found him guilty of killing Keziah Wairimu and Jesee Gitau Kabiru on November 1, 2008 at

Nderi Trading center in Kiambu…In mitigation, Mr Muiru had urged the court not to impose the death penalty, arguing it is no longer a mandatory sentence. It was also his argument that he was the sole surviving parent of his two children who are now under his care.

'But the judge said 'a man who obtains a firearm and shoots his wife should not expect any leniency or sympathy. The children should not be used as his defense as they will always remember that he caused the death of their mother…Considering the circumstances of this case, death is the only appropriate sentence considering that the attack whose motive is not known was brutal and uncalled for."' **[21a]**

13.05 The Amnesty International 2012 Annual Report, Kenya section, published on 24 May 2012, stated: 'Courts continued to impose the death penalty. There were no executions. Some courts ignored the July 2010 decision by the Court of Appeal that the mandatory application of the death penalty was unconstitutional.' **[15a]**

13.06 The AI death sentences report 2012 stated that:

'At least 21 new death sentences were reported to have been imposed in Kenya. During the year [2012], at least eight men were sentenced to death for crimes involving robbery and violence, but not intentional killing. In December, six Administration Police officers were reportedly sentenced to death for opening fire and killing seven taxi operators in Kawangware in 2010. In some of these cases, judges appeared to continue to apply the death penalty as a mandatory punishment. Kenya no longer retains a hangman.

'The scope of the death penalty was expanded when President Mwai Kibaki signed into law the Kenya Defence Forces Act in August [2012]. The Act allowed for members of Kenya's Defence Forces being sentenced to death for a range of offences, including treachery, spying, aiding the enemy, assisting the enemy with intelligence information and unlawfully advocating for a change of government.

'In July [2012], the UN Human Rights Committee expressed regret that a total of 1,582 convicts still faced the death penalty, and that the death penalty applied to crimes such as robbery with violence that did not qualify as "most serious crimes" within the meaning of Article 6(2) of the ICCPR. The Committee recommended abolishing the death penalty and acceding to the Second Optional Protocol to the ICCPR. It suggested that the state should intensify awareness campaigns with a view to changing the mindset of the public regarding the retention of the death penalty.' **[15e]**

See also Judiciary and Prison Conditions.

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14. POLITICAL AFFILIATION

This section should be read in conjunction with Human rights institutions, organisations and activists, and Freedom of speech and media

FREEDOM OF POLITICAL EXPRESSION

66 The main text of this COI Report contains the most up to date publicly available information as at 22 April 2013.

14.01 The United States State Department '2012 Human Rights Report: Kenya' (USSD Human Rights Report 2012), published on 19 April 2013, stated: 'The constitution and law provide citizens the right to change their government through generally free and fair multiparty 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.' **[4b] (section 3)**

14.02 The Freedom House 'Freedom in the World Report 2012', published on 17 August 2012, stated:

'Kenya is not an electoral democracy. While there were few claims of irregularities in the December 2007 parliamentary vote, the flawed presidential poll featured apparent vote rigging and other administrative manipulations that favored the incumbent, Mwai Kibaki. In September 2008, an international commission found that the legitimacy of the election results had been undermined by several factors, including a defective voter registry and widespread fraud. The panel's recommended electoral reforms have yet to be fully implemented. However, the conduct of the constitutional referendum held in August 2010 was considered legitimate and competitive, indicating an improvement in electoral transparency...Political parties representing a range of ideological, regional, and ethnic interests are active and vocal, and there are no significant impediments to party formation.' **[18a]**

14.03 Article 38 of the Constitution implemented in August 2010 describes citizens' political rights:

'… (1) Every citizen is free to make political choices, which includes the Right -
(a) to form, or participate in forming, a political party;
(b) to participate in the activities of, or recruit members for, a political party; or
(c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for -
(a) any elective public body or office established under this Constitution; or
(b) any office of any political party of which the citizen is a member.
(3) Every adult citizen has the right, without unreasonable restrictions, -
(a) to be registered as a voter;
(b) to vote by secret ballot in any election or referendum; and
(c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.' **[22a]**

14.04 The United Nations News Service reported on 6 August 2010 that:

'The United Nations today welcomed the conclusion of the referendum on a new constitution in Kenya, lauding the peaceful and orderly manner in which voting was conducted and commending the people of East African country for turning out in large numbers to cast their ballots.

'Secretary-General Ban Ki-moon sent his congratulations to the people of Kenya, describing the country's new basic law was as a 'major milestone in addressing the country's long term challenges.'

'"The United Nations was pleased to provide assistance to the electoral authorities and to support national conflict prevention efforts involving national leaders, institutions and civil society,' Mr. Ban's spokesperson said, adding that UN will continue to support the Kenyan Government and people in their efforts to further reconciliation, accelerate development and strengthen democratic institutions and governance in their country."' **[23a]**

14.05 The Kenya National Dialogue and Reconciliation (KNDR) Monitoring, Review Report October 2010, covering the period July to September 2010 noted that:

'The Referendum on the New Constitution was conducted peacefully: After several months of lively campaigns on the Proposed New Constitution, Kenyans went for a national referendum on 4 August 2010. The voting and tallying process started and ended peacefully in all parts of the country…The days preceding the referendum were filled with anxiety as Kenyans expressed fear of post-referendum chaos in the fashion of the 2007 post-election violence. Peace-building NGOs mapped potential hotspots of violence and identified early-warning signs. Among these were the resurgence of hate speech, and circulation of literature warning certain communities to leave some areas particularly in the Rift Valley. However, there was no violence reported during the period.' **[64a] (p31, paragraph 60-61)**

14.06 An opinion piece by Mwangi Kimenyi about the 2013 elections, published on the brookings.edu website, dated 2 April 2013, noted that:

'The aftermath of the 2007 post-election violence in Kenya - which resulted in 1,300 deaths and thousands more displaced from their homes - left an ugly scar on the country's image. Since attaining independence from British rule in 1963, Kenya had been one of few African exceptions to military coups and civil conflicts. The post-election violence in 2007 greatly undermined Kenya's position as country where the people were united. It revealed serious grievances and divisions in the society and many ridiculed Kenya as yet another story of a state doomed to fail.

'However, over the five years, Kenyans have made significant reforms in their institutions that in part contributed to the violence in 2007. Kenyans now have a new constitution, which not only creates lower level county governments but also reduces the powers of the presidency and establishes many independent institutions that are not subject to manipulation by the executive. The most important of these include a reformed judiciary and the Independent Election and Boundaries Commission (IEBC).

'On March 4, 2013, Kenyans participated in a complex election that included voting for the president and deputy president, county governors, senators, members of parliament and women representatives. Kenyans turned out in large numbers with over 80 percent of registered voters coming out to vote. There were no serious incidences of violence and the electoral process was deemed by many international observes as free, fair and credible. Although the IEBC faced challenges in the tallying process as a result of the technological failure of the data transmission system, the reversion to manual tallying did not compromise the integrity of the process.

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'After days of tallying and counter-checking the election results, the IEBC declared Uhuru Kenyatta and his running mate William Ruto as having been duly elected as president and deputy president, having received over 50 percent of the votes cast. Their closest rival, Raila Odinga and his running mate, Kalonzo Musyoka, managed about 43 percent of the votes cast. However, Mr. Odinga refused to accept the results on the grounds that the IEBC had failed to conduct a credible election. But on March 31, 2013, the Supreme Court of Kenya declared that the March 4 election was free, fair and credible.

'To a large extent, the prevailing peace in Kenya is a result of the many reforms that the country has undertaken to create credible institutions like the IEBC. Kenyans also trust the reformed judiciary, which has demonstrated its professionalism, independence, and capacity to adjudicate on complex matters, including the presidential election. One major lesson for the international community is that peace is more likely to be durable when it's the people of Kenya and their own institutions that are left to handle their problems.

'Now that credible and peaceful elections have taken place, Kenya has redeemed itself. This is the big story that the local media has been covering. However, the international media coverage of the elections has been extremely poor and demonstrated a mundane understanding of the electoral dynamics in Kenya. Apparently, international media outlets sent their best war correspondents and not election experts. It seems like they expected to cover stories of violence rather than elections. Frustrated with peaceful elections, these correspondents failed to note the great progress that Kenya has made and the monumental significance of the 2013 elections.' **[89]**

See Recent developments for information about the March 2013 elections, Constitution for information on the referendum process and Political system . For a list of political organisations, see Annex B.

FREEDOM OF ASSOCIATION AND ASSEMBLY

14.07 Articles 36 and 37 of the Constitution state that:

'36. (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

(2) A person shall not be compelled to join an association of any kind.

(3) Any legislation that requires registration of an association of any kind shall provide that -

(a) registration may not be withheld or withdrawn unreasonably;

and

(b) there shall be a right to have a fair hearing before a registration is cancelled.

'37. Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.' **[22a]**

14.08 The FH Report 2011 stated:

'The constitution guarantees freedom of assembly. This right is generally respected, but there have been cases of unnecessary use of force at demonstrations, and public gatherings were curtailed during the 2008 postelection violence. Kenya's civil society. sector has remained robust even in recent periods of political polarization. However, two leading human rights activists who had been investigating police abuses in the deaths of individuals linked to the Mungiki criminal sect were murdered in 2009. A police whistleblower who provided information to the national human rights body was also murdered during that year, and the police were unable to identify the perpetrators. No similar deaths were reported in 2010.

'There are some 40 trade unions in the country, representing about 500,000 workers. Most of the unions are affiliated with the sole approved national federation, the Central Organization of Trade Unions. The 2007 Labour Relations Act establishes broad criteria for union registration, leaving authorities with limited grounds for suspending or refusing to register a union. However, there are restrictions on the right to strike, and the relevant government bodies have been accused of failing to adequately enforce labor laws and protections. Historically, much of the trade union movement has been subservient to the authorities.' **[18a]**

14.09 The USSD Human Rights Report 2012 stated that:

'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. 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 also forcibly dispersed demonstrators. For example, on April 18 [2012], police used tear gas and fired live ammunition into the air to disperse approximately 2,000 youths who gathered for a political rally in Limuru, outside Nairobi. Police cited the participation of Maina Njenga, a former leader of the outlawed Mungiki criminal group, as justification for shutting down the rally, whose organizers included prominent opposition leaders. The organizers had obtained all the required permits. Police officers were filmed beating and arresting numerous youths who refused the order to disperse.

'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.' **[4b] (section 2b)**

For further information on these banned groups, please see Crime and security.

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15. FREEDOM OF SPEECH AND MEDIA

This section should be read in conjunction with Political affiliation and Human rights institutions, organisations and activists

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15.01 The Reporters sans Frontiers World Press Freedom Index 2013, published on 30 January 2013, covering the period 1 December 2011 to 30 November 2012, which measures violations of press freedom, ranked Kenya 71st out of 179 countries assessed. **[74a]**. The Freedom House report, 'Freedom of the Press 2012', Kenya (FH Press Freedom Report 2012), covering events in 2011, published on 1 May 2012, considered Kenya's media environment to be 'partly free'. **[18b] (Kenya)**

15.02 The United States State Department '2012 Human Rights Report: Kenya' (USSD Report Human Rights Report 2012), published on 19 April 2013, observed that:

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

'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 National Cohesion and Integration Commission (NCIC) worked with the police to monitor political rallies, media reports, parliamentary debate, and individual speech for instances of hate speech. In September Assistant Minister Ferdinand Waititu became the sixth member of parliament (MP) to be charged with hate speech since 2010. Waititu's indictment occurred a week after the judiciary dropped hate speech charges against Environment Minister Chirau Ali Mwakwere following his public apology for his inflammatory remarks. In June the NCIC recommended charges against three Kikuyu musicians for lyrics that were deemed ethnically divisive.

'In some instances the government used hate speech laws to curtail legitimate speech. For example, in October MP Shaykh Mohammed Dor was charged with hate speech and incitement to violence for stating in parliament that he would fund the MRC if asked. Dor's remark came days before the government initiated a crackdown on the MRC during which the group, which had been legalized by the High Court on July 25, was again proscribed.' **[4b] (section 2a)**

15.03 The stakeholders' Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 (UPR Stakeholder Summary 2010), submitted as part of the universal periodic review process of states' human rights undertaken by the UN Human Rights Council, dated 5 February 2010, stated:

'Article 19 reported that, although the press is relatively free, tensions between the government and the media remain and take the form of threats, insults and legal challenges resulting in the imposition of fines. There has also been a case where a journalist was murdered and no effective investigation took place…JS2 provided examples of a series of events and legal proceedings in recent years which have been read as direct warnings to the media in general and certain journalists in particular… It also reported that many journalists concede that certain subjects are considered no-go due to fear of retaliation…JS2 added that there is also some evidence to suggest that those who write for publications outside the mainstream press are more likely to be harassed by the authorities…According to Article 19, there were serious failures within the media themselves during the 2007-2008 election crisis and riots (self censorship and inadequate treatment of the politically motivated violence and ethnic divisions). The

Government introduced severe restrictions on the media that have had a long standing impact on the freedom of expression…' **[61f] (p7, paragraphs 39-40)**

15.04 The Freedom House 'Freedom in the World 2012' report, published on 17 August 2012, stated that:

'The constitution provides for freedoms of speech and of the press, and these rights were strengthened in the new constitution. However, the government occasionally attempts to restrict these rights in practice. There were several cases in 2011 of government officials bringing libel and defamation cases against journalists or media outlets for reporting on alleged corruption. There were also reports of harassment and threats against media workers by the security forces, allegedly for reporting on issues such as corruption and the 2007–08 postelection violence. Most Kenyans rely on the broadcast media, particularly radio, for news. A number of private television and radio stations operate, though their reach is limited. The government-owned Kenya Broadcasting Corporation continues to dominate the broadcast sector, particularly outside urban centers.' **[18a]**

15.05 The Freedom House, 'Countries at the Crossroads 2012, Country Report – Kenya' (FHCC Report 2012), released on 20 September 2012, observed:

'Kenya's media is increasingly diverse and almost entirely free of direct censorship, especially in the print sector. The state retains control over the largest broadcast media network, the Kenyan Broadcasting Corporation, which under the 2010 constitution is meant to take on the role of a nonpartisan public broadcaster rather than an uncritical supporter of the incumbent administration. Kenya's new constitution expressly guarantees press freedom, although media operations remain subject to various laws and jurisdictions, some of which might violate the new constitution. Criminal libel and defamation laws are sometimes used against journalists in courts that possess a mixed reputation for fairness. Some journalists and editors believe that fear of defamation suits and concern over losing business advertising inhibit reporting on corruption or other sensitive subjects. Yet Kenya's independent media continues to grow into a more powerful watchdog over government and other powerful interests, and some publications such as The Nairobi Law Monthly are offering in-depth investigative reports on alleged corruption by senior officials and other powerful interests.

'The Communications Commission of Kenya has significant powers to regulate broadcast media, and in October 2011 issued guidelines that mostly addressed "decency" issues. The 2007 Press Act, which created the Media Council of Kenya, and the Kenya Communications (Amendment) Law 2008, enacted in January 2009, which includes curbs on "hate speech," have increased the government's ability to regulate media to a degree that free expression advocates consider excessive. While the 2010 constitution more strongly protects media rights, it also provides the potential for greater governmental regulation, and introduces ill-defined strictures against media malpractices that could be misused to restrict open reporting. Local and international freedom of expression groups have called for changes to broadcasting regulations and media laws to reflect both the new constitution and international standards. Some books have been officially banned in Kenya, and booksellers have feared reprisals if they offer others, such as Michaela Wrong's corruption exposé, It's Our Turn to Eat: The Story of a Kenyan Whistleblower.

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'Both the government and civil society groups have stepped up efforts to sensitize and monitor local media, especially vernacular local radio stations, regarding potential incitement to violence. Kenya's media played a mixed role in the 2007–08 election and postelection violence, reflecting its growing diversity and uneven levels of maturity. Some outlets provided useful voter education before the polls, urged restraint in the postelection period, and mobilized assistance for victims of clashes. Others were accused of inciting people to violence. A Kenyan journalist, Joshua Arap Sang, is facing charges at the International Criminal Court (ICC) for allegedly disseminating coded messages calling for violence during radio broadcasts. Shortly after the 2007 presidential election results were announced, all live news broadcasting was temporarily banned, at least partially because some vernacular radio stations were goading their communities to bloodshed.' **[18c] (Accountability and Public Voice)**

15.06 The BBC News Kenya Country Profile, last updated 17 March 2013, provides a useful overview and assessment of the media and links to the main print, radio and TV operators. **[10c]**

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LAWS ON PRESS FREEDOM

15.07 Articles 33 and 34 of the Constitution state that:

'33. (1) Every person has the right to freedom of expression, which includes -

(a) freedom to seek, receive or impart information or ideas;

(b) freedom of artistic creativity; and

(c) academic freedom and freedom of scientific research.

(2) The right to freedom of expression does not extend to -

(a) propaganda for war;

(b) incitement to violence;

(c) hate speech; or

(d) advocacy of hatred that -

(i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or

(ii) is based on any ground of discrimination specified or contemplated in Article 27 (4).

(3) In the exercise of the right to freedom of expression, every

person shall respect the rights and reputation of others.

'34. (1) Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2).

(2) The State shall not -

(a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or

(b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that -

(a) are necessary to regulate the airwaves and other forms of signal distribution; and

(b) are independent of control by government, political interests or commercial interests.

(4) All State-owned media shall -

(a) be free to determine independently the editorial content of their broadcasts or other communications;

(b) be impartial; and

(c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

(5) Parliament shall enact legislation that provides for the establishment of a body, which shall -

(a) be independent of control by government, political interests or commercial interests;

(b) reflect the interests of all sections of the society; and

(c) set media standards and regulate and monitor compliance with those standards.' **[22a]**

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PRINT MEDIA

15.08 The USSD Human Rights Report 2012 stated that:

'The government occasionally interpreted laws to restrict press freedom, and officials regularly accused the media of being irresponsible and disseminating misinformation. Of the 15 laws in place that restrict media operations, the Defamation Act, the Official Secrets Act, and the Preservation of Public Security Act placed the most severe restrictions on freedom of the press. There were also reports that politicians paid journalists to avoid negative coverage or to plant negative coverage of a political opponent.

'The mainstream print media generally remained independent, but there were attempts at intimidation by officials and security forces. Independent tabloid periodicals often were highly critical of the government.' **[4b] (section 2a)**

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TV/RADIO

15.09 The USSD Human Rights Report 2012 stated that: 'There was a lack of independent national broadcast media. 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 outlets. KBC coverage generally was viewed as balanced.'
[4b] (section 2a)

INTERNET

15.10 The USSD Human Rights Report 2012 stated that:

'There were no government restrictions on access to the Internet and individuals could engage in the expression of views via the Internet, including by e-mail. In September the government announced plans to monitor short text messages and Internet communication for hate speech. Those found to be posting abusive messages or inciting violence would be subject to prosecution and a fine of up to five million shillings ($58,100).

'On August 21 [2012], blogger Robert Alai was detained for posting messages on Twitter that alleged the involvement of government spokesperson Alfred Mutua in the 2009 murder of human rights activists Oscar King'ara and Paul Oulu. Alai was released without being charged. He alleged continued harassment from the government following his release.

'A lack of infrastructure inhibited Internet access in some underdeveloped parts of the country.

'According to the International Telecommunication Union, 28 percent of individuals used the Internet in 2011.' **[4b] (section 2a)**

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JOURNALISTS

15.11 The USSD Human Rights Report 2012 stated that:

'Security forces harassed members of the media. For example, in April [2012] police threatened two journalists, The Standard's Osinde Obare and Radio Citizen's David Musindi, for publishing stories on a police raid at a market in Kitale. According to Obare, Kitale police chief Luca Ogara called him to ask why he published a negative story about the police and threatened repercussions if he returned to Kitale.

'In May [2012] two journalists with The Standard Media Group, Senior Investigative Editor Mohammed Ali and Dennis Onsaringo, filed a complaint with the police commissioner regarding ongoing threats and intimidation by senior police officials. In 2011 Ali filmed an investigative series for the Kenya Television Network (KTN) on police complicity in drug dealing and the role of state agents in frustrating an investigation into a large cocaine seizure. Pressure from politicians, including former defense minister Christopher Murangaru, forced KTN to stop broadcasting the series. The police

investigation into threats to Ali's life and the defamation lawsuits sparked by the program were unresolved at year's end…On September 30 [2012], police arrested three Somali journalists who were reporting on a grenade attack on a school in Eastleigh. The journalists were released without charge and deported from the country.

'The Committee to Protect Journalists issued a report in February [2012] noting that impunity in cases of torture of journalists remained a problem. Ten journalists reported mistreatment at the hands of police in 2011; the government had taken no action in any of the cases as of year's end.'

'Government harassment of journalists resulted in self-censorship, particularly with respect to stories associated with corruption, drug trafficking, and crimes in which government officials applied pressure to protect implicated individuals...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 and the incursion into Somalia.' **[4b] (section 2a)**

15.12 The Africa Centre for Open Governance reported in November 2010 that:

'A special investigation commissioned by the Africa Centre for Open Governance (AfriCOG) Investigative Journalism Fellowship reveals extensive corruption in Nairobi's major media houses. The dossier makes very depressing reading. It is not just about reporters accepting - or demanding - bribes in exchange for coverage. It is a lot worse.

'News desks are the destinations of dirty cash. There are journalists on the payrolls of politicians and corporate honchos. Public officers and events organizers set aside money to bribe journalists. Conscientious scribes have lost jobs for pursuing grand corruption after their bosses cut secret deals with those under the spotlight.…[I]n Kenya today everyone is excited about the media. Opinion polls show that it is the most trusted institution, beating even religious organizations. In the just concluded process of writing a new constitution, the media emerged as the most reliable source of information for the public before the referendum on August 4 [2010]. Right now Kenyans, who generally distrust the politicians, look up to the media to watch over full implementation of the new supreme law.

'As a matter of fact, it will be naïve to expect journalists to stand out as beacons of integrity where corruption is a way of life. But if it is the media that always calls for accountability and transparency, it will be impossible to avoid the charge of hypocrisy.' **[75a]**

15.13 The Committee to Protect Journalists reported on 19 April 2013 that:

'Two investigative journalists have reported receiving death threats in Kenya shortly after airing a story suggesting foul play in a government official's death, according to news reports and local journalists.

'Mohammed Ali and John-Allan Namu, investigative journalists from the private KTN television network received threats from anonymous callers and via social networking sites on Wednesday, according to Namu and Willis Angira, associate producer for KTN.

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"We received threats two days ago, and it was made clear that we were being watched, and there was a plan to eliminate Mohammed and myself," Namu told CPJ.

'David Ohito, news editor of The Standard, which is also affiliated with KTN, told CPJ that the threats were linked to an investigative story aired on KTN two weeks ago, called "Inside Story: Death in Ten Minutes" that suggested foul play in a helicopter crash that killed former Interior Minister George Saitoti.

'On June 10, 2012, a police helicopter crashed in the southern town of Ngong, which was carrying Saitoti and his deputy, Orwa Ojode, along with two pilots and two bodyguards. According to the KTN story, the commission set up to investigate the crash failed to pursue leads that emerged during the investigation, among them that Saitoti and Ojode may have been poisoned to death.

'The Standard said its journalists believe the threats originated from Kenya's internal security department. Ohito told CPJ that The Standard had contacted authorities to express their concern about the threats and saying that they planned to provide the journalists with extra security if more threats occurred.' **[90]**

Further information on corruption in the media can be found in the AfriCOG report. Further information on individual cases of press freedom can be found at the Reporters Without Borders and Committee to Protect Journalists websites.

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16. HUMAN RIGHTS INSTITUTIONS, ORGANISATIONS AND ACTIVISTS

This section should be read in conjunction with Political affiliation and Freedom of speech and media for a fuller picture of freedom of expression generally.

16.01 The United States State Department '2012 Human Rights Report: Kenya' (USSD Report 2012), published on 19 April 2013, observed that:

'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, and some reported threats and intimidation. In December human rights activists who raised concerns about the integrity of various candidates for the newly created post of inspector general of police reported increased threats and harassment from government agents.

'The government frequently did not respond to attacks on human rights activists. For example, authorities failed to investigate the November 9 attack on the executive

director of the NGO Kenyans for Justice and Development, who was seriously beaten and threatened with death over a lawsuit he filed against the government.

'On October 17 [2012], police at Pangani police station arrested seven human rights activists, including Amnesty International staff members, who had arrived for a prearranged meeting with the station's commanding officer to discuss policing in Nairobi's Mathare slum. Police beat the activists and arrested them on what Amnesty International termed "trumped-up charges" but did not record their arrest. The police refused to grant Amnesty International's lawyer access to the activists, denying that they were being held. The activists ultimately were released, but no investigation had been completed by year's end.

'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 HRW produced reports cataloguing human rights abuses.

'Several NGOs, including HRW and ARTICLE 19, 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 and as a result of human rights training for prison staff.' **[4b] (section 5)**

16.02 The Freedom House report, 'Countries at the Crossroads 2012, Country Report – Kenya' (FHCC Report 2012), released on 20 September 2012, noted:

'Kenya's many and diverse civil society groups generally operate with scant interference on a wide variety of issues, often with international funding. The pervasive and systematic repression of political dissidents and civil society activists that characterized the KANU regime is gone, but there have been instances of threats, harassment, intimidation, assaults, and even murder. Officials of the Gay and Lesbian Coalition of Kenya were targeted recently, as have several members of the grassroots group Bunge la Mwananchi (People's Parliament).'
[18c] (Accountability and Public Voice)

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KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

16.03 The Kenya National Commission on Human Rights (KNCHR) states on its website, undated, accessed on 1 May 2013, that it is an '…autonomous national Human rights institution established under article 59 of the Constitution of Kenya 2010 with the core mandate of furthering the promotion and protection of human rights in Kenya. It is a successor to the body of the same name established by an earlier Act of Parliament in 2002, that later became operational in July 2003.' **[24a]**. The KNCHR website also stated that its functions are:

'1. To promote respect for human rights and develop a culture of human rights

'2. To promote protection and observance of human rights in public and private institutions

'3. To monitor, investigate and report observance of human rights in all spheres of life in the Republic

'4. To receive and investigate complaints on alleged human rights abuses and take steps to secure appropriate redress

'5. On its own initiative or on basis of complaints investigate or research human rights matters and make recommendations to improve functioning of State organs

'6. To act as the principal organ in ensuring State compliance with obligations under international and regional treaties and conventions relating to human rights

'7. To formulate, implement and oversee programmes intended to raise public awareness of rights and obligations in the Constitution

'8. Perform such other function considered necessary for the protection and promotion of human rights.' **[24a]**

16.04 The UN Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council, (UN UPR Compilation 2010) dated 16 February 2010, a contribution submitted to the Human Rights Council as part of it's the universal periodic review (UPR) of Kenya held in May 2010, noted that: 'The Kenya National Commission on Human Rights was accredited with 'A' status by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) in 2005, which was reconfirmed in 2008…ICC highlighted the need for the Commission to have financial autonomy…' **[61c] (p3, paragraph 8)**. Details of the ICC current ranking of human rights institutions can be found in the Chart of the Status of National Institutions.

For information about human rights violations by state agents, avenues of complaint and impunity see Security forces and relevant subsections.

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HUMAN RIGHTS ACTIVISTS

16.05 The International Federation for Human Rights report, 'Steadfast in Protest - Annual Report 2011', published on 25 October 2011, noted that: 'In 2010-2011, human rights defenders who exposed and publicised grave violations of human rights as well as facilitated their investigation and prosecution faced heightened risks and reprisals. Defenders of sexual minorities' rights were also victims of harassment because of their activities.' **[87a] (Kenya)**

See also section Lesbian, Gay, Bisexual, Transgender and Intersex persons

16.06 The UN UPR Compilation 2010 reported that:

'The Special Rapporteurs on the right to freedom of expression and the Special Rapporteur on the situation of human rights defenders, jointly and separately, as well as the Special Rapporteur on the question of torture transmitted a number of communications concerning the alleged intimidation, harassment, arbitrary arrest, interrogation and torture of human rights defenders, as well as concerning the violent repression of demonstrations.' **[61c] (p9, paragraph 46)**

16.07 The stakeholders' Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 (UPR Stakeholder Summary 2010), submitted as part of the universal periodic review process of states' human rights undertaken by the UN Human Rights Council, dated 5 February 2010, stated:

'[NGO Front Line] FL reported that the Constitution protects the right to freedom of assembly and association. However, a number of defenders have been arrested by police or security forces for their participation in peaceful protests and charged with 'taking part in illegal demonstration' or 'causing disturbance'. Several human rights organizations reportedly had their office searched, properties confiscated and staff arrested…FL provided examples of such events…FL also indicated that human rights defenders reported several instances where the judicial system was used against them in retaliation for their human rights work…FL mentioned that, in the aftermath of the visit by the United Nations Special Rapporteur on extra-judicial, arbitrary and summary executions in February 2009, defenders who have passed information to the UN expert have been specifically targeted. At least three human rights defenders have been murdered and about fifteen have had to go into hiding or in exile…KNCHR reported that all those who interacted with the Special Rapporteur received threatening phone calls or text messages…FL recommended that Kenya take immediate measures to ensure the safety and protection of human rights defenders and take immediate measures to tackle the problem of impunity for attacks and abuses perpetrated against human rights defenders…' **[61f] (p7, paragraphs 41-42**)

16.08 The United States State Department '2012 Human Rights Report: Kenya' (USSD Report 2012), published on 19 April 2013, observed that:

'Human rights workers were abducted during the year [2012]. For example, in June [2012] four staff members from the Norwegian Refugee Council were abducted in Dadaab refugee camp and taken to Somalia. They were freed in July [2012].

'According to the 2011 Annual Report of the Observatory for the Protection of Human Rights Defenders, since 2010 at least five human rights defenders who assisted with the ICC investigation into the 2007-08 postelection violence were forced to relocate after being threatened. The observatory added that the offices of human rights organizations that provided information to assist with the ICC investigation were vandalized. Starting in 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. During the year the ICC reported attempts to bribe or intimidate witnesses in the postelection violence cases.' **[4b] (section 5)**

See also Security forces for information about human rights violations committed by state agents.

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17. CORRUPTION

17.01 The Freedom House 'Freedom in the World 2012' report, published on 17 August 2012, stated that:

'Corruption remains a very serious problem. Political parties, nongovernmental organizations, and the press, as well as some official bodies, have exposed many examples of corruption and malfeasance at all levels of government. However, official probes and prosecutions have yielded meager results. National and international watchdog bodies have identified the police, the judiciary, and the Ministry of Defense as some of the most corrupt institutions in the country. In September 2011, the Ethics and Anti-Corruption Commission (EACC) - created under the new constitution - replaced the ineffective Kenya Anti-Corruption Commission. Although the EACC had an expanded investigative mandate, like its predecessor, it lacks prosecutorial authority.' **[18a]**

17.02 The United States State Department '2012 Human Rights Report: Kenya' (USSD Human Rights Report 2012), published on 19 April 2013, stated that:

'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 had been prosecuted successfully for corruption. The World Bank's 2011 Worldwide Governance Indicators indicated that corruption was a severe problem.

'In September 2011 President Kibaki signed into law the Ethics and Anticorruption Commission Act, which replaced the Kenya Anticorruption Commission (KACC) with the Ethics and Anticorruption Commission (EACC). The law expanded 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 drew significant public attention to corruption issues, but the government took no complementary actions to punish the most senior perpetrators. Like the KACC, the EACC lacked prosecutorial authority, which remained with the director of public prosecutions.

'In September [2012] a panel of High Court judges nullified the appointment of Mumo Matemu as EACC chairman based on deficiencies in the vetting process. Matemu was accused of financial impropriety during his tenure as commissioner at the Kenya Revenue Authority and legal counsel at the Agricultural Finance Corporation. Two EACC commissioners nominated concurrently with Matemu were sworn into office in September; however, the commission was barred from recruiting additional staff or signing new contracts without a chairman. Throughout the year key technical staff members, including investigators, left the EACC to pursue other career options. On December 17, Abdi Ahmed Muhammed was sworn in as chairman of the EACC, but by year's end the EACC was a severely weakened institution.

'Between July 2011 and June 30, the EACC recommended 73 cases for prosecution to the attorney general, who accepted the recommendation in 54 of these cases. Most of these cases involved mid- or low-level officials, reinforcing the notion that corruption at the highest levels went unchecked.

'Despite the implementation of significant judicial reforms, corruption persisted throughout the legal system. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases. To address corruption in the judiciary, the Judicial Services Commission established the Judges and Magistrates Vetting Board. In April the vetting board dismissed four court of appeals judges. The board found these judges to be lacking in fairness and impartiality, although it found no evidence of bribery. Although police corruption was endemic, authorities rarely arrested and prosecuted officers for corruption or criminal activities.

'In September [2012] the National Taxpayers Association alleged that as much as 25.77 billion shillings ($299 million), or 30 percent of all public funds allocated to the Constituency Development Fund since its inception in 2003, had been lost due to corruption. The government did not investigate this allegation.

'In July [2012] the EACC arrested and charged the director general and procurement manager of the Kenya National Bureau of Statistics with abuse of office and procurement fraud for allegedly paying a nonexistent warehousing firm 7.4 million shillings ($86,000) to store census materials. The two individuals were awaiting trial at year's end.

'Local media reported on allegations of high-level corruption at the Ministry of Energy related to a coal mining contract awarded to a Chinese firm. The media also reported on allegations of corruption involving the contract for new construction at the airport in Nairobi.

'There were ongoing corruption investigations at the Nairobi City Council and the Ministries of Education, Water and Irrigation, Roads, Energy, Immigration, Sports and Youth Affairs, Special Programs, and Land. Officials at the National Social Security Fund and the National Health Insurance Fund also faced corruption allegations.

'There were developments in corruption cases from previous years.

'In September [2012] three former government officials, including the former permanent secretary in the Ministry of Tourism, Rebecca Nabutola, were convicted of abuse of office, conspiracy to commit fraud, and violation of public procurement laws. Nabutola was sentenced to four years in prison without the option of paying a fine.

'In September [2012] Sylvester Mwaliko, the former permanent secretary in the Ministry of Home Affairs, was convicted of three counts of abuse of office in connection with the Anglo Leasing scandal. Mwaliko was the only senior government official to have been convicted in this case; however, his conviction included the option of paying a fine to avoid time in jail. Numerous other officials, including cabinet ministers, had yet to face charges at year's end.

'In June [2012] the High Court cleared Henry Kosgey, the suspended minister of industrialization, of 12 charges of abuse of office related to his alleged attempts to import vehicles that did not meet requirements set by the Kenya Bureau of Standards. Kosgey was reinstated to the cabinet following this decision.

'In March [2012] Enos Magwa, a former deputy director at the Ministry of Education, was sentenced to three years in jail and a fine of 3.6 million shillings ($42,000) for his part in the free primary education scandal, in which 4.2 billion shillings ($48.8 million) were misappropriated. Magwa was convicted of these crimes in 2008. The government

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repeatedly rejected calls for then minister of education Sam Ongeri to resign and face consequences over the disappearance of funds, which included some international donor funding meant for the country's free primary education system during the period 2005-09. Ongeri did not resign and subsequently was appointed foreign minister.

'The Public Officer Ethics Act 2003 requires all public officers every two years to declare publicly their income, assets, and liabilities. Public officers must also include income, assets, and liabilities of their spouses and dependent children under the age of 18. Officers must declare this information to their responsible commission (e.g., the Parliamentary Service Commission in the case of members of parliament). Information contained in these declarations is not readily available to the public, and requests to obtain and publish this information must be approved by the relevant commission. Any person who publishes or otherwise makes public information contained in public officer declarations without such permission may be subject to five years in prison or a fine of up to 500,000 shillings ($5,810), or both.

'The Leadership and Integrity Act 2012 also requires public officers to register potential conflicts of interest with the relevant commissions. The law identifies interests that should be registered, including directorships in public or private companies, remunerated employment, securities holdings, and contracts for supply of goods or services, among others. To date no public officer declarations of wealth or conflicts of interest have been challenged in public.' **[4b] (section 4)**

17.03 Reuters Africa reported on 27 October 2010 that 'the Kenya Anti-Corruption Commission (KACC) has said graft and misuse of funds in government constitutes 30 to 40 percent of national gross domestic product.' **[57a]**. Kenya ranked 139th in Transparency International's 2012 Corruption Perceptions Index (CPI) of 174 countries, published on 5 December 2012. Kenya was given an overall CPI score of 27. The CPI is a composite index that draws on multiple expert opinion surveys. The Corruption Perceptions Index scores countries on a scale from 0 (highly corrupt) to 100 (very clean). **[13a]**

17.04 Reuters also reported on 27 October 2010 that:

'The top officials in Kenya's Ministry of Foreign Affairs stepped aside under pressure on Wednesday while investigators look into a scam involving deals to purchase foreign embassy buildings.

'Foreign Minister Moses Wetangula followed quickly on the heels of his permanent secretary in leaving his post, ahead of a possible vote in parliament that could have forced him to quit anyway…Earlier on Wednesday [20 October 2010], President Mwai Kibaki accepted a request by Thuita Mwangi to temporarily leave his post as permanent secretary in the ministry of foreign affairs.

'The moves come on the back of public and media pressure concerning questions raised in a report urging Wetangula and Mwangi to resign for causing the loss of millions of dollars by authorising payment at inflated prices for embassies abroad.' **[57b]**

17.05 On 26 October 2010, BBC News reported that: 'The mayor of the Kenyan capital, Nairobi, has been charged with corruption in connection with the sale of land for a graveyard in the city. Geoffrey Majiwa is the most high-profile figure to be charged over

the alleged scam. Officials are accused of paying $3.6m (£2.4m) of taxpayers' money for the land, which was worth only 10% as much and did not have a title deed.' **[10l]**

17.06 The Transparency International East African Bribery Index 2012, published on 31 August 2012, stated that:

'Bribery prevalence in Kenya remains high as the country moved from fourth place recorded in 2011 to third in the 2012 East African Bribery Index (EABI) with an aggregate index value of 29.5% up from the 28.8% recorded last year…The East African Bribery Index, conducted since 2009, is a governance tool developed to measure bribery levels in the private and public sectors in the region.

'The survey recorded responses on bribery from 9,303 respondents across the five East African countries [Kenya, Uganda, Burundi, Tanzania and Rwanda], picked through simple random sampling based on population proportion to size across various administrative regions. Field data collection across the five countries was conducted between March and May of 2012. 2,017 people were sampled in Kenya 44% of them being female respondents, 1,319 in Burundi, 2,382 in Rwanda, 2,136 in Tanzania and 1,449 Uganda…Kenya Police had the worst outlook in Kenya followed by land services, judiciary, and registry & licensing services respectively while city & local councils closed out the top five positions of the index.' **[13b]**

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ATTEMPTS TO FIGHT CORRUPTION

17.07 The Kenya Anti-Corruption Commission's (KACC) website explains that it is 'a public body created by the Anti-Corruption and Economic Crimes Act, 2003. The Kenya Anti-Corruption Commission (KACC) is headed by the Director (who is also the Chief Executive) assisted by up to four Assistant Directors. The Director and the Assistant Directors are selected by the Kenya Anti-Corruption Advisory Board and appointed by the President after vetting by Parliament.' (KACC website, accessed 15 October 2010) **[25a]**

17.08 The KACC website offers a link where members of the public can report corruption directly, including the option to report anonymously as a "whistleblower". The website states that:

'All complaints and reports received by the Commission undergo a rigorous process of analysis. In considering how a report is handled and eventually disposed of, the Commission is guided by the Anti-Corruption and Economic Crimes Act (2003).

'The Commission may decide to investigate a report based on the whether the alleged offences falls and the Anti-Corruption Act and whether, in the Commission's estimation, it is worth being investigated.

'Reports which are found to fall under the Commission's jurisdiction are investigated by the Commission's Directorate of Investigations and Asset Tracing, or the Commission may decide to undertake education or preventive work.

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'Reports which disclose offences which do not fall under the Commission's mandate, as stipulated under the Anti-Corruption Act, are referred to the appropriate Government Departments and Agencies for action. This is provided for in the Anti-Corruption Act. However, the Commission makes follow ups to ensure that action is taken on these reports.

'Following the competition of an investigation, KACC forwards the Investigation File, with appropriate recommendations, to the Attorney General, who conducts the prosecutions.' **[25b]**

17.09 The Kenya National Commission on Human Rights operates an anti-corruption project, under which 'the Commission speaks out against corruption while drawing and emphasizing the strong nexus between Corruption and human rights. It seeks to enhance the protection of public resources, give voice to those who are most hurt by illegal diversion of resources, empower the general public to demand accountability and transparency and serve as a check on poor leadership.' (KNCHR website, accessed 15 October 2010) **[24b]**

For further information on corruption within public service bodies, please see Security forces and Judiciary. The Freedom House Countries at the Crossroads Report 2012 **[18c]** has further information on anti-corruption measures in Kenya.

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18. FREEDOM OF RELIGION

18.01 The United States State Department International Religious Freedom Report for 2011: Kenya, dated 30 July 2012 (USSD IRF 2011 Report), described the religious demography of the country: 'Approximately 80 percent of the population is Christian and approximately 10 percent is Muslim. Groups that constitute less than 1 percent of the population include Hindus, Sikhs, and Baha'is. Most of the remaining population follows various traditional religions. Among Christians, 58 percent are Protestant and 42 percent are Roman Catholic.' **[4d] (Section I)**

18.02 The USSD IRF 2011 Report noted regarding the treatment of religious groups generally that:

'The constitution and other laws and policies protect religious freedom and, in practice, the government generally respected religious freedom. The government did not demonstrate a trend toward either improvement or deterioration in respect for and protection of the right to religious freedom. After government military forces entered Somalia in October and subsequent attacks inside Kenya, some of which the government linked to the Somali terrorist group al-Shabaab, some Muslims, particularly ethnic Somalis, complained of profiling by government security forces and targeting of Islamic nongovernmental organizations (NGOs).

'There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Some Muslims have alleged that business and community leaders thwarted development efforts in predominantly Muslim areas. Some Christian leaders

alleged that Christians were subject to discrimination in the historically Muslim areas of Coast and North Eastern provinces.' **[4d] (Executive Summary)**

18.03 The Constitution of Kenya, as ratified on 27 August 2010, states at Article 170 that the application of Islamic Law may be carried out by a Khadi court:

'170. (1) There shall be a Chief Kadhi and such number, being not fewer than three, of other Kadhis as may be prescribed under an Act of Parliament.

(2) A person shall not be qualified to be appointed to hold or act in the office of Kadhi unless the person—

(a) professes the Muslim religion; and

(b) possesses such knowledge of the Muslim law applicable to any sects of Muslims as qualifies the person, in the opinion of the Judicial Service Commission, to hold a Kadhi's court.

(3) Parliament shall establish Kadhis' courts, each of which shall have the jurisdiction and powers conferred on it by legislation, subject to clause (5).

(4) The Chief Kadhi and the other Kadhis, or the Chief Kadhi and such of the other Kadhis (not being fewer than three in number) as may be prescribed under an Act of Parliament, shall each be empowered to hold a Kadhi's court having jurisdiction within Kenya.

(5) The jurisdiction of a Kadhis' court shall be limited to the determination of 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 courts.' **[22a]**

18.04 The Freedom House 'Freedom in the World 2012' report, published on 17 August 2012, stated that:

'The authorities generally uphold freedom of religion. The Islamic (Kadhi) court is a subordinate body to the superior courts of Kenya. The Kadhi court system adjudicates cases related to personal status, marriage, divorce, or inheritance for people who profess the Muslim religion and who voluntarily submit to the Kadhi courts' jurisdiction authority. Religious groups are required to register with the government, which permits them to apply for tax-exempt status. Religious tension has risen since terrorist attacks in Kenya in 1998 and 2002 that were associated with Islamic extremism, but religion was not a major factor in the political and ethnic unrest of early 2008.' **[18a]**

See also Judiciary for further information on the court system in Kenya and Constitution for information on the legal theory behind religious freedom.

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19. ETHNIC GROUPS

ETHNIC DEMOGRAPHY

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19.01 The Central Intelligence Agency World Factbook, Kenya, updated on 18 March 2013 (CIA World Factbook), listed the ethnic breakdown of Kenya as: 'Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Kisii 6%, Meru 6%, other African 15%, non-African (Asian, European, and Arab) 1%'. **[3a]**

19.02 The results of the 2009 census, released by the Kenyan National Bureau of Statistics on 31 August 2010, gave the following numbers of each ethnicity in Kenya:

'Kikuyu 6,622,576
Luhya 5,338,666
Kalenjin 4,967,328
Luo 4,044,440
Kamba 3,893,157
*kenyan somali 2,385,572
Kisii 2,205,669
Mijikenda 1,960,574
Meru 1,658,108
*turkana 988,592
Maasai 841,622
Teso 338,833
Embu 324,092
Taita 273,519
Kuria 260,401
Samburu 237,179
Tharaka 175,905
Mbeere 168,155
Borana 161,399
Basuba 139,271
Swahili 110,614
Gabra 89,515
Orma 66,275
Rendile 60,437'. **[7b]**

19.03 These figures contrast with the figures from the CIA 'World Factbook' as follows:

Ethnic Group	Proportion of population based on 2009 Census **[7b]**	Proportion of population based on CIA 'World Factbook' **[3a]**
Kikuyu	17.2%	22%
Luhya	13.8%	14%
Kalenjin	12.9%	12%
Luo	10.5%	13%
Kamba	10.1%	11%
Kisii	5.7%	6%
Meru	4.3%	6%

[3a] [7b]

19.04 It should be noted that the Daily Nation reported on 28 September 2010 that the number of Turkana are disputed as 'results [from the census] were cancelled in northern districts [including]…Turkana Central, Turkana South and Turkana North'. **[16h]**. The Kenyan Star reported on 1 September 2010 that figures for Kenyan Somalis had also been disputed as: 'nearly 100,000 enumeration forms were distributed to Muslim clerics and village elders in North Eastern province and in Nairobi's Eastleigh area who then completed them and exaggerated the numbers…The Star established that the same code - 700 - was used to enumerate Kenyan Somalis and Kenyan Asians.' **[55b]**

19.05 Following the release of the results, BBC News reported on 31 August 2010 that:

'The chairman of the National Cohesion and Integration Commission (NCIC), set up to ease ethnic tensions after the post-election violence in 2007 and 2008, said there was a danger some groups would use the results to obtain more resources.

'"That's one of the things that the National Cohesion and Integration Commission is supposed to keep an eye on," Mzalendo Kibunjia told the BBC's Focus on Africa programme.

'"You say because you are a dominant tribe then you are also dominant in terms of resource allocation. That is what is wrong," he said.' **[10h]**

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DISCRIMINATION AND HUMAN RIGHTS VIOLATIONS

19.06 The United States State Department '2012 Human Rights Report: Kenya' (USSD 2011 Human Rights Report), published on 19 April 2013, stated that:

'The population is divided into 42 ethnic groups, among whom discrimination and occasional violence were frequent…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, especially on the coast, where land grievances fueled the rise of a secessionist movement.

'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.

'The expected devolution of fiscal and administrative responsibility to county governments, which was scheduled to take place after the March 2013 general elections, led to an increase in interethnic conflict.

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'Throughout the year interethnic conflict flared in several parts of the country. From December 2011 through May, violent clashes between the Borana and Turkana communities around Isiolo caused the displacement of 7,500 persons and the deaths of dozens of others. Fighting between the Borana and the Gabra around the town of Moyale on the Ethiopian border caused many deaths and the displacement of 40,000 persons in February.

'Between August and September [2012], more than 100 persons died in clashes between the Orma and Pokomo ethnic groups in the Tana River delta, and thousands more were displaced as a result of the conflict. In one attack on August 22, 52 persons, including 31 women and 11 children, were hacked and burned to death. There were allegations of rape. The government imposed a curfew in an attempt to stem the violence; the curfew created difficulties ascertaining the extent of the human rights abuses in Tana River. Several political and local leaders were accused of instigating the violence, and in September authorities charged one, Assistant Livestock Minister Dhadho Godhana, with inciting violence. The courts subsequently dismissed the charge against him.

'On September 12 [2012], the government deployed 1,300 GSU officers to the Tana River delta to bring calm to the region and conduct a search for illegal weapons. Following accusations of use of excessive force, the KNCHR sent a team to investigate reports that GSU officers deployed to Tana River violated the rights of residents during the security operation. The KNCHR reported that it found evidence of the excessive use of force and even instances of torture carried out by police, but it could not confirm some of the more sensational media reports, which accused police of torching houses and raping residents during the security operation.

'In December [2012] violence renewed in the restive Tana River delta, as both Orma and Pokomo ethnic groups carried out revenge attacks. Police were able to restore calm to the area, and the government appointed a judicial task force to investigate human rights violations in the delta. By year's end the death toll had reached 160, and hundreds more were displaced by the violence. On December 28, the new police inspector general David Kimaiyo stated that investigations revealed that political aspirants had planned and funded the attacks and that the government would take action to punish those who organized the violence.

'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 was fairly common in urban areas.

'There was frequent conflict, banditry, and cattle rustling among the 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 deaths. 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.' **[4b] (section 6)**

19.07 Article 27 of the new constitution, as published on 27 August 2010, states that:

'(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social

origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

'(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).' **[22a]**

19.08 Article 33 of the constitution, regarding freedom of expression, states that:

'(2) The right to freedom of expression does not extend to—

(a) propaganda for war;

(b) incitement to violence;

(c) hate speech; or

(d) advocacy of hatred that—

(i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or

(ii) is based on any ground of discrimination specified or contemplated in Article 27 (4).' **[22a]**

19.09 The Freedom House report, 'Freedom in the World 2012', covering events in 2011, published on 17 August 2012, observed that:

'Kenya's population comprises more than 40 ethnic groups, and friction between them has led to frequent allegations of discrimination and periodic episodes of violence. Land disputes frequently underlie ethnic clashes, and long-awaited land reforms have languished. The Mungiki sect of mainly Kikuyu youth has been linked to postelection and other criminal violence. In addition, the continued presence of refugees from Somalia, and associated criminal activity, have exacerbated the problems faced by Kenya's own Somali minority. The Somali Islamist organization Al-Shabaab has recently threatened Kenya with attacks, and it has been accused by the Kenyan government of several kidnappings in Kenyan territory, including four in 2011. In response, Kenya in October sent forces into southern Somalia to pursue Al-Shabaab. A week later, two grenade attacks in Nairobi killed one person and injured more than twenty others. At the end of the month, a 28 year-old man who identified himself as a member of Al-Shabaab was convicted of the attacks and given a life sentence; the trial of two alleged accomplices was ongoing at year's end. Other factors contributing to ethnic tension include widespread firearms possession, the commercialization of traditional cattle herding, poor economic conditions, drought, and ineffective security forces.'
[18a] (Political Rights and Civil Liberties)

19.10 The Freedom House, 'Countries at the Crossroads 2012, Country Report – Kenya' (FHCC Report 2012), released on 20 September 2012, observed:

'For decades, political patronage has entrenched an informal system of favoritism that has disproportionately and adversely impacted Kenya's smaller ethnic communities, even though the country's legal structures prescribe equality for its many ethnic groups. Discrimination on the basis of a person's "race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth" is forbidden in Article 27 of the new constitution. Ethnic Somali

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Kenyans have suffered particular neglect and abuse. Somali Kenyans are the only ethnic group required to produce two identification cards to prove citizenship. They also face unequal economic opportunities due to scant government development efforts in the North Eastern Province and discrimination in hiring for jobs within the police, military, and civil service. An "Equalization Fund" of one-half percent of annual revenue collected by the national government is mandated by Section 204 of the 2010 constitution. It aims "to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible." Realizing the Equalization Fund's goal, however, will face the same challenges of corruption and capacity that marred programs like the Constituency Development Fund.[61] There is some optimism that decentralization of budgets and oversight will help reduce corruption.' **[18c] (Civil liberties)**

19.11 The Freedom House 'Freedom in the World 2012' report, published on 17 August 2012, stated that:

'Kenya's population comprises more than 40 ethnic groups, and friction between them has led to frequent allegations of discrimination and periodic episodes of violence. Land disputes frequently underlie ethnic clashes, and long-awaited land reforms have languished. The Mungiki sect of mainly Kikuyu youth has been linked to postelection and other criminal violence. In addition, the continued presence of refugees from Somalia, and associated criminal activity, have exacerbated the problems faced by Kenya's own Somali minority…Other factors contributing to ethnic tension include widespread firearms possession, the commercialization of traditional cattle herding, poor economic conditions, drought, and ineffective security forces.' **[18a]**

For more information on the treatment of some minorities in Kenya, please see the Minority Rights Group International Overview on Kenya.

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RESPONSE TO INTER-ETHNIC VIOLENCE IN 2007-2008

19.12 The Associated Press reported on 21 September 2010 that:

'Riots and ethnic fighting killed more than 1,000 people and forced 600,000 from their homes after Kenya's disputed 2007 presidential election.

'[Luis] Moreno Ocampo [Chief Prosecutor of the International Criminal Court] has said the wave of violence included murder, rape and forcible deportations that could amount to crimes against humanity.

'A commission set up by the new government recommended establishing a special tribunal to prosecute perpetrators, but Parliament rejected the proposal last year.' **[27a]**

19.13 On 15 December 2010, Luis Moreno Ocampo requested the International Criminal Court to issue summonses to appear to William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali. **[11b]**

For further information on the ICC prosecutions, please see Recent developments and History

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20. LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) PERSONS

In considering the situation of lesbians, bisexual women and transgender persons, readers are advised to read the section on Women for more information on their position in society.

LEGAL RIGHTS

Gay and bisexual men

20.01 The United States State Department '2012 Human Rights Report: Kenya' (USSD 2012 Human Rights Report), published on 19 April 2013, stated that: '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.' **[4b] (section 6)**

20.02 The articles of the Penal Code, revised in 2009, accessed on 22 October 2010, which prescribed male same-sex relations are:

'162. Any person who:
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of an animal; or
(c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years: Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if -

'(i) the offence was committed without the consent of the person who was carnally known; or
(ii) the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.

'163. Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years, with or without corporal punishment.

'164. Indecent assault of boys under fourteen years of age. Repealed but contained in the sexual offenses act of 2006

'165. Any male person who, whether in public or private commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act

92 The main text of this COI Report contains the most up to date publicly available information as at 22 April 2013.

by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years, with or without corporal punishment.' **[22b] (Kenya Penal Code)**

20.03 The Act Up international NGO, in an article entitled, 'Kenya - Know your rights when arrested for engaging in gay sex', dated 14 November 2011, noted the difficulty in prosecuting men (and women) for same-sex sexual activity and application of the legal process:

'Having a homosexual sexual orientation is not an offense under Kenyan law. But when a man has sex with another man or a woman with another woman then that is an offense under section 162 of the Kenyan penal code. It is also an offense to attempt to do the same under section 163 of the Kenyan penal code.

'To prove this crime in a court of law, the police must show evidence of genital/sexual penetration…when can the police arrest me for gay or lesbian sex?

'The police can arrest you if;

- You are caught having sex and there are witnesses to prove that they saw the sexual act.

- when the sexual activity was not willingly consented (rape) by the partners and the victim reports to the police

What if my neighbours claim that they heard me and my partner(s) having sex?

This is not sufficient evidence to sustain a case in court, and if the police arrest you on the basis of this evidence they are simply harassing you and abusing the court process.' **[1]**

20.04 An Amnesty International statement dated 13 August 2010, which praised the generally progressive content of the new Constitution also raised a number of concerns including the Constitution's: '**…**failure to explicitly include gender identity and sexual orientation in the prohibited grounds of discrimination in Article 27(4) of the Constitution'. **[15b]**

20.05 The Daily Nation reported on 30 August 2010 that David Kuria, head of GALCK, 'says his group even presented a petition to the team of experts drafting Kenya's new constitution, and that he was rather taken aback to realise that the Committee of Experts had ignored Galck's recommendation that the country needs to pass laws that favour same-sex unions.' **[16j]**

Lesbians and bisexual women

20.06 Same-sex female sexual relations are not mentioned in the penal code. The International Lesbian and Gay Association report, 'State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults', (ILGA State-sponsored Homophobia report 2012) dated May 2012, listed female same-sex sexual relations as legal. **[77a] (p12; 44-50)**

20.07 A Voice of America report, 'Kenyan Gays Battle Prejudice', dated 2 February 2011, stated:

'Denis Nzioka lives in Nairobi and is one of East Africa's most prominent gay rights activists. He works for a variety of NGOs, including the Gay and Lesbian Coalition of Kenya and the Gay Activists Alliance of Africa…As in some other African countries, lesbianism is legal in Kenya. Nzioka says this is because same-sex relationships between women don't threaten the "alpha male culture in Kenya. This country is so patriarchal. Women, even if they are lesbians, are simply ignored."

'But in the recent past Kenyan police have arrested some lesbians for "public indecency" or "gross misconduct" - a strategy, says Nzioka, for the police to collect bribes. "The cop will say, 'You know what, there is no need of taking this to the court. Just give me 5,000 or 10,000 (Kenya Shillings) and we'll sort this out."'

'He says most of these women, "fearing public shame," pay the bribes. "So lesbianism in Kenya is covered up," says Nzioka. "That is one of the reasons why it has been so hard to collect statistics on women who have sex with women in Kenya and the HIV prevalence among this group."' **[85a]**

Transgender, transsexual and intersex persons

20.08 The ILGA report, 'Human Rights Violations on Kenya's Transgender Community', published in February 2009, stated that '[a]lthough the Kenyan Constitution does not criminalize transsexualism and transgenderism, there are both institutionalized and non-institutionalize forms of discrimination pervading in Kenya.' **[77b] (Introduction)**.

20.09 Capital FM Kenya reported on 2 December 2010 that there is no legal recognition of the term intersex:

'The constitutional court has thrown out a landmark case by an intersex convict, who wanted the recognition of a third gender. The court said it was unable to issue orders for the recognition of a third gender as sought by Richard Muasya since only Parliament has the power to define sex through legislation…The court however told Muasya – who is a death row convict - that he could not purport to seek orders for the recognition of other people like him, since he did not identity anyone with a similar condition.

'"There is no empirical data that can make the court conclude that people with such bodies need recognition,"' the three-judge bench ruled.' **[21c]**

20.10 The Kenya Human Rights Commission report, 'The Outlawed Amongst Us', based on interviews with 474 LGBTI persons in Nairobi, Central, Mid Rift, North Rift, Northern, Nyanza, Western Kenya, Upper Eastern and Coast (the report's methodology is set out in pages 18-19), published in 2011, stated that:

'Kenyan law and practice only recognizes the male and female gender, no recognition is made of intersex, due to the binary norm evident in the country. There is no legal framework that allows or facilitates Transgender and Intersex individuals to choose their gender and have it recognized by law; most intersex individuals are taken through unnecessary corrective surgeries when they are born or simply assigned a gender role and raised as such without being given a chance to choose their gender or undergo a sex correction surgery when they are of age. The transgender persons suffer lack of legal recognition and are legally bound to a gender they do not want to identify with. This is a violation of their freedom of expression. The government's persistent failure to

address and make cognizance of the falsity of the gender binary norms have resulted in State sanctioned homophobia.

'Intersex persons feel obliged to abide by the law by requiring them to choose between the male or female gender in order to get legal documents. This is because most public and government documents compulsorily require one to fill in their gender as either male or female. The intersex children are raised in unsupportive environments where they are hardly given information on their conditions. They grow up in a society that treats them as 'freaks' of nature, uses derogatory terms such as 'hermaphrodites ' to refer to them and are forced to identify with a gender that is not of their choice.'
[52] (pages 42-43)

20.11 In the case of Richard Muasya (RM v Attorney General), published on 2 December 2010, it was determined that:

'…the petitioner did not make any efforts to obtain a national identity card, nor did he make any efforts to obtain a voter's card. We find that the petitioner was never denied his right to vote…It was argued that the petitioner as an intersex person was discriminated against in the area of marriage. This was because the Kenyan Law only recognized a marriage between a male and a female, and the petitioner being allegedly neither male nor female, was not in a position to enter into a valid marriage. Our finding that the petitioner is in fact capable of being classified in one of these two categories albeit with difficulties, defeats the petitioner's argument.'
[22e] (p47-48 paragraph 136-137)

20.12 Captial FM reported on 2 December 2010 that: 'Justices Hannah Okwengu, George Dulu and Ruth Sitati awarded Muasya Sh500,000 for the indignity he has suffered in prison.' **[21c]**. The full determination of the case is available here.

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TREATMENT BY, AND ATTITUDE OF, STATE AUTHORITIES

20.13 The USSD 2012 Human Rights Report observed that: 'There were no reported prosecutions of individuals for same-sex sexual activity during the year [2012]. Police statistics for 2011 indicated 114 "unnatural offenses," down from 154 in 2010.'
[4b] (section 6)

20.14 BBC News reported on 29 November 2010 that: 'On Sunday [28 November], [Prime Minister] Odinga warned that men or women found engaging in homosexual acts would be arrested. He later said he was only saying the constitution bans same-sex weddings.' The report also stated that 'David Kuria from the Gay and Lesbian Coalition of Kenya told the BBC that Raila Odinga's comments would encourage people to extort money from gay and lesbian people.' **[10m]**

20.15 On 6 October 2010, Plus News reported that:

'A Kenyan cabinet minister who called for greater acceptance of gays by society has been accused of promoting 'un-African' acts and asked to resign.

'Special Programmes Minister Esther Murugi recommended more tolerance towards

men who have sex with men (MSM) at a national symposium on 'most-at-risk populations' in the coastal city of Mombasa last week.

'Several Christian and Muslim religious leaders, including the Federation of Evangelical and Indigenous Christian Churches of Kenya, have called for Murugi's resignation and threatened street protests if she is not fired immediately.' **[30b]**

See also Societal treatment and attitudes for information about attitudes of religious groups towards LGBT persons.

20.16 Plus News reported on 9 November 2009 that:

'A planned national survey of men who have sex with men (MSM) will be the first step in the government's plan to incorporate this high-risk group into the country's HIV programme, a senior government official has said…HIV programming for MSM is extremely limited despite the country's national strategic plan for HIV/AIDS classing them as a "most at-risk population…the survey - due to start in December and last six months - will attempt to discover information such as the specific sexual health risks and needs of MSM, MSM 'hot spots' around the country, and the number of MSM-friendly health facilities available.

'It will use respondent-driven sampling, recruiting openly gay men to reach out to other MSM who may not be out of the closet, and using existing MSM-friendly facilities to help conduct the research…Lorna Dias, MSM coordinator at Liverpool VCT (voluntary counselling and testing), Care and Treatment, one of the only organizations in the country that provides services to MSM, says the planned survey shows that the government is serious about tackling the epidemic among most at-risk populations.

'"It is a positive step and a clear indication that the government is ready to open up to the reality that men who have sex with men pose a great risk to the war against HIV unless they are integrated within mainstream HIV and AIDS programmes,' she said. 'The next step should be to de-stigmatize them and see them as normal people who need services like everybody else."' **[30a]**

20.17 The Kenya Human Rights Commission report, 'The Outlawed Amongst Us', published in 2011, reported that:

'Same sex sexual practices remain criminalized in Kenya, and even though there are few convictions based on sections 162 to 165 of the Penal Code that criminalize these practices, LGBTI persons are routinely harassed by the police, held in remand houses beyond the constitutional period without charges being preferred against them, and presented in court on trumped-up charges. Closely related to this, is a cartel of corrupt police officials who routinely extort and blackmail LGBTI persons with the threat of arrest and imprisonment if they do not give those bribes.…The most common of trumped up charges was possession of narcotic drugs where reports were received of police "planting" rolls of bhang (cannabis sativa) on the suspects. In the Coast, respondents reported that the police and other state officials usually arrest them along the beaches and charge them with wrong offences the most common being drunk and disorderly and prostitution. Similar reports were received in Nairobi where city council security officers arrest LGBTI persons for the same reasons…Those who fail to give bribes or sexual favours are charged with tramped up charges and sometimes raped by state security officers. In the Coast province, respondents who do sex work reported to

have been arrested by the police officers on night patrol only for them to be raped in dark street alleys then thereafter released. Attempts to report such incidents to the police were unsuccessful due to the reluctance of the police to investigate and prosecute their own.' **[52] (pages 21-23)**

See also HIV/AIDS – antiretroviral treatment.

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SOCIETAL TREATMENT AND ATTITUDES

20.18 The USSD 2012 Human Rights Report stated that:

'LGBT advocacy organizations, such as the Gay and Lesbian Coalition of Kenya, 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 generally were not sympathetic to LGBT individuals or concerns.

'For example, on June 25 [2012], a transgender individual was beaten by her employer and other community members in Kisumu, who alleged that she intended to rape the children in the house where she was employed as a domestic servant. Police intervened but subsequently arrested her on charges of impersonation of character. A Kisumu-based LGBT rights group intervened in the case and succeeded in securing the individual's release and relocation to Nairobi.

'During the year [2012] multiple political leaders made public statements critical of same-sex relationships and LGBT rights. For example, Prime Minister Odinga reportedly suggested during a political rally in Langata that gays should be put in prison. Eldoret MP and ICC indictee William Ruto, labeled by Gay Trust Kenya as "persistently homophobic," issued repeated statements criticizing same-sex relationships and accused the KNCHR of pushing a foreign agenda for its defense of the human rights of LGBT persons. LGBT advocacy organizations noted that stricter enforcement of hate speech laws by the NCIC, as well as strict guidelines against hate speech adopted by major media groups during the year, decreased instances of homophobic hate speech.

'No anti-LGBT publicity campaigns were conducted during the year; however, sensational reporting often inflamed societal prejudices.' **[4b] (section 6)**

20.19 A report published on the www.trust.org website, entitled, 'Life risky for Kenyan gays despite growing public confidence', dated 16 September 2011, stated:

'Despite her sexual attraction to women, Kate Kamunde married a man in a desperate bid to be 'normal' in conservative, homophobic Kenya…It is common for gays and lesbians in Kenya to get married and have children because they feel obliged to safeguard their reputations and to please their families.

'Homosexuality is a taboo, condemned by Kenya's previous president, Daniel arap Moi, as an un-African 'scourge'.

'Some 96 percent of Kenyans believe homosexuality should be rejected by society, according to a 2007 survey by the U.S. think tank the Pew Research Center.

'"Most of the lesbian women that are in the closet are actually married," said Kamunde.

'In a 2011 survey, Kenya Human Rights Commission (KHRC) found that only 18 per cent of Lesbian Gay Bisexual and Transgender (LGBT) Kenyans had told their families about their sexual orientation. Of these, 89 per cent were subsequently disowned… With piercings in her eyebrow, nose and lip, 30-year-old Kamunde is no longer trying to conform.

'She is part of a bold, new generation of LGBT Kenyans who are openly campaigning for their rights, in contrast with neighbouring Uganda where they are being driven underground by rising homophobia.' **[84a]**

20.20 In the judges' determination of the case of the intersex individual, RM v Attorney General, it was stated:

'The social stigma suffered by the petitioner is something of concern. However in our view the problem of social stigma is not a legal problem. What needs to be done is for parents and those who have such special conditions to be open about their situation, and for the society to be educated to respect the dignity of such people as human beings. As a court, we can issue orders and make declarations, but this will be of little effect considering that the stigma is connected with the public perception which is based on the public's limited knowledge of intersex status. Few seem to appreciate the fact that the issue of gender definition for an intersex person unlike a transsexual or a homosexual, is a matter of necessity and not choice. Tolerance and acceptance in this area will come with dissemination of appropriate information leading to enhancement of knowledge and better understanding of the condition. The challenge is with the government and the civil society to educate the masses. Indeed, this is what has happened in cases of mentally challenged persons. Society has not only come to appreciate their situation but also the need to have special schools for affected children. No doubt the society has come a long way from the days when such mentally challenged children were killed or abandoned due to cultural biases and beliefs. Such a development and change of attitude can only come gradually with time.'
[22e] (p51, para 145)

20.21 An article by Jenni Chang and Lisa Dazols, published on the huffingtonpost.com website entitled, 'What Is Everyday Gay and Lesbian Life Like in Kenya?', dated 4 June 2012, stated:

'The Kenyan penal code criminalizes homosexual behavior with up to 14 years imprisonment. A 2007 study found that 96 percent of the Kenyan population opposes homosexuality.

'So we asked: what is gay and lesbian life actually like for the average Kenyan living in Nairobi?

'We first meet with Akinyi Ocholla, a lesbian from Nairobi who works for Minority Women in Action and is a member of the International Gay and Lesbian Association. She tells us that Kenya has 42 different tribes, each with its own culture. Akinyi says, "The problem is that we remain a very closed society. We have not allowed ourselves to

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debate, diaglogue [sic], and discuss issues surrounding sex and sexuality. That means people have a shallow understanding of sexual orientation."

'Complicating matters, of course, is the strong religiously based homophobia in East Africa. She says, "When you bring in the religious aspect, and the traditional African culture of sex being a taboo topic, you have a complex situation. You can't discuss it because you are an African, and Africans don't discuss sex. You can't discuss it because you're a Christian, and Christians don't discuss sex. And then of course you have this funny law that criminalizes it. So there are so many things working against the discussion."

'Still, Akinyi takes on some heated discussions. She says, "When people believe in the Bible very literally, you cannot really do advocacy without negotiating religion. It's very difficult to come to some compromising point. Personally, I don't go to church, and I stopped reading the Bible a long time ago. I find it difficult to argue with religious people, so I use the scientific angle. I tell people, 'You may believe what you believe, but the fact is I am this way because I simply am. So what are we going to do about it? Let's just respect each other and get on with life.'"

'Akinyi considers herself lucky to live as an openly gay woman. She says, "Being gay in this country isn't exactly easy. It's not as bad as in Uganda, but it's still not easy. But you can actually pass. If you don't make too much noise or stand out too much, then you can live comfortably - that is, until the neighborhood finds out. Then you can't really know what's going to happen."

'To get a gay male perspective, we met with Solomon Wambua, Programs Officer of the Gay and Lesbian Coalition of Kenya (GALCK), the country's largest LGBT organization. Solomon tells us that when he came out to his mother, "she told me that the devil is now living in our house. She said that she wasted money paying for my school fees. I tell others now that family can take away your school or kick you out. Before you come out of the closet, get your education."

'He says, "Most parents try to contain it within the immediate family when they have a son or daughter who comes out. My mom was like, 'I don't have a problem with you, but what will the rest of the family say?' Then came several debates about this being un-African and questions about whether or not I was raped as a child." As of today, Solomon's extended family still does not know about his sexual orientation.

'Yet Solomon chooses to work at GALCK despite his own concern about whether or not he can find employment again after associating with a gay organization. In a country where homosexual acts are illegal, there are, of course, no anti-discrimination laws protecting sexual orientation. He says,"People think when you are gay you are a pedophilia [sic] or commit sodomy."

'When I asked Solomon about the number of gays incarcerated due to this penal code, he says, "Up to date, no case has been convicted of the penal code leading to actual incarceration. But it is used to extort money and blackmail people. It is used to discriminate and put lesbians and gays down."

'Organizations such as GALCK and Minority Women in Action are able to exist in Kenya despite the penal code. While there are no pride parades or openly gay clubs, Solomon

organizes community events such as World AIDS Day and the International Day Against Homophobia. The GALCK office remains open as a safe place for people to come read about gay topics, gain support from counselors, and hang out.' **[5]**

20.22 A Changing Attitude.com report, 'Kenyan gay man stoned to death in Nairobi slum', dated 14 June 2012, stated that:

'Identity Kenya [Kenyan sexual minorities news service] reported that two gay men were attacked by a mob after they were caught having sex in Kayole estate late last month. The two men were beaten by a mob on the night of May 27th 2012 as they were caught in the act by passers-by. One managed to escape while the other died after being stoned by a crowd of people.

'According to sources, the two were food vendors in Kayole in a make shift kiosk in the sprawling estate. The deceased was the cook at the kiosk while the one who managed to escape was charged with packing and handling of the food…The two are said to have agreed to have meet up behind the Catholic Church building in Soweto estate at 8pm on the fateful day. From there, sources say, they began to have sex…In the darkness, the two were caught by passers-by as they were having sex and they were beaten up after a confrontation. Later, a crowd milled around and started to stone the two men amidst insults.

'The survivor is said to have been hit in the back but managed to escape as the crowd grew and bayed for their blood. He is said to be in critical condition after the beating…The deceased – Kamau – it is said, was held down and beaten and later stoned to death. His body was found dumped at the dump site next to where they were caught. He had suffered severe head and body injuries.

'Local police were called in the morning to retrieve the body and it was taken to the City Mortuary. Reports say he was buried a week later.

'Kayole estate is a sprawling estate with a growing slum influence. The area is densely populated with the outlawed Mungiki sect adherents who target residents and extort money. They also dish out 'justice' to perpetrators of violence, disturbance or marital chaos.

'The Mungiki are also alleged to have targeted effeminate men in the past with the most recent case being two gay men who were confronted by Mungiki men, abducted and locked in a building under construction as they asked for money to let them go.

'Kenyan LGBT activists and organisations are said to be following up on the case.' **[91]**

20.23 The Kenya Human Rights Commission report, 'The Outlawed Amongst Us', published in 2011, reported that:

'Stigma and discrimination are the major problems that LGBTI persons in Kenya face. The stigma usually begins from family and neighbours, who alienate, harass and humiliate LGBTI persons when they are "outted". In most instances this is as a result of failure to appreciate the human diversity in sexual orientation and gender identity. As observed elsewhere in this report, the failure to address and bring out these issues in the public have resulted in the same being treated as taboo topics and thus creating superstitious beliefs on the same.

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'The stigma usually begins from family and neighbours, who alienate, harass and humiliate LGBTI persons when they are "outted". Close friends and workmates or school mates also perpetuate this stigma against the LGBT persons. Only 18% of the respondents reported to have come out to their families or having been "outted". 89% of the respondents who came out or were outted reported having being disowned by their family members on discovery of their sexual orientation or gender identity…Some of them were forced to attend counseling sessions in the belief that they were undergoing a psychological crisis and thus required help to get over the "confusion".

'More than 300 respondents stated that they feel most unwanted and threatened by the religious groups. However, [the] majority of them seek refuge and acceptance from the same religious groups which preach against them condemning them as unworthy and wretched.' **[52] (pages 24-25)**

20.24 The 'Outlawed Amongst Us' report also stated:

'The most reported forms of violence include, but are not limited to, physical violence (harassment, riots, beatings, lynching and mob justice), hateful printed publications (text messages, posters, books, printed and online publications) and hate speech.The common form of violence was verbal where insults and derogatory terms were used in reference to LGBTI persons who are often referred to in words that portray them as subnormal, pathological, perverted and deserving of annihilation…Physical violence perpetrated by the public was reported in the Coast, Nyanza, Eastern and Nairobi regions. Reports of physical violence mostly came from Nairobi where LGBTI persons reported to have suffered violence when their orientation was discovered especially in night clubs, through display of same sex display of affection in the streets and neighborhoods.' **[52] (pages 27-28)**

For information about the treatment of NGO workers, including those working with LGBTI persons, see Human rights institutions, organisations and activists

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LGBTI ORGANISATIONS

20.25 GALCK stated, on its website, accessed on 19 December 2011:

'The GALCK resource center was established in 2008 and continues to be a safe space zone to the LGBTI members who frequent the center to engage in various duties. The member groups based in Nairobi are housed within GALCK's safe house.

'The space provided by GALCK has been very instrumental in ensuring that groups have a place to carry out their meetings with members and also do other work as space acquisition is a real challenge to budding LGBTI organizations.

'It is also at this GALCKs [sic] resource centre that social gatherings such as the World's AIDS Day, GALCK's Open Day are held. The Centre also provides a space for GALCK and other LGBTI organizations in Kenya to conduct capacity building trainings [sic] for their members.

'The Center has a library with LGBTI titles which members can read at the center as we continue to look at ways of enhancing the borrowing system.

'The advantage of the 'one-stop shop' called GALCK is that in case one needs any information and assistance on LGBTI issues, they can comfortably access this from GALCK staff and/or the member groups.

'The GALCK resource center is run by the staff team who are instrumental in setting up structures such as reporting templates and handling of projects to aid in organizational runnin. [sic]' **[28a]**

20.26 Another gay rights NGO, Minority Women in Action, is also active in Kenya. Its website, updated on 8 December 2011, stated that its mission is to: '…secure and protect the rights of Lesbian Bisexual Transgender and Intersex (LBTI) women; to ensure that LBTI women have: full rights over their self and body, the right to self-accomplishment and development, full and equal protection of the law and real freedom from discrimination and violence.' **[32a]**

20.27 The Transgender Education & Advocacy (TEA) website, updated 13 December 2011, stated that it 'is a human rights organization working towards ending human rights violations against transgender and intersex people.' **[78a]**

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21. WOMEN

OVERVIEW

21.01 The UN Treaty website, undated, accessed 13 January 2011 stated that Kenya acceded to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 9 March 1984. **[33a]**. The Seventh periodic report of States parties, Kenya, dated 24 March 2010, information provided to the CEDAW committee by NGOs (various dates), and the concluding observations of the Committee, dated 5 April 2011, are available on the Office for the UN High Commissioner for Human Rights website.

21.02 The Federation of Women Lawyers in Kenya (Fida) noted that Kenya had 'not ratified the Optional Protocol to CEDAW.' **[34b]**

21.03 The Freedom House report, 'Freedom in the World 2012, Kenya', covering events in 2011, released on 17 August 2012, observed that:

'Women in Kenya continue to face serious discrimination. Rape and domestic violence are widespread but rarely prosecuted; due to poor police investigative procedures and societal stigma, an estimated 95 percent of sexual offenses were not reported. Traditional attitudes also limit the role of women in politics. However, noticeable progress has been made. The 2007 elections increased the number of women in the National Assembly to 20, or about 8 percent, and the new constitution guarantees women at least one-third representation in all elected bodies and state commissions. It also voids any customary law inconsistent with constitution, eliminates gender differentiation regarding the right to pass on Kenyan citizenship to spouses and offspring, and guarantees women equal inheritance rights for the first time. A 2011

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World Bank report, Women, Business and the Law, found that Kenya showed the greatest improvements among the countries studied- due primarily to the reforms in the new constitution - with significant gains in women entering institutions, utilizing property, and accessing the courts.' **[18a]**

21.04 The Freedom House, 'Countries at the Crossroads 2012, Country Report – Kenya' (FHCC Report 2012), released on 20 September 2012, observed:

'Kenyan law prohibits gender-based discrimination, and the new constitution strengthens requirements for gender equality., Traditional practices continue to restrict women's rights, however, and women's property rights have been limited under customary and formal laws of inheritance and succession. A court ruled in early 2011 that the new constitution clearly forbids any restriction on a woman's inheritance rights based on her marital status. The constitution also includes a provision allowing a woman to pass citizenship to her children or spouse. Kenya is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women. The 2011 Matrimonial Property Bill also provides new safeguards for married women's property rights.' **[18c] (Civil liberties)**

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LEGAL RIGHTS AND GOVERNMENT BODIES

International instruments/conventions

21.05 The Amnesty International report, 'Insecurity and indignity: Women's experiences in the slums of Nairobi, Kenya', published on 6 July 2010, stated:

'Kenya is party to international human rights treaties which expressly prohibit violence against women. These include; the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It has signed but not yet ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

'Kenya ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1984. The Committee on the Elimination of All Forms of Discrimination against Women (the CEDAW), charged with overseeing the implementation of this Convention, stated in its General Recommendation 19 that violence against women constitutes a violation of women's internationally recognized human rights.' **[15d] (p40)**

Domestic law and government bodies

21.06 The Kenya Constitution, revised in August 2010, states under article 27, which defines rights on equality and freedom from discrimination, inter alia, that:

'… (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social

origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.' **[22a]**

21.07 The Government ministry with the task of, amongst other things, promoting gender equality is the Ministry of Gender, Children and Social Development. The ministry's core functions are:

'
- Promotion of gender equality and women's empowerment through gender mainstreaming in national development.
- Coordination of the development, review, implementation, monitoring and evaluation of gender and social development policies, programmes and projects.
- Facilitate community development of communities to enable them identify, design, plan, implement, monitor and evaluate gender and social development programmes and projects.
- To coordinate the production and analysis of sex-disaggregated data for gender and social development planning and programming.
- Promotion and protection of sexual and reproductive rights of women, men, boys and girls.
- Supervise and monitor the implementation of the Women Enterprise Fund.' **[66a] (Core functions and specific roles)**

21.08 The Kenyan Experience, a report presented by Hon. Njoki.S. Ndungu (a Judge of the Supreme Court of Kenya) at a regional seminar for Asian Parliaments on violence against women and girls, held from 15-17 September 2011, noted that:

'Global trends have shown that in the last twenty years governments have made deliberate efforts to increase women's representation in law and policy making…Most Governments have now included affirmative action in their constitutions or political party policy to ensure that women's voices can be translated into formal action through legislation.

'Kenya is not one of these countries, where despite the modernization of its politico-economy, it has one of the most paternalistic parliaments in the African Region. This creates an environment not conducive to any advocacy or lobbying on issues of women's emancipation; indeed since independence the Kenyan Parliament has not only opposed such bills (i.e. the rejection of the Marriage Bill) but has actively regressed laws that do offer some protection and rights to women (i.e. the repeal of the Affiliation

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Act). Where it has been said to have made some gains for women as in the law of succession Act 1981, the same Act contains biased and discriminatory clauses, which are largely sexist in nature. Efforts to bring about laws relating to affirmative action, equal opportunities and inheritance of land have also similarly been rejected.' **[88a]**

21.09 Information on laws governing family rights, employment, protection against violence against women and sexual harassment is provided in the following subsections.

For details of the legislation, government policy and programmes aimed at women see the Kenyan government's submission to the CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seventh periodic report of States parties, Kenya, dated 10 November 2009 (advanced unedited version) (Kenya Government CEDAW Submission 2009) and Seventh periodic report of States parties, Kenya, 24 March 2010.

For information on legal assistance available to women, please see Legal assistance subsection below.

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POLITICAL RIGHTS

21.10 The Central Intelligence Agency World Factbook, Kenya, updated 18 March 2013, stated that women in Kenya have the right to vote at 18 years of age. **[3a] (Government)**. There are no legal barriers to women's participation in politics, however, the United States State Department 2012 'Human Rights Report: Kenya', published on 19 April 2013 (USSD 2012 Human Rights Report), stated that:

'Women's participation in electoral politics remained low; however, a record number of female candidates ran for parliament in 2007, despite harassment and attacks. Women constituted 10 percent of all parliamentary candidates. The new constitution provides that no more than two-thirds of any elected or appointed government body can be of one gender. However, the Supreme Court ruled that the gender requirement can be applied progressively, noting the practical impediments to electing enough women to meet the quota in the 2013 elections. The constitution created the new position of women's representative to increase the political participation of women. However, many women were actively discouraged from contesting other political positions.'
[4b] (section 3)

21.11 The United Nations Women website reported in an article, 'Women elected to one-fifth of seats during Kenyan elections', dated 28 March 2013, that:

'With the focus of local and international media on Kenya's ability to maintain peace and stability, improvements in women's political participation were an unsung success story of the country's national elections, held earlier this month [March 2013].

'After one of the most high-profile campaigns in Kenyan history, 87 of the 416 seats in the newly-established National Assembly and Senate chambers will be held by women. Previously, just 22 women sat in the old 222-seat Parliament, which did not have a Senate.

'Amina Abdalla, a female MP for the past ten years, says that: "This is an historic high for Kenyan women. One-fifth of seats will be held by women- doubling our representation."

'Abdalla is keen to emphasize that electoral success for women didn't happen overnight: "Constitutional support, increased support from party leadership, and training and support provided to women candidates made an impact."

'The process began as Kenya's new Constitution was drafted. UN Women supported a five-year civil society campaign for the enshrinement of key rights, including a ban on all forms of violence against women and girls, the right to own land, and equality in marriage. The campaign also included the right to political representation, in the form of a rule stating that no more than two-thirds of elected seats could be held by persons of either gender. In 2010, Kenyans overwhelmingly endorsed the new Constitution, heralding a step forward for women, and a new era for the country.

'In 2012, UN Women, with UNDP, established a "team of eminent persons"- prominent Kenyan advocates for women's rights, who met with the Independent Electoral and Boundaries Commission and political parties to ensure that nomination lists included the required number of women. After nominations closed, UN Women worked with partners to train and support female candidates from all parties, in all 47 counties.

'Then the Campaign for Women in Leadership kicked off- designed to encourage all voters to consider electing women to positions of leadership. It featured advertising in major newspapers as well as TV and radio stations, in local languages.' **[36]**

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SOCIAL AND ECONOMIC RIGHTS

21.12 The Organisation of Economic Cooperation and Development Social Institutions Gender Index, profile of Kenya (OECD SIGI), 2012 update, accessed on 5 April 2013, provided the following information:

'The Constitution guarantees equality of ownership rights for all Kenyan citizens. Women are free to buy, own and sell assets as they choose. However, in practice women's access to land and access to property other than land are severely restricted by customary law, which essentially prohibits women from owning or inheriting land and other forms of property. Women in Kenya are granted "life interest" in property rather than full ownership, which prevents them from using it as collateral for bank loans or from disposing of it as they see fit. In the event of her husband's death, this "interest" disappears upon remarriage. In fact, women hold title to somewhere between one and five percent of land in Kenya, although there are variations between regions. Even when women are able to acquire assets, their husbands often act as intermediaries in the transaction. The National Land Policy adopted in December 2009 calls for the government to repeal existing laws and outlaw regulations, customs and practices constituting discrimination against women and children in relation to land ownership and inheritance rights, but to what effect remains to be seen.

'Since they rarely have assets of their own, Kenyan women cannot provide the collateral required by lending institutions, making it difficult for them to acquire credit.

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Additionally, women face a range of difficulties in accessing microcredit services including a lack of capacity in terms of management skills. The 2010 CEDAW reports that all the major commercial banks in Kenya now have at least one financial credit or mortgage product targeting women, and that the government has initiated several schemes to enable women to obtain credit, including microcredit…Female employees in Kenya are entitled to three months of paid maternity leave, and their employers are required to pay 100 percent of their wages during their leave. Fathers are entitled to two weeks paternity leave. There are no other protections for pregnant women written in law. However, the majority of employed women work in the agriculture and informal sectors, which likely means that they are ineligible for social security benefits.' **[37a]**

Socio-economic statistics

For more socio-economic information including on women, please see:
UNDdata, Kenya: http://data.un.org/Search.aspx?q=kenya
From Countdown to Kenya (blog)
http://fromcountdowntokenya.blogspot.co.uk/2012/04/kenya-some-statistics.html
Foundation for Sustainable Development, Gender Equity Issues in Kenya:
www.fsdinternational.org/country/kenya/weissues
Kenya National Bureau for Statistics: www.knbs.or.ke/finddata.php
UNICEF, State of the World's Children 2012, Statistics:
http://www.unicef.org/sowc2012/statistics.php
World Development Report 2012, Gender Inequality and Development
http://wdronline.worldbank.org/worldbank/a/c.html/world_development_report_2012/selected_indicators/WB.978-0-8213-8810-5.app-group1.app1.sec3

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Family law: marriage, divorce, inheritance and property rights

21.13 The USSD 2012 Human Rights Report stated that:

'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 new constitution eliminates gender discrimination in relation to land and property and gives women equal rights to inheritance and unbiased access to land. The constitution also provides for the enactment of legislation for the protection of matrimonial property during and upon the termination of the marriage, and it affirms that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution.' **[4b] (section 6)**

21.14 The Organisation of Economic Cooperation and Development Social Institutions Gender Index, profile of Kenya (OECD SIGI), 2012 update, accessed on 5 April 2013, provided the following information:

'Previously, marriage in Kenya was governed by four separate chapters of the Laws of Kenya depending on the ethno-religious group of the persons getting married. The New Kenyan Constitution provides that parties to a marriage will be entitled to equal rights at the time of marriage, during the marriage and at its dissolution.

'The 2008 Marriage Act provides a minimum age of marriage of 18 for women and men, and the Children's Act of 2001 expressly forbids early or forced marriage. However, many marriages are not officially registered, but are instead performed under customary or Islamic law, where there is no age limit.

'Note that the new constitution recognizes customary laws as only as long as they are consistent with the Constitution of Kenya which means that discriminatory practices previously common in customary laws are outlawed. The constitution also provides for equality at marriage, during marriage and at its dissolution…Polygamy is forbidden in statutory marriages, but allowed in Muslim and customary marriages (an estimated 60 per cent of total marriages)…In the event of divorce, only statutory marriage requires that couples follow legal procedures and provides any degree of equality for women. Repudiation is permissible for Muslim and customary marriages, both of which allow husbands to end the union without following official divorce procedures.

'Statutory marriage stipulates that parental authority be equally shared by men and women; however, Muslim and customary marriages are discriminatory in this matter. Custody is almost always awarded to the father when a customary marriage ends in divorce. The Children's Act of 2001 also stipulates that the children born to unmarried mothers are the sole responsibility of the mother; only when the father claims responsibility or lives with the mother for 12 months following birth does he gain legal responsibility. Women have the same right as men to pass Kenyan citizenship onto their children.

'In 1981, Kenya established an inheritance law (The Law of Succession Act) that enforces equality between men and women, but it is not applied to all citizens and some judges do not respect the law, or determine that a property or inheritance dispute should be determined by customary law. For example, judges sometimes rule that married daughters are ineligible to inherit or, in cases in which the heirs are in dispute, they may transfer the affair to an elders council that follows discriminatory customs. Divorced and separated women are vulnerable since courts are free to apply customary law concerning property and maintenance determination. Islamic law is discriminatory in that daughters typically inherit only half of the share to which sons are entitled. Wives receive one-eighth of a husband's estate if there are children, or otherwise one-fourth. Wives in polygamous Muslim marriages would share the one-eighth or one-fourth. The 2010 CEDAW report notes, however, that in some recent inheritance cases, judges have in fact referred to the provisions in CEDAW and other international legal instruments to rule in favour of daughters receiving an equal share of inheritance.' **[37a]**

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Single women/mothers

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21.15 With regard to single mothers, Inter Press Service reported on 2 August 2008 that:

'There are increasing numbers of single mothers in Kenya…Angelina Nandwa, the founder of the Single Mothers' Association of Kenya (Smak)…set up Smak in 1991 to help single mothers.

'"Kenyan parents do not accept daughters back in their home once they are married. My mother told me to go back to my husband and persevere as she had done with my father. But I wanted to take control of my life, even if that meant raising the children myself in hardship," Nandwa told IPS about the motivation behind her work…Unlike most single mothers in Kenya, Nandwa is an educated, urban woman. After she got a German Development Foundation scholarship for training in community development, she returned to set up her own organisation. Now Smak has hundreds of clients who are provided help according to their need.

'Ruth Njeri, a 20-year old domestic worker, is one of them. She had to leave school after getting pregnant and then moved to Nairobi from her village in the Nakuru district in search of work as her father refused to support her or the baby.

'"I had completed my Form-IV (higher secondary) but after the child was born neither my family nor my school wanted me back. If I had wanted to study further at all, I had to go to a different school," [Njeri said]…Nandwa says no one has collected statistics on single mothers. But there is data that points to their growing numbers. The Nairobi-based Centre for the Study of Adolescence estimates that up to 13,000 Kenyan girls drop out of school every year as a result of pregnancy. These young girls are often treated as outcasts by their families. Many migrate to cities where they face unemployment, health risks and malnutrition.

'As a network of women's rights NGOs in Kenya gains strength, the presence of single mothers as a significant group in society is being recognised, says Nandwa. "We have worked with mothers as young as 13 and widows as old as 40 years old. Their needs are different from each other and it takes a network of women's groups to address them…Unmarried girls who become pregnant face three alternatives. She may marry the father; if she is in school, she most likely will drop out. The marriage as well as the pregnancy may be unwanted and soon result in divorce or abandonment, often experiencing societal disapproval and economic hardship. Or she may have an abortion, typically illegal and unsafe."…There are numerous projects, such as the Smak's programme of informal schools, which provide opportunities for alternative education to girls who have been expelled.' **[26a]**

Freedom of movement

21.16 The Organisation of Economic Cooperation and Development Social Institutions Gender Index, profile of Kenya (OECD SIGI), 2012 update, accessed on 5 April 2013, stated that: 'There do not appear to be any legal constraints on women's freedom of movement in Kenya. Previously existing requirements that women secure their husband's or father's consent before obtaining a passport have been removed. However, of the women interviewed for the 2008-2009 DHS, 26.3% reported that their husbands usually had the final say in deciding whether they were allowed to visit family and relatives.' **[37a]**

Reproductive rights

21.17 The Constitution of Kenya states, at Article 26, section 4 that: 'Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.' **[22a]**

21.18 The reproductive health organisation Pathfinder international works 'closely with more than 60 nongovernmental and community-based organizations, government agencies, and public and private sector institutions' and 'has reached some of Kenya's poorest communities with reproductive health information and services, including contraceptives and counselling (sic) in maternal and child health care. Today, Kenya has one of the most mature and successful family planning programs in Africa, with modern contraceptive methods used by 39 percent of married women (high by African standards).' **[38a]**

21.19 According to the Population Services International (PSI) Kenya branch's website, the PSI: 'was founded in 1990 to socially market condoms and has since expanded to include programs for malaria, reproductive health, HIV/AIDs and child survival.' PSI is operational 'in seven out of the eight provinces. PSI has built a network of more than 5,000 commercial partners that help enable low-income and vulnerable Kenyans to lead healthier lives.' **[39a]**

21.20 The OECD SIGI 2012 update, accessed on 5 April 2013, provided the following information:

'Currently in Kenya, the law does not allow abortion in any circumstances, however in some previous cases, doctors have been permitted to carry out abortions in cases where the woman's life was in danger…Although the level of contraceptive knowledge among all Kenyan women, including married women, tops 95 percent, actual prevalence rates are much lower. Just 55 percent of married women aged 15 to 49 reported ever using any modern method of contraception as a method of family planning in the 2003 DHS, and only 31.5 percent reported current usage. Nearly 58 percent of married women who were not using contraception at the time of the survey indicated that they planned to use in the future, but 38 percent indicated that they had no intention to ever use contraception. Among these women, the top reasons included religious objections, fear of side effects, and a desire for more children. Overall, 15.8 percent of married women reported an unmet need for family planning services for either birth spacing or limiting the number of children they bore. According to the 2010 CEDAW report, the government had set aside funds for the financial year 2008-2009, in order to provide all women in Kenya with free access to contraception.' **[37a]**

21.21 The USSD 2012 Human Rights Report stated that:

'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 girls and 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 skilled health personnel attended an estimated 44 percent of births. According to KDHS and UN estimates, the maternal mortality ratio in 2009 was 488 deaths per 100,000 live births, up from 414 in 2004. 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.' **[4b] (section 6)**

21.22 The Centre for Reproductive Rights report, 'In Harm's Way: The Impact of Kenya's Restrictive Abortion Law', published on 31 March 2010, stated that: 'Every year, at least 2,600 women die from unsafe abortion in Kenya; 21,000 more women are hospitalized annually with complications from incomplete and unsafe abortion, whether spontaneous or induced…these numbers…do not capture the number of women killed or disabled by unsafe abortions who never visit a health facility or whose cause of death is not recorded.' **[68a] (p9)**

For further information on the use of contraception by women in Kenya, please see Chapter 5 of the Kenya National Bureau of Statistics Demographic and Health Survey 2008-09 **[7a]**.

Healthcare

21.23 The Human Rights Watch report, 'I Am Not Dead, But I Am Not Living', published in July 2010, stated:

'Kenya has taken many positive steps to advance women's and girls' maternal and reproductive health. These initiatives include eliminating charges for public family planning services, antenatal and postnatal care, and prevention of mother-to-child HIV transmission. The government has also eliminated charges for delivery in dispensaries and health centers to encourage women to deliver in medical facilities with a skilled birth attendant.' **[9e] (section V, p45)**

See Medical issues for background on the healthcare system.

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VIOLENCE AGAINST WOMEN

21.24 The OECD SIGI Kenya profile stated:

'There is no specific law against domestic violence, and police are frequently reluctant to intervene in what they consider to be a 'family matter'…'Under the Sexual Offences Act (2006), all forms of sexual assault are criminalized, however marital rape is not specifically addressed. Widows are vulnerable to wife inheritance and "ritual cleansing" where a man is paid to have sex with her to "cleanse" her of evil spirits associated with her husband's death.

'Sexual harassment is against the law, but the law is not effectively enforced.

'Violence against women is generally accepted by public opinion and women are frequently beaten by their husbands. A clear majority of Kenyans find intimate partner violence acceptable.' **[37a]**

21.25 The Kenya National Bureau of Statistics Demographic and Health Survey 2008-09 (KNBS survey), released in June 2010, stated that: '…there is a culture of silence surrounding gender-based violence that makes collection of data on this sensitive topic particularly challenging. Even women who want to speak about their experiences of domestic violence may find doing so difficult because of feelings of shame or fear.' **[7a] (Gender-based violence, p245)**. The same survey stated that: '…39 percent of women [in Kenya] have experienced physical violence, with almost one in four women (24 percent) experiencing such violence in the 12 months before the survey.' **[7a] (Gender-based violence, p247)**

For further statistical detail on violence against women, including demographic data, see the Kenya National Bureau of Statistics Demographic and Health Survey 2008-09.

21.26 The Amnesty International Briefing to the Committee on the Elimination of Discrimination against Women, prepared for the January 2011 session and published on 30 November 2010 stated that:

'For women living in slums and informal settlements, the lack of adequate access to sanitation facilities for toilets and bathing…is leading to violations under Article 1 of the Convention (as interpreted by General Recommendation 19) and Article 12 of the Convention. This is in part related to the fact that women's need for privacy during bathing and toileting increases their risk of experiencing violence…Inadequate and inaccessible toilets and bathrooms, as well as the general lack of effective policing and insecurity, make women even more vulnerable to rape and other forms of gender-based violence.' **[15c] (p6)**

21.27 In the Compilation [of UN bodies] prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council, (UN UPR Compilation 2010) dated 16 February 2010, a contribution submitted to the Human Rights Council as part of it's the universal periodic review (UPR) of Kenya held in May 2010, it was noted:

'CESCR [Committee on Economic, Social and Cultural Rights] expressed concern about the incidence of domestic violence, the low number of complaints and the absence of criminal law provisions specifically criminalizing such violence... In 2009, the Special Rapporteur on violence against women stated that failure to ensure equal property rights upon separation or divorce discouraged women from leaving violent marriages…In 2007, the Special Rapporteur on trafficking in persons, especially women and children referred to customs in connection with forced marriage…2009 United Nations Development Fund for Women (UNIFEM) report indicated that multiple factors keep survivors of sexual violence from obtaining medical treatment, care and support…CESCR…CEDAW… the HR Committee…and CAT… noted with concern that female genital mutilation continues to be practiced in Kenya. CESCR noted that the practice is prohibited only if it involves children and recommended adopting legislation criminalizing female genital mutilation of adult women…' **[61c] (p7, paragraphs 29-30)**

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Rape and sexual violence

21.28 The USSD 2012 Human Rights Report noted that:

> 'The law criminalizes rape, defilement, and sex tourism; however, enforcement 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. Traditional dispute mechanisms frequently were used to address sexual offenses in rural areas, with village elders assessing financial compensation for the victims' families. NGOs reported difficulties in obtaining evidence and the unwillingness of witnesses to testify in sexual assault cases in areas where traditional dispute mechanisms were employed.
>
> 'Police statistics for 2011 indicated 4,517 reported cases of gender-based violence, including 934 rapes. In 2010 police reported 4,551 cases of gender-based violence, including 922 rapes. 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; the stigma attached to rape victims; 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, post-rape care, and victim support, were promulgated in 2009, but implementation mechanisms remained weak.
>
> 'Police procedures for 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. At the beginning of the year there was only one police physician in Nairobi, and human rights groups noted that the physician was often unavailable to conduct exams, frequently failed to appear in court, and issued examination reports that conflicted with the findings of other medical professionals. Following reports by human groups criticizing the physician's unavailability, the police hired an additional physician for Nairobi. Police physicians generally were not present in rural area.
>
> 'During the year police approved a change in procedure to allow clinical officers, in addition to police physicians, to examine victims of sexual violence; however, authorities did not implement the change by year's end, and the new forms used to report sexual assaults were not available at most police stations. 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 lack of evidence.' **[4b] (section 6)**

21.29 The KNBS survey stated that:

'[O]ne in five Kenyan women (21 percent) has experienced sexual violence… In the vast majority of cases, sexual violence is perpetrated by persons known to the victims; strangers account for only 6 percent of sexual violence…37 percent of women who have experienced sexual violence report current husbands or partners as the perpetrators, followed by current or former boyfriends (16 percent) and former husbands or partners (13 percent). It is worth noting that among ever-married women, sexual violence is perpetrated mainly by current and former husbands and partners. Among those who have never married, the violence is committed mainly by boyfriends, although almost one in five never-married women (19 percent) has been violated by a friend or acquaintance and almost as many by a stranger (17 percent).'
[7a] (Gender-based violence, p250)

21.30 The same survey stated that: '12 percent of women age 15-49 report that their first sexual intercourse was forced against their will.' **[7a] (Gender-based violence, p249)**

21.31 The Organisation of Economic Cooperation and Development Social Institutions Gender Index profile of Kenya (OECD SIGI), 2012 update, accessed on 5 April 2013, provided the following information:

'Under the Sexual Offences Act (2006), all forms of sexual assault are criminalized, however marital rape is not specifically addressed. Widows are vulnerable to wife inheritance and "ritual cleansing" where a man is paid to have sex with her to "cleanse" her of evil spirits associated with her husband's death.

'Sexual harassment is against the law, but the law is not effectively enforced…In 2008 official police statistics indicated 627 rapes during the year, but according to the US State Department's 2010 human rights report, human rights groups estimated that more than 21,000 rapes were perpetrated annually. The police and the justice system rarely prosecute cases of rape, and local women's rights organisations claim that police reluctance to investigate rape cases, and procedures in handling rape cases act as a significant deterrent to reporting (for instance, requiring that victims be examined by a police physician before any investigation can be initiated). This is compounded by cultural taboos that prohibit discussion of sex, and victims' fears of retribution.' **[37a]**

For further statistical detail on sexual violence against women, including demographic data, please see the Kenya National Bureau of Statistics Demographic and Health Survey 2008-09.

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Domestic violence

21.32 The USSD 2012 Human Rights Report stated that:

'Domestic violence against women was widespread but often condoned by society and seldom addressed in the courts. According to the 2009 Kenya Demographic and Health Survey (KDHS), 53 percent of women and 44 percent of men agreed that there exists

sufficient justification for wife beating. 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.' **[4b] (section 6)**

21.33 The KNBS survey stated that of the women they had surveyed who had experienced physical violence since the age of 15 and were or had been married, 64.8% had been assaulted by their current husband or partner, and 19.1% by their former husband or partner. Of all women in the survey who had experienced violence, 0.3% had been assaulted by their current boyfriend, and 1.4% by a former boyfriend. **[7a] (Gender-based violence, p249)**

21.34 The same survey stated that of the women they had surveyed who had experienced sexual violence and had ever been married, 43.7% had been assaulted by their current husband or partner, and 15.6% by their former husband or partner. Of all women in the survey who had experienced violence, 16.2% had been assaulted by their current or former boyfriend. **[7a] (Gender-based violence, p249)**

21.35 The OECD SIGI 2012 update, accessed on 5 April 2013, provided the following information:

'Violence against women is generally accepted by public opinion and women are frequently beaten by their husbands. A clear majority of Kenyans find intimate partner violence acceptable. Given five reasons why a man might be justified in beating his wife, more than 63 percent of men and 67 percent of women interviewed for the 2003 Demographic and Health Survey (DHS) agreed with at least one reason. Almost 40 of married women surveyed reported experiencing physical violence at the hands of their spouse, while 25 percent of all women reported having suffered from violence in the previous 12 months. Research conducted by a local NGO and reported in the US Department of State's 2011 human rights report found that 83% of women and girls question had experienced at least one episode of physical abuse.' **[37a]**

21.36 The Gender Violence Recovery Centre website, accessed on 1 May 2013, stated that:

'Women accounted for 49% of the total number of GBV [gender-based violence] cases reported in 2011-2012. Girls accounted for 41%, and men and boys 10%. Again, these numbers follow a pattern: in 2010-2011, for example, women accounted for 48% of all cases, girls for 42%, and men and boys 10%. Since the GVRC was established 11 years ago, women have accounted for 56% of the total number of cases treated and girls for 36%. Although the percentage of survivors seen during the last year has decreased for women from the cumulative 56% to 48%, it has increased for girls to 42%, indicating a higher risk and exposure for girls. Overall, women and girls still account for 90% of all survivors seen…Notably, in 2011-2012, the number of physical violence cases rose by almost 10%, from 385 the previous year to 422. Despite this, these cases represent only a fraction of actual cases occurring, for which there is no available data…In 2011-2012 the total number of sexual violence cases reported to the GVRC rose only slightly with 2532 cases reported, just above the 2524 cases reported in 2010-2011.' **[44a]**

Female Genital Mutilation/Cutting (FGM/C)

21.37 It is illegal to carry out female genital mutilation on females aged 18 or younger in Kenya. No similar protection exists for women over the age of 18. (Women's enews, 8 February 2005) **[40a]**

21.38 The Population Council report, Overview of FGM/C in North-Eastern Kenya and the Religious Oriented Approach, published 26 February 2009, further reported that the statistics varied depending on ethnicity:

- Universal among the Somali, Abagusii, Kuria, Maasai and Samburu (over 90%)
- Highly prevalent among the Taita Taveta (62%), Kalenjin (48%), Embu (44%) and Meru (42%)
- Practiced to a lesser extent among Kikuyu (34%) and Kamba (27%)
- Not practiced among some ethnic groups, notably Luo, Luhya, Teso and Turkana

[41a] (page 5)

21.39 The USSD 2012 Human Rights Report stated: 'In September 2011 the government passed a law making it illegal to practice FGM/C, procure the services of someone who practices FGM/C, 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/C. Although the new law was praised by NGOs and others opposed to FGM/C, FGM/C was practiced widely, particularly in rural areas. FGM/C usually was performed at an early age.' **[4b] (section 6)**

21.40 Female Genital Mutilation can lead to obstetric fistula (a tear in the birth canal which may result in physical complications and ostracisation), as reported by IRIN News on 19 July 2010: 'Infibulation, practised in some communities, which involves the cutting and sewing up of a girl's genitalia leaving a match-stick size hole for the passage of menstrual blood is especially harmful. This hole is then crudely cut open during childbirth, something which could end up severing the bladder.' **[42a]**

For further information on Female Genital Mutilation, please see Children: FGM

TRAFFICKING

21.41 The United States State Department 'Trafficking in Persons Report 2012', published on 19 June 2012, stated:

'Kenya is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking. Traffickers, who gain poor families' trust through familial, ethnic, or religious ties, falsely offer to raise and educate children in towns or to place adults in lucrative employment…Vehicles transporting khat to Somalia return carrying Somali girls and women who often end up in brothels in Nairobi or Mombasa. Both women and "beach boys" as young as 14 pimp children in coastal areas and receive commissions as high as the equivalent of $240 from tourists for each girl secured…Kenyan men, women, and children voluntarily migrate to other East African nations, South Sudan, Europe, the United States, and the Middle East – particularly Saudi Arabia, but also Qatar, Kuwait, the United Arab Emirates (UAE), Lebanon, and Oman – in search of employment, where they are at times exploited in domestic servitude, massage parlors and brothels, or forced manual labor, including in the construction industry.' **[4c] (Kenya)**

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For more information on trafficking, please refer to the chapter of the same name.

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ASSISTANCE FOR WOMEN

Government

21.42 The Amnesty International report, 'Insecurity and indignity: Women's experiences in the slums of Nairobi, Kenya', published 6 July 2010, stated:

'Kenya is party to international human rights treaties which expressly prohibit violence against women. These include; the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It has signed but not yet ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

'Kenya ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1984. The Committee on the Elimination of All Forms of Discrimination against Women (the CEDAW), charged with overseeing the implementation of this Convention, stated in its General Recommendation 19 that violence against women constitutes a violation of women's internationally recognized human rights.' **[15d] (p40)**

21.43 The Amnesty International (AI) report, Insecurity and Indignity, dated July 2010, referring via a footnote to an earlier AI statement in 2002 and a report undertaken by the Federation of Women Lawyers in Kenya (FIDA) in 2008, that:

'Generally in Kenya, women survivors of sexual and other forms of gender-based violence face a myriad of obstacles in their attempts to seek justice, including: widespread ignorance of the law on the part of the public and victims of violence; low reporting rates of such violence to the police and an even lower percentage of cases that result in prosecutions; difficulties relating to gathering of medical evidence; inefficient, expensive, inaccessible and discriminatory court systems and lack of protective shelters or places of safety for victims…' **[15d] (p38)**

21.44 The World Health Organisation bulletin, Delivering post-rape care services: Kenya's experience in developing integrated services, published 16 April 2009, gives an account of the facilities available to rape survivors in 2003:

'A situation analysis in 2003 revealed limited post-rape services, lack of policy and tensions between HIV and reproductive health staff at service delivery points. Facilities lacked protocols and confidential spaces for treatment. Beyond a requirement that examinations be undertaken by a doctor, there were no reporting requirements and an absence of monitoring and evaluation of services. Furthermore, survivors were required to pay for drugs and services in public institutions. Where HIV-test counselling existed, it was delivered in the context of voluntary counselling and testing (VCT). Formal

counselling for sexual trauma, where it existed, did not give consideration to HIV testing.' **[69a] (Kenyan context)**

21.45 The bulletin went on to state that, as part of a pilot project:

'In collaboration with a Kenyan nongovernmental organization (Liverpool VCT, Care & Treatment) services were established in government health facilities in three disparate districts in 2003 (Thika, Malindi and Rachuonyo) with the aim of informing national policy directly with experiences from the field…Each team assigned the coordination of post-rape care services to an individual member, who then liaised with the local police to ensure immediate referral of survivors to health facilities. The services were advertised through existing public health systems and wider staff training.

'The first port of call for survivors was the casualty (emergency) department, open 24 hours a day, where physical examination was conducted by a doctor, records kept and further referrals made. Emergency contraception, empirical STI treatment and starter packs of a two-drug HIV post-exposure prophylaxis (PEP) regimen were kept in casualty as part of essential drugs and offered routinely to survivors on presentation. To facilitate the collection of evidence, a locally assembled 'post-rape' kit was supplied by the district's sterilizing and surgical department…Police signed for any specimens they removed from casualty thus initiating a chain of custody of evidence. Data was captured by registers on the history of the alleged assault, therapies provided and specimens collected. After referral from casualty, post-rape counselling services were provided in the VCT sites; laboratory staff documented the results of HIV and other testing; and HIV care clinic staff prescribed and documented on-going PEP.

'Two separate peer-reviewed training programmes were piloted in the districts and are available for use in other settings…A 3-day training course aimed at all types of frontline clinicians involved in post-rape care included skills for clinical evaluation, risk assessment and legal documentation. The other longer course targeted practicing HIV counsellors from the facilities and focused on skills and observed practice for trauma counselling, HIV testing after rape, PEP adherence and legal information.' **[69a] (System development process)**

21.46 The bulletin further stated that:

'In mid 2004, the Kenyan Division of Reproductive Health disseminated the findings of the situation analysis…A committee was constituted and national guidelines for the medical management of rape and sexual violence approved and disseminated in 2005, with the Division of Reproductive Health recommending user-fees be waived. A universal data form, agreed and approved by the Ministry of Health, became the first clinical form acceptable for legal presentation of sexual violence in a Kenyan court. The training curricula were peer-reviewed and approved as the national manuals in 2006. Since 2006, indicators for post-rape care, including the number of health-care workers trained, the number of health facilities offering services, percentage of police officers trained and the percentage of antiretroviral treatment sites offering post-rape care, have been incorporated in national planning…By June 2007, there were 13 health facilities providing post-rape care services in Kenya including the national referral and teaching hospital. Between them they had delivered services to over 2000 adults and children with 96% of those eligible initiating PEP at presentation.' **[69a] (Using lessons to inform policy)**

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21.47 The bulletin concluded by adding:

'The potential to improve relationships between the health sector and justice systems has not been realized in Kenya. Specimen collection of sufficient standard to provide evidence in court was undermined by the lack of commercial specimen collection kits or availability of additional requirements such as tamper evidence seals, replacement clothing and specula suitable for children. In addition there was a lack of DNA profile testing. We were unable to determine how many of the survivors received legal support or the role played by the evidence that was collected. This remains a practical and policy gap in the provision of post-rape care.' **[69a] (Using lessons to inform policy)**

21.48 An article published on the Centre for Health Media Policy.com website, 'Kenya Reaches Milestones in Post-rape Care', dated 26 December 2012, stated:

'When the Government of Kenya passed the Sexual Offences Act of 2006, members of Parliament probably had no idea how important this landmark legislation was or how cumbersome it would be to sort out. The Sexual Offences Act (SOA) is a law that encompasses over 200 sex-related crimes ranging from gang rape to forced kissing. Prior to the passage of the SOA many of these crimes went without criminal investigation or punishment of the offender. An outcome of the SOA was the formation of a Sexual Offences Act Task Force, a multidisciplinary board chaired by a judge and comprised of representatives of government ministries and some members of civil society. When problems arise within the scope of the SOA it indeed takes a village to find solutions. Such issues are brought forward to the SOA Task Force.

'Historically, a major problem with clinical, post rape care was that only one doctor in the country was authorized to conduct post rape examinations in Kenya. Survivors of violence would sometimes wait in queues for days to be seen by this doctor. This untimeliness would result in physical evidence being lost or destroyed and any bodily injuries would be healed before the patient was examined. Worse, the doctor was expected by law enforcement to determine whether a crime of rape or defilement had occurred. In reality, it is not the duty of a doctor to determine if a crime has happened. Rather, it is the duty of the police to investigate violations of the law. The Kenyan people have been misled for decades to believe that a doctor could formulate a "diagnosis" of rape while rape is not a medical diagnosis. Rape is a crime that warrants police investigation.

'Typically, when a person in Kenya becomes a crime victim, they must report to the police and complete a police document known as the P3 form. Kenya Police will not investigate any incident without the filing of a P3 form. For reports of sexual assault, this protocol meant that the survivor would be burdened by finding transportation to hospital for treatment, then travel to a police station to obtain the P3 form, and return to the hospital with the P3 form for a doctor's signature, certifying that rape had occurred. The clinical information on the P3 is minimal but it is the doctor's "certification of rape" that spurs the police to investigate the crime.

'In recent weeks, the SOA Task Force has reached a new milestone with the official passage of a policy or "gazettement" by the Attorney General that allows nationwide use of the post rape care (PRC) form as a valid, forensic document. Medical doctors, registered nurses and clinical officers may now conduct post rape examinations and document their clinical findings on the approved form. The PRC form captures critical

data about the medical examination and provides forensic documentation of the clinical findings. If forensic evidence is collected, it also will be noted on the form. The PRC form will be available at all hospitals and clinics and should prove to be invaluable evidence in the prosecution of sexual offences.' **[76]**

21.49 An article published on the Liverpool VCT Care and Treatment website, 'A milestone in provision of Post Rape Care (PRC) services to survivors of sexual violence achieved in Kenya - PRC form now a legal medico-legal document', undated, stated:

'In 2011, LVCT was commissioned by the Task Force on the Implementation of the Sexual Offences Act (TFSOA), to undertake at [sic] study. Findings revealed that some health care providers were not comfortable in filling in this form for fear of being challenged in court as "expert witnesses" and survivors of sexual violence were also required to pay for health services. Upon dissemination of these findings to the taskforce, the Division of Reproductive Health convened a Technical Working Group to develop medical regulations to govern delivery of post rape care services.

'The journey came to end with the gazzetment of the medical regulation of 2012 vide Kenya Gazette supplement special issue legal notice Notice No. 133 of 16th November 2012.

'What does this mean to the public?

•That survivors can now access full examination and prescribed medical treatment at the expense of the state, meaning they can now demand for free post rape care services from any government facility.

•The era of relying on one doctor, Dr. Kamau for filling in of the P3 form is now over, as any 'designated person' includes a nurse registered under section 12(1) of the Nurses Act, Cap 257, Laws of Kenya; or a clinical officer registered under section 7 of the Clinical Officers (Training, Registration and Licensing) Act, Cap 260, Laws of Kenya.; and 'medical practitioner' in accordance with section 6 of the Medical Practitioners and Dentist Act, Cap 253, Laws of Kenya can now fill in this form

•No health care provider will refuse to fill in the PRC form for excuse of not been eligible to present evidence in court

'Implications of this on health care providers:

•The work over load on medical doctors will be a thing of the past, as clinical officers and nurses who examine survivors of sexual violence will be required to fill in both the PRC and P3 forms

•Clinical officers and nurses are now recognised as "expert witnesses" together with the doctors

•Evidence presented by clinical officers and nurses will be considered as valid

'We join the other stakeholders under leadership of the Division of Reproductive Health and the Taskforce on the implementation of the Sexual Offences Act in celebrating this milestone.' **[50b]**

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A table of service delivery methods for post-rape care is available as part of the bulletin. For information about the police and its general effectiveness see Security forces and for detail about the legal system see Judiciary.

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Non Government Organisations

For information about human rights organisations and civic society generally see Human rights institutions, organisations and activists.

21.50 The Kenya Government CEDAW Submission 2009 stated that there were 138,753 women's NGOs in Kenya in 2007, with 5,417,850 members, 96.5% of which were female. **[70a] (p64)**

21.51 Various NGOs were able to offer assistance to women in Kenya, including the Gender Violence Recovery Centre whose website, accessed on 1 May 2013, stated that:

'Gender Violence Recovery Centre (gvrc) is a non-profit making, non-partisan; charitable trust of the Nairobi Women's Hospital (NWH) which is a private institution that specialises in obstetrics and gynaecology ser-vices and seeks to provide holistic care to women and their families. GVRC's main purpose is to bring back meaning to survivor's lives and their families. We do this through the provision of free medical treatment and psychosocial support to survivors of gender based violence. The medical support given is the basic treatment for survivors of Gender Based Violence (GBV) that includes emotional, physical, sexual and psychological abuse.' **[44b] (Homepage)**

21.52 The GVRC provided the following statistics in their 2011/12 annual report, published in 2012:

'Women accounted for 49% of the total number of GBV [gender-based violence] cases reported in 2011-2012. Girls accounted for 41%, and men and boys 10%. Again, these numbers follow a pattern: in 2010-2011, for example, women accounted for 48% of all cases, girls for 42%, and men and boys 10%. Since the GVRC was established 11 years ago, women have accounted for 56% of the total number of cases treated and girls for 36%. Although the percentage of survivors seen during the last year has decreased for women from the cumulative 56% to 48%, it has increased for girls to 42%, indicating a higher risk and exposure for girls. Overall, women and girls still account for 90% of all survivors seen. The number of men rose from 3% to 4% and boys from 5% to 6%. Notably, in 2011-2012, the number of physical violence cases rose by almost 10%, from 385 the previous year to 422. Despite this, these cases represent only a fraction of actual cases occurring, for which there is no available data…In 2011-2012 the total number of sexual violence cases reported to the GVRC rose only slightly with 2532 cases reported, just above the 2524 cases reported in 2010-2011.' **[44a]**

21.53 The Centre for Rights Education and Awareness (CREAW) 'offers Support services to survivors of SGBV [sexual and gender based violence] including Individual and Group Therapy support and violence.' **[35b]**

21.54 Some assistance was available for women and girls fleeing FGM. According to the USSD Human Rights Report 2012: 'Some churches and NGOs provided shelter to girls

who fled their homes to avoid FGM/C, 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/C; however, in some communities some girls continued to insist on undergoing the practice.' **[4b] (section 6)**

For further information on assistance available for women and girls fleeing FGM, please see Children: FGM

A list of NGOs in Kenya that assist women is available in the NGO Directory of the UN Office of the Special Adviser on Africa. For more information on NGOs in Kenya generally, please see Human rights institutions, organisations and activists.

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Legal assistance

21.55 The Federation of Women Lawyers (FIDA Kenya) website, undated, accessed on 2 May 2013, stated:

'The Federation of Women Lawyers Kenya (FIDA Kenya) is committed to bridge the gap between the Government and the citizenry, and in particular, the disadvantaged women. Indeed, so much is going on in our society…FIDA came up with strategies, as documented in its 2008-2013 Strategic Plan. Apart from receiving only those who visit the legal aid clinics in Nairobi, Mombasa and Kisumu, FIDA Kenya has strategically put in place mechanisms to reach out to that indigent woman right at the community level…FIDA Kenya takes up the files court cases on behalf of the poor and the needy Women…In the regional offices, where informal justice system are more vibrant, FIDA Kenya assists women to access justice through the existing channels by training the respective bodies on gender and gender related issues.' **[34a]**

21.56 The Center for Rights Education and Awareness (CREAW) website, undated, accessed on 1 May 2013, stated that:

'Centre for Rights Education and Awareness (CREAW) is a non-governmental, non-partisan organization whose…Mission is to transform the Kenyan society through the promotion and expansion of women's human rights, rule of law and social justice. Vision is that of a just and free society in which women and men exercise equal and full rights and opportunities. Since Sexual and Gender-based Violence (SGBV) is culturally accepted in Kenya, CREAW is committed to transforming society and achieving for women, a just and dignified environment, in which their relation with men is equal, and their rights and freedoms are respected and realized. Our programs, which are politically non-partisan, mostly anchor on enthusiastic lobby and advocacy activities that support the interests of our constituency, the women of Kenya. Our membership is open to individuals and women who share in the same vision and mission, and are driven by positive values for women's development and empowerment.' **[35a] (Homepage)**

21.57 On its website, accessed on 2 May 2013, CREAW lists the following successes:

'Since inception, CREAW has handled over 16,000 cases for and on behalf of the poor and marginalised women of Kenya in pursuit of legal justice. The said cases entail numerous actions emanating from various violations of women's human rights including sexual and gender-based violence (SGBV) including defilements, women's property

rights, probate and administration (succession and inheritance), matrimonial (custody, maintenance, division of property, separation and divorce), early marriages and female genital mutilation.

'CREAW also undertakes strategic impact litigation and at the moment has several cases pending in court among them, sexual harassment in the work place; citizenship rights; property rights among others.

'CREAW also offers support services to survivors of SGBV including individual and group therapy support.' **[35b]**

See also the following United Nations reports on Kenya and gender issues available from this weblink:

http://www2.ohchr.org/english/bodies/cedaw/cedaws48.htm

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22. CHILDREN

OVERVIEW

22.01 Kenya signed the UN Convention on the Rights of the Child on 26 January 1990 and ratified it on 30 July 1990. (UN Treaties Collection, accessed on 2 May 2013) **[33b]**. Kenya signed the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict on 8 September 2000 and ratified it on 28 January 2002. (UN Treaties Collection, accessed on 2 May 2013). **[33c]**. Kenya also signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 8 September 2000, but has yet to ratify it. (UN Treaties Collection, accessed on 2 May 2013) **[33d]**

22.02 The UNICEF [United Nations Children's Fund] 'State of the World's Children 2012' report (UNICEF SOWC Report), published in February 2012, gave the following statistics:

Under-5 mortality rank		35
Under-5 mortality rate (per 1,000 live births)	1990	99
	2010	85
Infant mortality rate (under 1) (per 1,000 live births)	1990	64
	2010	55
Neonatal mortality rate (per 1,000 live births)	2009	28
Total population (thousands)	2009	40513

Annual no. of births (thousands)	2010	1529
Annual no. of under-5 deaths (thousands)	2010	122
Life expectancy at birth (years)	2010	57
Primary school net enrolment/ attendance (%)	2007–2009 [Data refer to the most recent year available during the period specified in the column heading]	83

[67a] (Tables section)

22.03 The United States State Department 2012 Human Rights Report: Kenya (USSD Human Rights Report 2012) stated: 'A child's 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.' **[4b] (section 6)**

The Child Rights International Network collates child-related law, policy, information and research reports, and lists NGOs working with children: http://crin.org/reg/country.asp?ctryID=111&subregID=1

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Basic legal information

22.04 The World Organisation Against Torture Report, Violence against women and children in Kenya: An alternative report to the Committee against Torture, published on 3 December 2008 (OMCT report 2008) gave the following summary of the definition of a child:

'The Children Act defines a child as any human being under the age of 18 years. Specific legal provisions with regard to minimum age are:

- the minimum age of criminal responsibility in Kenya is 8 years;
- the minimum age of sexual consent has been raised to 16 years; however, this only applies to girls younger than 16, thus offering less protection to girls aged between 16 and 18 and to boys;
- the minimum age for marriage is legally 18 years old; however, the Hindu Marriage and Divorce Act allows girls aged between 16 and 18 years to marry. In addition, under the various forms of customary law, boys and girls under 18 may marry. NGOs remain extremely concerned that the Children Act, which outlaws early marriage, cannot be consistently applied because of several contradictory statutes that remain in force;
- the minimum age for admission into employment has been recently lowered to 13 years.' **[47a] (p28-29, paragraph 2.1)**

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22.05 The Central Intelligence Agency,'World Factbook, Kenya', updated on 18 March 2013, stated that suffrage was at 18 years and was universal. **[3a] (Government)**. It further stated that the minimum age for military service is 18, however those younger may serve with parental consent. **[3a] (Military)**

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LEGAL RIGHTS

22.06 The Children Act 2001 defines the basic legal rights to which children in Kenya are entitled. The Act states at section 4:

'(1) Every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.

(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to -

(a) safeguard and promote the rights and welfare of the child;

(b) conserve and promote the welfare of the child;

(c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.

(4) In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and the degree of maturity.' **[22c]**

22.07 The UN Committee on the Rights of the Child's Concluding Observations on Kenya, published 19 June 2007 (UNCRC Kenya), noted:

'The Committee welcomes the enactment of a Children's Act in 2001 (Cap 586 Laws of Kenya) and notes the various legislative measures undertaken by the State party as listed in the second period report (CRC/C/KEN/2); however, it is concerned that national legislation needs further harmonization and strengthening…The Committee urges the State party to continue the harmonization of national legislation, inter alia by completing the legislative review regarding orphans and vulnerable children, and work towards the adoption and implementation, without further delay, of the various proposed laws and policies that benefit and protect children, and engage all efforts and resources necessary for the effective implementation of the Children's Act, as a matter of priority. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g.

children victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking and witnesses of such crimes, are provided with the protection required by the Convention, taking fully into account the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex, of 22 July 2005).' **[49a] (p3, paras 8-9)**

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VIOLENCE AGAINST CHILDREN

22.08 The USSD 2012 Human Rights Report stated that:

'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 received reports that 3,191 children were defiled (defined as a sexual act with a child involving penetration) in 2011, down slightly from 3,273 reported the previous year. 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 of 11 and 16, and 10 years if the child is between the ages of 16 and 18. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy.

'The Teachers Service Commission reported that more than 160 cases of sexual misconduct were filed against teachers across the country 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 reported sexual abuse by teachers from 2003 to 2007. In 2011 the commission established a code of conduct that addresses sexual relations with students and stipulates stiff penalties for violations of the new code.

'The government has banned corporal punishment in schools; however, there were reports that corporal punishment occurred throughout the year.' **[4b] (section 6)**

22.09 The report further stated:

'Child prostitution increased in recent years due to poverty and an 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 into 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 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

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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 2011 to oversee hotels, villas, and cottages to ensure their adherence to the code of conduct.' **[4b] (section 6)**

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Military service and recruitment into gangs

22.10 The Coalition to Stop the Use of Child Soldiers 'Global Report 2008', accessed on 2 May 2013, reported that:

'The Children's Act stated that 'No child shall take part in hostilities or be recruited in armed conflict, and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law', and that it was the government's responsibility 'to provide protection, rehabilitation care, recovery and re-integration into normal social life of any child who may become a victim of armed conflict'. In its declaration on the Optional Protocol, the government stated that 'the minimum age for recruitment of persons into the armed forces is by law set at eighteen years. Recruitment is entirely and genuinely voluntary and is carried out with the full informed consent of the persons being recruited. There is no conscription in Kenya.' However, the Armed Forces Act, Chapter 199, allowed for the enlistment of under-18s with the consent of parents, guardians or the district commissioner…Although there were no reports of under-18s serving in the armed forces, the lack of an effective system for registering births meant that there was a risk of under-age recruitment… Children were known to be involved in the activities of armed criminal gangs, including transporting weapons.' **[19a]**

22.11 The USSD 2012 Human Rights Report stated that: '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.' **[4b] (section 6)**

Forced labour

22.12 The United States State Department report, '2011 Findings on the Worst Forms of Child Labor', published on 26 September 2012, noted that:

'In 2011, Kenya made a moderate advancement in efforts to eliminate the worst forms of child labor. The Government passed the Tourism Act, which aims to protect children against commercial sexual exploitation. Kenya also increased the number of child protection officers, conducted a child labor household survey in three districts and participated in numerous initiatives to assist vulnerable children and children engaged in exploitative work. Legislation gaps continue to exist. For example, Kenya has drafted, but not yet adopted, a list of hazardous work prohibited to children and laws against forced labor and underage military recruitment contain no penalties. In addition, Kenya has failed to commit sufficient resources to enforcement efforts. Children continue to be involved in the worst forms of child labor, particularly in dangerous activities in agriculture and fishing.' **[4a]**

22.13 The same report noted that:

'The Children's Act of 2001 guarantees protection from exploitation, including trafficking, and prohibits all forms of hazardous child labor, prostitution and the recruitment of children into the military. However, child labor as defined by the Children's Act only applies to labor in exchange for payment. As a result, unpaid child workers do not benefit from these protections. The Sexual Offences Act of 2006 prohibits child prostitution, promotion of child sex tourism and child trafficking for the purposes of sexual exploitation.

'Both the sexual Offenses Act of 2006 and the Penal Code prohibit child pornography.

'The Kenyan Constitution prohibits forced labor, slavery and servitude. However, the Constitution does not provide penalties for these offenses and Penal Code penalties only apply to cases of abduction. The Counter Trafficking in Persons Act provides protections for trafficking victims and prohibits the recruitment, transport, transfer or harboring of persons, including children, for the purpose of forced labor, and lays out appropriate penalties for offenses. However, the Counter Trafficking in Persons Act does not have a sufficient implementation structure in place…The National Council for Children Services (NCCS) is responsible for the coordination of policy on children's issues, including child labor, down to the district level. The NCCS is a semi-autonomous government agency led by a presidential appointee and consists of members of the police, NGOs, private sector representatives, faith-based organizations and representatives from various ministries.

'There is also a National Steering Committee on Child Labor (NSCCL), chaired by the Ministry of Labor (MOL). The committee is a multisectoral policy body composed of government departments, private employers, workers organizations and civil society organizations. The NSCCL oversees efforts to eliminate child labor. During the reporting period, the NSCCL met only twice.

'Other entities participate in child labor coordination, including the MOL's Division of Child Labor and the District Child Labor Committees. The Division of Child Labor helps to coordinate efforts under the Employment Act and leads efforts to monitor action programs for the elimination of child labor at the district and community level. It also manages an information resource center to improve the collection and dissemination of data on child labor throughout the country. Reports indicate the Division of Child Labor lacks financial and ministerial support and, with only one full-time staff member, the division is not adequately staffed. District Child Labor Committees serve as a coordination point for those involved in child labor efforts and are present in 30 districts. Evidence suggests that since many District Child Labor Committees rely on volunteers, their success varies depending on whether they can obtain funding and whether members regularly participate...The MOL, in coordination with the MGCSD, enforces laws under the Employment Act and inspects businesses in the formal labor sector. During the reporting period, the MOL employed 30 labor inspectors to cover enforcement of labor laws, including of child labor laws, in 180 districts. The MOL lacks adequate personnel, facilities, transportation and fuel to carry out its duties. Labor inspectors may terminate an employment agreement between a child and an employer in any labor situation. However, inspectors do not have the ability to issue fines or penalties when they encounter a workplace violation. In 2010, the latest date such information is available, the MOL carried out 12,229 labor inspections and, as a result, 10 children were removed from work and placed in school.' **[4a]**

Please also see Trafficking for a wider overview of issues connected to this.

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Female Genital Mutilation (FGM)

Prevalence

22.14 The USSD 2012 Human Rights Report stated:

'According to UNICEF, one-third of girls and women between the ages of 15 and 49 had undergone FGM/C. 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 included 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.' **[4b] (section 6)**

22.15 The Kenya National Bureau of Statistics Demographic and Health Survey (KDH Survey 2009), published in June 2010, stated that: '…96 percent of women have heard of female circumcision and 27 percent are circumcised. The latter represents a decline from the level of 38 percent reported in the 1998 KDHS and 32 percent reported in the 2003 KDHS.' **[7a] (p264)**

22.16 The Africa Press International report, 'Kenya: Legislation failing to curb FGM/C', dated 5 June 2011, stated:

'The Children's Act (2001) criminalizes the subjection of children to FGM/C; people violating the law are subject to prison sentences. However, the 2008/2009 Kenya Demographic and Health Survey reported an FGM/C prevalence of 96 percent among Ruth's Kisii ethnic community; the Kisii practise a form of FGM/C known as excision, where part of the clitoris is removed.

'Overall, the 2008/2009 report logged a national drop in FGM/C prevalence to 27 percent from 38 percent in 1998 and 32 percent in 2003, but officials say the law's main impact has been to drive the practice underground.

'"With the implementation of laws such as the Children's Act, those who do this practice have resorted to secretive ways of doing it," said Pamela Mbuvi, district children's officer for Kisii District. "So when you see surveys pointing to a decline, it might mean people are abandoning the custom, but it could also mean they now do it secretly and report it less lest the law catches up with them."

'"We have caught a few people doing it and at least five have been jailed that I know of, but the secrecy that the perpetrators use makes it hard to effectively use the law to end the practice…Laws targeting specifically FGM are an important step in ending the practice but the law alone cannot do it because it is a traditional practice and it is deeply rooted; remember, people who strongly believe in culture are at times ready to die for it," Kilimo said…The few who have dared to defy tradition have paid a heavy price. Violet Masogo runs a rescue centre that provides protection to girls who have run way

from home to escape FGM/C, but she has had to move the centre from Kisii to Kisumu city, farther west, after two attacks by men who claimed she was "spoiling" their daughters.' **[82a]**

For further detail on the demographic statistics, including variation by age, ethnicity and geography see the Demographic and Health Survey.

Legal status and government assistance

22.17 The UNICEF and Innocenti Insight paper, 'The dynamics of social change: Towards the abandonment of female genital mutilation/cutting in five African countries', published in October 2010 (UNICEF FGM report), stated that:

'The Government of Kenya has taken a clear stance on the abandonment of FGM/C and other harmful practices. This is manifested through a number of specific policy guidelines and legislation, as follows:

• The Parliament of Kenya passed the Children Act (No. 8 of 2001), criminalizing the practice of FGM/C on children under 18 years of age. Article 14 of the act states: 'No person shall subject a child to female circumcision, child marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical and psychological development.' The penalty for subjecting a child to FGM/C is 12 months imprisonment, a fine of 50,000 Kenyan shillings (approximately US$710) or both.

• The Ministry of Gender, Children and Social Development was selected in 2005 to coordinate all FGM/C activities implemented by ministries, NGOs, donors and international organizations. It launched the National Plan of Action for Accelerating the Abandonment of FGM/C in Kenya (2008-2012).

• In June 2009, the Ministry of Gender, Children and Social Development supported the development of Kenya's policy for the abandonment of FGM/C, which was submitted to the Cabinet…Although legal reform is an important step towards ending FGM/C, criminalizing the practice in Kenya has also resulted in adverse effects. Medical complications related to the practice are at times not brought to the attention of health services for fear of prosecution. Furthermore, the trend towards fewer public ceremonies has led to concerns that the practice has been driven underground.' **[67b] (p35-37)**

22.18 A Kenya Broadcasting Corporation report, 'Enforce the law prohibiting FGM strictly: First Lady', dated 14 September 2011, stated that:

'First Lady Mama Lucy Kibaki has called on law enforcers to ensure that the law on Female Genital Mutilation (FGM) is strictly enforced once it becomes fully operational.

'In a statement issued from State House Nairobi Wednesday [14 September], the First Lady said the prohibition of FGM will have a positive impact on the development of girls and women.

'"Girls in communities where FGM is common now have no cause for worry and can be able to concentrate on their education," the First Lady said.

'Mrs. Kibaki thanked the tenth Parliament for passing the Prohibition of Female Genital Mutilation Bill 2010, saying the passage of the Bill early this month was a welcome development.

'Said the First Lady: "I am glad to note that the Bill provides for punitive penalties including a jail term of seven years or a fine of 500,000 Kenya Shillings for anyone convicted of FGM offence. Moreover, anyone who causes death in the process of carrying out FGM will be liable to life imprisonment. These punitive penalties are deterrent enough if effectively enforced."

'She, however, cautioned that with the law now in place, the next challenge is to ensure that this law is effectively enforced across the country.

'The First Lady observed that while the legislation prohibiting FGM is important, it is only a first step in the war against the retrogressive practice as legal bans alone cannot change customs and traditions.

'In this regard, Mrs. Kibaki expressed the need for the relevant Government agencies to step up measures to raise awareness on both the law and the dangers posed to women by this practice.

'She emphasized that widespread information on the dangers of FGM will generate the necessary awareness to enable communities to fully abandon FGM.

'Noting that the prohibition of FGM may simply drive the practice underground where it will be performed secretly on young girls, the First Lady urged law enforcers and Kenyans in general to remain vigilant in order to ensure the war on FGM is successful.' **[8c]**

Assistance from local communities and NGOs

22.19 The UNICEF FGM report 2010 stated that:

'Traditional mores and dictates are also changing, as demonstrated by positions taken in some parts of the country by traditional leaders who exercise a powerful and influential role within ethnic groups. During a public declaration in August 2009, the Njuri Ncheke Supreme Council of Ameru Elders condemned FGM/C and resolved to impose a fine on any member of the community in any of the Meru districts (Eastern Province) who either conducts or participates in the practice.' **[67b] (p35-37)**

22.20 The USSD Human Rights Report 2012 stated that: 'Some churches and NGOs provided shelter to girls who fled their homes to avoid FGM/C, 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/C; however, in some communities some girls continued to insist on undergoing the practice.' **[4b] (section 6)**

22.21 An Inter Press Service (IPS) report, 'Kenyan Men Turning the Tide Against FGM', dated 6 February 2013, stated that:

'For the Samburu community in northern Kenya it was bad enough that Julius Lekupe had not sired a son – it was even worse that his eldest daughter refused to be "cut".

"Women are like property here. We circumcise them and marry them off – some as young as 10 years old," Lekupe told IPS.

'He knew it was only a matter of time before his 16-year-old daughter, too, was going to have to undergo the ritual against her will.

'"She begged me to support and protect her. It was a tough decision, but I agreed. I sent her to Nairobi to live with a friend," Lekupe recalled.

'He is among an increasing number of men belonging to ethnic groups that practice Female Genital Mutilation/Cutting (FGM/C) who have begun to speak out against the now-illegal practice in this East African nation.

'Legally, the tide turned in Kenya in 2010, when parliament adopted the Prohibition of Female Genital Mutilation Act, which stipulates that offenders serve up to seven years in prison and can be fined up to 5,800 dollars – a huge sum in a country where the average monthly wage is 250 dollars.

'The combination of national legislation and shifting attitudes at the community level seems to bare fruit.

'On Wednesday Feb. 6 [2013], the United Nations Children's Fund (UNICEF) and the U.N. Population Fund (UNFPA), together released new numbers that show FGM/C is becoming less prevalent on the continent and particularly among the younger generation of girls.

'In a joint statement, the agencies highlighted Kenya as an example of sharp decline in the region, saying that "women aged 45 to 49 are three times more likely to have been cut than girls aged 15 to 19."…Increasingly, men are assuming active roles in initiating this cultural shift, as UNFPA's 2012 report "Accelerating Change" points out. In addition to fathers like Lekupe, who wish to protect their daughters, young men across Kenya are speaking out publicly to announce their preference to marry uncut girls, according to the report – a significant development in a country where FGM continues to be a prerequisite for marriage in some communities.

'What's more, over two dozen male Muslim leaders made public declarations to fight FGM/C in 2011, UNFPA said.

'"We had been misled into believing that FGM/C is the practice of the Prophet, and that His followers must follow it," Abdi Omar, a husband and father from Garissa in northern Kenya, told IPS. "But all over northern Kenya we have Muslim leaders telling us that it is not. Why should I support it if it isn't the practice of the Prophet?"

'According to Ibrahim Shabo, an FGM/C activist from Isiolo - a town in northern Kenya where the pastoralist community is notorious for practicing FGM/C – this stance by Muslim leaders is particularly significant when it comes to influencing Kenyan Somalis in northern Kenya, who have a FGM/C prevalence rate of 98 percent.

'In Kapenguria, Rift Valley, the local council of elders has joined the growing chorus against FGM/C by making a public declaration to abandon the practice in 2011.

'"This is a community that is known to practice extremely brutal forms of FGM/C," Philipo Lotimari, a community leader in the town, told IPS. He went on to describe the

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practice that involves opening up a girl's vagina with the horn of a cow the first time she has sex following her circumcision.

'The stance of the all-male council has shifted attitudes, according to Lotimari, by sending "a collective message that it is okay to marry a girl who isn't circumcised."

'His younger sisters have not been circumcised, he added, because he wanted them to have an education and not be married off…While not all men who speak out against FGM are acting as women's allies, their support for the issue at large is nevertheless crucial for accelerating the eradication of the practice.' **[26b]**

For further information on FGM in women, please see Women: FGM

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Child marriage

22.22 The USSD 2012 Human Rights Report stated:

'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.' **[4b] (section 6)**

Street children

22.23 The Daily Nation reported on 14 April 2010 that:

'Parliament has been riled by the influx of street children in major towns, even as the government admitted that it had no idea where many of them slept…The ministry also conceded that it had no details of the street children across the country in its records… The numbers had in 2000 been pegged at six thousand…Major towns in the country - Nairobi, Nakuru, Mombasa and Kisumu - have lots of street children many of them yet to be rehabilitated. Some of those who were taken off the streets during the 2004 clean-up are back in the streets. More street children are filtering back into the streets as the authorities dither on the promise to rid the cities of homeless people.' **[16k]**

22.24 The Daily Nation reported on 17 April 2010 on one such NGO in Nairobi:

'New Dawn Africa…has for years been running projects to uplift the lives of young people in the slums around the populous South B...[and] has a regular feeding programme, which is stepped up during times of drought...New Dawn sponsors training for young people in tailoring, mechanics and building and other crafts…Waithera [Chege, head of New Dawn] estimates that more than 100 young people have become self-reliant in the past four years, thanks to their efforts.' **[16m]**

For further information on trafficking in general, please see the chapter of the same name.

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CHILDCARE AND PROTECTION

22.25 The USSD 2012 Human Rights Report stated that:

> '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 and street children who were abused and exploited in the commercial sex industry.' **[4b] (section 6)**

22.26 The Children's Legal Aid Network (CLAN) website (accessed 19 October 2010) stated that the organisation 'works to promote high quality legal aid services that improve the lives of children. By working with local partners, we foster community participation and strengthen the capabilities of individuals and organizations to uphold the rights of the world's most vulnerable people - the children.' Their website further stated 'CLAN's mission is to enhance justice for children by advocating for, protecting and enhancing the rights and welfare of children through provision of free legal aid and related services. An essential component of this mission entails working together with frontline service providers, including the Government, civil society organizations, families and children.' **[45a] (Homepage)**

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EDUCATION

22.27 The UN CRC Kenya report stated that:

> 'The Committee notes with appreciation the introduction of a policy of free primary education in 2003, which despite prevailing high rates of children unable to access education, has resulted in a significant increase of school enrolment. The Committee is concerned at the low enrolment in early-childhood care and education institutions and the disparities in the access to quality education, which particularly disadvantages girls and pastoralist and hunter-gatherer children. The Committee also notes that the rapid increase in school enrolment significantly challenges sufficient allocation of financial resources, commonly resulting in a poor physical school environment lacking adequate infrastructure, trained teachers, and appropriate water and sanitation facilities. The Committee regrets that enrolment is secondary schools is not free, and because of this may impede higher attendance. It is also concerned about the low level of vocational training available to qualify adolescents for non-academic occupations.'
> **[49a] (p 15-16, paragraph 57)**

22.28 The United States State Department report, '2011 Findings on the Worst Forms of Child Labor', published on 26 September 2012, noted that:

> 'Access to education is a critical component in preventing the economic exploitation of children. School levies and exam fees hinder access to education in Kenya. Teacher shortages also hinder access to education and contribute to overcrowding, despite

government efforts in 2011 to hire 5,000 new teachers. As of 2010, 44 percent of Kenyan children in rural areas were not registered at birth, even though this service is free and compulsory as mandated by the Births and Deaths Registration Bill, passed in 2011. Unable to prove citizenship, unregistered children have difficulty accessing essential services, including schooling. School administrators may inadvertently contribute to the problem of schooling access by expelling some girls from school due to pregnancy.' **[4a] (p322)**

22.29 The USSD 2012 Human Rights Report stated:

'Education was free and compulsory through age 13. Secondary enrollment was limited to students who obtained high scores on standardized primary exams. Enrollment of girls increased 22.5 percent from 2007 to 2011; enrollment of boys increased 19 percent during the same period. Rural families were more reluctant to invest in educating girls than boys at higher levels, but the former priority placed on sending male children to primary school lessened, with 4.9 million girls enrolled in 2011, compared with 5 million boys. 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 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.' **[4b] (section 6)**

22.30 The KDH Survey 2009 stated:

'Compared with the 2003 KDHS, there has been a slight decrease in the proportion of children and young adults who have never attended school, particularly among those age 10-14 years and 15-19 years…The data for NAR [net attendance ratio]…indicates that 79 percent of children of primary school age are attending school…Surprisingly, the NAR is slightly higher for girls (80 percent) than for boys (78 percent). As expected, the NAR for primary school is higher in urban (84 percent) than in rural (78 percent) areas. The NAR for primary school increases with the increase in the wealth quintile, from 65 percent at the lowest wealth quintile to 88 percent at the highest wealth quintile…As expected, the NAR and GAR [gross attendance ratio] are lower at the secondary school level than at the primary level. However, there has been a considerable improvement in the secondary school NAR in 2008-09 compared with the 2003 KDHS, where the 2008-09 NAR is 5 percentage points higher than the one observed in the 2003 KDHS. The gap between the secondary school NAR in the lowest wealth quintile and that in the highest wealth quintile is very wide, ranging from 6 percent to 45 percent.

'The gender parity index shows the ratio of the female to male GARs. In primary school, there is parity between the sexes because the index is close to 1. However, the GPI for secondary school drops to 0.75, indicating a bias in favour of males. Comparison with data from the 2003 KDHS shows that the GPI for primary school has not changed much…Attendance rates for both male and female youth are at par at the age groups 6-10 (91 percent) and 11-15 (95 percent). However, at age group 16-20, there is a noticeably big gap in attendance between males and females; 73 percent of males attended school in 2008 compared with 57 percent of females. This pattern continues in the 21-24 age group in which more than twice as many males attended school in 2008

as females (27 percent for males and 11 percent for females).'
[7a] (p15-19, paragraph 2.3.1-2.3.2)

22.31 The KDH Survey 2009 further stated that 'One-third of uneducated teenagers (32 percent) have begun childbearing, compared with only one-tenth of those with some secondary education and above.' **[7a] (p56, section 4.7)**

For further detail on education delivery in Kenya, please see the Demographic and Health Survey. For details on educational attainment and standards in Kenya, see Uwezo's Kenya National Learning Assessment report 2010, published on 14 May 2010.

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HEALTH AND WELFARE

22.32 The UNICEF SOWC 2012 report gave the following statistics on healthcare:

% of population using improved drinking-water sources			2008	total	59
				urban	83
				rural	52
% of population using improved sanitation facilities			2008	total	31
				urban	27
				rural	32
% of routine EPI vaccines financed by government			2010	total	48
Immunization 2010	1-year-old children immunized against:	TB	corresponding vaccines:	BCG	99
		DPT		DPT1	93
				DPT3	83
		Polio		Polio	83
		Measles		measles	86
		HepB		HepB3	83
		Hib		Hib3	83
	% newborns protected against tetanus				78
% under-fives with suspected pneumonia taken to an appropriate health-care provider			2006 - 2010		56
% under-fives with suspected pneumonia			50		

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receiving antibiotics		
% under-fives with diarrhoea receiving oral rehydration and continued feeding	2006 - 2010	43
Malaria 2006–2010 [Data refer to the most recent year available during the period specified in the column heading]	% households owning at least one insect treated net (ITN)	56
	% under-fives sleeping under ITNs	47
	% under-fives with fever receiving anti-malarial drugs	23

[67a] (Tables section)

Nutrition

22.33 The UNICEF SOWC 2012 report gave the following statistics on nutrition:

% of infants with low birthweight (less than 2.5kg)		2006 - 2010	8
% of children (2006 - 2010) who are:	breastfed (within one hour of birth)		58
	exclusively breastfed	(<6 months)	32
	introduced to solid, semi-solid or soft foods	(6–8 months)	83
	breastfed at age 2	(20–23 months)	54
% of under-fives (2006 - 2010) suffering from:	underweight (WHO)	moderate & severe	16
	underweight (WHO)	severe	4
	wasting (WHO)	moderate & severe	7
	stunting (WHO)	Moderate & severe	35
Vitamin A supplementation coverage rate (6–59 months) 2010		Full coverage (%)	62
% of households consuming iodized salt		2006 - 2010	98

[67a] (Tables section)

Palliative care

22.34 The Human Rights Watch report, 'Needless Pain', published on 9 September 2010, reported that:

> 'Kenya has high and increasing rates of childhood disease and child mortality. Hundreds of thousands of children suffer from AIDS, cancer, sickle cell disease, and other chronic, often fatal, or otherwise life-limiting illnesses, and they often experience severe, debilitating pain…In Kenya, pain medicines are not widely available to alleviate sick children's suffering…the Kenya Medical Supplies Agency (KEMSA) does not procure oral morphine as it does other essential medicines, and this makes it more difficult for public hospitals to obtain it.' **[9d] (p4-6)**

22.35 The report further stated:

'…Only seven of approximately two hundred and fifty public hospitals have palliative care services and oral morphine for moderate to severe chronic pain. Medicines to treat neuropathic pain, caused by damaged nerves and common in AIDS and cancer patients, are also largely unavailable…Although the majority of critically ill children in Kenya are cared for at home, the health system does little to support home-based palliative care. Parents are often unaware of the existence of strong pain medicines and therefore do not seek them for their children. The prevalence of HIV means that many sick children are orphans living with relatives or other caregivers, making them especially vulnerable. While most caregivers do their best to care for sick children, some mistreat and neglect them; the weak and overburdened child protection system often fails to reach these children.' **[9d] (p8-11)**

See also Medical Issues

Child Rights International Network collates child-related law, policy, information and research reports, and lists NGOs working with children

: http://crin.org/reg/country.asp?ctryID=111&subregID=1

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23. TRAFFICKING

23.01 The United States State Department 'Trafficking in Persons Report 2012', published on 19 June 2012 (USSD Trafficking Report 2012) stated that:

'Kenya is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking. Traffickers, who gain poor families' trust through familial, ethnic, or religious ties, falsely offer to raise and educate children in towns or to place adults in lucrative employment. Within the country, Kenyan children are forced to labor in domestic service, agriculture, fishing, cattle herding, street vending, begging, and the sale of illicit brews. Children are also exploited in prostitution throughout Kenya, including in the coastal sex tourism industry, in the eastern khat cultivation areas, and near Nyanza's gold mines. Children are lured into brothels by promises of jobs as domestic workers in cities, while others are introduced by their families to the sex trade. Brothel-based child prostitution is reportedly increasing in Migori, Homa Bay, and Kisii counties, particularly around markets along the border with Tanzania. Vehicles transporting khat to Somalia return carrying Somali girls and women who often end up in brothels in Nairobi or Mombasa. Both women and "beach boys" as young as 14 pimp children in coastal areas and receive commissions as high as the equivalent of $240 from tourists for each girl secured. Some Kenyan tenant rice farmers work in situations of debt bondage to farm owners or supervisors, often to repay funds that were provided as an advance – for school fees, food, or medical needs – by their employers. Kenyan men, women, and children voluntarily migrate to other East African nations, South Sudan, Europe, the United States, and the Middle East – particularly Saudi Arabia, but also Qatar, Kuwait, the United Arab Emirates (UAE), Lebanon, and Oman – in search of employment, where they are at times exploited in domestic servitude, massage parlors and brothels, or forced manual labor, including in the construction industry. Officials at the Saudi Arabian embassy in Nairobi allegedly

collude with unlicensed recruitment agents to place Kenyans into situations of forced labor in Saudi Arabia. Recruitment of women for overseas domestic work reportedly increased during the year in Mombasa, Nairobi's Eastleigh area, and major towns in Central Province. In 2011, gay and bisexual Kenyan men recounted being lured from universities with promises of overseas jobs, only to be forced into prostitution in Qatar. Children from Burundi, Ethiopia, Somalia, South Sudan, Tanzania, and Uganda are subjected to forced labor and prostitution in Kenya.' **[4c] (Kenya)**

23.02 A Guardian (UK) article, 'Human trafficking on the rise amid Horn of Africa's drought and famine', dated 2 November 2011, stated:

'Womankind Kenya, an NGO based in Garissa in Kenya's North Eastern Province, estimates that 50 young girls are trafficked or smuggled to Nairobi each week. 'Vehicles that transport miraa [a leafy narcotic] from Kenya to Somalia return loaded with young girls and women who end up in brothels in Nairobi or who are shipped to destinations outside Kenya,' says Hubbie Hussein, Womankind Kenya's director.

'The deputy provincial police officer in Rift Valley province, Kenya's largest and most populous province, Ephantus Kiura, confirmed this. "Over 200 illegal immigrants enter the province every week from Sudan, Ethiopia, Tanzania, Uganda and Somalia through [Kenya's over 400-kilometre porous boarder section], which it shares with these countries," Kiura says.

'The International Organisation for Migration estimates that over 10,000 people are trafficked into Kenya's Coast province each year. It says trafficked children from Rwanda, Tanzania, Ethiopia, Somalia and Uganda work as domestic labourers, sex workers and cattle herders across Kenya. 'As of 28 September [2011] there were more than 452,000 refugees, mostly Somalis, at Dadaab camp. The huge influx of refugees has complicated the movement of people in the region; it has increased the vulnerability of people to trafficking, smuggling and other forms of exploitation,' says Jean-Phillipe Chauzy, the head of communications at IOM [International Organization for Migration].

'Hussein says Nairobi is the central market from where girls are distributed to different parts of Kenya and to other countries. 'From Nairobi many girls are sent to Mombasa, where underage girls are trafficked for sex tourism. They are taken to massage parlours or beauty shops, where contacts from tour operators and hotels come to select the ones they wish to take as sex workers in the tourism industry,' says Hussein

'The head of Womankind Kenya says these tour operators and hotel staff work as brokers and charge a fee of $600 for young girls aged between 10 and 15 years, who are mostly sold into sexual slavery. 'The trafficked children are taken to secluded villas in Mombasa where sex tourism thrives,' says Hussein.

'A report released in October [2011] by the International Peace Institute and the Africa Centre for Open Governance says the majority of people trafficked in east Africa are women and children who are sold into prostitution or forced labour. The report says traffickers and smugglers prey on drought, poverty and conflict in the Horn to smuggle people to Nairobi and across the world with the promise of a better life.' **[81b]**

LEGAL RIGHTS AND GOVERNMENT ASSISTANCE

23.03 The USSD Trafficking in Persons Report 2012 stated:

'The Government of Kenya does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the reporting period, the government's children's officers continued admirable efforts to identify and protect child trafficking victims throughout the country. The government failed, however, to fully enact its anti-trafficking law's implementing regulations, finalize its national plan of action, take tangible action against trafficking complicity among law enforcement officials, provide shelter and other protective services for adult victims, take concrete action against alleged incidences of child sex tourism, monitor the work of overseas labor recruitment agencies, or provide adequate anti-trafficking training to its officials, including diplomats, police, labor inspectors, and children's officers. The government held few trafficking offenders accountable for their crimes in comparison to the significant number of child trafficking victims identified. Therefore, Kenya is placed on Tier 2 Watch List as it did not show evidence of increasing efforts to combat human trafficking. The government's efforts remained uncoordinated and lacked strong oversight, creating an environment conducive to trafficking.' **[4c] (Kenya)**

23.04 United Nations IRIN News reported on 8 December 2010 on how new legislation against trafficking had been received:

'Counter-trafficking specialists say a law recently passed in Kenya which, for the first time, legally defines and recognizes trafficking in persons as a crime, will help protect the vulnerable and assist survivors, while serving as a deterrent to perpetrators… Kenyan President Mwai Kibaki signed into law the new legislation in October. Conviction carries a 30-year jail term or a KSh30 million (US$370,000) fine…Tony Odera, a lawyer at CRADLE, an NGO that works on children's issues through legal representation, said many cases of trafficking had been reported in the past but lack of a clear definition of the act had made prosecuting suspects complex.

'"The new law will provide a comprehensive legal framework that would address issues pertaining to human trafficking, Odera said, adding that it will enable the establishment of a counter-trafficking in persons advisory committee and provide confidentiality during prosecution and compensation…Some poor parents and older persons are said to force children into prostitution. CRADLE estimates that about 1,500 minors frequent 'sex spots' at the Kenyan coast.' **[42b]**

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PROTECTION

23.05 The International Organisation for Migration (IOM) information sheet, Countering Human Trafficking In Kenya through Capacity Building, Awareness Raising and Assistance to Victims Phase II, published in January 2010 stated that:

'IOM has been implementing counter trafficking activities in Kenya since mid 2005. IOM is currently implementing the project Countering Human Trafficking in Kenya through Capacity Building, Awareness Raising and Assistance to Victims (Phase 2) funded by the Royal Norwegian Embassy…In September 2008, IOM entered into a cooperation agreement with a local partner, the Centre for Domestic Training and Development (CDTD), for the establishment of a shelter to provide assistance to trafficked persons.

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Kenyan victims trafficked internally and externally to the UK, Saudi Arabia, and South Africa as well as foreign victims trafficked from Uganda, Rwanda and other neighbouring countries have been assisted within the framework of the project. Additionally IOM has compiled a directory of identified service providers for vulnerable members of society among them victims of trafficking and disseminated it to government agencies and nongovernmental organizations for purposes of referral.

'IOM has established a Counter Trafficking Stakeholders Network that meets periodically and brings together government officials, NGOs, International Organizations and donors. Any interested organization involved in counter trafficking activities is welcome to join the group. Through this large network, IOM prepared a service directory as a first step towards the creation of a national referral mechanism and continues to use this avenue to reach out to as many partners as possible.' **[48a]**

23.06 The USSD Trafficking in Persons Report 2012 stated:

'The government's efforts to identify and protect child trafficking victims continued during the year, but commensurate protection was unavailable for adults, including the increasing number of victims in the overseas migrant worker population. As guidelines for implementing the victim protection provisions of the anti-trafficking statute have yet to be developed, the government continued to lack a formal mechanism for identifying victims of trafficking among vulnerable populations. Nevertheless, government officials identified 99 child trafficking victims (23 of whom were in prostitution) in 2011 and provided protective services to all of these victims. The Ministry of Gender, Children, and Social Development's children's officers coordinated local Children's Advisory Committees that, as part of their protective mission, monitored service providers and advanced awareness of human trafficking at the local level. During the reporting period, children's officers rescued child trafficking victims, provided them with counseling and referrals to service providers, and participated in investigations. The Ministry of Gender and a local NGO continued to jointly operate a national 24-hour toll-free hotline for reporting cases of child trafficking, labor, and abuse, which received more than 40,000 calls each month. The hotline is located in a government-owned building in Nairobi and staffed, in part, by three children's officers who facilitated rescues and made referrals to appropriate district officials, as well as to health and legal aid organizations, in other provinces. During the reporting period, the hotline received 46 reports of child trafficking, 19 concerning child prostitution, and 497 related to child labor. The hotline's call center in Eldoret connected children with locally-available services in western Kenya. The Ministry of Gender's Children's Department also operated four drop-in referral centers in Mombasa, Malindi, Eldoret, and Garissa that provided counseling and guidance services, as well as referrals to other centers for victimized children that could not be returned home. This department also funded and operated rescue centers in Garissa, Malindi, Thika, and Machakos where child victims of violence could stay for three months before returning home or being referred to NGO facilities. The government did not provide data on how many trafficking victims were afforded such services during the year.

'While efforts to assist and care for child trafficking victims remained strong, the government provided relatively few services – including shelter, medical care, or psycho-social counseling – to trafficked adults identified within the country or abroad. Most of Kenya's overseas diplomatic missions failed to provide any assistance to trafficked Kenyan nationals. The Kenyan embassy in Riyadh, however, provided limited

repatriation assistance by issuing new travel documents to 460 victims of domestic servitude during the reporting period; other victims, however, complained that the embassy was slow to intervene in their cases, did not expeditiously process travel documents and did not provide material support. The Ministry of Immigration spent the equivalent of $26,500 to return 60 abused migrant workers from Saudi Arabia in 2011. While the government reports it encouraged Kenyan victims' assistance in the investigation and prosecution of trafficking crimes during the reporting period, it did not provide information on such instances. There were no reports that the government inappropriately incarcerated or otherwise penalized Kenyan victims for unlawful acts committed as a direct result of being trafficked. Police, however, arrested foreign women for engaging in prostitution or being in Kenya without valid identity documents, but did not screen them for trafficking victimization; in most cases, the women pled guilty to immigration violations and were quickly deported. Under the 2010 anti-trafficking law, the Minister of Gender may grant permission for foreign trafficking victims to remain indefinitely in Kenya if it is believed they would face hardship or retribution upon repatriation; the government did not use this provision during the year.' **[4c] (Kenya)**

See also Women and Children

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24. MEDICAL ISSUES

OVERVIEW OF AVAILABILITY OF MEDICAL TREATMENT AND DRUGS

24.01 The Kenya Private Sector Alliance draft report, Baseline Study on Healthcare Delivery in Kenya (KEPSA report 2010), edited 27 April 2010, gave the flowing breakdown of facilities in Kenya:

Level	Facility Type
VI	Tertiary Hospitals
V	Secondary Hospitals
IV	Primary Hospitals
III	Health Centres, Maternities, Nursing Homes
II	Dispensaries, Clinics
Interface	
I	Community: Villages/Households/Individuals

[71a] (Introduction, p1)

24.02 The KEPSA report 2010 added that:

'The health sector is pluralistic in nature, where health services are provided by many players including the public sector through the Government of Kenya (GOK) and parastatal organizations, the private sector comprising the Faith Based Organisations (FBOs), Non-Governmental Organisations (NGOs) and the Private for-profit facilities. The public sector is the largest provider and financier of health services and operates health care facilities throughout the country accounting for about 52% of these facilities.

'National referral and teaching or tertiary hospitals are at the apex of the health care system. In the public sector, these are represented by Kenyatta National Hospital in

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Nairobi and Moi Teaching and Referral Hospital in Eldoret. In the private sector, the equivalents are Aga Khan University Hospital and Nairobi Hospital. The referrals offer sophisticated diagnostic, therapeutic and rehabilitative services.

'Provincial or Secondary hospitals offer referral to their respective district hospitals. They oversee the implementation of health services in the districts, maintain quality standards, and control all district relevant activities. Aga Khan Hospitals in Mombasa and Kisumu fall in this level.

'District and sub-district or primary hospitals offer referrals and guidance to Health Centres. At the same time, they concentrate on their core functions required of their level.

'With respect to Health Centres, attention is focused on the preventive and curative services, mostly adapted to the local needs. They also offer ambulatory services to the communities.

'Dispensaries are meant to be the first line of contact with the community. This feature is also shared by the health centres. The dispensaries provide a wide coverage of preventive health services which is critical in the achievement of the health sector reform focus on the individual life style and the community. They also offer basic curative services.

'The Community level comprising villages, households and individuals is the foundation of service delivery priorities in the new arrangements of the KEPH [Kenya Essential Package for Health] system of health care delivery. Village Health Committees are expected to be forums through which individuals and households can participate and contribute to their own health and that of the community.

'The public health service is complemented by for-profit and not-for-profit facilities owned by private entities, NGOs, faith-based organisations and individuals. The facilities include hospitals, maternity homes, and clinics. These comprise over 45% of health facilities in the country.' **[71a] (Introduction, p2)**

For a list of hospitals in Kenya, please see Hospitals Worldwide. For a directory of healthcare facilities in Kenya, please see the Official Kenya Medical Directory.

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ACCESS TO HEALTHCARE

24.03 The Human Rights Watch report, 'I Am Not Dead, But I Am Not Living', published in July 2010, stated:

'[B]y introducing a system of full or partial fee waiver for access to government hospitals, the government has taken steps to increase access to health care for indigent patients. However, slow and sometimes absent progress in certain key areas calls into question whether Kenya is living up to its obligation with respect to the right to health. Many of the problems affecting the health sector in Kenya have persisted for many years. They include shortage of medical staff, mal-distribution of available staff and health facilities to the disadvantage of rural and poor regions, frequent shortages of

supplies including family planning supplies, and failure to ensure health services are accessible to the poor.' **[9e] (section V, p45)**

24.04 Business Daily reported on 6 October 2010 that:

'High pricing of essential drugs informed the government's decision to adopt the Essential Drug Concept, which was borne out of a conference held in Nairobi in 1985 that also addressed the need to make essential drugs affordable to both patients and governments.

'Among the strategies agreed on at the conference was the need to embrace generic drugs…Local drug companies have since been making generic medicines, often priced lower than branded drugs, to meet local demand.' **[20c]**

24.05 With regard to access to medical treatment, Business Daily reported on 13 September 2010 that:

'The high cost of accessing medical services is setting the stage for the launch of new innovative products targeting the low-end market, offering a new income stream for insurers and health care providers.

'Insurers say medical costs have been rising by at least of 20 per cent annually over the past year, fuelled by rising prices in drugs and hospital equipment.

'This has pushed up insurance premiums, locking out a sizeable number of households from basic healthcare, forcing insurers to develop more affordable products.

'The newest product is Changamka, a micro-health cover launched by Changamka Micro-Health.

'Changamka - a product that allows members to receive treatment at designated hospitals for as low as Sh450 per visit - joins the growing list of micro-health insurance covers.

'CIC Insurance, is another firm, offering Bima Ya Jamii, a micro-insurance health service that encourages savings while providing risk cover.

'Eagle Africa Insurance Brokers has also rolled out Afya Milele, an inpatient and outpatient cover costing Sh35 per day.

'"Afya Milele allows low income families to obtain the cover for four members of the family at a cost of Sh35 per day," said Mr Sam Ncheeri executive director of Eagle Africa.

'The cover takes care of maternity costs, doctors fees, daily hospital charges and drug prescriptions.' **[20d]**

24.06 A Kenya Broadcasting Corporation (KBC) report, 'Corruption plagues Kenyan health sector', dated 31 January 2011, stated that:

'There is rampant corruption at various levels in the health sector especially in the procurement of drugs and medical supplies, a new report has revealed.

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'The report titled 'Kenya Health Sector Integrity Study Report' by Transparency International indicates that recruitment and promotion processes in the health sector are plagued by corruption, nepotism and tribalism and influenced by politicians and other interested parties.

'The report allso [sic] decries the acute shortage of medicine and other essential supplies in public hospitals and recommends the development of national or regional centres of excellence to provide training on essential management and professional skills.

'It also calls for the strengthening of the human resource management system in ministries of medical services and public health and sanitation, fair distribution of medical staff in the country and the provision of incentives like salary increase and training opportunities to staff working in hardship areas.

'Speaking at the launch of the report TI-Kenya Executive Director, Samuel Kimeu Mbithi patients who participated in the survey accused nurses and other medical personnel of hoarding drugs and secretly supplying them to private pharmacies where patients are directed to purchase them after missing the drugs in public hospitals.

'Mbithi said the Kenya Medical Supplies Agency (KEMSA) lacks the institutional capacity, autonomy, financial and human resource capacity to procure and supply drugs efficiently and effectively to public hospitals since it works under the influence of senior medical services ministry staff or politicians.

'He said the slow procurement processes by KEMSA, lengthy ministerial consultations between the ministries of finance and medical services led to inflated tenders and budget limitations.

'The TI boss said conflicts over duplicated or overlapping functions between Medical Services and Public Health and Sanitation ministries pose the greatest challenge in implementation of policies.

'"There is need to review the procurement procedure and law to make it more responsive especially with regard to procurement of drugs. KEMSA should be given autonomy to curb interference by high ranking health officials and political interests,' he said.

'Both the medical services and public health and sanitation ministries received Ksh 41.5 billion in the 2010/11 financial year which Mbithi said was insufficient considering the myriad challenges facing the health sector.

'These include acute shortage of qualified health workers, poorly remunerated health personnel, shortage of drugs and medical supplies in public health institutions and unaffordable health services.' **[8b]**

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HIV/AIDS – ANTI-RETROVIRAL TREATMENT

24.07 UNAIDS gave the following estimates in 2009 for HIV prevalence in Kenya:

Number of people living with HIV	1,500,000	[1,300,000 - 1,600,000]
Adults aged 15 to 49 prevalence rate	6.3%	[5.8% - 6.5%]
Adults aged 15 and up living with HIV	1,300,000	[1,200,000 - 1,400,000]
Women aged 15 and up living with HIV	760,000	[650,000 - 860,000]
Children aged 0 to 14 living with HIV	180,000	[98,000 - 260,000]
Deaths due to AIDS	80,000	[61,000 - 99,000]
Orphans due to AIDS aged 0 to 17	1,200,000	[980,000 - 1,400,000]

[79a]

24.08 Chapter 14 of the Kenyan National Bureau of Statistics' Demographic and Health Survey 2008-09 gives a breakdown of statistics on HIV status by various demographic factors, including age, gender and location.

24.09 The USSD 2012 Human Rights Report stated that: '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.'
[4b] (section 6)

24.10 The Kenya Broadcasting Corporation reported on 6 October 2010 that:

'National Aids Control Council (NACC) representative Dr. Francis Muu said the organization has achieved targets on ARV treatment and Prevention of Mother to Child infections (PMTC).

'He singled out testing as critical towards achieving universal treatment noting that majority of Kenyans do not know their HIV status making it a challenge in reducing the spread and effects of the disease.

'He said every year in Kenya there are 166,000 new HIV infections with 34,000 being of new born children and underscored the need to scale up mechanism to reduce the numbers.

'"The national Aids councils aims at reducing these figures down by 50 percent by the year 2013, while mortality rate due to HIV/aids has been projected to be reduced by at least 25 percent' he added…The Director of Medical Services Dr. Francis Kimani [said] that the Ministry was exploring possibilities of introducing a new national health insurance scheme to cover outpatient treatment services for HIV/Aids patients including the provision of anti retroviral therapy.

'Dr Kimani said the government had increased funding towards HIV/Aids drugs in order to sustain treatment and prevention of the disease…Dr. Kimani said that introduction of ARV therapy in Kenya had increased over the years from less than 10,000 patients in 2003 to the current 400,000 patients…To accommodate the recently launched World Health Organization (WHO) regulations, Dr. Kimani said that the Ministry had adjusted programs by pushing for earlier start of ARV treatment and extended prophylaxis for prevention of mother to child transmissions.' **[8a]**

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24.11 Liverpool Voluntary Counselling Testing, Care and Treatment (LVCT), a NGO operating in Kenya, provides some HIV care services. Its website, undated, accessed on 2 May 2013, described it as a:

'Kenyan non-governmental non-for profit organization established in 1998 and registered in 2001. LVCT provides technical assistance to the government of Kenya (GoK) and partners in strengthening responses to HIV prevention and care. LVCT partners with the National AIDS Control Council (NACC) and the Ministry of Health's National AIDS and Sexually Transmitted Infections Control Programme (NASCOP) to strengthen the scaling up of quality assured HIV counselling and testing services, treatment and care programmes, and services to vulnerable groups or groups with special needs: survivors of sexual violence, the deaf, men who have sex with men (MSM), youth and sex workers…LVCT currently provides care and treatment to 13,000 patients with 6,500 on antiretroviral therapy. Clinical mentorship, decentralization of services and capacity building are key to these achievements. To strengthen capacities for the HIV response LVCT trains over 700 health providers annually and has trained over 70% of all the 4,500 VCT counsellors in Kenya and 90% of HIV counsellor supervisors. Over 95% of counsellors providing trauma counselling following sexual violence in public health settings in LVCT are LVCT trained.' **[50a]**

24.12 A Daily Nation report, 'Kenya: Aids Control Council Allays Fears Over Drug Shortage', dated 24 May 2011, stated that:

'Nairobi - Kenya has enough supply of antiretroviral drugs, the Aids control council has said.

'According to the National Aids Control Council, there are enough drugs for the 400,000 people on treatment.

'"Last year's national budget allocated Sh900 million to ensure Kenyans have these drugs,"' the agency's deputy director for coordination and support, Dr Sobbie Mulindi, said on Tuesday [24 May 2011].

'He added that the government had put measures in place to ensure a consistent supply of free condoms for those who cannot purchase them, adding that 'female condoms are also very available'.

'Dr Mulindi dismissed claims that there may be counterfeit ARVs being dispensed to unsuspecting wananchi [citizens].

'"The Kenya Bureau of Standards makes certain that the drugs we supply are of high quality and we also regulate the bodies that supply these drugs.

"'Through the Ministry of Health, we know that Kenyans are receiving good medication," he said.

'In March [2011], a civil society group, The National Empowerment Network of People Living with HIV/Aids in Kenya, had said that there was a looming shortage of the life-prolonging drugs - claims the government refuted.' **[16q]**

24.13 The 'Kenya AIDS Epidemic 2012 Update' report, published by the National AIDS Control Council (NACC), and the National AIDS and STI Control Programme (NASCOP), in 2012, stated that:

'Kenya has made substantial gains in delivering life-preserving treatment to people living with HIV, contributing to a notable reduction in AIDS-related deaths. In 2011, 83.1% of adults who were eligible for antiretroviral therapy were receiving it. Antiretroviral coverage is considerably lower for children (31.1%), although paediatric antiretroviral treatment coverage is also on the rise. Elimination of user fees for antiretroviral administration has aided in treatment scale-up.

'In 2011, one in six health facilities in Kenya were administering antiretroviral therapy. In response to evidence demonstrating the health benefits of earlier therapy, Kenya has revised its adult treatment guidelines to raise the CD4 count threshold for initiating therapy from 250 to 350. Changes in paediatric treatment guidelines have also expanded the number of HIV-infected children who are eligible for therapy.

'Most patients are on first-line antiretroviral regimens, although it is expected that demand for second-line regimens will increase over time. In response to the growing evidence base on optimal regimens, Kenya has taken steps to reduce use of the antiretroviral drug d4T, although roughly 200,000 individuals were receiving d4T-containing regimens in January 2011. Clinical sites in Kenya have adopted various innovations to enhance treatment adherence, including SMS reminders to patients and establishment of treatment literacy initiatives. Additional efforts are needed to promote maintenance in care, as roughly one in three antiretroviral patients are no longer enrolled in care two years after starting therapy. Treatment programmes in Kenya have recorded high survival rates, and cohort studies have correlated receipt of antiretroviral therapy with improved productivity and enhanced household well being.' **[73]**

24.14 The same report also stated that:

'A national network of Comprehensive Care Clinics facilitates the ready access of people living with HIV to treatment, care and support services. Roughly one in six health facilities (16%) were providing antiretroviral therapy in 2010. The number of facilities administering antiretroviral therapy increased from 731 in 2008 to 1,171 by early 2011 for adults and 1,105 for paediatric. As of December 2011, 1,405 facilities (including 1,242 public sector facilities) offered antiretroviral therapy..'

'In 2009, 213,521 HIV-positive patients were newly enrolled in HIV care, representing roughly one-third of cumulative enrolment (621,813)....The number of newly enrolled females in 2009 (140,639) was roughly twice the number of new male enrolees (72,882)…In 2009,52% (111,744) of newly enrolled patients were started on antiretroviral therapy in 2009…Kenya has exempted people living with HIV from the usual cost-sharing requirements for antiretroviral therapy and treatment for tuberculosis. However, patients may remain liable for certain costs associated with nutritional support, laboratory investigations and treatment of opportunistic infections.' **[73]**

CANCER TREATMENT

24.15 Capital FM Kenya reported on 18 July 2010 that:

'The Kenyatta National Hospital (KNH) has said it is unable to cope with the huge number of cancer patients seeking treatment at the facility.

'This is attributed to the fact that it is the only public hospital that offers cancer treatment in Kenya.

'The Head of the Cancer Treatment centre Dr Onyango Opiyo told Capital News that the hospital had a two-month waiting list for all new cancer patients which meant that each new patient had to wait for that long before they were attended to by a doctor.

'"And we are talking of about 40 new cancer patients per week waiting, so for two months that means about 320 patients waiting at any one time to be seen by a doctor," Dr Opiyo explained.

'He said that the cancer treatment centre receives about 4,000 patients each year.

'Those patients who require radiotherapy treatment, he said, had to wait for four weeks because the equipment cannot handle the large number of patients while those who required chemotherapy wait for two months.

'"It is obvious that there is need for the country to develop other cancer units and this is the area that we are trying to explore. The facilities in terms of the equipment that we have are not adequate and we need more and also we need to have development of manpower in the area of cancer," he said.

'"The most important is that we need to have some preventive measures."

'He said that cervical cancer topped the list of cancers detected at the cancer treatment centre followed by breast cancer and then head and neck cancer.' **[21b]**

24.16 Business Daily reported on 29 September 2010 that: 'Kenya has less than 15 cancer specialists against an average of 18,000 known cancer cases being diagnosed every year.' **[20e]**

24.17 The Kenya Cancer Association (KENCASA) website, undated, accessed on 2 May 2013, stated that it is '…a voluntary run non profit making organization established in Kenya in 1995 after recognition that Cancer was emerging as a leading cause of death in the country. Its core mandate is to raise public awareness on Cancer as well as mobilize and lobby stakeholders including the Government to prioritize Cancer in their programs.' **[51a]**

24.18 The Kenya Cancer Association's mission is to:

'…develop policies and strategies that will educate all Kenyans about cancer and involve key stakeholders and the populace in Cancer prevention and control and get the government to prioritize cancer control initiatives. This is in recognition of the fact that the fight against Cancer cannot be won by an individual or a government alone but through public, private partnership and that the best and most effective weapon against cancer is knowledge.' **[51a]**

Further information is available on the KENCASA website.

24.19 A Standard (Kenyan newspaper) report, 'MPs pass motion for free cancer treatment', dated 2 November 2011, stated that:

'Parliament has passed a motion compelling the Government to make cancer treatment free for all Kenyans.

'If implemented it would be a relief to thousands of Kenyans who suffer from the disease and are unable to access treatment due to prohibitive costs. A surgery for cancer treatment is estimated to cost Sh250,000 at Kenyatta National Hospital.

'According to estimates the disease kills 18,000 every year and 82,000 new cases are recorded annually. The legislators put up a double-edged strategy to wrestle the disease given that a Bill that establishes a Cancer Prevention and Control Institute is also before the House.

'The motion, sponsored by Kandara MP, Maina Kamau, points out that given the high costs to access cancer treatment and the increasing prevalence of the disease it was time the government accorded free treatment to its citizens.

'Medical Services Minister Anyang' Nyong'o, while supporting the motion complained of under-funding to his ministry pointing out that money meant for cancer treatment is very little.

'The fight against the disease is further compounded by the shortage of oncologists and machines for treatment. There are only five Oncologists working in public hospitals in the country.

'Nyong'o said his ministry requires about Sh17 billion every year, for five years to revamp the health sectors and build 45 referral hospitals in all the counties, saying the country's public hospitals do not have the capacity to cope with disasters.' **[83a]**

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KIDNEY DIALYSIS

24.20 Business Daily reported on 17 January 2010 that:

'Kidney patients have received a medical boost following the government's modernisation of provincial hospitals, which will decentralise the dialysis process from the two main referral hospitals in the country.

'Kidney patients have hitherto been forced to traverse the country for weekly removal of toxins from the blood, incurring heavy travel costs on top of the medication and dialysis process.

'Kenyatta National Hospital and Moi Teaching and Referral Hospital are the only public facilities with dialysis machines to cater for the over 400 patients suffering from kidney ailments.

'While the other options is private hospitals, the costs are beyond most patients. At the public referral hospitals, the dialysis process is subsidised to stand at about Sh4,500

per session, while the private facilities demand more than double the amount. Kidney specialists recommended two sessions per week.

'Three provincial hospitals have been earmarked for the first phase, pegged on the need according to patients at the two public referral hospitals.

'"We have already procured 12 dialysis machines and they are currently installed," said Dr Wycliff Magia, deputy director medical service, Ministry of Medical Services.

'In about two months, Mombassa and Nakuru will have five machines while Kisumu will have two.' **[20f]**

24.21 Daily Nation reported on 13 January 2010 that:

'Patients with kidney failure were on Wednesday [13 January] handed a lifeline after Kenya's largest referral hospital introduced low-cost transplant.

'In a new partnership with an international drug company, Norvatis, and a team of Spanish doctors, Kenyatta National Hospital would also provide drugs to the patients at a subsidised rate.'The project will discourage medical travels to other countries,' Dr Charles Kabetu, the hospital's acting chief executive said.

'According to Dr Anthony Were, the head of the renal unit at the hospital, 142 patients are currently on dialysis, with 110 of them in need of kidney transplants…At Kenyatta hospital, pre-transplant analysis and the transplant operation costs about Sh520,000. In the partnership, doctors from Basel, Switzerland, will team up with their local peers to perform the transplants…After the pilot phase, the pharmacy will provide medication to patients at a reduced cost.' Under the new partnership, the patients under the programme will access medicines at a cost of Sh30,000 per month,' Dr Kabetu said.

'While it costs a dialysis patient Sh4, 500 at KNH per session, seeking an alternative option would mean going to private hospitals where the cost is much higher. Spanish medics Fredericho Oppenheimer and Antonio Alcaraz are in the country on a two-day observation tour.' **[16l]**

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MENTAL HEALTH

24.22 The Kenya National Commission on Human Rights report, 'Silenced Minds: The Systemic Neglect of the Mental Health System in Kenya', published in November 2011, stated:

'The Government has not taken sufficient steps to address the burden of mental health in Kenya. Legislation governing the mental health sector is outdated and narrowly focused on in-patient admission. Regulations envisaged under the Mental Health Act to oversee the equipment, administration, control and management of mental hospitals; the care, treatment and rehabilitation of persons suffering from mental disorder; and the procedure for admitting out-patients have never been enacted. Similarly, the Act vests functions in a Board of Mental Health, but these are not effectively performed. While a specific mental health policy was drafted in 2003, it still has not been finalised and

adopted. At the same time, the broader health sector strategic plan say little on mental health. Although the Ministry has introduced some commendable initiatives to encourage hospitals to improve mental health services, their effectiveness appears to have been limited by the policy vacuum in the sector.

'In the absence of an effective legal and policy framework, the mental health sector in Kenya has lagged behind physical health. The availability of in-patient and out-patient services - including rehabilitation services like halfway houses - is extremely limited due to underfunding and lack of personnel, which particularly affects groups such as children and youth, as well as criminal offenders. Kenya has approximately 77 consultant psychiatrists, 418 psychiatric nurses and 30 clinical psychologists to serve a population of slightly below 40 million…Further, the services that are available are overly centralised. Almost 70 percent of in-patient beds are in Nairobi, for example. This limits accessibility as many patients have to travel long distances to seek treatment. Of the 46 psychiatrists in the public service, 28 are based in Nairobi; leaving the effective ratio outside the capital one psychiatrist per province of 3-5 million people. North Eastern Province has neither a psychiatrist nor a psychiatric nurse.

'Also of concern is the fact that available services are not of sufficient quality. Crowded, understaffed wards hinder effective service delivery. Although the hospitals visited were on track in some areas such as providing sufficient food, infrastructure was generally not conductive to recovery, with patients housed in isolated, poorly ventilated and dilapidated buildings. Sanitary conditions were similarly problematic, with wards and patients' clothing appearing unclean.' **[31] (xiii-xiv)**

24.23 The website of mental health NGO Basic Needs, accessed on 2 May 2013, stated that:

'Kenya has little provision for mental health.

'Despite having a mental health programme, with a focus on community mental health care, the government only spends 0.01% of its health budget on mental health.

'This means that there is only one psychiatrist for every 500,000 people. Only a third of these psychiatrists work in the public sector, the rest only take on private patients at great expense.' **[53a]**

24.24 A Daily Nation report, 'Why Citizens Would Rather Take the Mentally Ill to a Faith Healer', dated 10 March 2011, stated that:

'One in every 20 Kenyans would rather take a mentally-ill patient to a faith healer to be prayed for or to a witchdoctor than to a hospital, say researchers.

'Mental health experts say it will take time to win the fight against the stigma associated with mental illness in general, and the country's largest public referral psychiatric hospital - Mathari - in particular…The research further shows that more young and relatively educated people, as well as unmarried Kenyans are prone to mental illness.

'"The biggest problem is that their relatives do not know that they can be cured," says Dr Lawrence Atwoli of Moi University's School of Psychiatry.

'He joins the small group of mental health experts in the country - there are only 77 mental health specialists in Kenya - in calling for a national campaign against

stigma…According to experts, one in every four Kenyans may be suffering from a mental health problem, ranging from depression to schizophrenia.

'Clinical depression tops the chart of Kenya's mental health problems, with latest research indicating that as many as four million Kenyans may be mentally ill.

'According to a study conducted by a team of mental health researchers led by Prof David Ndetei of the University of Nairobi, one in every 10 Kenyans is depressed enough to contemplate suicide.

'More research indicates that six per cent of Kenyans first take mentally-ill patients to witchdoctors and other traditional healers instead of qualified psychiatrists.

'This, according to experts, is largely driven by a wrong assumption that demons and evil spirits possess mentally-ill people…In a desperate effort to counter stigma, the country's largest referral psychiatric hospital - Mathari - dropped the 'Mental' from its original name, Mathari Mental Hospital.

'But mental health experts say the change of name had the reverse effect; it reinforced the stigma…Few top brains opt to specialise in psychiatry. As a result, the country has only 70 mental health doctors. Out of these, only 25 are on the government pay roll.

'And while all health workers have basic training on mental health, most would rather handle a plague than mental health.

'The result is a general misconception that Mathari Hospital is the only medical facility that can cure mental illness in Kenya.' **[16t]**

24.25 A Nairobi Star report, 'Kenya: Faith Healers Key to Fighting Mental Disorders', dated 1 April 2013, stated:

'Traditional and faith healers are among informal players that are expected to aid the health sector in bridging the human resource gap in mental health service delivery.

'This is according to preliminary findings from a study that was recently commissioned by the Global Health Research Initiative headed by the lead doctor Victoria Mutiso of the Africa Mental Health Foundation.

'Mutiso's team has been training faith and traditional healers, community-based health workers and hospital personnel to perform basic psychiatric tasks, such as identifying symptoms, diagnosing conditions, and referring patients to specialised services.

'"AMHF saw these actors as potential points of access to reach people suffering from mental illness, since they are already known and accepted by the community," Mutiso says.

'In a one year span, AMHF says tradi- tional and faith healers made 727 referrals in urban and rural experimental sites of Kibwezi in Eastern province and Kangemi in Nairobi, which revealed an upward trend in the number of clients referred by informal workers.

'"This indicates the critical role that lay health workers can play in improving access to mental health services in Kenya," AMHF programmes officer Teddy Aswani says.

'This is the first study that has been commissioned to determine the effectiveness of task shifting in the delivery of mental health services. The 2011-12 results showed an upward increase in the number of self referral cases during the year under review in rural and urban settings, at 29 and 34 respectively.

'Mutiso attributes the positive responses to reduced stigma in the study sites due to increased community sensitisation, awareness and mobilisation by the informal health workers.

'The initial approach of task shifting was launched by the World Health Organisation in collaboration with the Office of the United States Global Aids Co-ordinator, to expand the pool of workers for health in HIV/Aids.

'It is a process of delegation where tasks are moved to less specialised health work ers. By reorganising the workforce in this manner, task shifting is touted to make more efficient use of the available human resources.' **[80b]**

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25. FREEDOM OF MOVEMENT

25.01 The constitution states at Article 39 that:

'(1) Every person has the right to freedom of movement.
(2) Every person has the right to leave Kenya.
(3) Every citizen has the right to enter, remain in and reside anywhere in Kenya.' **[22a]**

25.02 The United States State Department '2012 Human Rights Report: Kenya', published on 19 April 2013, stated that: 'The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.' **[4b] (section 2d)**

25.03 The Shelter Forum webpage, 'The State of Kenya's Human Rights', published on 14 October 2010, stated that '…[t]here are a number of Kenyan human rights that are generally not infringed upon. Freedom of movement and travel, religion, and association are all constitutionally protected and usually not at issue.' **[43a]**

25.04 The Organisation of Economic Cooperation and Development Social Institutions Gender Index, profile of Kenya, (OECD SIGI) undated, accessed on 5 April 2013 stated that: 'There do not appear to be any legal constraints on women's freedom of movement in Kenya. Previously existing requirements that women secure their husband's or father's consent before obtaining a passport have been removed. However, of the women interviewed for the 2008-2009 DHS, 26.3% reported that their husbands usually had the final say in deciding whether they were allowed to visit family and relatives.' **[37a]**

For information about freedom of movement for non-Kenyan citizens, please see Foreign refugees. For information on who qualifies for Kenyan citizenship, please see Citizenship and nationality.

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26. INTERNALLY DISPLACED PERSONS (IDPS)

26.01 The United States State Department '2012 Human Rights Report: Kenya' (USSD Human Rights Report 2012), published on 19 April 2013, stated:

'A large number of IDPs still had not returned home after being displaced in previous years. According to the NGO 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. The Internal Displacement Monitoring Center (IDMC) estimated that approximately 200,000 of the 350,000 persons who fled their homes as a result of 2007-08 postelection interethnic violence had not returned home. The government's eviction of persons and destruction of homes in low income areas during the year resulted in hundreds of new IDPs. Flash floods and land disputes during the year also resulted in more IDPs. According to the IDMC, 118,000 persons were displaced as a result of intercommunal and resource-based violence during the year (see section 6).

'IDPs were concentrated in informal settlements and camps, with many of those dislocated as the result of 2007-08 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 police personnel occurred in IDP camps. Police sometimes beat and arbitrarily arrested IDPs. For example, on December 3 [2012], police arrested four persons who had been among approximately 400 IDPs from Ruringu who had marched in protest to the office of the provincial commissioner of Central Province. Video of the arrests, which was broadcast by NTV News, showed administration and regular police officers dragging the IDPs through the streets before placing them in a police vehicle.

'In September 2011 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. Throughout the year the government continued the resettlement of postelection IDPs from camps in Rift Valley Province. The government asserted that nearly all of the postelection IDPs had been resettled by year's end and that only five of the 107 IDP camps established in 2008 remained open. The government's assertion directly contradicted the IDMC estimate that approximately 200,000 IDPs from the postelection violence had not returned home. The discrepancy between the government's number of IDPs and civil society estimates was because many of the persons displaced by the postelection violence were not registered in the government camps. The government did not try to verify the extent of the IDP problem and inhibited civil society efforts to do so. In 2011 human rights groups formed the Protection Working Group on Internal Displacement and submitted a strategy to the government to document all IDPs. After reaching agreement on the way forward, the government withdrew its support, and the strategy was not implemented.

'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. Forcible resettlement fueled additional violence. For example, in May political leaders in Kitale mobilized local squatters to resist the resettlement of 200 IDPs from Nakuru. Similar clashes occurred in 2011 when the government attempted to resettle Kikuyu IDPs on land that had been allocated for Maasai squatters dislocated during pre-2007 election-related violence.' **[4b] (section 2c)**

26.02 The Amnesty International 2012 Annual Report, Kenya section, published on 24 May 2012, reported that:

'Government figures released in September [2011] indicated that most people displaced as a result of the post-election violence of 2007-8 had returned to their homes, been integrated into various communities or resettled in other parts of the country. Around 158 households remained in transit displacement camps. Local NGOs reported that the official figures excluded hundreds of internally displaced households still living in self-help makeshift camps not recognized by the government. Groups of people internally displaced as a result of the post-election violence complained that official measures to help them, such as subsidies, were inadequate. Thousands of other people remained displaced as a result of ethnic clashes before the 2007-8 violence.' **[15a]**

26.03 United Nations IRIN News reported on 26 May 2011 that:

'The Kenya Human Rights Commission (KHRC), an NGO, has a caseload of 50,000 IDPs, whose displacement predates the post-election violence of 2008, often by two decades.

'Across the country, there are now between 200,000 and 250,000 conflict-related IDPs in Kenya, according to the Internal Displacement Monitoring Centre (IDMC)...Muthoni Wanyeki, KHRC executive director, told IRIN not enough attention had been paid to those displaced before the 2007 elections, when disputed results unleashed violence that pushed some 600,000 people to flee their homes.

'"The KHRC is only one organization. Reports have been produced on the clashes that led to displacement in 1997 and in 1992, yet none of these reports has been acted on," she said.

'"Fundamentally, the underlying reasons for displacement remain. The Ministry of Lands should initiate discussion on ways and means of dealing with the various [competing] claims to land in the Rift Valley and Coast,' she said."' **[42c]**

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27. FOREIGN REFUGEES

27.01 The United States State Department 2012 Human Rights Report: Kenya (USSD 2012 Human Rights Report), published on 19 April 2013, reported that:

'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. While there were fewer new arrivals overall than in the previous year, significant numbers of Somali refugees entered the country, and events in Sudan and South Sudan also led to new arrivals. 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, impeding the efforts of the UNHCR and other humanitarian organizations to assist and protect refugees and asylum seekers.

'The number of new arrivals from Somalia declined. The government did not allow new arrivals in Dadaab to register, except during a one-month window in June and two weeks in November, during which 12,775 new arrivals were registered. Due to conditions in Sudan and South Sudan, 11,542 new arrivals registered in Kakuma refugee camp by year's end, compared with 4,619 in 2011. The UNHCR estimated the total number of refugees in the country at 650,000, including more than 445,000 at Dadaab, more than 105,000 at the Kakuma refugee camp and more than 100,000 in urban areas throughout the country.

'The government officially took over responsibility for the registration of refugees, moving to implement a new government-issued identity card to be the sole proof of refugee status in the country. However, lack of government capacity hampered the process of distributing the identity cards. In early December the government announced the cessation of refugee registration in urban areas and required services to take place exclusively in the camps, despite inadequate capacity and its refusal to resume registration in Dadaab. 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 for them.' **[4b] (section 2d)**

27.02 As regards the abuse of refugees and restrictions imposed on them, the same report stated:

'Police abuse of refugees increased following the 2011 military incursion into Somalia, which triggered a series of attacks directed at police officers in the Dadaab refugee camps. For example, on February 29, after police found an explosive in one of Dadaab's camps, they arbitrarily rounded up dozens of refugees who were in the area and arrested them, releasing those who were detained in exchange for bribes. In March HRW received reports of police extorting money and looting shops in Hagadera camp. In December 2011, in what HRW's report Criminal Reprisals: Kenyan Police and Military Abuse against Ethnic Somalis called a "planned response intended to punish refugees," police officers spent four days beating scores of refugees, including pregnant women and children. HRW also noted that police raped at least one woman, attempted to rape others, looted shops, and stole money from refugees.

'Kituo cha Sheria, an NGO that works with refugees and asylum seekers in Nairobi, noted that police frequently arrested refugees and threatened them with charges of terrorism or membership in an organized criminal gang. Police did not record the arrests or take the refugees to court, detaining them indefinitely until relatives brought bribes to secure their release. Lawyers from Kituo cha Sheria were sometimes denied access to detained refugees, as happened at the Pangani police station on December 24.

'In April 2011 the UNHCR and the government signed a memorandum of understanding to reinforce security in Kakuma and Dadaab refugee camps by increasing the number of police officers, procuring additional equipment for police, and establishing a screening center at Liboi. In November 2011, 92 officers (of the 200 officers requested) were deployed to Dadaab, bringing the total to 349 officers. Security sharply deteriorated in Dadaab starting in September 2011, forcing the UNHCR and NGOs that work with refugees to suspend some activities in the camps.

'Sexual and gender-based violence (SGBV) remained problems in 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/C. 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 the 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.

'Mobile court officials associated with the camps reportedly directed imams not to officiate at 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.

'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 2011 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 restricted outside of the Dadaab and Kakuma refugee camps. In December the government announced its intention to enforce an encampment policy requiring refugees to remain at the camps and all urban refugees in cities to report to Dadaab or Kakuma. Urban refugees were harassed, arrested, and requested to pay bribes for violating the encampment directive. However, the government granted permission to refugees to attend higher education institutions and receive specialized medical care outside the camps, and it made exceptions to the encampment policy for extremely vulnerable groups in need of protection.

'Numerous refugees were arrested for violating movement restrictions. In September 2011 the government reported that 70 percent of refugees who were granted movement passes did not return to the camps. According to the UNHCR, approximately 1,500 refugees from Dadaab were detained for unauthorized movement outside the camp in 2011; of those, 330 were minors who were handed over to the UNHCR. In Kakuma during the same period 150 persons were detained, of whom only seven were registered refugees.' **[4b] (section 2d)**

More information about abuses against ethnic Somalis can be obtained from the 2012 Human Rights Watch report, 'Criminal Reprisals Kenyan Police and Military Abuses against Ethnic Somalis'.

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28. CITIZENSHIP AND NATIONALITY

28.01 Articles 14 and 15 of the Constitution stated the conditions for citizenship:

> '14. (1) A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
> (2) Clause (1) applies equally to a person born before the effective date, whether or not the person was born in Kenya, if either the mother or father of the person is or was a citizen.
> (3) Parliament may enact legislation limiting the effect of clauses (1) and (2) on the descendents of Kenyan citizens who are born outside Kenya.
> (4) A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.
> (5) A person who is a Kenyan citizen by birth and who, on the effective date, has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.
>
> '15. (1) A person who has been married to a citizen for a period of at least seven years is entitled on application to be registered as a citizen.
> (2) A person who has been lawfully resident in Kenya for a continuous period of at least seven years, and who satisfies the conditions prescribed by an Act of Parliament, may apply to be registered as a citizen.
> (3) A child who is not a citizen, but is adopted by a citizen, is entitled on application to be registered as a citizen.
> (4) Parliament shall enact legislation establishing conditions on which citizenship may be granted to individuals who are citizens of other countries.
> (5) This Article applies to a person as from the effective date, but any requirements that must be satisfied before the person is entitled to be registered as a citizen shall be regarded as having been satisfied irrespective of whether the person satisfied them before or after the effective date, or partially before, and partially after, the effective date.' **[22a]**

28.02 Article 16 states that a 'citizen by birth does not lose citizenship by acquiring the citizenship of another country.' **[22a]**

28.03 Article 17 gives provisions for revocation of citizenship:

> '17. (1) If a person acquired citizenship by registration, the citizenship may be revoked if the person -
> (a) acquired the citizenship by fraud, false representation or concealment of any material fact;
> (b) has, during any war in which Kenya was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was knowingly carried on in such a manner as to assist an enemy in that war;

(c) has, within five years after registration, been convicted of an offence and sentenced to imprisonment for a term of three years or longer; or
(d) has, at any time after registration, been convicted of treason, or of an offence for which -
(i) a penalty of at least seven years imprisonment may be imposed; or
(ii) a more severe penalty may be imposed.
(2) The citizenship of a person who was presumed to be a citizen by birth, as contemplated in Article 14 (4), may be revoked if -
(a) the citizenship was acquired by fraud, false representation or concealment of any material fact by any person;
(b) the nationality or parentage of the person becomes known, and reveals that the person was a citizen of another country; or
(c) the age of the person becomes known, and reveals that the person was older than eight years when found in Kenya.' **[22a]**

28.04 A Nairobi Star article 'Kenya: Citizenship Law Benefit for the Stateless People', dated 1 September 2011, stated:

'Stateless people living in Kenya, Kenyans married to foreign nationals and thousands of Kenyans who have lost their citizenship are the biggest beneficiaries of the new citizenship law passed by parliament and approved into law.

'The Kenya Citizenship and Immigration Act also addresses historical citizenship issues which have seen sections of people who are legitimately Kenyan live without citizenship for years.

'According to the Act, Kenyans who lost their citizenship because the former regime did not endorse dual citizenship now have an opportunity to regain it. These include thousands who win US citizenship lotteries and thousands others married or working overseas. "We had proposed ways of not only regaining citizenship for these Kenyans but also to cater for those who cannot regain their citizenship because the countries in which they are citizens do not allow dual citizenship. '[sic] For the latter, we proposed a permanent residence status for them because they have inseparable relations in Kenya such as families and history. They are also free to apply for citizenship in case their countries change laws to provide for dual citizenship. We are glad it all went through," chair of the task force on citizenship Mumo Matemu told the Star in an exclusive interview yesterday…He told the Star that his task force addressed the concern that was raised by Kenyans during the referendum period on children found in Kenya who in the wording of the constitution "appears to be less than 8 years and whose nationality and parents are not known".

'The concern was that if all such children were 'presumed to be (Kenyan) citizen[s] by birth, it would be abused and Kenya will become a dumping ground for children from neighboring countries. "[sic] We proposed a process through which any doubts will be cleared and facts established and which entail courts of law. Kenyans will have an opportunity to intervene and participate in such a process to make sure it is not abused. There are also high penalties for abuse," he said.

'The biggest score in the Act, said Matemu, is the solution offered to the problem of stateless people which was not addressed by the new constitution. This benefits people born in Kenya but whose parents were not born in Kenya…The Act saves the the [sic]

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plight of foreign women married to Kenyan men whose husbands died before they could reach the mandatory seven years after which they could be granted citizenship.' **[80a]**

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29. FORGED AND FRAUDULENTLY OBTAINED OFFICIAL DOCUMENTS

29.01 The Kenya Star reported on 21 June 2010 that:

'The National Security Intelligence Service may soon stop checking the background of those applying for Kenyan passports.

'Last month the Head of Public Service and Secretary to the Cabinet Francis Muthaura issued a circular directing officials at the Immigration office not to carry out security verifications in order to speed up the issuance of passports.

'Presently security agencies are expected to scrutinise all applications and an applicant is only issued with a passport after they give the go-ahead.

'The proposal is yet to be implemented because the ministries of Internal Security and Immigration are at loggerheads over the directive and are yet to meet to discuss its implications.

'Immigration officers have welcome the proposal but the intelligence service fear that a relaxation in security checks could lead to an increase in falsified applications, especially by criminals and aliens from neighboring war-torn countries…Numerous foreigners, many of Somali origin, have been arrested in other countries while traveling on Kenyan passports. Cases have been reported in South Africa, Tanzania and recently in Zambia where a Kenyan was arrested while tying to smuggle 12 Somalis with Kenyan passports to South Africa.

'Security expert Werunga Simiyu cautioned against the proposals saying it would make travel for Kenyans even more difficult.

'"We know one issue raised was a high number of people traveling to Dubai using forged Kenya passports. The problem is that our passports are misused all over the world,' said Werunga…Security checks are aimed at verifying authenticity of birth certificates, national Identification Cards and other documents before a person is issued with a passport…Already seven cases of forged passports are reported at the immigration offices daily.

'"It is hard even to tell how many passports are in circulation due to forgeries," said an immigration official. The passports are stolen and then the bio-data and photo pages falsified, making it difficult to ascertain their authenticity.

'Police and immigration officials regularly arrest people traveling on forged Kenya passports.

'Almost a year ago, two Kenyans and two Rwandese were arrested at the Moi International Airport while using other Kenyans' passports to travel to Germany. The

four, Innocent Nahimana, Yves Ngarambe, Jackline Karimi Njue and Flavia Wanjiku Njue were separately fined a total of Sh180,000.

'Last year, a Congolese, Emmanuel Lambata, was deported after he forged travel documents that would have aided 34 countrymen to be flown to Hungary. He was arrested with 12 Kenyan passports as he presented them to the Czech embassy.

'Security officials say most suspects are of Somali and Indian origin who forge documents and sell them between Sh40,000 and Sh100,000 to potential buyers.

'The ministry also intends to introduce electronic passports which experts still warn as "being vulnerable to forgeries."' **[55a]**

See also Citizenship and Nationality and Corruption

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Annex A

CHRONOLOGY OF MAJOR EVENTS

The following list of events is mainly extracted from the BBC News article 'Kenya: a political history', published on 24 December 1997 **[10i]**, and the BBC 'Kenya Profile - Timeline', updated on 31 March 2013 **[10c]**.

1963	
12 December	Kenya gains independence. (CIA World Factbook, updated 13 March 2013) **[3a]**
1964	
12 December	Republic of Kenya formed. Kenyatta becomes president and Odinga vice-president. **[10c] [10i]**
1969	Assassination of government minister Tom Mboya sparks ethnic unrest. KPU banned and Odinga arrested. Kanu only party to contest elections. **[10c]**
1978	
August	Kenyatta dies in office. **[10i]**
October	Vice-President Daniel arap Moi takes over the office of President. **[10i]**
1982	
9 June	Kenya officially declared a one party state. **[10i]**
1 August	An attempted coup by the Air Force is suppressed by the Army. Leader of the coup, Private Hezekiah Ochuka, ruled Kenya for about six hours before fleeing to Tanzania. (Daily Nation, 'How heroic trio of fighter pilots scuttled mission to bomb State House and GSU', 11 December 2009) **[16n]**
1985	
10 July	Hezekiah Ochuka, Pancras Oteyo Okumu, Bramwel Injeni Njereman and Walter Odira Ojode are all hanged for their parts in the coup of 1982. They remain the most recent people to be lawfully killed by the Government of Kenya. (Daily Nation, 'How heroic trio of fighter pilots scuttled mission to bomb State House and GSU', 11 December 2009) **[16n]**
1991	
August	The Forum for the Restoration of Democracy (Ford) was formed by six opposition leaders, but was outlawed and its members were arrested. International condemnation of the arrests was followed by suspension of aid. **[10c]**
December	A special conference of Kanu agreed to introduce a multi-party political system. Several ministers resigned and formed new political parties, the most notable of which was Mwai Kibaki, the Minister for Health, who formed the Democratic Party. **[10i]**
1992	
August	Ford split into two factions - Ford-Asili and Ford-Kenya (led by Odinga). **[10c]**
November	The international community ended the suspension of aid. **[10i]**

December	President Moi was re-elected in multi party elections for a fourth term of office in elections widely viewed as neither free nor fair. However, a Commonwealth monitoring group assessed that the outcome of the election, which resulted in a strong majority for Kanu, "reflected the will of the people". **[10c][10i]**
1994	
January	Oginga Odinga died and was succeeded as Chair of Ford-Kenya by Michael Wamalwa Kijana. **[10i]**
June	The United National Democratic Alliance (UNDA) was formed by opposition groups, with the exception of Ford-Asili, however it was plagued by disagreements. **[10i]**
1995	
May	Safina was formed as a new political party, with Mutari Kigano as Chair, and Richard Leakey as secretary-general. The party campaigned for the introduction of proportional representation and improved human rights. **[10i]**
1997	
November	Safina permitted to register as a political party as Daniel arap Moi opens registration. **[10c] [10i]**
1997	
December	Widely-criticised elections held resulting in Moi winning a fifth term. **[10c]**
1998	
August	Al-Qaeda operatives bomb the US embassy in Nairobi, killing 224 people and injuring thousands. **[10c]**
2001	
June	A new law is passed in Parliament which allows the import and manufacture of cheap copies of anti-Aids drugs. **[10c]**
2001	
December	Nairobi's Kibera slum district sees rent battles involving Nubian and Luo communities result in several deaths while thousands flee. **[10c]**
2002	
28 November	A terror attack on an Israeli-owned hotel near Mombasa killed 10 Kenyans and injured three Israelis. A simultaneous attack where two missiles fired at an Israeli holiday jet that had taken off from the city's airport failed. A previously unknown group called the Army of Palestine claimed responsibility, however a later statement - purportedly from al-Qaeda – also claimed responsibility. (BBC News, 'Kenya terror strikes target Israelis', 28 November 2002) **[10j]**
2002	
30 December	Mwai Kibaki is inaugurated as president of Kenya following a landslide victory in elections. (BBC News, 'Eyewitness: Kenya's historic day', 30 December 2002) **[10k]**
2004	

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March-July	The draft of the new constitution was completed, including proposals for curbing the president's powers and creating post of prime minister. **[10c]**

2004

July-August	A food crisis, caused by crop failures and drought, is called a "national disaster" by President Kibaki. The UN launched an aid appeal for vulnerable rural Kenyans. **[10c]**

2005

July	Parliament approves a draft constitution after days of violent protests in Nairobi over aspects of the draft which demonstrators say give the president too much power. **[10c]**
December	Voters rejected a proposed new constitution in what is seen as a protest against President Kibaki. The president replaces his cabinet; some nominees reject their appointments. **[10c]**

2006

January	The Kenyan Government declared that four million people in the north needed food aid because of a drought which the president called a "national disaster". **[10c]**
February	Government ministers were linked to corruption involving contracts for a phantom company, Anglo Leasing. Finance Minister David Mwiraria, resigned stating that allegations against him were false. **[10c]**

2007

December	Presidential elections were followed by disputes over the outcome and violence in which more than 1,500 died. **[10c]**

2008

February	The government and opposition came to a power-sharing agreement. **[10c]**
April	A new cabinet is agreed. **[10c]**
October	A report into post-election clashes called for an international tribunal to try those implicated in violence. Many political leaders are reluctant to implement the commission of inquiry's recommendations, with some arguing that prosecutions could trigger further clashes between communities. **[10c]**

2009

August	The government stated that at least 10 million people, or one third of the population, were in need of food aid. The government mobilised the military to distribute food, water and medicines to areas hit hardest by drought. **[10c]**
October	The government said it will co-operate with the International Criminal Court (ICC) to try key suspects in post-election violence. **[10c]**
November	A draft constitution was published ahead of a referendum planned for 2010. **[10c]**

2010

July	Kenya joins its neighbours in forming a new East African Common Market, intended to integrate the region's economy. **[10c]**

4 August	The referendum on the new constitution designed to limit the powers of the president and devolve power to the regions produces resounding "yes" vote. **[10c]**
27 August	The new constitution is signed into law. (BBC News, 'Kenya president ratifies new constitution', 27 August 2010) **[10b]**

2011

19 August	The Kenyan government stated that it wanted to drop the new constitutional requirement that women should make up a third of MPs in parliament, which would be "technically impossible" to achieve by the 2012 elections. The cabinet decided to appoint a task force to draw up a constitutional amendment to scrap the quota. (BBC News, 'Kenya's cabinet rejects quota for female MPs', 19 August 2011) **[10o]**
24 August	President Kibaki reshuffles members of the government ministerial team, after consultations with the Prime Minister, Raila Odinga. The changes mainly involve members of the ODM. (Daily Nation, 'ODM Rebels Dropped in Cabinet Reshuffle', 24 August 2011) **[16s]**
30 August	The International Criminal Court rejects an appeal by the Kenyan government to stop it putting on trial six individuals accused of being linked to the 2008 post-election violence. (BBC News, 'Kenya post-election violence: ICC rejects appeal', 30 August 2011) **[10e]**
16 October	Kenyan military forces move into southern Somalia, a day after Kenyan defence officials stated that Kenya has the right to defend itself, after a series of militant kidnappings of Europeans inside Kenya. A Kenyan government spokesman stated that their troops were pursuing al-Shabab forces across the border. (The Guardian, 'Kenyan troops move into Somalia', 16 October 2011) **[81a]**

2012

March	The Independent Electoral and Boundaries Commission (IEBC) announces that the next General Election will be held in on 4 March 2013. (Daily Nation, 'Kenya polls body sets March elections date', dated 17 March 2012) **[16p]**
August	At least 48 people were reported to have been killed in clashes over grazing land pasture between pastoral and farming communities in south east Kenya. A group of about 200 people belonging to the farming Pokomo ethnic group raided a village in the Riketa area and torched all the houses belonging to the Orma, a pastoralist community. (Aljazerra, 'Dozens killed in Kenya clashes', 23 August 2012) **[6a]**
November	At least five people were killed after a grenade destroyed a minibus in a Somali-dominated part of Nairobi. The Nairobi regional police commander stated that a grenade had been thrown into the minibus. There was no immediate claim of responsibility for the attack but the attacks were blamed on Somali groups and their sympathisers in retaliation for Kenya's decision to send troops into Somalia in 2011 to drive out al-Qaeda-linked fighters. (Aljazeera, 'Deaths reported in Kenya bus blast', 18 November 2012) **[6b]**

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2013

9 March	Uhuru Kenyatta confirmed as the winner of the presidential election, winning 50.07% of the vote, narrowly avoiding a run-off. (BBC News, 'Kenya election: Uhuru Kenyatta wins presidency', 9 March 2013) **[10p]**
30 March	Kenya's Supreme Court upholds Uhuru Kenyatta election win. (BBC News, 'Kenya election: Uhuru Kenyatta wins presidency', 9 March 2013) **[10q]**
9 April	Uhuru Kenyatta was sworn in as Kenyan's new president. (BBC News, 'Uhuru Kenyatta sworn in as Kenyan president', 9 April 2013) **[10n]**

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Annex B

POLITICAL ORGANISATIONS

Please note information in this annex post-dates the narrative cut-off date of 22 April 2013 to include information about the main political groups during and following elections on 4 March 2013.

All information is taken from the Kenya - Internal Affairs section of Jane's Sentinel, updated 2 May 2013. **[14c]**

Jubilee Alliance

Formed in December 2012 ahead of the March 2013 elections, it brought together Uhuru Kenyatta's The National Alliance (TNA) party, William Ruto's United Republican Party (URP), the National Rainbow Coalition (NARC), led by Charity Ngilu, and the Republican Congress Party of Kenya, led by Najib Balala. **[14c]**

Kenya African National Union (KANU)

KANU was founded by Jomo Kenyatta in 1960 and ruled Kenya without interruption from the independence elections of 1963. It was the only legal political party from 1982 until November 1991, when Daniel arap Moi acceded to international and domestic demands for a return to a multi-party polity and lifted a nine-year ban on opposition parties. This paved the way in December 1992 for the country's first multi-party parliamentary and presidential elections in 26 years. In the run-up to the 2007 elections, KANU allied itself to Kibaki's re-election vehicle, the Party of National Unity (PNU). In the parliamentary elections, KANU won 14 constituencies. For the 2013 election, KANU joined the newly formed Amani coalition, led by Musalia Mudavadi, of the United Democratic Forum (UDF). The coalition also included the New Ford Kenya party. The Amani coalition finished in third place during the presidential, legislative and local county elections held on 4 March 2013. **[14c]**

Orange Democratic Movement (ODM)/CORD coalition

The Orange Democratic Movement (ODM) had its origin in the November 2005 referendum on the constitutional draft. The 'No' vote was assigned the orange as its symbol, whereas the 'Yes' faction campaigned under the banana symbol. The various 'No' campaigners, led by Odinga, later coalesced into a political movement. Odinga was subsequently chosen as the ODM's candidate for the 2007 presidential elections. The ODM did very well in the 2007 parliamentary elections, representing the largest party in the National Assembly. However, the presidential election results were disputed. Ahead of the elections, Odinga had led in some opinion polls and the opposition leader had also appeared to take the initial lead as election results started to emerge. However, with more than 80% of the votes counted, the tide was said to have turned in Kibaki's favour, which led to accusations from some among the opposition camp of vote rigging, and subsequently also sparked fierce outbreaks of violence and ethnic clashes in the country after the incumbent was confirmed the winner. **[14c]**

The political stand-off was only brought to a close in February 2008 with the signing of a power-sharing agreement, under which Odinga secured the newly created post of prime minister. However, it took more than a month of wrangling before the opposing political factions finally announced a new coalition cabinet in mid-April that year. The coalition government remained vulnerable to further tensions and disputes. Nevertheless, in a remarkable display of unity in

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2010, several of the country's leading politicians, including Odinga and Kibaki, threw their weight behind the 'yes' campaign for the new constitution, which subsequently succeeded at the referendum vote in August that year. **[14c]**

Ahead of the March 2013 election, more than 10 parties, including the ODM, formed the Coalition for Reform and Democracy (CORD). Odinga was nominated as the coalition's presidential flagbearer, with then vice-president Kalonzo Musyoka, leader of the Wiper Democratic Movement, acting as his running mate, after the latter agreed to defer his own presidential bid following negotiations between the coalition's principal leaders. Odinga however lost out to Uhuru Kenyatta, running on the ticket of the Jubilee Alliance, in the first round. Although he disputed the result, which saw Kenyatta secure victory with slim margin of 50.07%, the vote outcome was upheld by the Supreme Court on 30 March. **[14c]**

Wiper Democratic Movement (WDM)

The Wiper Democratic Movement was originally formed as the ODM-K, a breakaway faction from the larger ODM that was created when presidential aspirant Kalonzo Musyoka defected. Musyoka came third in the 2007 presidential election. In the aftermath of the heavily disputed elections, Musyoka accepted a post of vice-president. ODM-K won 16 seats in the 2007 parliamentary elections. **[14c]**

For the March 2013 elections, the WDM formed part of the CORD coalition with the ODM and a number of other parties including the Forum for Restoration of Democracy-Kenya (Ford-K), with Musyoka nominated as the running mate of presidential candidate Odinga, who eventually took second place in the polls. **[14c]**

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Annex C

PROMINENT PEOPLE

Please note that most of the information in this annex post-dates the narrative cut-off date of 22 April 2013 to include information about the new government cabinet, formed after the elections which took place on 4 March 2013.

The information in this annex has been obtained from the Capital FM Kenya report, 'Uhuru Cabinet Now Gets Down to Work', dated 15 May 2013 **[21d]**, the BBC News report, 'Uhuru Kenyatta sworn in as Kenyan president', dated 9 April 2013 **[10n]**, and The Star report, 'Kenya: Cabinet Secretaries Take Oath of Office', dated 15 May 2013 **[80c]**.

President	Uhuru Kenyatta **[10n]**
Cabinet Secretary for Industrialization and Enterprise Development	Adan Mohammed **[80c]**
Cabinet Secretary for Education, Science and Technology	Jacob Kaimenyi **[80c]**
Cabinet Secretary for Energy and Petroleum	Davis Chirchir **[21d]**
Cabinet Secretary of the National Treasury	Henry Rotich **[21d]**
Cabinet Secretary for Agriculture, Livestock and Fisheries	Felix Kosgey **[21d]**
Cabinet Secretary for Foreign Affairs	Amina Mohamed **[21d]**
Cabinet Secretary for Information, Communication and Technology	Fred Matiang'i **[80c]**
Cabinet Secretary for Mining	Najib Balala **[21d]**
Cabinet Secretary for Health	James Wainaina **[21d]**
Cabinet Secretary for Land, Housing and Urban Development	Charity Ngilu **[21d]**
Cabinet Secretary for East African Affairs, Commerce and Tourism	Phyllis Kandie **[21d]**
Minister for Transport and Infrastructure	Michael Kamau **[21d]**
Cabinet Secretary for Environment, Water and Natural Resources	Judy Wakhungu **[21d]**
Cabinet Secretary for Sports, Culture and Arts	Hassan Wario **[21d]**
Cabinet Secretary for Defence	Raychelle Omamo **[21d]**
Cabinet Secretary for Devolution and Planning	Anne Waiguru **[21d]**

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Annex D

LIST OF ABBREVIATIONS

AI	Amnesty International
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CIA	Central Intelligence Agency (United States)
CPJ	Committee to Protect Journalists
FCO	Foreign and Commonwealth Office (UK)
FGM	Female Genital Mutilation
FH	Freedom House
GALCK	Gay and Lesbian Coalition of Kenya
GDP	Gross Domestic Product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HRW	Human Rights Watch
IDP	Internally Displaced Person
ILGA	International Lesbian and Gay Association
IMF	International Monetary Fund
IOM	International Organisation for Migration
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission on Human Rights
NGO	Non Governmental Organisation
OCHA	Office for the Coordination of Humanitarian Affairs
TB	Tuberculosis
TI	Transparency International
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USSD	United States State Department

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