



# KENYA

## COUNTRY OF ORIGIN INFORMATION (COI) REPORT

COI Service

25 February 2011

**SECURING OUR BORDER CONTROLLING MIGRATION**

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## Preface

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- i This Country of Origin Information (COI) Report has been produced by the COI Service, United Kingdom Border Agency (UKBA), 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 24 January 2011. The 'Latest News' section contains further brief information on events and reports accessed from 24 January 2010 to 25 February 2011. The report was issued on 25 February 2011.
- ii The Report is compiled wholly from material produced by a wide range of recognised external information sources and does not contain any UKBA 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 are 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 COI Report reflects the way it is used by UKBA 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 COI 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.
- vi As noted above, the Report is a compilation of extracts produced by a number of reliable information sources. In compiling the Report, no attempt has been made to resolve discrepancies between information provided in different source documents though COIS 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. COI 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.

- 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 COI Report and the accompanying source material are public documents. All COI Reports are published on the RDS section of 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 in the Report are available in electronic form, the relevant web link 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 the COI Service upon request.
- ix COI Reports are published regularly on the top 20 asylum intake countries. UKBA officials also have constant access to an information request service for specific enquiries.
- x In producing this COI Report, COI Service has sought to provide an accurate, balanced summary of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to UKBA as below.

**Country of Origin Information Service**

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**Website:** [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

**INDEPENDENT ADVISORY GROUP ON COUNTRY INFORMATION**

- xi The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Chief Inspector of the UK Border Agency to make recommendations to him about the content of the UKBA's COI material. The IAGCI welcomes feedback on UKBA's COI Reports and other country of origin information material. Information about the IAGCI's work can be found on the 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 UKBA COI documents and makes recommendations specific to those documents and of a more general nature. A list of the COI Reports and other documents which have been reviewed by the IAGCI or the Advisory Panel on Country Information (the independent organisation which monitored UKBA'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 UKBA 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

decision or proposal to designate a particular country for NSA, nor of the NSA process itself.

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**Website:** <http://icinspector.independent.gov.uk/country-information-reviews/>

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## Latest News

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### EVENTS IN KENYA FROM 24 JANUARY 2011 TO 25 FEBRUARY 2011

*The Latest News provides a non-exhaustive selection of significant events since 24 January 2011. Further information may also be available from the list of useful sources below.*

*The Home Office is not responsible for the content of external websites.*

18 February     President Mwai Kibaki insisted that his nominations for Chief Justice, Attorney General, Director of Public Prosecutions and Controller of the Budget were within the constitution, despite the constitutional court issuing interim orders declaring the nominations unlawful.

#### Capital FM Kenya

I acted lawfully, insists Kibaki, 18 February 2011

<http://www.capitalfm.co.ke/news/Kenyanews/I-acted-lawfully,-insists-Kibaki-11757.html>

Date accessed 18 February 2011

16 February     Kenya's government conceded that it had been slow to respond to the droughts affecting Garissa, Marsabit, Isiolo, Tana River, Tharaka, Wajir, Mandera, West Pokot, Samburu, Baringo, Kajiado, Makueni, Kwale, Kilifi and Turkana. Although it had provided some food and non-food supplies, it accepted it had not been proactive enough.

#### Daily Nation

Drought: Govt concedes slow response, 16 February 2011

<http://www.nation.co.ke/News/-/1056/1108594/-/111rrs1z/-/index.html>

Date accessed 18 February 2011

15 February     Prime Minister Raila Odinga announced that the 1984 killing of thousands of ethnic Somalis at Wagalla airstrip in Kenya is to be investigated.

#### BBC News

Wagalla massacre: Raila Odinga orders Kenya probe, 15 February 2011

<http://www.bbc.co.uk/news/world-africa-12463001>

Date accessed 18 February 2011

14 February     The Global Alliance for Vaccines and Immunisations and GlaxoSmithKline (GSK) launched a vaccine against pneumococcal disease in Kenya. The vaccine is to be mandatory for all children under one year of age and will be available in all public hospitals.

#### Capital FM Kenya

Kenya to curb pneumonia deaths, 14 February 2011

<http://www.capitalfm.co.ke/news/Kenyanews/Kenya-to-curb-pneumonia-deaths-11679.html>

Date accessed 18 February 2011

Public hospitals to stock pneumonia vaccine, 24 January 2011

<http://www.capitalfm.co.ke/news/Kenyanews/Kenya-to-curb-pneumonia-deaths-11679.html>

Date accessed 18 February 2011



- 1 February      The African Union endorsed Kenya's request to delay the International Criminal Court trial of those accused of organising post-election violence. Kenya says it wants the six suspects named by the ICC to be tried at home.

**BBC News**

African Union backs Kenya call to delay ICC case, 1 February 2011

<http://www.bbc.co.uk/news/world-africa-12332563>

Date accessed 18 February 2011

**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/>

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## REPORTS ON KENYA PUBLISHED OR ACCESSED BETWEEN 24 JANUARY 2011 AND 25 FEBRUARY 2011

*The Home Office is not responsible for the content of external websites.*

### **Committee to Protect Journalists**

Attacks on the Press 2010, 15 February 2011

<http://cpj.org/2011/02/attacks-on-the-press-2010-africa-developments.php>

Date accessed 18 February 2011

### **Committee on the Elimination of all forms of Discrimination Against Women**

Concluding observations of the Committee on the Elimination of Discrimination against Women, Kenya, 2 February 2011

<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-KEN-CO-7.pdf>

Date accessed 18 February 2011

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## Background Information

### 1. GEOGRAPHY

- 1.01 The Republic of Kenya (Permanent Committee of Geographical Names for British Use, *Country Names*, May 2010) [1] “lies in east Africa, and is bordered by Somalia, Ethiopia, Sudan, Uganda, Tanzania and the Indian Ocean” (Foreign and Commonwealth Office (FCO), *Country Profile*, March 2010). [2a] The total area of the country 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 20 January 2011 (CIA World Factbook)) [3a]
- 1.02 The results of the 2009 census recorded the population of Kenya to be 38,610,097 (Kenya National Bureau of Statistics *2009 Population and House 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 capital of Kenya is Nairobi (United States Department of State (USSD), *Background Note*, 28 December 2010) [4a] with a population of 3.1 million. (2009 census) [7b].
- 1.03 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

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

- 1.04 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]. Estimates of the populations of other major cities include Kisumu (650,846; 2005-6) and Eldoret (193,830; 1999) (United States Department of State (USSD), *Background Note*, December 2010). [4a]

- 1.05 The CIA World Factbook 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, when converted to percentages, 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], with the USSD *Background Note* adding that numerous other languages from the Bantu, Nilotic, and Cushitic linguistic groups also spoken. [4a]

For further detail on [Ethnic Groups](#) see the section of the same name

- 1.06 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] The US State Department *Background Note* on Kenya gave slightly different statistics: "Christian 80%, Muslim 10%, traditional African religions 9%, Hindu/Sikh/Baha'i/Jewish 1%". [4a]

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

- 1.07 The public holidays in Kenya for 2011 are: 1 January (New Year's Day); 22–25 April (Easter); 1 May (Labour Day); 1 June (Madaraka Day, anniversary of self-government); 30 August (Id al Fitr, end of Ramadan – may vary by one or two days depending on the lunar calendar); 10 October (Moi Day); 20 October (Kenyatta Day); 12 December (Independence Day); 25–26 December (Christmas) (Europa Worldonline, undated, accessed on 5 January 2011). [59a] (Public Holidays)

## MAP

1.08 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 *World Factbook*, Kenya, updated 20 January 2011, (CIA World Factbook) 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.” [3a]



- 2.02 The International Monetary Fund, in its *World Economic Outlook* database, dated October 2009, estimated Kenya's Gross Domestic Product (GDP) in 2009 was 30.212 billion US dollars, with inflation estimated to be 12 per cent. [6a] Economic growth in Kenya in 2009 reached 2.6 per cent of GDP (World Bank, *Kenya Economic Update*, June 2010). [5a]
- 2.03 Kenya's economy is dominated by the service industry, particularly communications, travel and tourism (World Bank, *Kenya Economic Update*, June 2010). [5a] The United States State Department Background note on Kenya, updated 28 December 2010, listed agriculture, in particular cultivation of tea, coffee and horticultural products, as the second biggest sector in Kenya, with industry, particularly the production of petroleum products, the third largest. [4a] Kenya's main exports included tea, coffee, flowers and vegetables accounting for around 26% of its GDP in 2009 (World Bank, *Kenya Economic Update*, June 2010). [5a] (Executive summary, page v)
- 2.04 The currency is the Kenyan Shilling; as of 5 January 2011 the exchange rate was KSh 125.785 per Pound Sterling. [60a]
- 2.05 *The Business Daily* reported on 4 March 2010 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 gave a 2008 estimate of unemployment in Kenya as 40 per cent. [3a]

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### 3. HISTORY (1963 TO FEBRUARY 2010)

This section provides a brief history of events since independence from the United Kingdom in 1963 to February 2010, with the focus on recent events. For more detail see the [US State Department Background Note](#), updated 28 December 2010 [4a], the Freedom House report, [Freedom in the World 2010, Kenya](#), May 2010 [18a] and [BBC News Timeline](#), updated 24 November 2010. [10c] Also see [Annex A: chronology of major events](#).

- 3.01 The US State Department's *Background Note* on Kenya, updated 28 December 2010, stated:

"Kenya became independent [from the UK] on December 12, 1963, and the next year joined the Commonwealth. Jomo Kenyatta, an ethnic Kikuyu and head of the Kenya African National Union (KANU), became Kenya's first President. The minority party, Kenya African Democratic Union (KADU), representing a coalition of small ethnic groups that had feared dominance by larger ones, dissolved itself in 1964 and joined KANU.

"A small but significant leftist opposition party, the Kenya People's Union (KPU), was formed in 1966, led by Jaramogi Oginga Odinga, a former Vice President and Luo elder. The KPU was banned shortly thereafter, however, and its leader detained. KANU became Kenya's sole political party. At Kenyatta's death in August 1978, Vice President

Daniel arap Moi, a Kalenjin from Rift Valley province, became interim President. By October of that year, Moi became President formally after he was elected head of KANU and designated its sole nominee for the presidential election.

"In June 1982, the National Assembly amended the constitution, making Kenya officially a one-party state. Two months later, young military officers in league with some opposition elements attempted to overthrow the government in a violent but ultimately unsuccessful coup. In response to street protests and donor pressure, parliament repealed the one-party section of the constitution in December 1991. In 1992, independent Kenya's first multiparty elections were held. Divisions in the opposition contributed to Moi's retention of the presidency in 1992 and again in the 1997 election. Following the 1997 election Kenya experienced its first coalition government as KANU was forced to cobble together a majority by bringing into government a few minor parties.

"In October 2002, a coalition of opposition parties formed the National Rainbow Coalition (NARC). In December 2002, the NARC candidate, Mwai Kibaki, was elected the country's third President. President Kibaki received 62% of the vote, and NARC also won 59% of the parliamentary seats. Kibaki, a Kikuyu from Central province, had served as a member of parliament since Kenya's independence in 1963. He served in senior posts in both the Kenyatta and Moi governments, including Vice President and Finance Minister. In 2003, internal conflicts disrupted the NARC government. In 2005 these conflicts came into the open when the government put its draft constitution to a public referendum – key government ministers organized the opposition to the draft constitution, which was defeated soundly. In 2007, two principal leaders of the movement to defeat the draft constitution, Raila Odinga and Kalonzo Musyoka – both former Kibaki allies – were presidential candidates for the Orange Democratic Movement (ODM) party and the Orange Democratic Movement-Kenya (ODM-K) party, respectively. In September 2007, President Kibaki and his allies formed the coalition Party of National Unity (PNU). KANU joined the PNU coalition, although it was serving in parliament as the official opposition party.

"On December 27, 2007, Kenya held presidential, parliamentary, and local government elections. While the parliamentary and local government elections were largely credible, the presidential election was seriously flawed, with irregularities in the vote tabulation process as well as turnout in excess of 100% in some constituencies. On December 30, the chairman of the Electoral Commission of Kenya declared incumbent Mwai Kibaki as the winner of the presidential election. Violence erupted in different parts of Kenya as supporters of opposition candidate Raila Odinga and supporters of Kibaki clashed with police and each other. The post-election crisis left about 1,300 Kenyans dead and about 500,000 people displaced. In order to resolve the crisis, negotiation teams representing PNU and ODM began talks under the auspices of former UN Secretary General Kofi Annan and the Panel of Eminent African Persons (Benjamin Mkapa of Tanzania and Graca Machel of Mozambique). On February 28, 2008, President Kibaki and Raila Odinga signed a power-sharing agreement, which provided for the establishment of a prime minister position (to be filled by Odinga) and two deputy prime minister positions, as well as the division of an expanded list of cabinet posts according to the parties' proportional representation in parliament. On March 18, 2008, the Kenyan parliament amended the constitution and adopted legislation to give legal force to the agreement. On April 17, 2008 the new coalition cabinet and Prime Minister Odinga were sworn in. The Kofi Annan-led political settlement also set out a reform agenda to address

underlying causes of the post-election violence. The focus is on constitutional, electoral, land, and institutional reform as well as increased accountability for politically motivated violence and corruption. Negotiation on many key elements of reform is ongoing.” [4a]

- 3.02 Human Rights Watch report, *Establishing a Special Tribunal for Kenya and the Role of the International Criminal Court*, dated 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]

- 3.03 The BBC News Timeline stated that in October 2009, Kenya confirmed that it would “co-operate with the International Criminal Court (ICC) to try key suspects in post-election violence”. A draft constitution was published in November 2009 ahead of the planned referendum in 2010. In February 2010, “President Kibaki overturn[ed] a decision by Prime Minister Odinga to suspend the country's agriculture and education ministers over alleged corruption. The row threaten[ed] the coalition government.” [10c]

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## 4. RECENT DEVELOPMENTS (FEBRUARY 2010 TO JANUARY 2011)

### INVESTIGATION OF POST-ELECTION VIOLENCE

- 4.01 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 in 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]
- 4.02 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]

## NEW CONSTITUTION

4.03 On 14 June 2010 *BusinessWeek* reported that:

"An explosion at a rally to oppose a proposed constitution in the Kenyan capital, Nairobi, killed six people and injured at least 75, Kenya Television News reported, citing hospital workers.

"The government will do anything possible to uncover those who are behind this very heinous act,' Internal Security Minister George Saitoti told Nairobi-based television station KTN late yesterday.

"The rally in a downtown park [Uhuru] was led by religious leaders and politicians who oppose a draft constitution that is scheduled to be put to a national referendum on Aug. 4. They disagree with a clause that stipulates women can terminate pregnancies that

pose a risk to their health and another, which is also in the current constitution, that recognizes Islamic law.” [12a]

- 4.04 A BBC News report 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] The constitution was adopted 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”. It was also reported that “Sudanese President Omar al-Bashir was present at the event, despite being wanted for war crimes”. (BBC News, 27 August 2010) [10b]

See following section for text of the [Constitution](#).

## SECURITY SITUATION

- 4.05 On 21 December 2010, it was reported by BBC News that

“A bomb explosion at a bus station in Nairobi [on 20 December 2010] was caused by a grenade carried by a man believed to be Tanzanian, Kenya's police commissioner has said...Mathew Iteere said the suspect had been boarding a bus to Uganda but became nervous due to security checks, causing him to drop the grenade...The man is believed to have been one of the three people killed in Monday's blast, which wounded 39 others...Ugandan police have said al-Shabab militants may be linked to the attack.” [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, 27 August 2010). [10b] The Human Rights Watch World Report 2011, covering events of 2010, published 24 January 2011, stated:

“The new constitution, supported by 67 percent of Kenyan voters on August 4, was the culmination of four decades of effort. The new coalition government committed to a new constitution, among other reforms, after post-election violence in 2007 in which 1,300 people died and hundreds of thousands were displaced.

“The new constitution addresses several longstanding concerns, namely the concentration of power in the executive, the absence of checks and balances, and the use of land as a tool of political patronage. It creates a smaller cabinet of ministers who do not have to be parliament members; reforms the legislature by creating an upper house, the Senate; and devolves considerable power to a new tier of county governments and governors. In an effort to address the judiciary's lack of independence, the new constitution creates a new judiciary service commission to nominate judges, creates a new post of director of public prosecutions, and requires parliamentary approval for appointing the attorney general. It also enshrines in law a land commission, which removes the president's ability to allocate land, review existing land holdings, and set minimum and maximum holdings of land.” [9h]

- 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 However, in the same statement Amnesty 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]

The Constitution of Kenya can be accessed [here](#). [22a]

See [Recent developments](#) for political developments leading to the revised constitution.

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## 6. POLITICAL SYSTEM

- 6.01 Kenya is described by the US State Department (USSD) Report on *Human Rights Practices 2009*, Kenya, released on 11 March 2010, as: "A republic with a mixed presidential and parliamentary system. It has a strong president and a prime minister with unclearly defined executive powers. There is a unicameral National Assembly. [4b] (introductory section) However the Central Intelligence Agency *World Factbook*, Kenya, updated 20 January 2011, (CIA World Factbook) 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 USSD *Background Note: Kenya*, updated December 2010, observed that
- "The unicameral National Assembly consists of 210 members elected to a term of 5 years from single-member constituencies, plus 12 members nominated by political parties on a proportional representation basis. The president appoints the vice president; under the power-sharing agreement, the president with the agreement of the prime minister makes the initial appointment of cabinet members from among those elected to the assembly. Subsequent cabinet appointments are made by the president in consultation with the prime minister, in accord with the power-sharing agreement's proportional division of cabinet positions. The attorney general and the speaker are ex-officio members of the National Assembly." [4a] (Government)
- 6.03 The CIA World Factbook provided a basic description of the executive and legislature:
- "Executive branch:** chief of state: President Mwai KIBAKI (since 30 December 2002); Vice President Stephen Kalonzo MUSYOKA (since 10 January 2008);
- "[H]ead of government: President Mwai KIBAKI (since 30 December 2002); Vice President Stephen Kalonzo MUSYOKA (since 10 January 2008); note - the roles of the president and prime minister are not well defined at this juncture; constitutionally, the president remains chief of state and head of government, but the prime minister is charged with coordinating government business [...the new constitution abolishes the position of prime minister... (Constitution)]
- "[C]abinet: Cabinet appointed by the president and headed by the prime minister, who is the leader of the largest party in parliament ...
- "[E]lections: president elected by popular vote for a five-year term (eligible for a second term); in addition to receiving the largest number of votes in absolute terms, the presidential candidate must also win 25% or more of the vote in at least five of Kenya's seven provinces and one area to avoid a runoff; election last held on 27 December 2007 (next to be held in December 2012); vice president appointed by the president.
- "[E]lection results: President Mwai KIBAKI reelected; percent of vote - Mwai KIBAKI 46%, Raila ODINGA 44%, Kalonzo MUSYOKA 9%.
- "Legislative branch:**
- "[U]nicameral National Assembly or Bunge usually referred to as Parliament (224 seats; 210 members elected by popular vote to serve five-year terms, 12 nominated members appointed by the president but selected by the parties in proportion to their

parliamentary vote totals, 2 ex-officio members) [the new constitution... establishes a bicameral legislature; many details have yet to be finalized and will require significant legislative action... (Constitution)]

“[E]lections: last held on 27 December 2007 (next to be held in December 2012).

“[E]lection results: percent of vote by party - NA; seats by party - ODM 99, PNU 46, ODM-K 16, KANU 14 other 35; ex-officio 2; seats appointed by the president - ODM 6, PNU 3, ODM-K 2, KANU 1 [see Political parties below for titles of parties in full]”. [3a] (Government)

## LOCAL ADMINISTRATION

6.04 USSD *Background Note: Kenya*, updated 28 December 2010, stated that

“Local administration is divided among 140 rural districts, each headed by a commissioner appointed by the president. The President has announced additional districts, but these are not yet legally constituted. The districts are joined to form seven rural provinces. Nairobi has special provincial status. The Ministry of State in charge of Provincial Administration and Internal Security supervises the administration of districts and provinces.

“Once implemented, the new constitution that was approved on August 4, 2010 will result in significant changes to this structure, including greater devolution of power to 47 counties and creation of a second legislative chamber with responsibility for representing the interests of the counties and regions. Implementation of the new constitution will take several years.” [4a] (Government)

## POLITICAL PARTIES AND LEADERS

6.05 The CIA World Factbook listed the main political parties:

“Forum for the Restoration of Democracy-Kenya or FORD-Kenya [Musikari KOMBO]; Forum for the Restoration of Democracy-People or FORD-People [Reuben OYONDI]; Kenya African National Union or KANU [Uhuru KENYATTA]; National Rainbow Coalition-Kenya or NARC-Kenya [Martha KARUA]; Orange Democratic Movement or ODM [Raila ODINGA]; Orange Democratic Movement-Kenya or ODM-K [Kalonzo MUSYOKA]; Party of National Unity or PNU [Mwai KIBAKI]; Shirikisho Party of Kenya or SPK [Chirau Ali MWAKWERE]” [3a] (Government)

See also [Recent developments](#) and [Constitution](#). For information on political rights in practice see [Political affiliation](#) and [Freedom of speech and media](#). For a list of political organisations in Kenya, see [Annex B: Political organisations](#).

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## Human Rights

### 7. INTRODUCTION

- 7.01 Human Rights Watch stated in its *World Report 2011*, chapter on Kenya covering events in 2010, released on 24 January 2011:

“In a historic move, Kenya’s citizens voted overwhelmingly in favor of accountability and reform when they supported a new constitution by a two-thirds majority in August 2010. Constitutional reform was among the steps to which the coalition government agreed after the 2007 post-election violence. It paves the way for restructuring the government, establishing a land commission, and carrying out sweeping changes to the police and judiciary. The year also saw the prosecutor of the International Criminal Court open an investigation into the post-election violence. Kenya continues to suffer the regional effects of Somalia’s crisis, with a steady flow of refugees entering the country; some suffered serious abuses at the hands of Kenyan police as they tried to find safety.” [9h]

- 7.02 The US State Department *Report on Human Rights Practices 2009*, Kenya, released on 11 March 2010, stated:

“The following human rights problems were reported: abridgement of citizens’ right to change their government; unlawful killings, torture, rape, and use of excessive force by police and the military; mob violence; police corruption and impunity; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary interference with the home; prolonged pretrial detention; executive influence on the judiciary; restrictions on freedom of speech, assembly, and of the press; forced return of refugees and societal abuse of refugees including killing and rape; official corruption; violence and discrimination against women including female genital mutilation; child prostitution and labor; trafficking in persons, including allegations of recruitment of child soldiers to fight in Somalia, and minors who were internally displaced; interethnic violence; and lack of enforcement of workers’ rights.” [4b] (Introductory section)

- 7.03 The Amnesty International *Annual Report 2010*, Kenya, covering events in 2009, released in May 2010 observed:

“The authorities showed little political will to ensure that those responsible for human rights abuses committed during the post-election violence of 2007/8 were brought to justice and that victims received adequate reparations. Impunity for state security officials who carried out unlawful killings and torture was not addressed. Human rights defenders faced considerable risks and threats. Violence against women and girls remained widespread. Thousands of people were forcibly evicted from their homes. The President commuted to life imprisonment the sentences of more than 4,000 prisoners who had been on death row for prolonged periods. Courts continued to impose death sentences but there were no executions.” [15a]

- 7.04 The Freedom House report, *Countries at the Crossroads 2010*, Country Report – Kenya, written by Thomas R. Lansner, adjunct associate professor of International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, observed:

“Absent genuine efforts to transcend ethnic politics and instill accountability for the political—and potentially criminal—acts of senior political leaders before scheduled

2012 elections, Kenya's prospects are bleak. The country is experiencing a simmering crisis that threatens to again erupt into bloody conflict that could tear it apart along ethnic lines, as nearly happened after profoundly flawed elections in December 2007. The country's ethnic divisions have been reinforced by successive generations of politicians who have used patronage to build personal and party loyalties based on ethno-regionalism. The bitterly divided, and effectively unelected, coalition government formed in April 2008 has thus far proved unable to address the many grave problems facing the nation... During the 1990s, Kenya gradually transitioned from authoritarian rule toward functional multiparty democracy. The 2002 election as president of Mwai Kibaki, a longtime top KANU leader and former vice president and finance minister who broke with the party in 1992, raised hopes for a peaceful evolution to more equitable and responsive governance... [but] many of the problems and worst practices of a one-party, patronage-based state were carried over into the new democratic structures. Corruption endured and remains rife, impairing governmental effectiveness and damaging people's faith in elected leaders. Compounding the problem is Kenya's origin as a British colonial creation that grouped disparate ethnicities into an externally-imposed polity within artificially drawn frontiers. Rapid population growth... has helped intensify competition for land and resources among ethnic groups... Group violence is deployed as a political tool through various armed militia groups that often operate with impunity. Attacks on individual citizens, activists, journalists, and politicians, many of them deadly, continue and are mostly left unresolved. Police brutality is widespread and rarely punished. And perhaps most damaging, the failure to reverse the broad perception that government power continues to disproportionately reward one ethnic group—under current circumstances, President Kibaki's Kikuyu—has pushed politics perilously further from ideological argument towards identity-based conflict.

"Kenya's democratic space has undoubtedly expanded since Kibaki replaced Moi in 2002. Independent media have grown stronger and fight to expose wrongdoing by official and non-state actors, although some media outlets have promoted sectarian violence. Civil society is diverse and active across sectors including basic rights, the environment, gender equity, and rural development, and today it is this arena that appears to be the country's best hope for transcending ethnic divisions." [18c] (Introduction)

7.05 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]:

"... 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." [15b]

7.06 The website, [Bayefsky.com](http://Bayefsky.com), updated on 12 November 2010, listed the UN conventions/treaties ratified (includes ratification, accession and succession) by Kenya. 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 US State Department *Country Reports on Human Rights Practices 2009* (USSD Report 2009), Kenya, released on 11 March 2010, described the security forces:

"There was a large internal security apparatus that included the Kenyan National Police Service (KNPS) and its Criminal Investigation Department, responsible for criminal investigations, and Antiterrorism Prevention Unit; the Kenya Administration Police (KAP), which has a strong rural presence throughout the country, constitutes the security arm of the civilian provincial administration structure, and has the mandate for border security; the Kenya Wildlife Service (KWS), responsible for security and counterpoaching operations within the national parks; the paramilitary General Services Unit (GSU), responsible for countering uprisings and guarding high-security facilities; and the National Security Intelligence Service (NSIS), which collects intelligence. The KNPS, KAP, and GSU are under the authority of the Ministry of State for Provincial Administration and Internal Security. The NSIS is under the direct authority of the president. There was a public perception that police often were complicit in criminal activity." [4b] (section 1d)

- 8.02 Jane's *Sentinel Country Risk Assessment*, Kenya, section on Security and Foreign forces, updated on 2 November 2009, estimated the police numbered 35,000 personnel and further stated that:

"The Kenyan police force operates 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 a Tourism Police Unit to provide security for tourists." [14b]

- 8.03 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] The [Kenya Police website](#) provides further details of, amongst other things, the police's structure, mission, relevant criminal law and contact details.

- 8.04 The USSD Report 2009 noted that: "[The] Police were ineffective and corrupt, and impunity was a problem. In 2008 OFFLACK noted that bribery in police recruitment was a problem. The police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations." [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, 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 "the police force lacks sufficient training, discipline and professionalism." [61a] (p6-7, paragraphs 5-6)



- 8.05 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)

- 8.06 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, paragraph 18)

- 8.07 The USSD Report 2009 observed that: “In September [2009], in response to an interim report by the National Task Force on Police Reforms, the president replaced police commissioner Hussein Ali and the senior police leadership. The final task force report was released in November [2009]; by year's end the government had not appointed the Police Reform Implementation Commission charged with overseeing the implementation of the recommended reforms”. [4b] (section 1d). On the same subject a BBC News article dated 8 September 2009 reported that the Kenyan Government “... replaced almost all of the country's most senior police officers...ex-police commissioner Maj Gen Hussein Ali has been moved to the Post Office... His replacement is the respected Mathew Iteere, who used to command the elite General Services Unit - the feared police shock troops often called in to control civil unrest.” [10e]

- 8.08 The Transparency International *East African Bribery Index 2010*, published on 22 July 2010, found that the Kenyan Police Department is the most corrupt Kenyan institution, and is considered the third most corrupt institution in East Africa. [13b] (p14)

- 8.09 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:

“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]

- 8.10 However the pace of police reform remained slow. 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 re-invention of illegal groups, the return of macabre killings and the resurgence of extra-judicial killings point to the need 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; paragraphs 28-29)

- 8.11 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]

8.12 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]

8.13 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 need 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.<sup>16</sup> 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)

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

- 8.14 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, paragraphs 35-36)

- 8.15 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

- 8.16 The Central Intelligence Agency *World Factbook*, Kenya, updated 20 January 2011 (CIA World Factbook) 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 in November 2009, reported that “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)
- 8.17 Jane’s also noted 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. The military command was seen to have acted with dignity and professionalism in playing a politically neutral role during the December 2002 elections and transition of power after 39 years of KANU rule. Nevertheless, the security forces were heavily politicised and ethnicised under KANU and in his first months in office in 2003, President Kibaki reshuffled a number of positions in the military and security forces command in order to reduce KANU's political influence in the institution.” [14a] (Armed Forces, Assessment)
- 8.18 The Freedom House, *Countries at the Crossroads 2010, Country Report – Kenya* (FHCC Report 2010), written by Thomas R. Lansner, adjunct associate professor of International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, observed:
- “Kenya's military numbers about 22,000 personnel. It was closely aligned with the authoritarian KANU regime, and individuals from President Moi's Kalenjin group were awarded many senior posts during his rule. The only overt effort to take power was an aborted coup in 1982, and the army has continued to accept civilian oversight during the country's fitful democratic transition. There are fears that the military could fracture along ethnic lines if it is asked to suppress large-scale ethnic conflict. Most domestic security operations are carried out by various police units, including highly trained paramilitary groups.” [18c] (Rule of law)

## HUMAN RIGHTS VIOLATIONS BY GOVERNMENT FORCES

- 8.19 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)
- 8.20 The Human Rights Watch (HRW) *Annual Report 2010, Kenya*, covering events in 2009, released on 20 January 2010, stated:



"A damning United Nations report [UN Special Rapporteur's report released in May 2009] on widespread abuses by, and impunity of, the security forces was followed by the police commissioner's removal in August [2009], but incidents of extrajudicial killings and excessive use of force by police and military continued unchecked in 2009. There were also renewed reports of systematic torture and mistreatment of civilians during disarmament operations. Kenya's coalition government, formed in the wake of the flawed 2007 general elections, made little progress in implementing promised reforms." [9b]

- 8.21 Amnesty International's *Annual Report 2010*, Kenya, covering events in 2009, released in May 2010, (AI Annual Report 2010) stated:

"In February [2009], the UN Special Rapporteur on extrajudicial, summary or arbitrary executions conducted a fact-finding mission to Kenya. His report issued in May confirmed systematic and widespread human rights violations by the police and other security personnel. It documented unlawful killings, torture and other human rights violations by the police during the post-election violence in 2007/8, in security operations against alleged members of the outlawed Mungiki vigilante group, and during a 2007 security operation in Mount Elgon in western Kenya." [15a]

- 8.22 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.

"While the existing situation is bad, it is far from intractable. If it so chooses, Kenya can significantly reduce the prevalence of unlawful killings. Much of the institutional and legal structures needed to carry the reform process forward is in place. The international community is keen to support a genuine reform programme. Kenyan citizens are politically engaged and civil society is professional and serious, and contributes

substantially to the protection of human rights by monitoring abuses and proposing reforms.” [61a] (Summary, p2-3)

- 8.23 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, paragraph 45)

- 8.24 The FHCC Report 2010 observed: “Kenyans enjoy little protection against abuse by police and security forces, and in some areas of the country also fall prey to organized criminals who appear linked to local political leaders. Numerous credible allegations have emerged in recent years of extrajudicial killings and other assaults on suspected criminals or ordinary citizens by police, who operate with virtual impunity.” [18c] (Civil liberties)

- 8.25 The USSD Report 2009 stated that: “Press and civil society 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.” [4b] (section 1d)

- 8.26 The *Daily Nation* reported on 22 September 2010 that:

“The Kenya Human Rights Commission (KHRC) [in their *Biannual Human Rights Report*] documented 43,922 cases of violation of civil and political rights between 2005 and 2010. More than 70 per cent of these cases are attributed to the state security organs and judiciary directly or indirectly... Most of these abuses, including violation of women’s and children’s rights took place between July and December 2007 when campaigns for the General Election was at its peak and the eruption of chaos after the poll.

“These include police brutality, arbitrary arrests and harassment (1247), extra judicial killings (1791), torture (1151), filthy and harsh prison conditions (6155), denial of citizens’ freedom of expression and assembly (50), limiting freedom of the media (19) and restricting freedom of information (8).

“Other forms include general insecurity in the country (4711), disappearance of Mungiki adherents (954), mob violence (639), deprivation of right to life (2740) and violation of women’s and children’s rights (10761 and 1291 respectively).

“According to the report, cases of police brutality, arbitrary arrests and harassment hit an all-time high between July and December 2007 to reach above 500.

“Extra judicial killings and police torture too increased during this period. This was at the height of the 2007 General Election and the beginning of the post-election violence.

“The period between January and June 2008 saw a major drop in extra-judicial killings from 250 previously to less than 50. This coincides with the time UN Special Rapporteur Prof Philip Alston was investigating the extra-judicial killings by the state security organs.

“Police brutality, arbitrary arrests and harassment and torture also went down to below 400 during the same period.

“But the cases of these arbitrary killings rose again between July and December 2008 to above 100.

“The subsequent period [January 2009 to June 2009] saw cases of extra-judicial killings go up above 200 within the six-month period.” [16q]

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

## Arbitrary arrest and detention

See [Arrest and detention – legal rights](#) for information on laws codifying arrest and detention.

8.27 The USSD Report 2009 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)

8.28 The USSD Report 2009 also observed that:

“Police also often did not enter suspects into police custody records, making it difficult to locate detainees... Police often stopped and arrested citizens to extort bribes. Since few could afford even a modest bribe, many languished in jail unless family or friends raised the bribe money demanded by police... Muslim leaders claimed that police indiscriminately arrested Muslims on suspicion of terrorism and that some suspects subsequently disappeared, but the police denied this.

“There were reports during the year that police arbitrarily arrested persons demonstrating against the government.” [4b] (section 1d)

8.29 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, paragraph 12)



## Torture and use of excessive force

8.30 The USSD Report 2009 noted:

“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 frequently used violence and torture 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 condemned numerous cases of torture and indiscriminate police beatings. In 2008 [NGO, the Independent Medico-Legal Unit] IMLU received 772 cases alleging torture by security officers, compared with 397 in 2005, although it noted that the number of torture cases was likely higher... There were allegations of rape by security forces, including the rape of women in prisons, as well as in camps for internally displaced persons (IDPs) and refugee and among asylum seekers crossing into the country from Somalia. The Center for Rights Education Awareness alleged in 2008 that policemen raped women in the Kibera slum in Nairobi and those seeking refuge in police stations.” [4b] (section 1c)

8.31 The same source noted that: “During the year [2009] there were reports that persons died while in police custody or shortly thereafter, some as a result of torture.” [4b] (section 1a)

See also subsection on [Extra-judicial killing](#) below for further information on deaths in custody.

8.32 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, paragraph 27)

8.33 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, paragraph 13)

8.34 Referring to the UN CAT Report 2009, the FFCC Report 2010 observed that:

“Kenya ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, and after a long delay submitted its first state report in June 2007. In January 2009, the UN Committee against Torture responded by

welcoming the introduction in Kenya of several formal mechanisms that, if properly empowered, could reduce the prevalence of torture, including the [Kenya National Commission for Human Rights] KNCHR, the launch of the Governance, Justice, Law and Order Sector Reform Programme, and the establishment of the independent Police Oversight Board. Despite such official commitments, torture remains commonplace. The Kenyan NGO Independent Medico-Legal Unit, which works to rehabilitate torture victims, has issued numerous reports with their testimonies and detailed forensic evidence of torture in Kenya. The group states that ‘the need for clear, comprehensive and consolidated legislation on torture cannot be overemphasized.’” [18c] (Civil liberties)

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

8.35 The HRW *Annual Report 2010* stated:

“Allegations of torture and ill-treatment of civilians by police and military in the course of an October 2008 joint police-military disarmament operation in Mandera district surfaced within days of the start of the operation. Human Rights Watch investigated the allegations in northeast Kenya in February 2009 and found that security forces tortured scores of men, beat and injured at least 1,200 people (including one man who died from his wounds), and raped at least a dozen women over the course of the three-day operation. Human Rights Watch called for an independent investigation into the abuses and for prosecutions of the officers responsible for directing the operation, neither of which occurred.

“In February 2009 similar abuses were reported in Samburu when, in response to fighting between different groups, the Kenyan police and military confiscated cattle and beat civilians.” [9b]

8.36 On the use of force by the security forces, the USSD Report 2009 noted the police use of “excessive violence” to disperse demonstrators resulted in injuries in 2009 (section 1c) but unlike 2008 there were no reported deaths. [4b] (section 1a) 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 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, paragraph 21-22)

See also [Prison conditions](#) and subsection on [Avenues for complaint](#) below

## Extra-judicial killings

8.37 The HRW *Annual Report 2010* stated that extra-judicial killings occur in Kenya:

“The police regularly targeted civilians for killings and other violence in 2009, as in previous years. Members of rival factions within the regular and administration police were also victims of extrajudicial killings. The UN special rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, investigated police abuses and other serious crimes in the course of the government’s 2008 counterinsurgency campaign in Mt. Elgon, during a February 2009 visit to Kenya.

“In his report to the UN Human Rights Council, Alston noted widespread extrajudicial killings by the police that ‘clearly implicated senior officials,’ including the police commissioner. He also found compelling evidence that at least 200 people had been killed or were “disappeared” by the security forces in Mt. Elgon. Alston called for Police Commissioner Hussein Ali to be replaced and for Attorney General Amos Wako to resign, singling them out as key individuals ‘with direct responsibility for the current state of affairs.’ Ali was replaced as police commissioner in August, but the government failed to investigate or prosecute security forces implicated in the Mt. Elgon abuses.” [9b]

8.38 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)

8.39 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, paragraphs 5-6)

8.40 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, paragraphs 9-10)

8.41 The USSD Report 2009, referring to the UN Special Rapporteur investigations and report stated:

“In February [2009] Philip Alston, the UN special rapporteur on extrajudicial, summary or arbitrary executions, released a report which found ‘that police in Kenya frequently execute individuals and that a climate of impunity prevails.’ The rapporteur also reported ‘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.’ The government rejected the findings of the Alston report and filed a protest with the UN. According to media reports, however, the Ministry of Internal Security acknowledged in a February [2009] letter to the Kenya National Commission on Human Rights (KNCHR) that police had killed 308 youths in 2008.” [4b] (section 1a)

8.42 The USSD Report 2009 also stated:

“In March [2009] unidentified gunmen, reportedly acting on orders from the commissioner of police, shot and killed Oscar Kamau King'ara, the executive director of the local NGO Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and Paul Oulu, OFFLACK's program coordinator [both interviewed by the UN special rapporteur in February 2009]; the gunmen first blocked King'ara's car at a roundabout. On the day of the killing, government spokesman Alfred Mutua accused OFFLACK of being a front for the Mungiki, the country's largest criminal organization, and criticized OFFLACK's role in providing information on extrajudicial killings of Mungiki members to the UN special rapporteur. In 2008 OFFLACK reported that police were linked with the continued disappearance and deaths of suspected Mungiki members. Police threatened and intimidated witnesses to the killings, and four witnesses went into exile. The prime minister requested international assistance to investigate the murders, but the minister for foreign affairs subsequently rejected such assistance, and no credible investigation had been conducted by year's end.

“Security forces continued to claim that police must shoot to kill to defend themselves when confronted by armed suspects.... The policy first was enunciated in 2005 and later reiterated in 2007 after armed criminals killed 43 police officers in the line of duty...

“Police killed numerous criminal suspects during the year, often claiming that the suspects had violently resisted arrest or were armed. From January to October, IMLU documented 33 alleged extrajudicial killings by police officers, the majority of whom were criminal suspects killed by police during apprehension. Human rights organizations claimed that police often planted weapons to justify the killing of criminal suspects during apprehension... During the year more than 25 suspected Mungiki members were killed by security forces.” [4b] (section 1a)

8.43 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)

8.44 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 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.” [160]

More details about the incident can be found at the [Daily Nation website](#).

8.45 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, paragraph 27) On the same subject the USSD Report 2009 observed that:



“During the year there were reports that persons died while in police custody or shortly thereafter, some as a result of torture. In 2008 the Independent Medico-Legal Unit (IMLU), a leading and credible human rights nongovernmental organization (NGO), reported one death while in police custody but noted that the actual number was likely higher; police often did not enter suspects into police custody records, impeding ability to track such cases.” [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

- 8.46 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, paragraphs 4 and 6)

- 8.47 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.

- 8.48 The USSD Report 2009 observed that: “The civil court system can be used to seek damages for victims of human rights violations. However, corruption, political influence over the civil court system, and chronic backlogs of cases limited access by victims to this remedy.” [4b] (section 1e)

- 8.49 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](#).

- 8.50 The USSD Report 2009 noted that: “The government took some steps to curb police abuse during the year; the media reported that several dozen police officers were arrested for petty corruption in the last quarter of the year.” [4b] (section 1d) However the AI Annual Report 2010 stated that: “No individual police officers or security personnel were brought to justice for unlawful killings and other violations committed in the recent past.” [15a]
- 8.51 The USSD Report 2009 also stated:
- “In May [2009] Internal Security Minister George Saitoti inaugurated the National Task Force on Police Reform [NTFPR], an 18-member team. The task force was guided by the Waki and Kriegler reports and the Vision 2030 plan. The report was completed in October [2009], following five months of gathering and analyzing views from the public and security experts.
- “In September [2009] President Kibaki removed Hussein Ali as police commissioner. Ali was identified as one of the key officials that were a stumbling block to reforms in the police force in official reports. His tenure was marred by extrajudicial killings of more than 500 Mungiki members in 2007 and also brutal police killings and human rights violations during the 2008 postelection violence. This move was widely hailed as a positive step by society, the NGO community, and international observers.” [4b] (section 4)
- 8.52 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)
- 8.53 The *Daily Nation* reported on 30 October 2010 that:
- “A Bill that seeks to improve policing by involving civilians in an oversight role has been agreed upon by all stakeholders and is awaiting action by the Cabinet... The Independent Policing Oversight Authority Bill 2010 could result in an open and accountable police and improve the country’s safety... ‘It will democratise police and make them accountable to the people and the law. Police will be internally and externally accountable and respect human rights and rule of law,’ said Philip Ochieng of Usalama Group, an umbrella organisation of 14 NGOs in the security sector.” [16p]
- 8.54 Commenting on the availability of information regarding cases of ill-treatment and prosecution of those who have violated rights, based on evidence submitted at the end of 2008, the UN CAT Report 2009 observed that: “The Committee regrets the lack of data and statistical information, especially on cases of torture, the type and number of complaints, prosecution and conviction of perpetrators as well as on compensation and rehabilitation of victims.” [62a] (p10, paragraph 30)

See subsection on [Impunity](#) below for description of government inaction against perpetrators of human rights violations.

## Public Complaints Standing Committee

8.55 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)

8.56 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)

## Police Oversight Board

8.57 The USSD Report 2009 noted that: “In September 2008 the Ministry of Provincial Administration and Internal Security established a police oversight board to hear public complaints and recommend disciplinary actions. By year’s end [2009] the board was not functional due to a lack of political will and police concerns that they were not represented.” [4b] (section 4)

8.58 The UN SR Report 2009 stated, following observations obtained in February 2009, that:

“On 4 September 2008, the Minister of State for Provincial Administration and Internal Security established a Police Oversight Board (POB). While the creation of such a board should have been a positive, it exists on paper only, devoid of offices, a secretariat, any full-time members, and the powers it would need to be effective.

“It can ‘receive’ complaints from the public and ‘evaluate’ them, but its investigative powers are entirely inadequate. It can do no more than make recommendations to the Commissioner of Police, and has no authority to enforce its recommendations, make any binding decisions, or impose disciplinary measures on police officers. The board

was set-up not by legislation, but by the Minister through a gazette notice. It can thus be dismantled by decision of the Minister. Its members are appointed and dismissed by the Minister, and no requisite qualifications are set out. In sum, the board lacks the independence and powers required to achieve even minimal accountability.” [61a] (p17, paragraphs 36-37)

## **Kenya National Commission on Human Rights (KNCHR)**

8.59 The FFCC Report 2010 noted

“The autonomous KNCHR has the authority to review prison conditions and receive complaints regarding prison conditions, and serves as the primary rights watchdog and provider of redress for all Kenyan abuse victims. It is widely perceived as independent and has called attention to numerous rights issues while also attempting to formulate programs to improve rights awareness and protections throughout the government and society. It has the authority to order detainees released as well as compensation for rights abuse victims, but lacks prosecutorial powers.” [18c] (Civil liberties)

8.60 The USSD Report 2009 observed that:

“The KNCHR has some powers of a court, including the issuance of summonses and ordering the release of a prisoner or detainee, payment of compensation, or other lawful remedy; however, the government continued to ignore such summonses and orders. The police routinely refused to release suspects when ordered to do so by the KNCHR. During the year the attorney general filed a brief with the High Court arguing that the KNCHR should be stripped of judicial powers; the court has not issued a final ruling but did issue an injunction barring the KNCHR from convening investigatory panels. As a result, the KNCHR was barred from intervening in cases of police and judicial misconduct.” [4b] (section 1e)

See [Human rights institutions, organisations and activists](#) for more information on the KNCHR.

## **Impunity**

8.61 The USSD Report 2009 observed that:

“Impunity was a major problem. Police officers were rarely arrested and prosecuted for criminal activities, corruption, or for using excessive force. Authorities sometimes attributed the absence of an investigation into corruption or an unlawful killing to the failure of citizens to file official complaints. However, the required complaint form was available only at police stations, and the public was rather skeptical regarding a process that assigned the investigation of police abuse to the police themselves.” [4b] (section 4)

8.62 The USSD Report 2009 further stated:

“The government took only limited action in enforcing the law against security forces suspected of unlawfully killing citizens... In 2008 the government formed the Commission of Inquiry into Postelection Violence (CIPEV) as part of the internationally mediated political settlement. The CIPEV documented 405 gunshot deaths during the postelection period; it attributed the vast majority of these to police. Law enforcement authorities offered no evidence to contradict reports that police officers perpetrated the shooting deaths. The final CIPEV report recommended that the government establish a

special tribunal to investigate individuals suspected of such violence; however, no tribunal had been established by year's end, and the government had not systematically investigated or prosecuted individuals suspected of postelection violence through other means... No action was taken against security force members in the following 2008 killings of criminal suspects... No action was taken against security force members responsible for 2008 extrajudicial killings of Mungiki members or the October 2008 killing of a police officer who had cooperated with the KNCHR investigation of Mungiki killings." [4b] (section 1a)

8.63 The same source also noted that:

"Due to shortage of civilian state prosecutors in the legal system (73 civilian prosecutors nationwide compared to 350 police prosecutors), police were responsible for investigating and prosecuting all crimes at the magistrate court level; civilian prosecutors handled cases at the high court level. Police routinely ignored evidence of security force torture provided by IMLU and other human rights organizations. In most cases allegations of torture were not fully investigated and the perpetrators not charged.

"As part of reforms agreed to in the National Accord, in July [2009] the government established the Truth, Justice, and Reconciliation Commission (TJRC) whose mandate included the investigation of alleged cases of torture since independence. However, the TJRC had conducted no hearings by the year's end." [4b] (section 1c)

8.64 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)

8.65 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)

8.66 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)

8.67 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.

42 The main text of this COI Report contains the most up to date publicly available information as at 24 January 2011. Further brief information on recent events and reports has been provided in the Latest News section to 25 February 2011.



“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]

- 8.68 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]

See also [Abuses by non-government armed forces](#), [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.

For information on reforms to the police in Kenya, please see the [Report of the National Task Force on Police Reforms](#) (abridged version).

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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, (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 its 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).

## MUNGIKI

- 9.06 A BBC News article, published on 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, paragraphs 7-8)

- 9.07 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)
- 9.08 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)
- 9.09 *The Daily Nation* reported on 29 March 2010 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]
- 9.10 *The Daily Nation* reported on 29 March 2010 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]
- 9.11 *The Daily Nation* reported on 16 August 2010 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

9.12 In March 2010, the *Daily Nation* reported 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]

9.13 In July 2010, the *Daily Nation* reported 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]

- 9.14 However, a July 2010 article from *Radio France International* 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 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]

- 9.15 Further to this, *Daily Nation* reported on 5 July 2010 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.

“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. 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]

Further information on the Mungiki is available in the [Landinfo report](#).

## OTHER GROUPS

- 9.16 In February 2010, the *Daily Nation* reported that other groups within Kenya had formed:

“Milicias 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 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 Kaberege. 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 Thaaai 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]

- 9.17 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:

“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 need 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

- 10.01 Freedom House in its *Freedom in the World Report 2010*, Kenya, covering events in 2009, released in May 2010, stated that:

"The judiciary's actions have reflected the primacy of the executive branch for much of the period since independence, and judicial corruption remains an impediment to the rule of law. The courts are understaffed and underfinanced, leading to long trial delays that violate defendants' right to due process. The 2008 inquiry on postelection violence noted the public's lack of confidence in the judiciary and called for the establishment of a truth, justice, and reconciliation commission, which began work in 2009. The country has officially recognized Kadhi courts, which administer Sharia (Islamic law) for issues including marriage and inheritance in areas with a predominantly Muslim population." [18a]

- 10.02 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 its the universal periodic review (UPR) of Kenya held in May 2010, the UN Country Team in Kenya:

"... stressed that the judiciary is widely considered as lacking independence. The HR Committee was concerned about reports of serious dysfunction in the administration of justice, owing primarily to the lack of human and material resources and the slow pace

of proceedings. It noted with concern that due, inter alia, to widespread corruption, access to domestic courts and to judicial remedies is limited, and pointed to the frequent failure to enforce court orders and judgments as an additional cause of concern. In its 2006 follow-up response, Kenya noted that it has undertaken a number of measures to give the judiciary more control over its resources and to shield it from interference.” [61c] (p7, paragraph 34)

- 10.03 The US State Department *Country Reports on Human Rights Practices 2009, Kenya* (USSD Report 2009), released on 11 March 2010, noted that there were delays in attending court:

“Lengthy pretrial detention continued to be a serious problem that contributed to overcrowding in prisons. The government claimed the average time spent in pretrial detention on capital charges was 16 months; however, there were reports that many detainees spent more than three years in prison before their trials were completed... According to the chief justice, as of August 2007 there was a judicial backlog of nearly one million criminal cases, resulting in persons being detained for months before seeing a judge.” [4b] (section 1d)

See [Prison conditions](#)

- 10.04 With regard to the civil court system, the USSD Report 2009 stated that: “Widespread corruption existed at all levels of the civil legal system. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases. Court fees for filing and hearing cases – a daily rate of at least 2,040 shillings ([US]\$28) for arguing a civil case before a judge – effectively barred many citizens from gaining access to the courts.” [4b] (section 1e)

- 10.05 The same source further noted that:

“In May [2009] the government appointed a multidisciplinary task force to examine accelerating judicial reforms. The task force presented an interim report in June and the final report in August [2009]. The report was forwarded to cabinet for approval and once approved, a bill will be presented to parliament for vote. The main recommendations included hiring additional judicial personnel, standardization and automation of court processes, introduction of small claims courts, introduction of a permanent mechanism to handle complaints against the judiciary, and additional funding... The chief justice dealt with complaints against specific judges and magistrates; most complaints were mainly related to court management.” [4b] (section 4)

## ORGANISATION

- 10.06 The USSD Report 2009 stated that:

“The court system consists of the Court of Appeals, High Court, and various levels of magistrate courts, where most criminal and civil cases originate. The Court of Appeals is the highest court; the chief justice is a member of both the Court of Appeals and the High Court. All judges on the Court of Appeals and the High Court are appointed by the president upon recommendation of the Judicial Service Commission; magistrates are hired by the commission. The High Court has a criminal division that handles capital offences and other serious crimes. The bulk of criminal trials are conducted by

magistrate courts, while the High Court and Court of Appeals also hear appeals. Civil cases may be heard by any of the courts, depending on the nature of the case.

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

“Military personnel are tried by court-martial, and verdicts may be appealed through military court channels. The chief justice appoints attorneys for military personnel on a case-by-case basis. Military courts do not afford defendants all the rights that civilian courts provide. Military courts are not empowered to try civilians.” [4b] (section 1e)

- 10.07 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:

“[The Institute on Religion and Public Policy] IRPP reported that since Kenyan independence, Islamic Shari'a law has been permitted in cases where all parties are Muslim and, by the 1967 Kadhis' Courts Act, jurisdiction has been limited to certain districts and to strictly civil matters of personal status, marriage, divorce, or inheritance. There are a total of 17 Kadhis whose hierarchy is appointed by the Judicial Service Commission. IRPP added that, as a new Constitution is presently being written, the entrenchment of the Kadhis' courts has become a contentious issue between Muslims and Christians.” [61f] (p5, paragraph 26)

## INDEPENDENCE

- 10.08 The USSD Report 2009 stated:

“The constitution and law provide for an independent judiciary; however, the executive branch sometimes exercised political influence over the judiciary. The judiciary was corrupt at all levels. In 2006 the African Peer Review Mechanism, an African Union (AU) initiative which evaluates AU member states for conformance with commonly agreed political and economic standards, reported a ‘visible lack of independence of the judiciary.’ In January 2008, after the controversial announcement of the presidential results, the opposition leader refused to file a court challenge to the announcement because he did not expect a fair hearing... The president has extensive powers over appointments, including of the attorney general, chief justice, and appellate and high court judges. The president can dismiss judges and the attorney general upon recommendation of a special tribunal appointed by him. Although judges have life tenure, except for a few foreign judges hired under contract, the president has authority

over judicial appointments....The government occasionally used the legal system to harass critics. Local authorities continued to prosecute a 2008 case against a physician who helped document allegations of human rights abuses in the Mount Elgon region but dropped a case against a second witness.” [4b] (Section 1e)

- 10.09 The Freedom House, *Countries at the Crossroads 2010, Country Report – Kenya* (FHCC Report 2010), written by Thomas R. Lansner, adjunct associate professor of International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, observed:

“Kenya's judicial system... in practice is heavily dominated by the executive branch and permeated with corruption at all levels. The lack of judicial independence and integrity is a core factor permitting impunity for abuses by the country's most powerful groups and individuals. Reports by the Commonwealth (2002) and the International Commission of Jurists (2005) detailed dire deficiencies and offered clear suggestions for improvement. While the first Kibaki administration took up the mantle of reform and the government sacked some judges and magistrates, the structure of the judiciary, its lack of resources, and its susceptibility to external influences gravely subvert the rule of law in Kenya today.

“The president appoints the attorney general, chief justice, and Supreme Court, Court of Appeals, and High Court judges. The Judicial Service Commission advises on such appointments but is itself comprised of the chief justice, attorney general, chair of the Public Service Commission, and two High Court or Court of Appeals judges, all of whom are executive appointees. This process has created a judiciary that is largely beholden to the incumbent regime, although some individual jurists have demonstrated independence in seeking to enforce the law even at the highest levels despite demonstrated executive disdain for court decisions.” [18c] (Rule of law)

## FAIR TRIAL

- 10.10 The USSD Report 2009 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. A defendant's right to consult with an attorney in a timely manner was generally 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, provided it. During the year the government launched a National Legal Aid Office, but the program was not functional by year's end.

“Discovery laws are not defined clearly, further handicapping defense lawyers. Implementation of the High Court ruling that written statements be provided to the defense before trial was slow. Often defense lawyers did not have access to government-held evidence before a trial. The government sometimes invoked the Official Secrets Act as a basis for withholding evidence. Defendants can appeal a



verdict to the High Court and ultimately to the Court of Appeals. The legal system does not provide for trial by jury; judges try all cases.

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

“According to NGOs, the police practice of requiring an exam and testimony by a single police physician of victims of sexual assault resulted in substantial barriers to the investigation and prosecution of sexual violence cases.” [4b] (section 1e)

10.11 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)

10.12 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)

10.13 The FHCC Report 2010 observed that:

“Kenyan law presumes people charged with a crime to be innocent until proven guilty, guarantees a public hearing, and allows consultation with an attorney. The government provides attorneys only in capital cases, however, and most defendants cannot afford legal counsel. The government and courts sometimes withhold evidence from defendants by using secrecy laws, and the scale of free legal aid services does not match the enormous need. Courts are chronically underfunded and understaffed, and a daunting backlog of cases prevails. Legal requirements that people arrested 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 of 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 for most Kenyans.” [18c] (Rule of law)

## PENAL CODE

10.14 The Penal Code of Kenya is available on the [Kenya Law Reports website](#).

## CODE OF CRIMINAL PROCEDURE

10.15 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.

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## 11. ARREST AND DETENTION – LEGAL RIGHTS

11.01 The US State Department *Country Reports on Human Rights Practices 2009*, Kenya (USSD Report 2009), released on 11 March 2010, noted that:

“Under the criminal procedure code, police have broad powers of arrest. Police may make arrests without a warrant if they suspect a crime has occurred, is happening, or is imminent. Detainees in noncapital cases must be brought before a judge within 24 hours. Detainees in capital cases must be brought before a judge within 14 days; however, the government did not respect this law in practice. The courts dealt with this shortcoming by considering whether the constitutional rights of the accused had been breached. In many cases accused persons, including some murder defendants, were released because they had been held longer than the prescribed period.

“The right to prompt judicial determination of the legality of detention frequently was not respected in practice. The law provides pretrial detainees the right of access to family members and attorneys. When detainees could afford counsel, police generally permitted access; however, there were cases in which police refused access to lawyers. Family members of detainees frequently complained that access was only permitted on payment of bribes. There is a functioning bail system; however many suspects remained in jail for months pending trial because of their inability to post bail. Individuals charged with offenses that were deemed serious and capital offences are not eligible for bail pending trial.” [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 modified on 17 June 2010, 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: <a href="http://www.homeaffairs.go.ke">www.homeaffairs.go.ke</a>
Head of prison administration (and title)	Isaiah Samuel Osugo Commissioner of Prisons
Prison population total (including pre-trial detainees / remand prisoners)	46,662 at 5.6.2009 (national prison administration)
Prison population rate (per 100,000 of national	117 based on an estimated national population of

population)	39.8 million at mid-2009 (United Nations)		
Pre-trial detainees / remand prisoners (percentage of prison population)	43.3% (5.6.2009)		
Female prisoners (percentage of prison population)	4.5% (5.6.2009)		
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	98 (2009)		
Official capacity of prison system	20,892 (5.6.2009)		
Occupancy level (based on official capacity)	223.3% (5.6.2009)		
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)
	2008	45,000	(116)

[72a]

- 12.02 The US State Department *Report on Human Rights Practices in Kenya 2009* (USSD Report 2009), released on 11 March 2010, stated:

“Prison and detention center conditions continued to be harsh and life threatening. A KNCHR prison assessment during the year concluded that torture, degrading and inhuman treatment, unsanitary conditions, and extreme overcrowding were endemic in prisons. Most prisons, particularly men's prisons, continued to be severely overcrowded in part due to a backlog of cases in the judicial system. In May 2008 the director of health services for prison services stated that the country's 90 prisons held 48,000 prisoners but were designed to hold only 12,000 persons. The WKHRW [Western Kenya Human Rights Watch] reported that in September, Bungoma Prison near Mount Elgon held more than 1,100 prisoners in a facility with a 480-person capacity.

“Civil society organizations began visiting prisons in 2003, and these visits continued to reveal harsh conditions as well as allegations by prisoners of inhumane treatment, including torture. For example, in February the KNCHR documented beatings and assault by prison staff of prisoners at Nairobi Remand and Meru Women's prisons, and in April at Kisumu Women's Prison.



"In 2008 wardens in Kamiti Prison scalded prisoners with hot water and beat them during an operation to interdict contraband items. One person died, and 20 were hospitalized. Three wardens were suspended. At year's end a police investigation of the incident continued.

"In 2007 the Legal Resource Foundation released a report which stated that torture in prisons was commonplace and inflicted openly. Of 948 prisoners from 29 prisons interviewed, 83 percent claimed they were beaten, and 59 percent witnessed wardens mistreating other prisoners. Police did not appear to target any particular ethnic, religious, or social group for torture. Authorities did not take action against those accused of torture.

"Prisoners generally received three meals per day, but portions were inadequate, and they were sometimes given half rations as punishment. Water shortages, an issue outside prisons as well, continued to be a problem.

"Prison personnel stated that the rape of male and female inmates, primarily by fellow inmates, continued. Media reports indicated that it was also common for prison officials to rape female inmates. In September a transgender person alleged abuse by male prisoners and wardens in Nairobi's Kamiti Prison.

"Hundreds of prisoners died annually from infectious diseases spread by overcrowding, unhygienic conditions, and inadequate medical treatment. In August, 18 prisoners died of suspected tuberculosis and pneumonia in Kodiaga Prison in Kisumu. In July 2008 a Ministry of Home Affairs report on prison conditions estimated that 46 inmates died monthly because of overcrowding, unhygienic conditions, and poor health care.

"Prisoners were sometimes kept in solitary confinement far longer than the legal maximum of 90 days. Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who wanted to visit prisoners faced numerous bureaucratic and physical obstacles, each often requiring a bribe to overcome.

"There were no separate facilities for minors in pretrial detention. Civil society activists witnessed young children, women, and men sharing the same cells. In 2008 IMLU reported that underage boys were detained in Bungoma Prison. Additionally, a July 2008 government report on prison conditions noted that underage female offenders, who were ineligible for diversion to a lesser security training school, were housed with adult female prisoners.

"Some children under the age of four lived with their mothers in the 14 prisons for women. Official data were unavailable, but the Law Society of Kenya issued a report in December 2008 stating that 281 children lived with their mothers in prisons.

"The government permitted visits to prisons by local human rights groups during the year.

"Following the release during the year of the Madoka Committee report on prison conditions, the government increased investment in the prison system. New prison facilities and housing for prison staff were built, and bedding and meals for inmates improved although they were still considered inadequate by rights groups." [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* 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, paragraph 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, paragraph 40-41)

## VOTING RIGHTS

- 12.06 *Business Daily* reported in February 2010 that "... recent attempts at reforming prisons are laudable; but the matter of prisoner's right to vote has never been cracked in Kenya." [20a] BBC News further reported in 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 referendum, but correspondents say it may lead to further concessions for future elections." [10g]

## CHILDREN IN PRISON

- 12.07 The USSD Report 2009 stated:

"There were no separate facilities for minors in pretrial detention. Civil society activists witnessed young children, women, and men sharing the same cells. In 2008 IMLU reported that underage boys were detained in Bungoma Prison. Additionally, a July 2008 government report on prison conditions noted that underage female offenders, who were ineligible for diversion to a lesser security training school, were housed with adult female prisoners.

"Some children under the age of four lived with their mothers in the 14 prisons for women. Official data were unavailable, but the Law Society of Kenya issued a report in December 2008 stating that 281 children lived with their mothers in prisons.

"The government permitted visits to prisons by local human rights groups during the year.

"Following the release during the year of the Madoka Committee report on prison conditions, the government increased investment in the prison system. New prison facilities and housing for prison staff were built, and bedding and meals for inmates improved although they were still considered inadequate by rights groups." [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 2009*, dated 29 March 2010 (Amnesty death sentence report 2009), as a country that "... retain[s] 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] (p29)

13.03 The Amnesty death sentence report 2009 further stated that "... an unknown number of people were sentenced to death..." in Kenya in 2009 [16e] (p18) but also that "in August, the Kenyan government announced that more than 4,000 condemned prisoners would have their sentences commuted to terms of imprisonment. This is the largest ever mass commutation of condemned prisoners known to Amnesty International. Kenya continues to impose death sentences even though it has not carried out an execution since 1987." [15e] (p23) The US State Department *Report on Human Rights Practices in Kenya 2009*, released on 11 March 2010, stated that the commuted sentences were for those on "death row". [4b] (section 1d)

13.04 On 30 July 2010, it was reported by the *Daily Nation* that:

"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]

13.05 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 Jeseie 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]

13.06 Further to this, Hands Off Cain reported on 22 October 2010 that "a man and a woman were sentenced to death in Nairobi, Kenya, after being found guilty of the murder of an Italian Catholic priest in 2009." [73a]

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 activist](#), and [Freedom of speech and media](#)

### FREEDOM OF POLITICAL EXPRESSION

- 14.01 The US State Department *Report on Human Rights Practices in Kenya 2009* (USSD Report 2009), released on 11 March 2010, stated:

“The constitution and law provide citizens the right to change their government through free and fair multiparty elections, and citizens exercised this right through generally free and fair local and legislative elections held on the basis of universal suffrage. However, the manner in which the December 2007 presidential election results were tallied raised serious doubts as to whether this right was respected in practice on the presidential level.” [4b] (section 3)

- 14.02 The Freedom House report, *Freedom in the World 2010*, Kenya, released in May 2010, covering events in 2009, (FH Report 2010) noted that:

“Kenya is an electoral democracy. While there were few claims of irregularities in the December 2007 parliamentary polls, which the opposition won, reports on the flawed presidential vote highlighted apparent vote rigging and other administrative manipulations that had the effect of favoring the incumbent, Mwai Kibaki. The election commission nevertheless declared Kibaki the winner, and he was quickly sworn in. In September 2008, an international commission issued a final report stating that the legitimacy of the election results was undermined by several factors, including a defective voter registry and widespread fraud. The report also recommended electoral reforms that have yet to be fully implemented.

“The president is elected for a five-year term. Under the 2008 postelection compromise, he now shares power with a prime minister, who is the leader of the largest party or coalition in the National Assembly... 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 However, the Freedom House report, *Countries at the Crossroads 2010, Country Report – Kenya* (FHCC Report 2010), written by Thomas R. Lansner, adjunct associate professor of International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, noted that the parliamentary and legislative as well as the presidential elections in 2007 were flawed:

“Leading up the 2007 elections, political parties worked tirelessly to mobilize support throughout the country, usually with few official constraints. Legislative and local elections conducted concurrently were generally accepted as free and fair, despite localized problems that eventually proved far graver than observers had first suspected. ... Voter turnout was strong, polling was mostly orderly, and local parliamentary voting and results in most constituencies did not at first appear contentious. Reports later identified the recurrence of serious flaws that had been highlighted during the 2002 campaign. The Electoral Commission of Kenya (ECK), whose composition and competence was questioned even before the election, was in later analysis found to be grossly negligent in fulfilling its duties. Large areas of election conduct, from voter



registration to tallying ballots, fell far short of international standards and Kenyan law. The most detailed analysis of these widespread shortcomings was provided in an official report by the Independent Review Commission (IREC)... According to IREC, 'vote-buying and ballot-stuffing appear to be such extensive and universally condoned practices in Kenyan elections that the question can rightly be asked whether genuinely free and fair elections are at all possible,' adding, 'the conduct of the 2007 elections was so materially defective that it is impossible—for IREC or anyone else—to establish true or reliable results for the presidential and parliamentary elections.'

"Several observer groups, including those from the European Union and the Commonwealth, also found that the election process was seriously flawed... Reports from both groups noted a clear bias in state media toward President Kibaki and the PNU... New financial accountability structures and public financing for political parties were included in the 2008 Political Parties Act, but it is unclear whether loopholes will be closed and transparency mechanisms enforced... In the legislative portion of the elections, the ODM and its allies took 103 seats, while the PNU and its affiliates took 77. While the IREC report makes clear that the entire electoral process was severely compromised, early returns matched anticipated results and gave the opposition ODM a clear lead in parliamentary contests, with numerous incumbents and sitting ministers defeated." [18c] (Accountability and public voice)

14.04 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]

14.05 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 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]

- 14.06 The Kenya National Dialogue and Reconciliation (KNDR) Monitoring, *Review Report October 2010*, (KNDR 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)

- 14.07 The KNDR Review Report October 2010 further stated that

“Several factors, combined, led to a peaceful referendum. There were political, institutional or structural, and ethnicity-related factors... The alliance between PNU and ODM solidified support...All the major ethno-political groups, except sections of the Rift Valley, mobilised in support of the Constitution... The NCIC [National Cohesion and Integration Commission]’s campaign against hate speech halted mobilisation for violence...The Commission summoned senior politicians over hatespeech and demanded their arrest.... Gradually the referendum campaign became issues based; politicians could not mobilise protests and demonstrations as expected. On the whole, the NCIC sustained a campaign for a peaceful referendum particularly through monitoring the campaigns...The public confidence in the Interim Independent Electoral Commission (IIEC) legitimised the results. People praised the IIEC for transparent management of several by-elections held before the 4 August 2010 referendum... Further, all parties accepted the referendum results. Those opposed to the Constitution conceded defeat and urged supporters to maintain peace and participate in the implementation of the New Constitution. Leaders who supported approval of the New Constitution also urged for inclusiveness in the implementation process, despite nascent intra-party divisions and civil society debate over whether or not to include No supporters in the implementation structures... A few days before the referendum, the Government deployed thousands of security officers drawn from the Regular Police, General Service Unit, Administration Police, the Kenya Wildlife Service and Kenya Prisons Service to areas mapped as possible scenes of violence... Rift Valley leaders were keen not to be associated with political violence... In cosmopolitan regions notably in Uasin Gishu, people from different communities registered in different polling stations and in particular polling stations where their own ethnic group formed the majority...The

Kalenjin also registered to vote away from Kikuyu dominated polling stations. This deliberate segregation, though not widespread across the Rift Valley, was a manifestation of lingering lack of trust between the communities.” [64a] (page 31-34, paragraph 62-71)

See also [Constitution](#) for information on the referendum process and [Political system](#) for further information on the theory of politics in Kenya. For a list of political organisations in Kenya, see [Annex B](#).

## **FREEDOM OF ASSOCIATION AND ASSEMBLY**

14.08 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]

14.09 The FH Report 2010 stated:

“The constitution guarantees freedom of assembly. This right is generally respected, although there have been cases of unnecessary use of force at demonstrations, and public gatherings were curtailed during the 2008 postelection violence. One of the core strengths of Kenya’s political culture, even in recent periods of political polarization, has been its robust civil society. 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 the year, and the police were unable to identify the perpetrators.

“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 Industrial Relations Charter gives workers the right to engage in legitimate trade union organizational activities, and all workers other than police officers are legally free to join unions. The 2007 Labour Relations Act explicitly establishes broad criteria for trade union registration, leaving authorities with limited grounds for suspending or refusing to register a union. Some unions have complained that employers resist unionization efforts, and that the relevant government bodies have been ineffective in enforcing the law. Historically, much of the trade union movement has been subservient to the authorities.” [18a]

#### 14.10 The USSD Report 2009 stated that

“The constitution and law provide for freedom of assembly, but the government frequently 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 forcibly dispersed demonstrators...The constitution and law provide for freedom of association, and the government generally respected this right. The Societies Act requires that every association be registered or exempted from registration by the registrar of societies. The 2008 Political Parties Act, which increased the fee for registering a political party to 600,000 shillings (\$8,000), resulted in a decrease in the number of political parties from 138 in 2007 to 47 by year's end.

“The 2002 ban on membership in the Mungiki criminal organization remained in effect. The Mungiki espoused political views and cultural practices that are controversial in mainstream society. Also in 2002 the government declared the group a criminal organization because it ran protection rackets, particularly in the public transportation sector, and harassed and intimidated residents. The Mungiki had a significant following among the poor and unemployed. Other prohibited criminal organizations with political or cultural trappings included the Kamjesh, Chinkororo, Baghdad Boys, Jeshi la Embakasi, Jeshi la Mzee, Amachuma, Sungu Sungu, and a local group called ‘the Taliban.’” [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](#)

15.01 The Reporters sans Frontiers *World Press Freedom Index 2010*, dated 20 October 2010, covering the period 1 September 2009 to 1 September 2010, which [measures violations of press freedom](#), ranked Kenya 70<sup>th</sup> out of 178 countries assessed. [74a] The Freedom House report, *Freedom of the Press 2010*, Kenya (FH Press Freedom Report 2010), covering events in 2009, released on 1 October 2010, considered Kenya's media environment to be “partly free”. [18b]

15.02 The US State Department *Country Report on Human Rights Practices 2009*, Kenya, (USSD Report 2009), released on 11 March 2010, observed that:

“The constitution provides for freedom of speech and of the press, but the government sometimes restricted these rights. During the year security forces killed, harassed, beat, and arrested members of the media. Journalists practiced self-censorship.

"The government occasionally interpreted laws in such a way as to restrict freedom of expression. The prohibition on discussion of issues under court consideration limited deliberation on a number of political issues, although this restriction was relaxed in September. The government monitored many types of civil society meetings, and individuals were not always allowed to criticize the government publicly without reprisal. In September the speaker of parliament issued a ruling that the long-standing 'sub judice' practice which prohibited parliamentary discussion of issues under judicial consideration could not be used to bar parliament from debating matters of public interest as it had in the past... Generally the media remained independent despite attempts at intimidation by officials and security forces... The international media operated freely; approximately 120 international correspondents worked in the country, and approximately 100 media organizations reported from Nairobi. There were four international FM broadcasters in Nairobi: Radio France International, Voice of America, the British Broadcasting Corporation, and China Radio International.

"The government occasionally interpreted laws to restrict press freedom, and officials regularly accused the media of being irresponsible and disseminating misinformation. There were also reports of politicians paying journalists to avoid negative coverage or to plant negative coverage of a political opponent... Officials used libel laws to suppress criticism.... The government cited national or public security as grounds to suppress views that were politically embarrassing." [4b] (section 2a)

- 15.03 The Freedom House report, *Countries at the Crossroads 2010, Country Report – Kenya* (FHCC Report 2010), written by Thomas R. Lansner, adjunct associate professor of International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, noted: "Media are generally free and the private press is vibrant, but pressure from the government occasionally encourages self-censorship... Gangs and others have also threatened individual journalists for everyday reporting." [18c] (Accountability and Public Voice)

- 15.04 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)



- 15.05 The BBC News [Kenya country profile](#), last updated on 24 November 2010, provides a useful overview and assessment of the media and links to the main print, radio and TV operators [100].

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## **LAWS ON PRESS FREEDOM**

- 15.06 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]

15.07 The FH Press Freedom Report 2010 stated that:

“...the government routinely restricts this right by broadly interpreting several laws that criminalize press offenses, including the Official Secrets Act and the penal code. Section 77 of the penal code prohibits ‘exciting disaffection’ against any public officer, and the code also allows the responsible government minister to prohibit publications without clearly stating the grounds and procedures for such a ban. Although defamation remains criminalized in Kenyan law, the attorney general declared in a 2005 defamation case that the archaic law would no longer be used to suppress freedom of expression; there were no reports of criminal libel laws being used to threaten journalists in 2009.

“In January 2009, amendments to the Communications Act were signed into law. The measures came under attack for upholding a regulation that would allow the home affairs minister to raid media houses and confiscate equipment ‘in the interest of public safety and tranquillity.’ The amendments also prescribed heavy fines and jail terms for media offenses, gave the government—particularly the Information and Home Affairs Ministries—authority over broadcast licenses and the production and content of news programs, and allowed it to exert political control over the Communications Commission of Kenya. While authorities argued that the amendments were intended to promote media professionalism, journalists and activists accused the government of trying to restrict press freedom. Following pressure from local media and international donors, in May 2009 President Mwai Kibaki directed the attorney general to revise the law in consultation with all stakeholders, and later that month, the controversial amendments were withdrawn.

“Several potentially positive legal reforms have yet to be implemented. For example, the Information Ministry published a draft freedom of information policy and bill in 2007, but it has not been presented in Parliament. The independent Media Council of Kenya continued to operate, but it appeared to be hampered by lack of funds. Because it was chaired by a major media owner during 2009, questions were raised about its credibility.

Council members were nominated by media stakeholders and appointed by the Information Ministry.” [18b] (Kenya)

15.08 The FHCC Report 2010 noted that:

“The state retains control over the largest broadcast media network, the Kenyan Broadcasting Corporation, which has continued its long tradition of strongly supporting the incumbent administration. Kenya's constitution does not expressly guarantee press freedom, and media operations are subject to various laws and jurisdictions...] The 2007 Press Act, which created the Media Council of Kenya, and a new communications law passed at the end of 2008 that includes curbs on ‘hate speech,’ have increased the government's ability to regulate the media to a degree that free expression advocates consider excessive. The Kenya Communications (Amendment) Law 2008, enacted in January 2009, also empowers the government to destroy or confiscate broadcasting equipment to maintain ‘public safety.’ A concerted campaign by journalists and freedom of expression advocates—during which authorities arrested a number of protesters in December 2008—won a government promise in May 2009 to revise or repeal more draconian sections of the law... Criminal libel and defamation laws are sometimes used against journalists in courts that possess a mixed reputation for fairness. The National Cohesion and Integration Act 2008 made it an offence to use threatening, abusive, or insulting words to seek to promote ethnic hatred. Internet and other electronic communication are not obstructed, although there are reports that some government ministries have sought to block their staff's computer access to the government's own anticorruption commission.” [18c] (Accountability and Public Voice)

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## PRINT MEDIA

15.09 The FH Press Freedom Report 2010 stated that:

“Kenya's leading media, especially in the print sector, were often critical of politicians and government actions and remained pluralistic, rigorous, and bold in their reporting, although they also frequently pandered to the interests of major advertisers. There are currently five daily newspapers, one business daily, and several regional weekly newspapers that are delivered nationally. In addition, a number of irregularly published independent tabloids are highly critical of the government.” [18b] (Kenya)

## TV/RADIO

15.10 The FH Press Freedom Report 2010 stated that:

“Although the number of private broadcast media outlets has risen steadily, the government-controlled Kenya Broadcasting Corporation (KBC) remains dominant outside the major urban centers, and its coverage tends to favor the ruling party. Two private companies, the Standard Media Group and the Nation Media Group, run independent television networks and respected newspapers. There has been a significant expansion of FM radio, particularly ethnic stations, and their call-in shows have fostered increasing public participation as well as commentary that is unfavorable to the government. Unfortunately, many of these vernacular stations were accused of broadcasting ethnic hate speech in the violent wake of the December 2007 elections. The Media Council of Kenya cited the prevalence of politicians who doubled as radio

station owners as a contributing factor behind the increased tensions. International news media, including the British Broadcasting Corporation and Radio France Internationale, are widely available in Kenya.” [18b] (Kenya)

15.11 The USSD Report 2009 stated that:

“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 short-wave transmission. Although KBC coverage was generally viewed as balanced, its monopoly on national broadcasting limited the ability of critics of government to communicate with the electorate. The disadvantage to government critics posed by the KBC monopoly on national broadcasting was particularly pronounced in the period prior to the December 2007 general elections. Eleven television stations owned by other media companies and more than 100 radio stations operated in both rural and urban areas.” [4b] (section 2a)

## INTERNET

15.12 The FH Press Freedom Report 2010 stated that: “There were no reports that the government restricted internet access in 2009, but the authorities did reportedly monitor the internet during the postelection period in late 2007 and early 2008, as it was used to disseminate both information and hate messages. The share of Kenyans accessing the internet is estimated at about 10 percent, and in recent years there has been a growth in online news publications as well as blogging.” [18b] (Kenya)

15.13 The USSD Report 2009 stated that

“There were no government restrictions on access to the Internet. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet service was limited in rural areas due to lack of infrastructure. According to the International Telecommunication Union statistics for 2008, approximately 8.6 percent of the country's inhabitants used the Internet.

“In July the government announced that all cell phone users must provide the government with their name and identification number for each line owned; this announcement also affected citizens who accessed the Internet through cell phone-based modems, potentially enabling the government to monitor Internet use.” [4b] (section 2a)

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## JOURNALISTS

15.14 The FH Press Freedom Report 2010 stated that:

“Extrajudicial attacks on the media by state and nonstate actors remained rare by regional standards. However, a number of journalists were killed, harassed, beaten, or arrested by security forces in 2009. In January, Francis Nyaruri, a journalist with the private *Weekly Citizen*, was found beheaded after publishing stories on police corruption. Witnesses in the case received death threats, and a lawyer and police officer went into hiding. In July, the Kenyan antiterrorism police unit interrogated editors and a reporter for the *Star* about the sources of a June article that claimed the unit had lost

crucial files related to an accused Al-Qaeda member. A judge rejected police attempts to charge the journalists with contempt of court for jeopardizing a terrorism prosecution, and the police instead sought a court order directing the *Star* to retract its article and issue an apology. It is unclear if the scheduled October hearing took place. In August, the Nation Media Group (NMG) resisted pressure from the Ethiopian and Kenyan governments to withhold a documentary series on a separatist rebel group in Ethiopia. The series was aired after the company decided it was balanced and accurate.” [18b] (Kenya)

15.15 The USSD Report 2009 stated that “[t]he government cited national or public security as grounds to suppress views that were politically embarrassing. The Kenya National Dialogue and Reconciliation Monitoring Project (KNDR) reported that two journalists for the *Star* newspaper were charged in court for threatening national security. In October the KNDR reported that journalists reporting on the security sector were often intimidated by government officials and requested to reveal sources.” [4b] (section 2a)

15.16 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. 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]

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 US State Department *Country Report on Human Rights Practices 2009*, Kenya, (USSD Report 2009) released on 11 March 2010, observed that:

“Approximately 15 domestic organizations advocated for human rights in the country; 14 were independent of the government. Several NGOs maintained comprehensive files on local human rights abuses. A number of attorneys represented the indigent and human rights advocates without compensation, although they could handle only a small percentage of those who needed assistance and were concentrated in Nairobi and other large cities. 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.

“NGOs monitored the August [2009] by-elections in cooperation with the KNCHR and foreign diplomatic missions.

“A number of human rights organizations, including the Kenya Human Rights Commission, [Independent Medico-Legal Unit] IMLU, and [Kenya National Commission on Human Rights] KNCHR, produced reports cataloguing human rights abuses... As required by the National Accord, the government established the [Truth, Justice and Reconciliation Commission] TJRC to investigate politically and ethnically motivated human rights abuses since independence. The TJRC had not held any hearings by year's end.” [4b] (section 5)

- 16.02 The Freedom House report, *Countries at the Crossroads 2010, Country Report – Kenya* (FHCC Report 2010), written by Thomas R. Lansner, adjunct associate professor of International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, noted:

“The critical role played by civic groups has become more apparent in recent years. Kenya's civil society groups generally operate freely, often with international aid. The vibrant civil society sector has opened debate and offered myriad highly credible reports and proposed solutions related to problems in governance and development. Its robust character also offers hope that issues of human rights and equitable opportunity can be addressed across ethnic lines. Networks like Bunge la Mwananchi, or ‘People's Parliament,’ are building grassroots support for systemic change... These civil society groups have garnered significant media attention and raised public pressure on issues such as parliamentary allowances and land rights. Although problems with legal registration have not been as contentious an issue as in many developing countries, a current focus of nongovernmental organizations (NGOs) is revision of the 1990 NGO Coordinating Act, which is viewed as codifying arbitrary and potentially unconstitutional provisions while also failing to provide regulation adequate to enforce transparency and accountability among NGOs and other civil society groups...” [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 15 October 2010, that it “is an independent national human rights institution established by the government through an Act of Parliament, namely the

Kenya National Commission on Human Rights Act 2002. It's (sic) core mandate is to further the protection and promotion of human rights in Kenya. Many countries have similar bodies that audit the government on human rights." [24b] The KNCHR website also states: "According to the strategic objectives, key programme areas are: Complaints and Investigation; providing Redress; Reforms and Accountability; Economic, Social and Cultural Rights (ECOSOC), Public education and Training; Regional Outreach and Partnership Building." [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 [Paris principles](#) followed by national human rights institutions (NHRI), the ICC the accreditation system and current ranking of institutions can be found on the [NHRI forum website](#).

16.05 The FHCC Report 2010 noted:

"The autonomous KNCHR has the authority to review prison conditions and receive complaints regarding prison conditions, and serves as the primary rights watchdog and provider of redress for all Kenyan abuse victims. It is widely perceived as independent and has called attention to numerous rights issues while also attempting to formulate programs to improve rights awareness and protections throughout the government and society. It has the authority to order detainees released as well as compensation for rights abuse victims, but lacks prosecutorial powers." [18c] (Civil liberties)

16.06 The USSD Report 2009 stated that:

"The KNCHR has some powers of a [an appeals - see section 5 of the same report] court, including the issuance of summonses and ordering the release of a prisoner or detainee, payment of compensation [for human rights abuses – see section 5 of the same report], or other lawful remedy; however, the government continued to ignore such summonses and orders. The police routinely refused to release suspects when ordered to do so by the KNCHR. During the year the attorney general filed a brief with the High Court arguing that the KNCHR should be stripped of judicial powers; the court has not issued a final ruling but did issue an injunction barring the KNCHR from convening investigatory panels. As a result, the KNCHR was barred from intervening in cases of police and judicial misconduct." [4b] (section 1e)

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

16.07 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)

16.08 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)

16.09 Amnesty International's *Annual Report 2010*, published 28 May 2010, covering events of 2009, stated that

“In early March [2009], Oscar Kingara and Paul Oulu were killed by unknown armed assailants in Nairobi. Both men worked for the Oscar Foundation, a legal aid and human rights advocacy organization, and had provided the visiting UN Rapporteur with information about alleged police killings. No progress with investigations into the two killings was reported.

“Several human rights activists, including officials of NGOs working in Nairobi and local activists based in Mount Elgon area of western Kenya, fled the country after being threatened and harassed by police and other security personnel.” [15a] (Kenya)

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 report, *Freedom in the World 2010*, Kenya, released on 3 May 2010, covering events in 2009, stated that:

“Corruption remains a very serious problem. Political parties, nongovernmental organizations (NGOs), and the press, as well as some official bodies, have exposed many examples of government corruption and malfeasance. However, official probes and prosecutions have yielded meager results. Since 2003, the Kenya Anti-Corruption Commission's efforts have led to just 51 convictions, and in 2009 the parliament rejected Kibaki's attempt to appoint its director for another five-year term...The 2009 East African Bribery Index identified the Kenyan police as the most corrupt institution in East Africa, followed in Kenya by the Ministry of Defence and the judiciary.” [18a]

- 17.02 The US State Department *Country Report on Human Rights 2009*, Kenya, (USSD Report 2009), released on 11 March 2010, 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. The World Bank's 2008 Worldwide Governance Indicators reflected that corruption was a severe problem.

“Frequent press reports of government corruption fueled a widespread public perception that massive corruption persisted up to the highest levels of the government and in parliament and that the government took little official action against the most corrupt.” [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] Transparency International placed Kenya joint 154th out of 178 in their 2010 Corruption Perceptions Index, released on 26 October 2010, equal with Central African Republic, Comoros, Congo-Brazzaville, Guinea-Bissau and Russia. [13a] (p3)

- 17.04 Reuters also reported on 26 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, 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." [101]

#### 17.06 The USSD Report 2009 stated that

"During the year the media reported on three major corruption cases linked to the government: one involving oil; one involving education; and one involving maize...No one had been prosecuted in any of these cases by year's end...In 2008 OFFLACK [Oscar Foundation Free Legal Aid Clinic Kenya] noted endemic bribery in police recruitment. The police often recruited unqualified candidates who had political connections or who paid bribes, which contributed to poorly conducted investigations.

"Impunity was a major problem. Police officers were rarely arrested and prosecuted for criminal activities, corruption, or for using excessive force." [4b] (section 4)

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### ATTEMPTS TO FIGHT CORRUPTION

17.07 The Kenya Anti-Corruption Commission (KACC) 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.

"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 completion of an investigation, KACC forwards the Investigation File, with appropriate recommendations, to the Attorney General, who conducts the prosecutions." [25b]



17.09 The USSD Report 2009 stated that:

“In December 2008 the Kenya Anti-Corruption Commission (KACC) sued seven current and former MPs for making fraudulent reimbursement claims for allowances totaling 20 million schillings (\$250,000). Among those accused was Information Minister Samuel Poghiso, who denied taking 2.8 million schillings (\$37,000) in 2006 and 2007. Four additional MPs were sued in January for recovery of false reimbursements totaling 14 million schillings (\$187,000). Both cases were pending at year's end.

“In 2003 the government created the KACC and in 2004 appointed a director and other staff. The KACC lacks prosecutorial powers and can only recommend cases for prosecution to the attorney general. By year's end, according to the KACC, it had recommended 382 cases for prosecution to the attorney general, including eight ministers, four MPs, 11 permanent secretaries, seven chairpersons of boards of public institutions, 65 directors and chief executive officers of top public institutions, and 96 other senior level management officers of public institutions. The attorney general accepted the prosecution recommendations in 316 of the cases and has won convictions in 74 of the cases, all involving low- and mid-level officials.

“Local anticorruption NGOs claimed that the KACC accomplished little, despite significant financial support provided by the government. Some civil society organizations reported that the government also used the commission to harass critics. In 2007 the NGOs Name and Shame Corruption Network Campaign and the Center for Law and Research International claimed the KACC failed to investigate and prosecute influential persons and criticized its failure to address the Goldenberg and Anglo Leasing megascandals. Since President Kibaki assumed office in 2002, no top officials have been successfully prosecuted for corruption, despite numerous scandals.

“In August President Kibaki unilaterally reappointed Aaron Ringera as the head of the KACC. This action drew widespread outrage from parliament, society in general, the NGO community, and international observers, since the appointment bypassed rules that require a recommendation by the KACC advisory board and approval from parliament. Parliament subsequently passed a motion nullifying Ringera's reappointment, which the executive argued was not binding. Ringera, who was the head of KACC since its inception and was widely viewed as ineffective, voluntarily resigned in September.” [4b] (section 4)

17.10 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) [24c]

For further information on corruption within public service bodies, please see [Security forces](#) and [Judiciary](#). The [Freedom House Countries at the Crossroads Report 2010](#) [18c] has further information on anticorruption measures in Kenya.

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## 18. FREEDOM OF RELIGION

- 18.01 The US State Department *International Religious Freedom Report 2010*, Kenya, released on 17 November 2010, covering events in Kenya from 1 July 2009 to 30 June 2010, (USSD IRF Report 2010) described the religious demography of the country:

“Approximately 80 percent of the population is Christian and 10 percent is Muslim. Groups that constitute less than 1 percent of the population include Hindus, Sikhs, and Baha'is. The remainder follows various indigenous religions. Protestants are 58 percent of Christians, with 42 percent Roman Catholics.

“North Eastern Province, where the population is predominantly ethnic Somali, is home to 15 percent of the Muslim population. Sixty percent of the Muslim population lives in eastern Coast Province, making up 50 percent of the population there. Western areas of Coast Province are mostly Christian. The upper part of Eastern Province is home to 10 percent of the country's Muslims, mostly ethnic Borana but also some Somalis, where they are the majority religious group. Apart from a small ethnic Somali Muslim population in Nairobi, the rest of the country is largely Christian.

“Upper Eastern, North Eastern, and Coast provinces, which together are home to approximately 75 percent of the Muslim population, were less developed than other parts of the country.” [4d] (Section II)

- 18.02 The USSD IRF Report 2010 noted, regarding the treatment of religious groups generally, that:

“The constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion.

“The government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the government during the reporting period; however, some Muslim leaders continued to charge that the government is hostile toward Muslims.

“While there were few reports of societal abuse or discrimination based on religious affiliation, belief, or practice, some Muslims perceived themselves as treated as second-class citizens in the predominantly Christian country. Christian leaders also complained of perceived discrimination in the historically Muslim areas of Coast and North Eastern Province.” [4d] (Introductory section)

- 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 report, *Freedom in the World 2010*, Kenya, covering events in 2009, released on 3 May 2010, observed that:

"The authorities generally uphold freedom of religion, though there have been some reports of government hostility toward Muslims. 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 1998 and 2002 that were associated with Islamic fundamentalism, but religion was not a major factor in the political and ethnic unrest of early 2008. A record 13 Muslims were appointed to the cabinet that year." [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

- 19.01 The Central Intelligence Agency *World Factbook*, Kenya, updated on 20 January 2011 (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%

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." [76a]

19.05 Following the release of the results, the BBC 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 US State Department *Country Reports on Human Rights Practices 2009*, Kenya, (USSD Report 2009) released on 11 March 2010, stated that: "The [pre August 2010] constitution and law prohibit discrimination based on race, tribe, place of origin or residence, or other local connection... color... but does not prohibit discrimination based on language or social status. Government authorities did not enforce effectively many of these provisions. There was also evidence that some government and opposition officials tolerated, and in some instances instigated, ethnic violence." [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 2010*, Kenya, covering events in 2009, released on 3 May 2010, 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, as seen in the 2008 fighting, and long-awaited land reforms have languished. The Mungiki sect of mainly Kikuyu youth has been associated with postelection and other criminal violence. In addition, the continued presence of refugees from Somalia, and criminal activities by some of them, 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] (Political Rights and Civil Liberties)

- 19.10 The Freedom House report, *Countries at the Crossroads 2010, Country Report – Kenya* (FHCC Report 2010), written by Thomas R. Lansner, adjunct associate professor of International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, noted:

"Kenya's legal structures prescribe equality for its many ethnic groups—discrimination on the basis of a person's 'race, tribe, place of origin or residence or other local connection, political opinions, color, or creed' is constitutionally forbidden—but political patronage has entrenched an informal system of favoritism that has especially disfavored smaller ethnic communities. Ethnic Somali Kenyans have suffered particular neglect and abuse. Somali Kenyans are the only ethnic group required to produce two identification cards to prove their citizenship. Furthermore, they face unequal economic opportunities due to lack of government development efforts in the North Eastern Province and discrimination in hiring for jobs within the police, military, and civil service." [18c] (Civil liberties)

- 19.11 The USSD Report 2009 stated that:

"The population is divided into approximately 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. The numerically small and shrinking South Asian community controlled a disproportionate share of commerce.

"There was frequent conflict, banditry, and cattle rustling among Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and Pokot ethnic groups in arid regions located in North Eastern, Eastern, and Rift Valley provinces. Intervention by security forces to reclaim stolen cattle resulted in police expropriating cattle which had not been stolen and inflaming ethnic tension.

"The government did not investigate alleged abuses committed in 2008 by security forces searching for illegal weapons in El Wak, Garri, and Mandera.

"In 2008 the government established CIPEV; it issued a report that called for the establishment of a special tribunal to try suspected organizers of postelection violence. By year's end the government had not established a special tribunal, and the list of suspects prepared by CIPEV was handed by Kofi Annan to the International Criminal Court for investigation. According to the director of public prosecutions, the government prosecuted a number of low level individuals suspected of having engaged in postelection violence; the cases continued at years' end.

Through the provincial administrations, the government held public meetings to promote reconciliation in communities affected by the postelection violence and to establish a forum for dialogue and peaceful resolution of conflicts. NGOs reported that implementation of reconciliation efforts was not uniform.

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

“In private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of other members of the same group. Some neighborhoods, particularly in slum areas of the capital, tended to be segregated ethnically, although interethnic marriage had become fairly common in urban areas.” [4b] (section 6)

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 in 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](#).

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## 20. LESBIAN, GAY, BISEXUAL AND TRANSGENDER 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 US State Department *Country Reports on Human Rights Practices 2009*, Kenya, (USSD Report 2009) released on 11 March 2010, stated that:

“The penal code criminalizes ‘carnal knowledge against the order of nature,’ which is interpreted to prohibit homosexual [male same-sex] activity and specifies a maximum penalty of 14 years’ imprisonment. A further statute specifically criminalizes male-to-male sex and specifies a maximum penalty of 21 years’ imprisonment. However, there were no reported prosecutions of individuals for sexual orientation or homosexual activity during the year.” [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 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 Gay and Lesbian Coalition of Kenya (GALCK) website, on its page titled *When you are arrested for engaging in gay sex*, dated 19 August 2009, noted the difficulty in prosecuting men (and women) for same-sex sexual activity and application of the legal process:

“... if the police arrest you, do not fear to go through the laid down legal process. Let them take you to a police station, book you up, and prefer charges against you. It is on the basis of the charges laid against you that our lawyers will file defences. Often they will not charge you because they are also aware of how difficult it is to prosecute ‘un-natural sex’ cases. Instead they may want to hold you longer than they should - 24 hrs.

“That is why you need our lawyers - who will come and ask on your behalf, for a police bail or be taken to court and they will then ask for bail from the court...” [28b]

- 20.04 The GALCK website further stated:

“GALCK would like to challenge these sections of the penal code [crimnizing same-sex relations] in court. In order to do this, we need a perfect case: That is where two adults, engaged in consensual sex in private, are aligned in court under section 162 of the penal code or 163/165 of the penal code. It is important that the act be consensual for the both parties and its between adults. Such a case would propel our activism for change tremendously. Lets all be on the look out for the case - more importantly, when arrested, lets (sic) not take the easy way out by bribing the police for temporary freedom!!!” [28b]

- 20.05 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]
- 20.06 The *Daily Nation* reported on 20 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.” [16]

## Lesbians and bisexual women

- 20.07 Same-sex female 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 2010) dated May 2010, listed female same-sex relations as legal. However there are no laws that positively legislate on relationships between women (or men), for example legalising civil unions or marriage between members of the sex, or prohibit hate crime based on sexual orientation. [77a] (p12; 44-50)

## 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) The ILGA

State-sponsored Homophobia report 2010 noted that there was no law on gender recognition after gender reassignment treatment. [77a] (p50) The Amnesty International report, *Sexual Minorities and the Law: A World Survey*, updated July 2006, stated, with regard to the legal status of transgender person, that: “[There is] No data or legal situation unclear. Traditionally transgendered people had an accepted place in society”. [15f]

- 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 identify 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]

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## TREATMENT BY, AND ATTITUDE OF, STATE AUTHORITIES

- 20.10 The USSD Report 2009 observed that: “there were no reported prosecutions of individuals for sexual orientation or homosexual activity during the year.” It further noted that: “Lesbian, gay, bisexual, and transgender advocacy organizations, such as the Gay and Lesbian Coalition of Kenya, were permitted to register and conduct activities.” [4b] (section 6)
- 20.11 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.” [10m] The same 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]
- 20.12 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.



For more information on the February 2010 incidents in Mtwapa, please see [Societal treatment and attitudes](#).

20.13 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]

## Intersex persons

20.14 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)

20.15 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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## SOCIETAL TREATMENT AND ATTITUDES

20.16 The USSD Report 2009 stated that “There was frequent and widespread societal discrimination based on sexual orientation during the year. In 2007 the Council of Imams and Preachers of Kenya and other civic leaders condemned homosexuality and

argued against legalizing gay marriages. A group in Mombasa created the Muslim Youth Pressure Group to oppose homosexuality in 2007.” [4b] (section 6)

20.17 The *Daily Nation* reported in August 2010 that:

“If, just a few years ago, somebody had thought of setting up an organisation to champion the rights of the local gay community, they would have been chased out of town.

“Kenya, like the rest of Africa, was one vast anti-gay territory, an ‘unsullied’ region where even the subtle mention of the words ‘homosexual’ or ‘lesbian’ attracted bile from social purists.

“Then, slowly, winds of change began to sweep across the land. In South Africa, they amended the constitution in 2006 to allow same-sex marriages.

“The continent rose in unison to condemn the move, saying it was un-African and a corruption of human dignity and values. But the chorus of condemnation soon died off, and another one of ‘tolerance’ and ‘open-mindedness’ took its place... Mr Kuria [head of the Gay and Lesbian Coalition of Kenya] says a society that adopts a tight-lipped approach to the issue of homosexuality, or is bold and misadvised enough to even criminalise the sexual preference, is likely to create social disharmony, and that the police should understand their choice of life instead of intimidating them... ‘Our activism in Kenya — and in much of Africa — faces such fierce opposition that one wonders whether any headway is possible,’ laments Kuria.” [16j]

20.18 Behind the Mask republished an article from *Before It's News*, dated 23 June 2010, a website that publishes reports written by members of the public following “editorial guidelines” of the website. The article written by a regular contributor, Abdulkarim Jimale, stated that homophobia was increasing in Kenya:

“Homosexuality is a new and amazing culture in Africa, in Kenya Muslims and Christians Kenyans believe it is aped from Western countries. The majority Christians and the 30 percent Muslim have their leaders united on the stand against homosexuality.

“‘Our society is so homophobic, you can’t declare to the public you are gay or lesbian, they may harass you.’ Joshwa told Before It’s News.

“Almost all of the other African countries have the same homophobic.

“Gay and lesbian people are afraid to come forward in Kenya, a country where homosexuality can result in jail or harassment from the civilians both Muslims and Christians... On February 12, 2010 gay couple recently wanted to hold public wedding ceremony in Muslim-populated district of Mtwapa in the Kenya’s Coast city of Mombassa. But the two met the wrath of angry local Muslim and Christian communities. They were rescued by police, who whisked them away from the scene but later were reported to hold in a police cell.

“‘I never dreamt that this will actually happen in Kenya where the community is so homophobic,’ said Hassan a resident in Mombasa... ‘The incident shocked me. If were not for the police, the two men would have been lynched by the angry mob,’ he said, adding that he is now worried more than ever about the future of Kenyan youth.

"The ceremony was the first public gay marriage held in Kenya. A gay couple of Kenyan origin got married recently in London, attracting much criticism within the Kenyan population with some even unleashing the wrath to the couple's family in the country." [29b]

20.19 An article posted on the Behind the Mask website, dated 14 April 2010, titled *Kenya's Anglican Bishop calls for LGBTI pastoral care*, reported: "A Kenyan Bishop has called on the Anglican leadership in the country to make pastoral care for the LGBTI a reality... Bishop Josiah Were of Nambale diocese of Western Kenya said continued discrimination of the gay community will not help in addressing problems of homophobia facing the community inside and outside the church." [29a]

20.20 The *Daily Nation* reported on 30 August 2010 that:

"Sheikh Juma Amir of the Jamia Mosque in Nairobi says nothing can justify an irrational behaviour, and that this talk about tolerance and acceptance is just a buzz created by NGOs.

"'This is just a bunch of people trying to promote a culture that is totally unacceptable,' he says. 'It is totally un-Islamic.' His sentiments are echoed by Bishop David Oginde of the Christ is the Answer Ministries, who terms lesbianism and homosexuality as 'an unnatural tendency' that is both socially and religiously unacceptable.

"'I am not aware of any religion in the world that has accepted homosexuality as a lifestyle,' says Bishop Oginde, and in the same breath asks transgender and transsexual persons to seek medical attention 'to correct' their conditions." [16j]

20.21 GALCK reported on blackmail of the LGBTI community on their webpage entitled *Have you ever been blackmailed?*, updated on 9 June 2009, that:

"GALCK would like to establish the true cost of being Gay in Kenya. Blackmail and extortion are the twin crimes that afflict the LGBTI community in Kenya today, but majority of the cases are never reported. By compiling this report we shall be able to establish the extent and total cost of what we have paid to 'keep the silence.'

"From the stories we have gathered so far, our people have paid from Kshs. 500 to Kshs.2,000 000. The latter having paid only a month ago." [28d]

20.22 The *Daily Nation* reported further:

"Kenya's would-be first gay wedding was violently stopped by protesting youths and police on Friday [12 February 2010] at Mtwapa near Mombasa, hours before it was due to take place.

"Police intervened as dozens of Christian and Muslim youth stormed the apartment where three men — including the gay couple — had been putting up, intent on flushing them out to stop the wedding.

"They arrested five suspected homosexuals, including two who were rescued from youths baying for their blood but the local police chief later said no charges would be preferred.

"I sent Mtwapa OCS to rescue them from angry residents baying for their blood because they were trying to conduct that marriage between men,' said Kilifi police chief Grace Kakai.

"The wedding between two men had been scheduled to take place at a private villa. But the protesting youth, banded together under the banner of the so-called Operation Gays Out, were not done yet." [16i]

20.23 On the same incident, Human Rights Watch reported on 17 February 2010 that:

"On February 12 [2010], an armed mob of 200 to 300 people surrounded the KEMRI health center [in Mtwapa, a coastal town northeast of Mombasa]. Witnesses told Human Rights Watch that a man called Faridi,' an organizer of the mob, said a KEMRI staff member was homosexual because he wore a T-shirt promoting safer sex. In response, police who were at the scene took him and another KEMRI staffer into custody.

"Earlier the same day, Faridi, with police, forcibly entered another private individual's home, claiming that the two people in the house were homosexual. Police took the two into custody, too. Local activists have informed Human Rights Watch that none of the men were charged and they have all since been released, and that the police were attempting to protect them from violence by taking them into custody... The mob beat senseless another man who was approaching the health center and was about to set him on fire when the police arrived and took him into custody as well.... A mob attacked and severely beat up another KEMRI volunteer on February 13, and the police again took the victim into custody... Although the declared reason for the six men's detention was to protect them, news reports said authorities asked the men to submit to forensic examinations to determine if they are homosexual. Five of them refused and the sixth consented and was examined, although no 'evidence' of homosexuality is reported to have been found. Forensic medical examinations to 'prove' homosexual conduct are archaic and discredited. If conducted without genuine consent, they may constitute torture or inhuman or degrading treatment, Human Rights Watch said." [9g]

For further information on this event, see also:

<http://www.hrw.org/en/news/2010/02/17/kenya-halt-anti-gay-campaign>

20.24 *Red Pepper* magazine reported in an article, *Coming out in Kenya*, dated 23 August 2009, on the treatment of lesbians:

"Pauline Kimani is a 23-year-old gay rights activist, feminist and one of Kenya's few lesbians to openly admit her sexuality.... 'I felt afraid,' says Pauline, 'because I had heard stories, especially in school, that attraction between people of the same sex wasn't normal, and it was considered evil and un-African.'... In Kenya, [same-sex relations between men] is punishable by up to 14 years in jail. Although no one has ever been convicted, the existence of this law has kept most of Kenya's lesbian, gay, bi and trans-sexual (LGBT) community in the closet. There are high incidences of suicide and drug abuse, and no legal recourse in the face of discrimination and hate crimes... Targeted rapes of lesbians are very common[.]

"One major breakthrough for Kenya's gay coalition was to collaborate with Liverpool VCT, the only HIV counselling and treatment centre in Kenya to cater to LGBT people." [31a]

- 20.25 The USSD Report 2009 stated that “in September [2009] a transgender person alleged abuse by male prisoners and wardens in Nairobi’s Kamiti Prison.” [4b] (section 1c) In the judges’ determination of the case referred to by the USSD report, *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, paragraph 145)

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## LGBT ORGANISATIONS

- 20.26 The USSD Report 2009 stated that: “Lesbian, gay, bisexual, and transgender advocacy organizations, such as the Gay and Lesbian Coalition of Kenya [GALCK], were permitted to register and conduct activities.” [4b] (section 6) On its website, updated 14 August 2009, accessed on 19 October 2010, stated:

“The Galck Resource Centre [in Nairobi] houses the following:

“A drop in centre for LGBTI persons as well as a library which can be accessed both by the LGBTI persons as well as other interested persons

“Office space for the five member organizations plus board room accessible to all the organizations

“HIV/AIDS counselling & Testing Room, also used by mental health program used on alternate day

“TV/MOVIE screening space.

“Although Galck does not run program activities, it is often the case that member organizations, carry out their cross-cutting programming with Galck’s sponsorship. As a result then, such activities as Access to sexual and mental health and Human rights will often be coordinated by Galck.” [28a]



- 20.27 Minority Women in Action was established in 2006 [28c]. Its website, updated on 6 September 2010, stated that it is “an organization that fronts for minority women rights in all spheres. It is an organization which is open for all Kenyan women who share the same vision.” The website further describes the organisation’s 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]
- 20.28 The Transgender Education & Advocacy (TEA) website, updated 30 December 2010, 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 *UN Committee on the Elimination of Discrimination Against Women: Combined Fifth and Sixth Periodic Reports of States Parties, Kenya*, published on 16 October 2006, are available [here](#) and the *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Kenya*, published on 10 August 2007 are available [here](#). 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) is available [here](#).
- 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 2010*, Kenya, covering events in 2009, released on 3 May 2010, observed that:
- “Women in Kenya continue to face serious obstacles. They are denied equal property rights, putting them at greater risk of poverty, disease (including HIV/AIDS), violence, and homelessness. Kenyan women’s rights groups have pointed out that 60 percent of the charges stemming from the 2008 postelection violence involved cases of rape, noting evidence that police committed the most abuses against women. Several bills aimed at strengthening women’s rights with regard to marriage and property have been introduced by the government in recent years, but have yet to be enacted. Traditional attitudes limit the role of women in politics, although there are no legal restrictions and some progress has been made. In 2006 Kibaki declared that women would receive 30 percent of appointments in the public service, but this has yet to be realized. The 2007 elections increased the number of women in the National Assembly to 20, or about 8 percent of the total.” [18a]
- 21.04 The Freedom House, *Countries at the Crossroads 2010, Country Report – Kenya* (FHCC Report 2010), written by Thomas R. Lansner, adjunct associate professor of

International Affairs at Columbia University School of International and Public Affairs, released on 7 April 2010, observed:

“While Kenyan law prohibits gender-based discrimination, traditional practices and law continue to restrict gender equality... Multiple accounts describe how women and girls are particular and common targets for sexual violence by the military, police, ethnic militia, and criminal gangs... Many women and girls were sexually assaulted during the post-2007 election violence, reportedly including by police.

“The police have acted on a Waki Report suggestion to launch a special unit to investigate and address gender-based violence, although its effectiveness remains to be proven. Despite laws against trafficking of children and trafficking for sexual exploitation, UNICEF reported in 2009 that ‘there is evidence that Kenya is a fast growing source country, as well as a transit and destination country, for human trafficking’.... While female genital mutilation was outlawed in 2001, it is still widely practiced within many communities... women's property rights remain limited under customary and formal laws of inheritance and succession. A draft National Land Policy pushed by civil society and approved by the cabinet in July 2009 proposes expanding women's rights to inherit land and would modernize discriminatory laws... Even if it passes, enforcing change in a strongly patriarchal society will be difficult; traditional courts, especially in rural areas, are particularly biased against women. Of the 222 members of Parliament, only 15 elected and 6 nominated MPs are female. A wide array of proposed legislation aimed at protecting women, including the Anti-trafficking in Persons Bill, the Domestic Violence (Family Protection) Bill, the Equal Opportunities Bill, and the Matrimonial Property Bill, remains at the discussion stage in Parliament.” [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 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 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) In addition the [UN Secretary General's database on violence against women](#) listed database lists legislation and policies to counter violence against women and girls.

For information on legal assistance available to women, please see [Legal assistance](#) subsection below.

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## POLITICAL RIGHTS

- 21.09 The Central Intelligence Agency *World Factbook*, Kenya, updated 27 May 2010 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 US State Department *Country Reports on Human Rights Practices 2009*, Kenya, released on 11 March 2010 (USSD Report 2009) stated:

"Women's participation in electoral politics remained low; however, a record number of female candidates ran for parliament and for local office in 2007, despite harassment and attacks. Women constituted only 10 percent of all parliamentary candidates and held 21 of the 222 seats in parliament. Women also held seven of 40 ministerial portfolios.

"While the constitution does not specify representation for women, youth, or minorities, it emphasizes gender equality. Moreover, the constitution provides that 12 nominated parliamentary seats be filled by parties in proportion to the number of seats held in parliament; six of the 12 nominated MPs were women.[However the revised constitution states that: "... 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." [4b] (section 3)

- 21.10 The website of the Caucus for Women's Leadership, undated, accessed 19 October 2010, noted that:

"The representation of women in decision-making organs in Kenyan parliament and local authorities is still very low (under 10%), four decades after independence. To address this issue, the Caucus is one of the organizations implementing the famous four-year Gender and Governance Programme in Kenya. The Caucus twin focus in this programme is Gender Equality and Women's participation in local governance as well as Gender Equality and women's empowerment in political party processes.

"In preparing for the 2007 general elections, the Caucus trained 105 community resource persons, both men and women whose mandate included mobilizing support for women's leadership in the run up to the elections.

"Using the assembly outreaches, extensive civic education was conducted around election issues and the need to support credible women's leadership. The success of this programme culminated in the triumphant victory of 2 women parliamentarians. Hon Lorna Laboso's journey to parliament is proof that the Women's Regional Assembly

structure is the best vehicle for women into leadership.” [36a] (Our work/Gender and Governance Programme)

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## SOCIAL AND ECONOMIC RIGHTS

21.11 The UNICEF *State of the World's Children report 2010*, published 19 November 2009, gave the following basic socio-economic statistical information about women and girls in Kenya:

Life expectancy: females as a % of males		2008	102
Adult literacy rate: females as a % of males		2003–2007 [Data refer to the most recent year available during the period specified in the column heading]	90 [Data refers to years or periods other than those specified in the column heading, differ from the standard definition or refer to only part of a country.]
Enrolment and attendance ratios: females as a % of males	Net primary school 2003–2008 [Data refer to the most recent year available during the period specified in the column heading]	enrolled	102
		attending	100
	Net secondary school 2003–2008 [Data refer to the most recent year available during the period specified in the column heading]	enrolled	97
		attending	114
Contraceptive prevalence (%)		2003–2008 [Data refer to the most recent year available during the period specified in the column heading]	39
Antenatal care coverage (%)	At least once	2003–2008 [Data refer to the most recent year available during the period specified in the column heading]	88
	At least four times		52



Delivery care coverage (%)	Skilled attendant at birth	2003–2008 [Data refer to the most recent year available during the period specified in the column heading]	42
	Institutional delivery		39
Maternal mortality ratio [as reported by national authorities]	2003–2008 [Data refer to the most recent year available during the period specified in the column heading]	reported	410
	2005	Adjusted	560
		Lifetime risk of maternal death. 1 in:	39

[67a] (Table 8)

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## Family law: marriage, divorce, inheritance and property rights

21.12 The USSD Report 2009 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. Women constituted an estimated 75 percent of the agricultural work force and were active in urban small businesses. 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. In 2007 the government pledged to reserve one-third of civil service positions for women but had not implemented its pledge by year's end.” [4b] (section 6)

21.13 The same report continued:

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

“Certain communities commonly practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. Other forced marriages were also common. Although poor and uneducated women were more likely to be inherited or suffer from property and inheritance discrimination, prominent and educated women sometimes were victims.” [4b] (section 6)

- 21.14 The Organisation of Economic Cooperation and Development *Social Institutions Gender Index*, profile of Kenya, (OECD SIGI) undated, accessed 19 October gave information regarding the Family Code of Kenya:

“The government of Kenya sets the minimum age for statutory marriage at 16 years for women and men. However, there is no such limit for Muslim or customary marriages. Considering that only a minority of the population choose the route of statutory marriage, the prevalence of early marriage is not surprising. A 2004 United Nations report estimated that 17 per cent of girls between 15 and 19 years of age were married, divorced or widowed.

“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. By contrast, it is very difficult for wives to end such marriages.

“Statutory marriage stipulates that parental authority be equally shared by men and women; Muslim and customary marriages are discriminatory in this matter. Following divorce in statutory marriage, mothers typically maintain custody of children until the age of 16 years. In the case of Muslim families, young children usually stay with the mother, but the father is awarded custody of sons older than 7 years and daughters older than 14 years. Custody is almost always awarded to the father when a customary marriage ends in divorce.

“In 1991, Kenya established an inheritance law that enforces equality between men and women, but it is not applied to all citizens and some judges do not respect the 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. Islamic Sharia law is discriminatory in that daughters typically inherit only half of the share to which sons are entitled.”

“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 custom, which essentially prohibits women from owning land. In fact, women only own 4 per cent of land in Kenya. Even when women are able to acquire assets, their husbands often act as intermediaries in the transaction.

“This situation also has negative implications for women’s access to bank loans. Since they rarely have assets of their own, Kenyan women cannot provide the collateral required by lending institutions.

“These constraints to ownership and borrowing are more prevalent amongst women in Kenya’s lower class and less common for middle or upper class women.” [37a]

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## Single women/mothers

21.15 With regard to single mothers, Inter Press Service reported in 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]

For further information on education for children who become single mothers, please see [Children: Education](#).

## Freedom of movement

21.16 The Organisation of Economic Cooperation and Development *Social Institutions Gender Index*, profile of Kenya, (OECD SIGI) undated, accessed 19 October 2010, stated that there are “no legal constraints on women’s freedom of movement in Kenya. However, cases are reported of husbands who deny this freedom by refusing to let their wives travel or visit friends.” [37a]

## Prostitution

21.17 The USSD Report 2009 stated that:

“Prostitution is illegal but was widespread. While operating a brothel is illegal, soliciting prostitution is not a crime. Police arrested women engaged in prostitution. High rates of prostitution existed in tourist areas such as Nairobi and coastal tourist areas. A 2006 study report by the UN Children's Fund (UNICEF) estimated that as many as 30 percent of minor girls ages 12 to 18 engaged in prostitution to varying degrees in coastal tourist areas.” [4b] (section 6)

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## Reproductive rights

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 Population Services International's Kenya branch “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 USSD Report 2009 further stated that:

“Subsidized contraception options, including condoms and birth control pills, were widely available to both men and women throughout the country, although access was more difficult in rural areas. The UN estimated in 2007 that 39 percent of adult women used contraceptives regularly. Skilled obstetric and postpartum care was available in major hospitals, but many women were unable to access or afford these services. Also in 2007 the UN estimated that 88 percent of women had at least one antenatal exam, and 42 percent had skilled obstetric care during childbirth.

“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)

21.21 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]



- 21.22 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)

- 21.24 The Human Rights Watch *Annual Report 2011*, covering events of 2010 and published 24 January 2011 stated:

"Partly due to health care system failures, tens of thousands of Kenyan women and girls die each year in childbirth and pregnancy, while more suffer preventable injuries, serious infections, and disabilities. Maternal deaths represent 15 percent of all deaths for women of reproductive age—one in 39 women in Kenya die during childbirth according to the United Nations—while an estimated 300,000 women and girls are living with untreated fistula. Kenya's restrictive abortion laws, which criminalize abortion generally, contribute to maternal death and disability. Unsafe abortions cause about 30 percent of maternal deaths." [9h] (Kenya, p138)

See [Medical issues](#) for background on the healthcare system.

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## VIOLENCE AGAINST WOMEN

- 21.25 The OECD SIGI Kenya profile stated:

"The Constitution officially provides equal protection against threats to physical integrity for all citizens. However, violence against women remains an issue. There is no specific law against such violence, which is generally accepted by public opinion and women are frequently beaten by their husbands. Sexual acts with very young girls (less than 14 years of age) are not recognised as criminal acts, nor is spousal rape. The police and the justice system rarely prosecute other cases of rape." [37a]

- 21.26 The USSD Report 2009 stated that “the law prohibits sexual harassment; however, sexual harassment continued to be a problem. It was often not reported and rarely resulted in charges being filed.” [4b] (section 6) The same report also noted that “The law criminalizes rape, defilement, sex tourism, and sexual harassment; however, implementation remained limited, and as many as 95 percent of sexual offenses were not reported to the police. The law does not specifically prohibit spousal rape.” [4b] (section 6)
- 21.27 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 [KNBS survey](#).

- 21.28 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)

- 21.29 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 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

21.30 The USSD Report 2009 noted that though rape was illegal, spousal rape was not criminalised. The same source also stated that:

"The law provides a maximum penalty of life imprisonment for rape, although sentences usually were no longer than the minimum of 10 years. The law establishes a minimum sentence for defilement--defined as a sexual act with a child involving penetration--of life imprisonment if the child is under 11 years old, of 20 years if the child is between 11 and 16 years old, and of 10 years if the child is between 16 and 18 years old; a child is any person under 18 years of age. NGO activists complained that a provision in the law that criminalized false claims of sexual assault deterred the reporting of sexual offenses.

"In 2008 official police statistics indicated 627 rapes during the year, but human rights groups estimated that more than 21,000 rapes were perpetrated annually. 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; victims' fear of retribution; police reluctance to intervene, especially in case 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.

"According to NGOs, police procedures in handling cases of sexual assault created substantial barriers to the investigation and prosecution of suspected perpetrators of rape and sexual assault. Police prosecutors required victims of sexual assault to be examined by a police physician prior to the initiation of an investigation and required the same physician to testify during trial. As of year's end there was only one police physician in Nairobi, and police physicians were generally not present in rural areas. The police physician in Nairobi frequently issued examination reports that conflicted with the findings of other medical professionals, was often not available to conduct exams, and frequently failed to appear in court. As a result, numerous alleged cases of sexual violence were not investigated by the police, and numerous cases were dismissed from court due to the absence of the police physician.

"The government did not investigate or prosecute reported incidents of widespread sexual violence following the disputed election in 2008 and 2007.... Prison personnel stated that the rape of male and female inmates, primarily by fellow inmates, continued. Media reports indicated that it was also common for prison officials to rape female inmates." [4b] (section 6)

For further information on prison conditions, please see the [section of the same name](#).

21.31 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)

- 21.32 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)

For further statistical detail on sexual violence against women, including demographic data, please see the [KNBS survey](#).

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## Domestic violence

- 21.33 The USSD Report 2009 stated that:

“Domestic violence against women was a serious and widespread problem but often condoned by society and the courts. The penal code does not contain specific provisions against domestic violence, but treats it as assault. Police generally refrained from investigating cases of domestic violence, which they considered a private family matter... NGOs, including the Law Society of Kenya and the Federation of Women Lawyers, provided free legal assistance to some victims of domestic violence.” [4b] (section 6)

- 21.34 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)
- 21.35 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)

## Female Genital Mutilation/Cutting (FGM/C)

- 21.36 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]
- 21.37 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)

21.38 The USSD Report 2009 also stated:

“The law prohibits FGM, but it was practiced, particularly in rural areas. FGM usually was performed at an early age. According to UNICEF, one-third of women between the ages of 15 and 49 had undergone FGM, and in June an obstetrician estimated that 32 percent of women had suffered from the procedure. 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. According to the Ministry of Gender and Children Affairs, in 2008 90 percent of girls among Somali, Kisii, Kuria, and Maasai communities had undergone the procedure. The rates among other communities were: Taita Taveta (62 percent); Kalenjin (48 percent); Embu (44 percent); and Meru (42 percent). FGM was less practiced among the Kikuyu and Kamba, with 34 percent and 37 percent respectively. There were public awareness programs to prevent the practice, in which government officials often participated.” [4b] (section 6)

21.39 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

21.40 The US State Department report, *Trafficking in Persons 2010*, released on 14 June 2010, stated, with regard to Kenya that: “Kenya is a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically conditions of forced labor and forced prostitution...Trafficked Kenyan adults are exploited in involuntary domestic servitude and forced prostitution.” [4c] (Kenya)

For more information on trafficking, please refer to the [chapter of the same name](#).

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## ASSISTANCE FOR WOMEN

### Government

21.41 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)

- 21.42 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)

- 21.43 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)

- 21.44 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)

21.45 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)

21.46 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)

A table of service delivery methods for post-rape care is available [here](#), 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](#).

21.47 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)

21.48 Various NGOs were able to offer assistance to women in Kenya, including the Gender Violence Recovery Centre whose website, accessed on 19 October 2010, stated:

"The Gender Violence Recovery Centre (GVRC) is a non-profit making, non-partisan, charitable trust of the Nairobi Women's Hospital. GVRC main purpose is to mobilize resources to provide free medical treatment and psychosocial support to survivors of gender based violence. The treatment includes Post Exposure Prophylaxes (PEP) given within 72 hours of assault to help prevent infection of HIV/AIDS. Other treatments include prevention of pregnancy, prevention of sexually transmitted infections and hepatitis B vaccine. Since inception (March 2001) GVRC has treated over 16,260 survivors of gender based violence; 3% being men, 58% women and 39% being men. The centre receives an average of 260 survivors per month." [44] (Homepage)

21.49 The GVRC offered the following statistics in their 2008/2009 annual report, undated:

"GVRC recorded an increase in the number of new cases of gender based violence from 2750 in the annual year (2007/2008) to 2805 with 91% of the cases being female survivors and 9% male survivors. Out of the 2805 cases received 2357 cases were of rape/defilement, 388 domestic violence, 41 sexual assault cases and 19 physical violence cases. A total of 4507 survivors received psychological support (counseling) at the centre, this figure represent both new and follow up cases while 138 survivors were referred to other organization for further psychosocial support mainly shelter and legal aid."

"The reported year also saw an introduction of two new projects, advocacy project and rescue services. The Advocacy project is supported by Plan Danida and is based on GVRC's unique in-depth insights and concerns on survivors of sexual and domestic violence and the day-to-day realities that the survivors face with an aim of pushing for policy advocacy. The rescue services are provided in partnership with Child Line Kenya (CLK) upon an agreement entered into in December 2008, to provide rescue services to children survivors of gender based violence and their families in difficulties and referred by Child line Kenya and / or the child helpline personnel. During the reporting period 5 children were rescued." [44a]

21.50 The Federation of Women Lawyers (FIDA) offered help to victims of crime. The website accessed on 19 October 2010 stated:

"Most clients come to FIDA Kenya after undergoing a lot of psychological or physical trauma.

"Through counseling, clients are empowered through psycho-social support to make informed choices regarding their situations Apart from individual counseling sessions, group therapy sessions have now been introduced...To ensure that FIDA Kenya

counselors provide quality services, they have been linked to reputable counseling institutions where they undergo supervision twice a month. This also acts as a de-briefing session for them to minimize burnout. The de-briefing sessions have been institutionalized and form part of the Legal Aid Team's activities." [34a]

21.51 The Coalition on Violence Against Women (COVAW) also offers community and national advocacy for women affected by violence. Further information can be found in their [strategic plan for 2009-2013](#).

21.52 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]

21.53 Some assistance was available for women and girls fleeing FGM. According to the USSD Report 2009:

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

"In August two girls were forcibly circumcised against their will in Narok, after previously fleeing threats of FGM by their families." [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

21.54 The Federation of Women Lawyers (FIDA Kenya), stated on their website accessed on 19 October 2010, offers an advocacy service for women in Kenya. The organisation's "Access to Justice" system offers engagement with the formal justice system:

"On average FIDA Kenya receives a total of 100 clients daily in its 3 legal aid clinics situated in Nairobi, Kisumu and Mombasa.

FIDA Kenya takes up and pursues the following types of cases:

- Succession and Inheritance.
- Family Law cases including - Separation, Divorce, Custody of Children, Maintenance and Division of Matrimonial Property.
- Employment cases where there is discrimination on the basis of sex.
- Land cases also where there is discrimination on the basis of sex.
- Cases involving gender based violence such as Rape, Defilement, Incest and Assault
- Public Interest cases" [34a]

## 21.55 FIDA also:

“... established a Pro Bono Scheme in 1997 to enable the organization to respond to the growing number of women needing the services of FIDA Kenya. Through the scheme, a number of both male and female lawyers in practice countrywide take up cases on behalf of FIDA Kenya clients. Lawyers in the scheme do not only engage in litigation but in PIL [public interest litigation], mediation and training in self representation... The self-representation programme was started at FIDA Kenya in 2000. It involves training of women to enable them access justice through self representation in court. The main objective of the programme is to enhance the number of women accessing justice. It was based upon the realization that due to the limited number of FIDA Kenya Legal counsels, only a limited number of women would be able to access justice if all were to be represented in court. This program educates a wide section of poor women on their rights. It teaches them the skills of self-representation and familiarizes them with court procedures so that they are able to face the court and protect their rights. Each case is treated on its own merits and the selection as to whether a client should be represented or should represent herself is dependent on several factors such as the complexity of the case, the receptiveness of the particular court where the case is to be filed as well as the suitability of the client in question. In future FIDA Kenya intends to empower former clients and communities to drive the self-representation intervention with minimal technical support from FIDA.” [34a]

21.56 The FIDA website, accessed 19 October 2010, reported that “Most of the cases handled during the review period at the Legal Aid Clinics relate to matrimonial matters and gender based violence.” [34a]

21.57 The Center for Rights Education and Awareness (CREAW) website accessed 19 October 2010, stated that the group is a “non-governmental, non-partisan, membership organization based in Nairobi, Kenya. This life transforming organization was set up in 1998 by several women lawyers, who had common goals and purpose: a commitment to confront the low awareness of women's real needs and rights in society. CREAW obtained its full legal status in 1999, when it was registered as an NGO, in compliance to Kenyan Laws.” [35] (Homepage)

21.58 CREAW has, amongst others, the objective to “transform the Kenyan society into a community of people who respect, defend and actualize women's rights” with the following sub-objectives:

- “I. To provide, promote and facilitate civic education amongst local communities towards realization of women's rights
- “II. To enhance awareness on women's rights and sensitize communities to demand their realization
- “III. To develop and sustain strategic engagements with relevant stakeholders on socio-cultural and political issues that impedes the advancement of women's rights
- “IV. To strengthen meaningful participation of women in leadership and decision making process at the local and national level.” [35a] (website, accessed 19 October 2010)

21.59 The organisation lists the following successes on its website, accessed 19 October 2010:



“Since inception, CREAM 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 Human rights including Sexual And Gender Based Violence ( SGBV) including defilements; Women 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.” [35b]

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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 19 October 2010) [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 19 October 2010) [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 19 October 2010) [33d]
- 22.02 The UNICEF *State of the World's Children* report, published 19 November 2009, (UNICEF SOWC Report) gave the following statistics:

Under-5 mortality rank		21
Under-5 mortality rate (per 1,000 live births)	1990	105
	2008	128
Infant mortality rate (under 1) (per 1,000 live births)	1990	68
	2008	81
Neonatal mortality rate (per 1,000 live births)	2004	34
Total population (thousands)	2008	38765
Annual no. of births (thousands)	2008	1506
Annual no. of under-5 deaths (thousands)	2008	189
Life expectancy at birth (years)	2008	54

Primary school net enrolment/attendance (%)	2003–2008 [Data refer to the most recent year available during the period specified in the column heading]	76
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[67a] (Table 1)

22.03 The US State Department *Country Report on Human Rights Practices 2009*, Kenya (USSD Report 2009) stated: “According to 2007 UNICEF data, only 64 percent of births in urban areas and 48 percent in rural areas were registered. Lack of official birth certificates resulted in discrimination in delivery of public services such as education and health care.” [4b] (section 6)

22.04 The UNICEF document, *Report of the field visit to Kenya by members of the Bureau of the Executive Board*, dated 30 April 2009, observed that:

“Over half of the population is less than 18 years old, and an estimated 6 million children require special care and protection. Approximately 2.4 million children are orphans; in the Kenyan context, this means that they have lost one or both parents... According to information provided to the delegation during the visit, Kenya is likely to achieve Millennium Development Goal 2 (achieve universal education) and Goal 6 (combat HIV/AIDS, malaria and other communicable diseases), and is likely to achieve one target under Goal 3 (promote gender equality: eliminate gender disparity in education)... The Bureau was struck by the impression of great disparities facing the population of Kenya. The two areas of the country most affected are North Eastern Province, bordering Somalia, and the south-western areas of the country...

“With regard to Goal 4 (reduce child mortality), the 2003 Kenya Democratic and Health Survey, the source of latest official data, reported infant and child mortality rates at 77 and 115 deaths, respectively, per 1,000 live births. Despite the focus on child survival, achieving the targets of 26 per 1,000 live births for infant mortality and 33 per 1,000 live births for under-five mortality remains a serious challenge. While in Central Province the under-five mortality rate is 54 per 1,000 live births, the south-western Nyanza Province has an under-five mortality rate as high as 250 per 1,000 live births... Similarly unlikely seems the achievement of the target of 147 per 100,000 live births under Goal 5 (reduce maternal mortality) by the target date. The current maternal mortality ratio of 414 per 100,000 live births translates into an estimated 4,500 women dying annually due to pregnancy-related complications...

“The practice of the most severe forms of female genital mutilation/cutting (FGC) — especially in North Eastern Province, but not only there — is further contributing to pregnancy related complications and also leading, in some cases, to the loss of the first child. Fifty per cent of children are born without assistance by trained birth attendants.... Malnutrition, high incidence of diseases, inadequate health care and hygienic practices, poor environmental and living conditions and the HIV/AIDS pandemic are all factors contributing to the poor level of child health. Additional contributing factors include limited access of health services, partly due to long distances, and inadequacies in the health care system, such as lack of drugs, supplies and skilled personnel... An estimated one out of every three Kenyan children under the age of five is malnourished. Only half of the population in Kenya has access to safe water or sanitation... About 70 per cent of schools do not have adequate sanitation facilities or a safe water supply...

“Child protection challenges in Kenya continue to be serious; at the same time, national data on child protection issues remains very limited. Most of the approximately 2.4 million orphans are cared for by family members, but many live on the streets, in charitable children’s institutions or in child-headed households. Despite an official ban on corporal punishment, it is still practiced in schools, institutions and homes. A 2006 UNICEF study revealed that 3000 children were working as sex workers in four tourist communities on the coast. According to the study, 30 per cent of girls between the ages of 12 and 18 years living in these areas were involved in casual commercial sex work. Moreover, hundreds of thousands of children are estimated to be living on the streets. During the post-election violence of 2007–2008, in some communities, almost half of the women and girls were raped or suffered sexual abuse. There is evidence that Kenya is a fast growing source country, as well as a transit and destination country, for human trafficking. According to the 2003 Kenya Demographic Health Survey, 34 per cent of girls between the ages of 15 and 19 years have been circumcised nationwide; in North Eastern Province, that figure is 98.9 per cent.” [67b] (p2-4, paragraph 8-19)

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## Basic legal information

22.05 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)

22.06 The Central Intelligence Agency, *World Factbook*, Kenya, updated on 20 January 2011, 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

22.07 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]

22.08 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, paragraphs 8-9)

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## VIOLENCE AGAINST CHILDREN

22.09 The OMCT report 2008 stated that:

“The main issues of concern with regard to the implementation of the Convention Against Torture to children are the following:

116 The main text of this COI Report contains the most up to date publicly available information as at 24 January 2011. Further brief information on recent events and reports has been provided in the Latest News section to 25 February 2011.

- harmful traditional practices,
- general practice of corporal punishment constituting daily degrading treatment against children,
- sexual violence and exploitation,
- trafficking of children.” [47a] (p27-28)

22.10 The USSD Report 2009 stated that:

“Child rape and molestation continued to be serious problems. Police reported that 1,626 children were defiled in 2008. Newspapers contained frequent reports of molestation or rape of children by relatives, neighbors, teachers, police, and clergy. In 2007 the Nairobi Women's Hospital handled 915 cases of child abuse; however, the stigma attached to sexual violence made many persons reluctant to report such cases or seek assistance, and the true rate of occurrence was likely much higher. NGOs The CRADLE and Care Kenya released a 2006 report entitled *Robbing the Cradle* that indicated an increase in child sexual abuse and a decrease in the age of the youngest victims. The most vulnerable victims were girls under age 18 and boys ages three to eight. Most child abusers were neighbors, fathers, and other relatives. Teachers were the worst perpetrators in the professional category, with pastors and police officers following closely.” [4b] (section 6)

22.11 The report further stated:

“Child prostitution increased in recent years due to both poverty and the increase in the number of children orphaned by HIV/AIDS. Strong growth in the tourism industry also led to a large increase in foreign and domestic tourists seeking sex with underage girls and boys. During the year political leaders expressed concern that minors in drought affected communities were leaving school and being lured to prostitution to cater for basic needs.” [4b] (section 6)

22.12 The USSD report 2009 also stated:

“Teachers often impregnated secondary students, a practice Minister for Education Sam Ongeru criticized in April. A report released in November by the Teachers Service Commission found that 12,660 female students were sexually abused by teachers from 2003 to 2007.

“In 2008 the Ministry of Education estimated that 80,000 children dropped out of school annually due to forced marriages and child labor. Cherish Others, a local NGO, reported 30 cases of child marriage in TransMara district during the year but also noted that local officials had managed to prevent many more child marriages. In 2008 UNICEF reported that nine out of 10 children from poor households failed to complete primary education.

“The government ordered provincial administrators to arrest parents who did not take or send their children to school. However, this law was not enforced uniformly.

“The government banned corporal punishment in schools; however, there were reports that corporal punishment occurred throughout the year, with caning the most frequent form of punishment.” [4b] (section 6)

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## Military service and recruitment into gangs

- 22.13 The Coalition to Stop the Use of Child Soldiers *Global report 2008: Kenya*, accessed on 20 January 2011 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]

- 22.14 The USSD Report 2009 stated that: “[t]here were reports of children joining gangs and militia and of the Mungiki gang recruiting young boys from schools. Armed groups operating in Somalia, particularly the Al Shabaab militia and militias supporting the Transitional Federal Government, allegedly recruited minors from North Eastern Province and refugee camps in the country to fight in Somalia.” [4b] (section 6)

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## Female Genital Mutilation (FGM)

### Prevalence

- 22.15 The USSD Report 2009 stated:

“The law prohibits FGM [for those under 18 years old; see section on FGM/C in Women], but it was practiced, particularly in rural areas. FGM usually was performed at an early age. According to UNICEF, one-third of women between the ages of 15 and 49 had undergone FGM, and in June an obstetrician estimated that 32 percent of women had suffered from the procedure. 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. According to the Ministry of Gender and Children Affairs, in 2008 90 percent of girls among Somali, Kisii, Kuria, and Maasai communities had undergone the procedure. The rates among other communities were: Taita Taveta (62 percent); Kalenjin (48 percent); Embu (44 percent); and Meru (42 percent). FGM was less practiced among the Kikuyu and Kamba, with 34 percent and 37 percent respectively. There were public awareness programs to prevent the practice, in which government officials often participated.” [4b] (section 6)

- 22.16 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

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from the level of 38 percent reported in the 1998 KDHS and 32 percent reported in the 2003 KDHS.” [7a] (p264)

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.” [67c] (p35-37)

### Assistance from NGOs

22.18 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.” [67c] (p35-37)

22.19 The USSD Report 2009 stated that: “Some churches and NGOs provided shelter to girls who fled their homes to avoid FGM, but community elders frequently interfered with attempts to stop the practice. Various communities and NGOs have instituted ‘no cut’ initiation rites for girls as an alternative to FGM.” [4b] (section 6)

22.20 IRIN News reported in 2008 that:

“Hundreds of girls between seven and 17 are seeking refuge in church compounds in western Kenya to avoid the ritual removal of their clitorises, a practice that remains common despite its illegality... Relief aid for the girls has been provided by the government and agencies such as World Vision, the Maranatha Church and their Swedish partners. Other (sic) involved in efforts promoting the abandonment of FGM/C in the Kuria district include Action Aid, ADRA and GTZ/MOH and World Vision.” [42b]

22.21 The World Organisation Against Torture reported further on efforts to stop FGM in 2008:

“The initiative to eliminate FGM has been largely the efforts of the Civil Society Organizations. In addition, while some administration officers especially those in marginalised areas have been helpful in rescuing girls and apprehending those perpetrating FGM, a good number have indeed condoned the practise in their areas and even participated in celebrations of FGM. More concrete and practical efforts have to be made by the government on the issue, which will extend to provision of safe house facilities for girls who are under threat or who have been rescued and the punishment of administration and police officers found in condoning or participating in the practise. Stiff penalties should also be meted out to parents who are found having given away their daughter to be forcefully married.” [47a]

22.22 IRIN News further reported in 2009 that:

“The practice of female genital mutilation/cutting (FGM/C), once the foundation of womanhood among the Meru, is slowly dying out as people become more aware of the physical risks involved and its reinforcement of women’s inferior position in society. There is still some resistance, however, with many believing abandoning FGM/C will undermine Meru values still considered intrinsic to young girls becoming women in the community.

“Female circumcision rites had a dual role; the cut, yes, but there was also the period of seclusion following the cut, during which girls were schooled in the ways of women in Meru society – how they should behave in polite society, how they should interact with men and how to be a respectable member of society,’said Gilbert Musai, of the Roman Catholic Diocese of Meru, which, with the Catholic Relief Services NGO, runs an alternative rite-of-passage (ARP) that teaches local girls both new and old-school values as a replacement for FGM/C. ‘We are trying to find a way to link the old system to the new system.’” [42c]

22.23 World Vision reported:

“At the age of only eleven years, Irene was forced to run away from her home to escape what the community made her believe was a traditional obligation - female genital mutilation.

“Through the support of World Vision, Irene has been offered a safe haven in a rescue centre that accommodates girls who have been circumcised against their wish or who, like her, are escaping the practice.

“World Vision’s programme manager in the Marigat area of Kenya, Pamela Wamalwa, expresses optimism in World Vision’s anti-mutilation campaign. The prevalence of genital cutting and early marriage is slowly but steadily decreasing in the area.” [46a]

For further information on FGM in women, please see [Women: FGM](#)

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## Child marriage

22.24 The USSD Report 2009 stated:

“Newspapers frequently highlighted the problem of child marriages, which was commonly practiced among certain ethnic groups. According to UNICEF, 25 percent of young women had been married as children. 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 will apply the provisions of the act when deciding the case.” [4b] (section 6)

## Street children

22.25 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]

22.26 The USSD Report 2009 stated that:

“In 2006 the African Network for the Prevention and Protection Against Child Abuse and Neglect, a children’s rights NGO, estimated that 750,000 children lived on the streets. Street children faced harassment and physical and sexual abuse from police and others, and within the juvenile justice system.

“The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to girls abused and street children exploited in the commercial sex industry.” [4b] (section 6)

22.27 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

22.28 The UNICEF document, *Report of the field visit to Kenya by members of the Bureau of the Executive Board*, dated 30 April 2009 (UNICEF field report 2009), observed that:

“... Child protection challenges in Kenya continue to be serious; at the same time, national data on child protection issues remains very limited. Most of the approximately 2.4 million orphans are cared for by family members, but many live on the streets, in charitable children’s institutions or in child-headed households. Despite an official ban on corporal punishment, it is still practiced in schools, institutions and homes. A 2006 UNICEF study revealed that 3000 children were working as sex workers in four tourist communities on the coast. According to the study, 30 per cent of girls between the ages of 12 and 18 years living in these areas were involved in casual commercial sex work. Moreover, hundreds of thousands of children are estimated to be living on the streets. During the post-election violence of 2007–2008, in some communities, almost half of the women and girls were raped or suffered sexual abuse. There is evidence that Kenya is a fast growing source country, as well as a transit and destination country, for human trafficking. According to the 2003 Kenya Demographic Health Survey, 34 per cent of girls between the ages of 15 and 19 years have been circumcised nationwide; in North Eastern Province, that figure is 98.9 per cent.” [67b] (p4, paragraph 19)

22.29 The USSD Report 2009 stated that

“Poverty and the spread of HIV/AIDS continued to intensify child homelessness. In 2007 the government began a pilot program to place two million AIDS orphans with families in 20 districts. In 2007 the program placed 5,000 children in homes. In 2006 the African Network for the Prevention and Protection Against Child Abuse and Neglect, a children’s rights NGO, estimated that 750,000 children lived on the streets. Street children faced harassment and physical and sexual abuse from police and others, and within the juvenile justice system.

“The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to girls abused and street children exploited in the commercial sex industry.” [4b] (section 6)

22.30 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.” [45] (Homepage) 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]

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## EDUCATION

22.31 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 in 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)

22.32 The USSD Report 2009 stated:

“Primary and secondary education was tuition-free (although secondary enrollment was limited to students who obtained high scores on standardized primary exams); however, classes were overcrowded due to insufficient teachers and an inadequate budget. According to 2007 UNICEF data, approximately 79 percent of eligible children were enrolled in primary school, while only 13 percent of eligible minors were enrolled in secondary school. Boys outnumbered girls in secondary education by approximately 25,000 students. Rural families were more reluctant to invest in educating girls than boys, particularly at higher levels. Approximately 40 percent of university students were female.

“In 2008 the Centre for the Study of Adolescence reported that between 10,000 and 13,000 girls dropped out of school annually due to pregnancy. While the Education Act gave pregnant girls the right to continue their education until and after giving birth, NGOs reported that schools often did not respect this right and that schoolmasters sometimes expelled pregnant girls.” [4b] (section 6)

22.33 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)

- 22.34 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

- 22.35 The UNICEF SOWC report gave the following statistics on healthcare:

% of population using improved drinking-water sources			2006	total	57
				urban	85
				rural	49
% of population using improved sanitation facilities			2006	total	42
				urban	19
				rural	48
% of routine EPI vaccines financed by government			2008	total	100
Immunization 2008	1-year-old children immunized	TB	corresponding vaccines:	BCG	95
		DPT		DPT1	90

	against:		DPT3	85
		Polio	Polio	85
		Measles	measles	90
		HepB	HepB3	85
		Hib	Hib3	85
% newborns protected against tetanus				78
% under-fives with suspected pneumonia taken to an appropriate health-care provider			2008	49
% under-fives with suspected pneumonia receiving antibiotics			Data not available	
% under-fives with diarrhoea receiving oral rehydration and continued feeding			2008	33
Malaria 2006–2008 [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)	6
			% under-fives sleeping under ITNs	5
			% under-fives with fever receiving anti-malarial drugs	27

[67a] (Table 3)

22.36 The UNICEF field report 2009 stated:

“...Malnutrition, high incidence of diseases, inadequate health care and hygienic practices, poor environmental and living conditions and the HIV/AIDS pandemic are all factors contributing to the poor level of child health. Additional contributing factors include limited access of health services, partly due to long distances, and inadequacies in the health care system, such as lack of drugs, supplies and skilled personnel...Only half of the population in Kenya has access to safe water or sanitation. This increases the risk of diarrhoeal diseases, the cause of 20 per cent of all child deaths. About 70 per cent of schools do not have adequate sanitation facilities or a safe water supply.” [67b] (p3, paragraph 13-15)

## Nutrition

22.37 The UNICEF field report 2009 noted that “an estimated one out of every three Kenyan children under the age of five is malnourished. Poor nutrition is estimated to be a critical factor in over half of all child deaths. Levels of acute malnutrition are especially high in the arid areas of the country...” [67b] (p3, paragraph 14)

22.38 The UNICEF SOWC report gave the following statistics on nutrition:

% of infants with low birthweight (less than 2.5kg)		2008	10
% of children (2008) who are:	Early initiation of breastfeeding (within one hour of birth) (%)		52
	exclusively breastfed	(<6 months)	13
	breastfed with complementary food	(6–9 months)	84
	still breastfeeding	(20–23 months)	57
% of under-fives (2008) suffering from:	underweight (NCHS/WHO)	moderate & severe	21
	underweight (WHO)	severe	4
	wasting (WHO)	moderate & severe	6
	stunting (WHO)	Moderate & severe	35
Vitamin A supplementation coverage rate (6–59 months) 2008		Full coverage (%)	27
% of households consuming iodized salt		2008	91

[67a] (Table 3)

## HIV and AIDS

22.39 The UNICEF field report 2009 stated:

“Kenya is experiencing a high incidence of HIV/AIDS among all age groups, along with a continuing feminization of the epidemic. The national prevalence rate currently stands at 7.4 per cent; while numbers have stabilized in the urban areas, in the rural areas prevalence rates continue to increase... Half of all children infected with HIV at birth die before their second birthday. This is a major reason why the magnitude of the problem had remained hidden for a long time. The main source of infection for children is mother-to-child transmission...” [67b] (p4, paragraph 16-17)

22.40 The *United Nations General Assembly Special Session on HIV and AIDS Country Report – Kenya, 2010* stated that:

“About 1000 health facilities are providing Early Infant Diagnosis for HIV. The number of children tested for HIV has increased from 30,640 (37.8 percent) in 2008 to 49,344 (61%) in 2009. Pediatric treatment has also increased during the reporting period (from 13,000 children treated in 2007 to 20,517 in 2008 and 28,370 in 2009) covering about 24.2% of children in need of ART. Although number of children on ART has increased from 2008 to 2009, there is a reduction in percent coverage because of the change in denominator in the view of the new guidelines that all HIV + children below 18 years need ARVs.” [79b] (p16-17)

## Palliative care

22.41 The Human Rights Watch report, *Needless Pain*, published in 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)

22.42 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](#)

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## 23. TRAFFICKING

23.01 The US State Department *Trafficking in Persons Report 2010*, published 14 June 2010 (USSD Trafficking Report 2010) stated, with regard to Kenya that:

"Kenya is a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically conditions of forced labor and forced prostitution. Within the country, Kenyan children are forced into domestic servitude, commercial sexual exploitation – including involvement in the coastal sex tourism industry – and forced labor in agriculture (including on flower plantations), fishing, cattle herding, street vending, and bars. Traffickers – who gain poor families' trust through familial, tribal, or religious ties – falsely offer to raise and educate children in towns, or to obtain women lucrative employment. Trafficked Kenyan adults are exploited in involuntary domestic servitude and forced prostitution. Kenyan men, women, and children voluntarily migrate to the Middle East, other East African nations, and Europe in search of employment, where they are exploited in domestic servitude, massage parlors and brothels, and forced manual labor, including in the construction industry. At least 10 Kenyan trafficking victims remained in detention in Saudi Arabia at the end of the reporting period. Children from Burundi, Ethiopia, Rwanda, Somalia, Tanzania, and Uganda are subjected to forced labor and commercial sexual exploitation in Kenya. Chinese, Indian, and Pakistani women reportedly transit Nairobi en route to exploitation in Europe's sex trade. There were reports during the year that the al-Shabaab militia and Somalia's Transitional Federal Government may have recruited Somali youth under the age of 18 from Kenya-based refugee camps and Nairobi's Eastleigh neighborhood to participate in armed conflict in Somalia... 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 re-launched its national anti-trafficking committee, finished drafting a national action plan,



and partnered with a foreign government to arrest and extradite a suspected trafficker. While the government convicted at least two Kenyan trafficking offenders in 2009, most prosecutions failed to progress and data on such cases were not compiled at the provincial or national level.” [4c] (Kenya)

## LEGAL RIGHTS AND GOVERNMENT ASSISTANCE

### 23.02 The USSD Trafficking Report 2010 stated:

“The government failed to provide statistics on its anti-trafficking law enforcement efforts, but convicted and punished at least two trafficking offenders during the reporting period... The government made modest progress in its efforts to prevent human trafficking. The National Steering Committee to Combat Human Trafficking, chaired by the Minister of Gender, Children, and Social Welfare, met twice during the second half of the reporting period and completed the drafting of a five-year National Action Plan on Human Trafficking; the plan has not yet been approved by the cabinet. In 2009, the government cosponsored public advertising, including large billboards, near Mombasa airport and in resort areas carrying anti-child prostitution messages and threatening prosecution for tourists engaging in child sex tourism. In partnership with various donor-funded programs, labor officers, children’s officers, social workers, chiefs, health officials, police, and religious leaders identified and withdrew children from forced labor situations during the reporting period. District-level child labor committees, in conjunction with local Children’s Advisory Committees, raised awareness of child trafficking and labor among local populations. The Ministry of Labor, which is required by law to review and attest to all employment contracts for individuals legally migrating to work overseas, verified 400 contracts between December 2009 and February 2010; migrant workers, however, often left Kenya before their contracts had been reviewed and approved. It is unknown whether the government provided anti-trafficking training for its troops before deployment on international peacekeeping missions.” [4c] (Kenya)

### 23.03 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.” [42d]

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## PROTECTION

- 23.04 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. 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]

- 23.05 The USSD Trafficking Report 2010 stated:

“The government sustained minimal but inadequate victim protection efforts throughout the year. The government lacked both a mechanism for identifying victims of trafficking among vulnerable populations and a formal referral process to transfer victims to NGOs for assistance; it maintained no record of the number of victims referred by government officials to IOM or NGO service providers during the year. The government reportedly operated two shelters for child trafficking victims – one for boys and the other for girls – in Garissa, North East Province, but did not provide further information on these facilities. In 2009, the Ministry of Gender, Children, and Social Development hired an additional 67 Children’s Officers – officials charged with advocating for children’s rights and obtaining services for children in need – bringing the total number to 400. These officers coordinated the work of 2,427 local Children’s Advisory Committees, which worked in partnership with police to combat child trafficking, monitor institutions – such as orphanages – providing charitable services to children, and advance awareness of human trafficking at the local level. During the reporting period, Children’s Officers participated in trafficking investigations and provided counseling and follow-up to child trafficking victims. In addition, Children’s Officers served on the management committee of the Rescue Center, a shelter for sex trafficking victims in Mombasa, and provided case assessments and service referrals for victims. The government also worked with Ugandan authorities to repatriate four Ugandan children who had been identified in conditions of forced labor. The Ministry of Gender, Children, and Social Development continued partnership with a local NGO to jointly operate a 24-hour toll-free hotline for reporting cases of child trafficking, labor, and abuse. The hotline is located in a government-owned building and staffed, in part, by Children’s Officers who facilitated rescues and made referrals to appropriate district officials. During the reporting period,

the hotline received 27 reports of child trafficking and 13 concerning child prostitution.”  
[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 following 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 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 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](#).

Kenya's essential drugs list, last updated in 2003, is available [here](#).

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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 in 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 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]

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## HIV/AIDS – ANTI-RETROVIRAL TREATMENT

24.06 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]

24.07 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.



24.08 The *United Nations General Assembly Special Session on HIV and AIDS Country Report – Kenya 2010*, undated, stated that:

“The number of health facilities providing antiretroviral therapy has increased from 731 in 2008 to 943 in 2009, which represents 14% of the total health facilities in the country. In 2007 a total of 172,000 HIV positive patients were on ART, and the number increased to 236,881 in 2008 (230,059 adults and 20,517 children) and to 336,980 in 2009 (308,680 adults and 28,370 children). At least 30,000 of those on ART also receive nutritional support. Overall, ART coverage has increased from 42 percent in 2007 to 70.4 percent in 2009... About 1000 health facilities are providing Early Infant Diagnosis for HIV. The number of children tested for HIV has increased from 30,640 (37.8 percent) in 2008 to 49,344 (61%) in 2009. Pediatric treatment has also increased during the reporting period (from 13,000 children treated in 2007 to 20,517 in 2008 and 28,370 in 2009) covering about 24.2% of children in need of ART. Although number of children on ART has increased from 2008 to 2009, there is a reduction in percent coverage because of the change in denominator in the view of the new guidelines that all HIV + children below 18 years need ARVs... According to KAIS 2007, 12.1 percent of HIV-infected adults were taking cotrimoxazole daily to prevent infections. Uptake among infants born to HIV infected mothers started on cotrimoxazole within two months of birth was lower at 3 percent in 2008 and 6 percent in 2009. KAIS survey of 2007 found that among those known to be infected with HIV, 76.1 percent were taking cotrimoxazole daily... the coverage of TB patients being tested for HIV has increased from 80 percent in 2008 to 88 percent in 2009. The proportion of HIV positive TB patients who are on ART treatment has also increased from 16 percent in 2006 and 31 percent in 2008, to 36 percent in 2009.” [79b] (p16-17)

24.09 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 (PMTCT).

“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]

- 24.10 Liverpool Voluntary Counselling Testing, Care and Treatment (LVCT), a NGO operating in Kenya, provides some HIV care services. Its website, accessed on 22 October 2010, 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 (NASCO) 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]

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## CANCER TREATMENT

- 24.11 Capital FM Kenya reported in 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]

24.12 *Business Daily* reported in September 2010 that “Kenya has less than 15 cancer specialists against an average of 18,000 known cancer cases being diagnosed every year.” [20e]

24.13 The Kenya Cancer Association (KENCASA) website, accessed on 22 October 2010, 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]

24.14 Its role included:

“Promoting access of high quality evidence based cancer treatment for all Kenyans through:-

- i. Working with KESHO and other relevant professional association of institutes
- ii. Raise funds for treatment to aid needy cases through Vital Cancer Care and coordinate treatment support initiatives by well wishers both local and international
- iii. Lobby the relevant government ministries and industry players to provide affordable and accessible cancer treatment
- iv. Advocate for adequate trained/skilled manpower in cancer care provision.” [51a]

For further information on the work of KENCASA, please see their [website](#).

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## KIDNEY DIALYSIS

24.15 *Business Daily* reported in 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]

24.16 *Daily Nation* reported in 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." [16f]

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## MENTAL HEALTH

24.17 A paper published in *International Journal of Mental Health Systems*, published on 28 June 2010, entitled *Mental health policy in Kenya - an integrated approach to scaling up equitable care for poor populations* stated:

"Mental illness is common [in Kenya] but the specialist service is extremely sparse and primary care is struggling to cope with major health demands. Non health sectors e.g. education, prisons, police, community development, gender and children, regional administration and local government have significant concerns about mental health, but general health programmes have been surprisingly slow to appreciate the significance of mental health for physical health targets." [52a]

- 24.18 The website of mental health NGO *Basic Needs*, accessed on 22 October 2010, 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]

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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 US State Department Country Report on Human Rights Practices 2009, Kenya, (USSD Report 2009) stated that the “constitution and law provide for freedom of movement within the country, 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 19 October 2010, stated that there are “... no legal constraints on women’s freedom of movement in Kenya. However, cases are reported of husbands who deny this freedom by refusing to let their wives travel or visit friends.” [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 US State Department *Country Report on Human Rights 2009*, Kenya, released on 11 March 2010, (USSD Report 2009) stated:

“In September [2009] President Kibaki ordered that approximately 7,000 of the 350,000 persons who fled their homes in Rift Valley Province, Central Province, Nairobi, and other sections of the country as a result of 2008 postelection interethnic violence, still



had not been resettled in their home regions. In May 2008 the government announced 'Operation Rudi Nyumbani' (Operation Return Home) to return IDPs in camps to their homes; however, the majority of IDPs chose to relocate to transit sites near to their homes. By the end of 2008 the government had closed or ceased providing services to IDP camps; however, the Kenya Red Cross Society reported that 99,198 IDPs resided in transit sites at the beginning of the year. IDP camp residents complained that police used force and did not offer adequate compensation during the resettlement.

"Rapes allegedly perpetrated by residents of camps, local residents, and sometimes by police personnel occurred in IDP camps. In May 2008 the representative of the UN secretary-general on the human rights of IDPs visited the country and concluded that the returns of some IDPs were not voluntary and based on informed choices. In an October 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.

"During the year government eviction and destruction of homes in low income areas resulted in IDPs. For instance, in July police bulldozed homes in Githogoro Village, Nairobi, displacing 3,000 residents.

"During the year there were many other causes of displacement, including land disputes and flash floods. Throughout the year NGOs reported that hundreds of pastoralists were displaced in conflicts over pasture and watering holes in semiarid regions of North Eastern, Eastern, and Rift Valley provinces. During the year Karamojong from Uganda engaged in cross-border cattle raids in Western Rift Valley Province, resulting in death and displacement among the Pokot and Turkana tribes.

"An unknown proportion of the several thousand persons displaced by ethnic clashes from the 1990s had not returned to their homes due to fear of renewed violence." [4b] (section 2c)

26.02 The Internal Displacement Monitoring Centre reported in June 2010 that:

"Although post-election violence ended with the signing of the [National Dialogue and Reconciliation] Accord [as part of the 2008 power sharing agreement], violence has since caused new displacements in different parts of the country. Displacement was reported in arid areas of northern Kenya in 2009 and early 2010 as a result of inter-ethnic clashes and a state-led disarmament programme which mostly targeted pastoralist communities. Inter-ethnic clashes between pastoralist communities have commonly tended to undermine livelihoods and lead to displacement. Traditionally, pastoral communities have practiced cattle rustling to assert dominance over neighbouring tribes. However, the recent proliferation of small arms, the commercialisation of cattle rustling and growing competition for natural resources have made these conflicts more violent and frequent. In 2009, it was estimated that over 400 Kenyans died as a result of cattle rustling, and nearly 9,000 fled their homes (IRIN, 17 November 2009, The Standard, 08 December 2009; OCHA, February 2010).

"In November 2009, hundreds of families were displaced from their homes in Isiolo District following an armed attack that left 11 people dead. Hundreds of livestock were stolen in these raids, which also affected women's livelihoods and disrupted children's learning (IRIN, 17 November 2009). In December 2009, armed bandits from the Pokot

tribe raided a village in Turkana East District, resulting in three deaths and the displacement of hundreds of people (The Standard, 8 December 2009).

“In late 2009, hundreds of people, especially women, were displaced during a government operation aimed at disarming pastoralists which was characterised by human rights violations affecting a number of communities. The Kenya National Commission on Human Rights accused government security personnel of using excessive force that led to loss of lives and other human rights violations (Kenya Broadcasting Corporation, 5 December 2009; Daily Nation, 24 December 2009). A similar operation carried out by government security forces in the Mount Elgon region of western Kenya displaced thousands of people in 2008 (Médecins Sans Frontières, 17 June 2008; Human Rights Watch, 28 July 2008; Daily Nation, 25 August 2008). Despite reported returns to Mount Elgon, it appears that many families remain separated, that children’s education has been disrupted and livelihoods have been lost.” [54a]

26.03 The report further stated, with regard to the Government’s response, that:

“The government’s National Humanitarian Fund for Mitigation and Resettlement has worked to help resettle and assist the people displaced by postelection violence, by providing compensation for shelter and supporting livelihoods and reconciliation. It has enabled a number of families to resettle and return to their farms. However, a section of civil society and the media have reported that the fund has been grossly mismanaged and government promises to buy land to resettle displaced families have not been honoured. An audit report compiled by the Office of the President blamed the Ministry of State for Special Programmes for the loss of Sh200 million (\$2.7 million) earmarked for IDP resettlement, due to corruption in the Rift Valley provincial administration (Daily Nation, 7 January 2010; The Standard, 7 January 2010; OCHA, February 2010).

“The government has worked with a broad range of national and international stakeholders including UN agencies on a national IDP policy, and the Ministry of State for Special Programmes (MOSSP) and the Ministry of Justice, National Cohesion and Constitutional Affairs launched a draft version in March 2010. This draft will have to go to the Cabinet and Parliament before it is adopted.

“Since the signing of the power sharing agreement in March 2008, which gave birth to the Coalition Government in Kenya, the government’s response to the welfare of IDPs has not been consistent.

“In March 2010, the Speaker of Kenya’s Parliament asked MPs not to forget the thousands of IDPs who were still in camps. The Speaker accused politicians of forgetting about the displaced after the National Accord was signed (The Standard, 15 March 2010). Attempts by IDPs in February 2010 to march to the presidential palace to bring their plight to the attention of authorities were thwarted by security forces (Daily Nation, 17 February 2010; The Standard, 17 February 2010).

“In the arid and semi-arid areas where conflict induced displacement has continued, the humanitarian response from both the government and humanitarian organisations remained very poor at the end of 2009, with the government not paying as much attention as in the Rift Valley (ODI, November 2009; IRIN, 17 November 2009; Daily Nation, 21 December 2009; The Standard, 17 February 2010).” [54a]

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## 27. FOREIGN REFUGEES

- 27.01 The US State Department *Country Report on Human Rights Practices 2009*, Kenya, released on 11 March 2010, (USSD Report 2009) reported that:

“The law provides for the granting of asylum or refugee status in accordance with the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, and the 1969 Organization of African Unity Convention Governing the Specific Aspects of the Refugee Problem in Africa. The country is a signatory of this convention. Its laws minimally provide for the granting of asylum or refugee status, and the government has established a system for providing protection to some refugees.

“The government provided some protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. However, there were reports of forcible returns of Somali asylum seekers throughout the year; the Kenya-Somalia border remained officially closed, preventing asylum seekers from legally entering Kenya. Somali asylum seekers reportedly paid approximately 7,500–15,000 shillings (\$100- \$200) per family in bribes and transportation costs to travel from the Kenya-Somalia border to the Dadaab refugee camps.

“During the year international donors initiated a program to transfer the responsibility of registering all asylum seekers and determining refugee status from the UNHCR to the government...Despite the policy that all refugees must reside in camps (encampment policy), slightly more than 45,000 refugees were registered in Nairobi as of December; however, the UNHCR provided assistance to these refugees only in exceptional cases. Unofficially, the UNHCR and NGOs estimated that more than 100,000 refugees resided in Nairobi. The government did not provide opportunities for local integration; however, it worked closely with the UNHCR in facilitating refugee resettlement to other countries...The government required all refugees to remain at UNHCR camps, which were located near the country's borders with Somalia and Sudan, unless refugees had been granted permission to attend higher education institutions, receive specialized medical care outside the camp, or to leave to avoid security threats.

“The government introduced mobile courts to serve the camp populations, which were fully fledged judicial courts and instrumental in curbing crime and violence.

“The government had not provided temporary protection since 2004 to individuals who may not qualify as refugees under the 1951 convention and its 1967 protocol.” [4b] (section 2d)

- 27.02 The Human Rights Watch report, *Welcome to Kenya*, published in June 2010 stated:

“Two decades after they first started to flee the brutal conflict in their country, Kenya provides asylum to 325,000 registered Somali refugees—and probably an equal number who have not registered...Near Kenya's officially closed border with Somalia, police have free rein to intercept as many as possible of the estimated 10,000 mostly Somali asylum seekers who cross the border every month with the help of people smugglers. Making no distinction between women, children, and men, police often use violence, unlawful detention in appalling overcrowded conditions, and threats of deportation to extort money from them. Some police officers rape women near the

border. During the first ten weeks of 2010, hundreds, if not thousands, of Somali asylum seekers unable to pay were unlawfully sent back to Somalia.

“The widespread threat of police interception and abuses forces most asylum seekers to travel on small paths away from the main road between the border and the refugee camps, where common criminals (often described by asylum seekers as “men not wearing uniform”) also prey upon them, raping women and stealing the little they have.

“About half of all Somalis fleeing to Kenya register in the world’s largest refugee settlement, made up of three overcrowded refugee camps near the town of Dadaab in north-east Kenya, now hosting almost 300,000 people. The other half make their way to Nairobi, Kenya’s capital, where very few are able to register as refugees due to the limited capacity of the government and the United Nations High Commissioner for Refugees (UNHCR)...Police arresting newly arrived Somali asylum seekers incorrectly tell them they are unlawfully in Kenya and charge them with offenses under Kenya’s Immigration Act which prohibits entry into Kenya without documents and a visa. But the Act does not apply to asylum seekers who, under Kenya’s Refugee Act, have 30 days from the moment they enter the country to register as refugees with the authorities at the nearest office of the Kenyan Refugee Commissioner. For Somalis crossing overland from Somalia, that means the Dadaab camps.” [91]

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## DADAAB CAMPS

27.03 The USSD Report 2009 stated:

“The government... registered refugees in Dadaab camps, located in the northeastern part of the country; however, many refugees had not received their identification documents by year's end.

“The government permitted the UNHCR to register and assist new arrivals who successfully made their way to one of the three Dadaab refugee camps. The UNHCR registered more than 59,000 new arrivals in the Dadaab camps between January and the end of November, increasing the camp size to more than 266,000 (the three camps were designed to accommodate 90,000 refugees). In August the UNHCR requested government permission to build a fourth camp in Dadaab due to severe overcrowding; however, as of year's end the government had not responded. Between August and October the International Organization for Migration (IOM) transported more than 13,000 newly arrived Somali refugees from the Dadaab camps to the Kakuma camps to minimize overcrowding.

“The UNHCR stopped providing newly arrived refugees with plots in the Dadaab camps, restricting assistance to limited nonfood items (plastic sheeting and cooking utensils) and instructions to locate clan members or search for accommodations in Dadaab refugee camp. Cholera, meningitis, H1N1, and measles outbreaks were all reported in Dadaab. Many new refugees reportedly were bypassing Dadaab camps because of the conditions and continued directly to the Kakuma camp or on to Nairobi...Security concerns, including rape, banditry, and shooting, remained problems at both Dadaab and Kakuma refugee camps. Health and social workers at the camps reported that due to strong rape awareness programs, victims increasingly reported such incidents, resulting in improved access to counseling. During the year approximately 249 crimes

were reported in Kakuma refugee camp, including two homicides and three cases of sexual assault. There were no reported cases of sexual assault by police in either camp. Fifteen relief agencies followed a code of conduct for humanitarian workers to further reduce incidents of sexual abuse by agency staff in refugee camps.

“Other security and human rights problems affecting refugees included persecution of Muslim converts to Christianity, community pressure against opponents of female genital mutilation (FGM), forced marriage, particularly of young Sudanese and Somali girls, and family objections to out-of-clan marriage. At times these resulted in the kidnapping of spouses and children. The UNHCR requested increased police presence in the identified troubled areas, as well as increased patrolling within the refugee camps. Additional police were also assigned to the camps but not in sufficient numbers.

“There were isolated incidents of interclan violence at the Dadaab refugee camps.” [4b] (section 2d)

27.04 The Human Rights Watch report *Welcome to Kenya* stated:

“Over a period of six days in the Dadaab camps in March 2010, Human Rights Watch interviewed 102 refugees about police abuses and sexual violence in and around the camps. Half of the interviewees spoke about police abuses, including excessive force leading to death and miscarriages, rape, whipping, beatings, and kicking. Fifteen said the police had arrested and detained them—together with around 220 other people—soon after they had entered Kenya. Eight said that the police had deported them, and 152 others, back to Somalia after they had failed to pay the police money. Despite the limited time Human Rights Watch had to conduct research in the camps, this number suggests that the abuses documented in this report are systematic and widespread.

“UNHCR has failed to put in place an effective monitoring system to collect information on the types of abuses documented in this report. The UN refugee agency says that a number of factors have affected its ability to carry out its protection mandate: security concerns that restrict its work in the camps, a lack of human resources and financial capacity, and the absorption of its time and resources in addressing the myriad needs relating to the humanitarian situation in the chronically overcrowded and underfunded camps.” [9f]

27.05 The Human Rights Watch *Annual Report 2011*, covering events of 2010 and published on 24 January 2011, stated that the “overstretched refugee camps in Dadaab, northeastern Kenya, continued to receive thousands of new arrivals during the year, including some 34,000 people between January and September [2010].” [9h] (Kenya, p 137)

## FREEDOM OF MOVEMENT

27.06 The Human Rights Watch Report, *Welcome to Kenya*, stated: “Kenya currently unlawfully confines refugees to camps, denying them their freedom of movement and choice of residence, in contravention of the 1951 Refugee Convention, although thousands have also registered in Nairobi. Under this policy, police arrest refugees travelling without (and at times with) permission, extort money, and sometimes take them to court in Garissa where they are fined or sent to prison.” [9f]

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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]

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## 29. FORGED AND FRAUDULENTLY OBTAINED OFFICIAL DOCUMENTS

29.01 The *Kenya Star* reported in 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 trying 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]

29.02 A letter from the Foreign and Commonwealth Office, dated 1 November 2010 stated:

“Kenyan travel documents and ID cards are subject to high levels of abuse, particularly by Somali nationals. The abuse is exacerbated by Somalia’s close proximity to Kenya, the difficulties the Kenyan authorities have in determining nationality (especially from the border communities) and widespread fraud and corruption.

“Local newspaper articles have reported abuse of the Kenyan ID card resulting in the temporary closure of the ID card office servicing the Eastern Province of Kenya.” [2b]

See also [Citizenship and Nationality](#)

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## Annex A

### CHRONOLOGY OF MAJOR EVENTS

The following list of events is extracted from the BBC News Article *Kenya: a political history*, published on 24 December 1997 [10i] or the BBC News Timeline, updated 24 November 2010 [10c] unless otherwise stated.

#### 1963

12 December Kenya gains independence [3a] (CIA World Factbook)

#### 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. [16n] (Daily Nation, How heroic trio of fighter pilots scuttled mission to bomb State House and GSU)

#### 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. [16n] (Daily Nation, How heroic trio of fighter pilots scuttled mission to bomb State House and GSU)

#### 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**

- 7 August An Al-Qaeda bomb exploded at the US embassy in Nairobi, killing 224 people and injuring thousands. [4a] (US State Department Background Note) [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. [10c] [10j] (BBC News, Kenya terror strikes target Israelis)

**2002**

- 30 December Mwai Kibaki is inaugurated as president of Kenya following a landslide victory in elections. [10k] (Eyewitness: Kenya's historic day)

**2004**

- 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. [10b] (BBC News, Kenya president ratifies new constitution)

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## Annex B

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### POLITICAL ORGANISATIONS

The following information is from Jane's Country Assessments: Kenya, Politics, Internal Affairs [14c] and the CIA World Leaders website, updated 27 July 2010 [3b].

#### **Forum for the Restoration of Democracy-People (FORD-People)**

Currently led by Reuben Oyondi. [3b]

Jane's stated that:

"Ford-People was created in October 1997 from a split in Ford-Asili...In 2002, Ford-People initially joined the opposition coalition but broke away in early November to form the main body of the Kenya People's Coalition (KPC), whose leader and candidate was Simeon Nyachae, a KANU defector who had joined Ford-People in 2001 and revived the party as a focus for Kisii support from Nyanza province. However, the other coalition members split over support for the NARC and designation of candidates and Ford-People contested the election alone. With 14 elected and one appointed seat, Ford-People was the third-largest party in parliament. Its total included two seats in Coastal province and another in Eastern province, as well as 11 from Nyanza. As a result of splits within the NARC coalition, Kibaki brought Ford-People into the government and appointed Nyachae as minister of energy in July 2004, later minister of roads and public works. In 2007, Ford-People was affiliated to the PNU." [14c] (Internal Affairs)

#### **Kenya African National Union (KANU)**

Led by Deputy Prime Minister Uhuru Kenyatta. [3b]

Jane's stated that:

"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.

"...The party found new strength in 2001 with a governing alliance with the Luo-dominated National Development Party (NDP) of Raila Odinga. With the merger of the parties in March 2002, Odinga became KANU secretary general and began to position himself as a potential presidential successor or candidate for the anticipated new post of prime minister. However, whatever unity KANU had created was broken in mid-2002 with disputes over the selection procedure for a successor to Moi, who finally agreed to stand down. [George] Saitoti and other long-time party leaders of the Rainbow Alliance coalition broke with the president in August 2002 when his selection of Uhuru Kenyatta became clear. A large segment of the parliamentary rank and file followed Odinga and Saitoti into opposition in mid-October 2002. These dissident KANU factions became the Liberal Democratic Party (LDP) within the NARC.

"KANU therefore entered the December 2002 elections with its support base severely weakened: Odinga had taken the Luo vote with him; Saitoti and other leaders took much of the party's Kamba, Maasai and coastal vote; and the Kikuyu vote that Uhuru had been expected to mobilise was split with Kibaki. Although Uhuru's candidacy allowed important inroads into

southern Kikuyuland and Moi's patronage maintained strong support among the Kalenjin and the nomadic peoples of the north and east, in other areas of its previous support it lost out to the Narc and Ford-People. With 64 elected and four nominated seats, KANU was still the second party in parliament and leads the opposition, but this was a major reduction on its previous 113 seat majority. The party did regain some strength as a result of its participation in the successful campaign against the constitutional referendum.

"In the run-up to the 2007 elections, KANU allied itself to Kibaki's re-election vehicle, the PNU. In the parliamentary elections, KANU won 14 constituencies." [14c] (Internal Affairs)

### **Orange Democratic Movement (ODM)**

Led by Prime Minister Raila Odinga. [3b]

Jane's stated that:

"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 per cent 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. 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." [14c] (Internal Affairs)

### **Orange Democratic Movement-Kenya (ODM-K)**

Led by Kalonzo Musyoka. [3b]

Jane's stated that:

"The ODM-K is a breakaway faction from the larger ODM, which 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 parliamentary elections." [14c] (Internal Affairs)

### **Party of National Unity (PNU)**

Led by President Mwai Kibaki. [3b]

Jane's stated that:

"Following the falling out within the NARC, the multi-party coalition with which Kibaki had won the presidential elections in 2002, it appeared certain that Kibaki would be seeking a new alliance platform ahead of the next elections. In mid-September 2007, he subsequently unveiled

the Party of National Unity (PNU). The PNU comprised, among others, the former ruling KANU, which had enjoyed almost four decades in power until the NARC unseated it in 2002. Earlier in September 2007, Uhuru Kenyetta of KANU, a former Kibaki presidential election rival, had indicated that he would not be contesting the presidential elections and that KANU would instead back Kibaki. Former president Daniel arap Moi also gave his backing to Kibaki. Kibaki maintained the presidency following the disputed December 2007 polls and power-sharing agreement of February 2008. The PNU had been trumped in the parliamentary elections by the Orange Democratic Movement (ODM) of Raila Odinga.” [14c] (Internal Affairs)

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## Annex C

### PROMINENT PEOPLE

From the Central Intelligence Agency *World Leaders* website, updated 27 July 2010 [3b]

<b>President</b>	Mwai KIBAKI
<b>Vice President</b>	Stephene Kalonzo MUSYOKA
<b>Prime Minister</b>	Raila Amolo ODINGA
<b>Deputy Prime Minister</b>	Uhuru KENYATTA
<b>Deputy Prime Minister</b>	Wycliffe Musalia MUDAVADI
<b>Minister for Agriculture</b>	Sally Jepngetich KOSGEY
<b>Minister for Cooperative Development</b>	Joseph NYAGAH
<b>Minister for the East African Community</b>	Amason Kingi JEFFAH
<b>Minister for Education</b>	Sam ONGERI
<b>Minister for Energy</b>	Kiraitu MURUNGI
<b>Minister for Environment &amp; Mineral Resources</b>	John MICHUKI
<b>Minister for Finance</b>	Uhuru KENYATTA
<b>Minister for Fisheries Development</b>	Paul Nyongesa OTUOMA
<b>Minister for Foreign Affairs</b>	Moses WETANGULA
<b>Minister for Forestry &amp; Wildlife</b>	Noah WEKESA
<b>Minister for Gender &amp; Children Affairs</b>	Esther Murugi MATHENGE
<b>Minister for Higher Education, Science, &amp; Technology</b>	William Samoei RUTO
<b>Minister for Home Affairs</b>	Stephene Kalonzo MUSYOKA
<b>Minister for Housing</b>	Peter Soita SHITANDA
<b>Minister for Industrialisation</b>	Henry Kiprono KOSGEY
<b>Minister for Information &amp; Communications</b>	Samuel Lesuron POGHISIO
<b>Minister for Labour</b>	John Kiyonga MUNYES
<b>Minister for Lands</b>	Aggrey James ORENGO
<b>Minister for Livestock Development</b>	Mohamed Abdi KUTI
<b>Minister for Local Government</b>	Wycliffe Musalia MUDAVADI
<b>Minister for Medical Services</b>	Peter Anyang NYONGO
<b>Minister for Nairobi Metropolitan Development</b>	Mutula KILONZO
<b>Minister for Public Health &amp; Sanitation</b>	Beth Wambui MUGO
<b>Minister for Public Works</b>	Chris OBURE
<b>Minister for Regional Development Authorities</b>	Fredrick Omulo GUMO
<b>Minister for Roads</b>	Kipkalya KONES
<b>Minister for Tourism</b>	Mohamed Najib BALALA
<b>Minister for Trade</b>	Amos KIMUNYA
<b>Minister for Transport (Acting)</b>	Amos KIMUNYA
<b>Minister for Water &amp; Irrigation</b>	Charity Kaluki NGILU
<b>Minister for Youth &amp; Sports</b>	Helen Jepkemoi SAMBILI
<b>Minister of State for Defense</b>	Yussuf Mohamed HAJI
<b>Minister of State for Immigration &amp; Registration of Persons</b>	Gerald Otieno KAJWANG
<b>Minister of State for National Heritage &amp; Culture</b>	William Ole NTIMAMA
<b>Minister of State for Planning, National Development &amp; Vision 2030</b>	Wycliffe Ambetsa OPARANYA



<b>Minister of State for Provincial Admin. &amp; National Security</b>	George SAITOTI
<b>Minister of State for Public Service</b>	Dalmas Anyango OTIENO
<b>Minister of State for Special Programmes</b>	Naomi Namsi SHABAN
<b>Attorney General</b>	Amos WAKO
<b>Governor, Central Bank of Kenya</b>	Njuguna S. NDUNGU

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## Annex D

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### LIST OF ABBREVIATIONS

<b>AI</b>	Amnesty International
<b>CEDAW</b>	Committee on the Elimination of All Forms of Discrimination Against Women
<b>CPJ</b>	Committee to Protect Journalists
<b>FCO</b>	Foreign and Commonwealth Office (UK)
<b>FGM</b>	Female Genital Mutilation
<b>FH</b>	Freedom House
<b>GDP</b>	Gross Domestic Product
<b>HIV/AIDS</b>	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
<b>HRW</b>	Human Rights Watch
<b>IDP</b>	Internally Displaced Person
<b>IMF</b>	International Monetary Fund
<b>IOM</b>	International Organisation for Migration
<b>NGO</b>	Non Governmental Organisation
<b>OCHA</b>	Office for the Coordination of Humanitarian Affairs
<b>TB</b>	Tuberculosis
<b>TI</b>	Transparency International
<b>UN</b>	United Nations
<b>UNAIDS</b>	Joint United Nations Programme on HIV/AIDS
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>USAID</b>	United States Agency for International Development
<b>USSD</b>	United States State Department

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## Annex E

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