



Home Office

# **Country Policy and Information Note**

## **Kenya: Actors of protection**

**Version 1.0**

**May 2020**

# Preface

## Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

## Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive)/Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

## Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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# Assessment

Section 1 Updated: 24 March 2020

## 1. Introduction

### 1.1 Scope of this note

- 1.1.1 Whether in general those with a well-founded fear of persecution or serious harm from non-state actors can obtain effective state protection.

### 1.2 Points to note

- 1.2.1 Where a claim is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002, as Kenya is listed as a designated state for men only (see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#))

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Section 2 Updated: 19 May 2020

## 2. Consideration of issues

### 2.1 Credibility

- 2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Exclusion

- 2.2.1 Decision makers must consider whether there are serious reasons for considering whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.
- 2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.
- 2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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### 2.3 Protection

- 2.3.1 Where the person has a well-founded fear of persecution from non-state actors, including 'rogue' state actors, decision makers must assess whether the state can provide effective protection.

- 2.3.2 The constitution provides the legal framework for establishing a criminal justice system creating provision for a police service, armed and intelligence forces, an independent judiciary, and scope for independent commissions to oversee functions of the state. The penal code establishes a series of laws criminalising behaviour and acts that might be persecutory or cause serious harm (see [Security apparatus](#), [Police oversight and complaints mechanism\(s\)](#) and [Rule of law and the judiciary](#)).
- 2.3.3 The National Police Service (NPS) maintains internal security and includes within its structure, the Kenya Police Service (KPS), which has primary responsibility for enforcing the law throughout the country and for providing protection to those who need it. Poor caseworking skills, incompetence and corruption within the KPS remain significant problems and undermine its effectiveness. However, in 2018 the government announced a reorganisation of the structure and responsibilities of the NPS and in 2019, reviewed the training curriculum for police and intensified its anti-corruption campaign. The number of police officers have increased since 2013 with figures recorded in March 2019 at just over 100,000. All police officers were required to undergo a vetting process to improve professionalism and integrity. The KPS response to crime (and prosecution of criminals) is variable but as a result of reforms has improved over recent years (see [Security apparatus](#) and [Security forces capabilities](#)).
- 2.3.4 Security forces have been responsible for harassment, excessive force, torture, extra-judicial killings and enforced disappearances. The government has mechanisms in place to investigate police abuses and the Independent Policing Oversight Authority (IPOA), has continued to increase its capacity to investigate abuse and has referred cases to the Director of Public Prosecution (ODPP) for prosecution. Despite progress in police oversight, abuse and impunity remain ongoing concerns and the IPOA's effectiveness has been limited; with 67 cases involving killings by police investigated and 6 convictions of police officers secured since 2012 (see [Security forces capabilities](#), [Human rights abuses](#), [Prosecution of police officers](#) and [Police oversight and complaints mechanism\(s\)](#)).
- 2.3.5 The law provides for an independent judiciary and the government generally, but not always, respected this. The law provides for the right to a fair public trial and the presumption of innocence and the government generally respected these rights. However, weaknesses in the judicial system has contributed to slow prosecutions and large numbers of acquittals, which undermine the courts' effectiveness (see [Rule of law and the judiciary](#)).
- 2.3.6 The state has taken reasonable steps to prevent persecution or serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and there are, generally, no barriers to accessing such protection. Therefore, in general, the state is willing and able to offer effective protection, however each case must be considered on its facts with the onus on the person to demonstrate why they would not be able to obtain protection.
- 2.3.7 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

- 2.3.8 For an assessment of protection available for persons whose claims are based on their sexual orientation and/or gender identity and/or expression or for claims based on FGM, see the Country Policy and Information Notes on [Kenya: sexual orientation and gender identity and expression](#) and [Kenya: female genital mutilation \(FGM\)](#)

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# Country information

Section 3 updated: 7 April 2020

## 3. Security apparatus

### 3.1 Penal code and criminal law

- 3.1.1 Kenya's [penal code](#) is the code of laws concerning crimes and offences and their punishment. It was set up in 2010 and revised in 2012<sup>1</sup>.
- 3.1.2 The [Constitution of Kenya](#) is the supreme law of the Republic of Kenya<sup>2</sup>. The 2010 referendum voted in favour of a new constitution<sup>3</sup> which was passed and subsequently promulgated on 27 August 2010<sup>4</sup>.

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### 3.2 The police

- 3.2.1 The [Constitution of Kenya](#) outlines the establishment, object, function and command of the National Police Service<sup>5</sup>.
- 3.2.2 The Amnesty International report, Police Reform in Kenya: 'A Drop in the Ocean', published in 2013, stated:

'The National Police Service Act passed in August 2011 merges the Kenya Police and the Administration Police into one hierarchy and establishes the role of Inspector General of Police with authority over both policing branches. Article 41 of the National Police Service Act also places limits on the force which police are able to exercise, stipulating that an officer may use "force and firearms, if and to such extent only as is necessary." Publication of the Act was delayed for almost a year, raising serious concerns regarding political commitment to police reform.'

<sup>6</sup>
- 3.2.3 In January 2017, President Kenyatta announced that Kenya had 98,732 police officers, compared to 78,885 in 2013, an increase of more than 25 per cent. During the same speech, he stated that the Kenya police force had several thousand police vehicles, and several police helicopters<sup>7</sup>. In March 2019, there were 101,288 police officers recorded through biometric registration<sup>8</sup>.
- 3.2.4 The highest paid police officer takes home 283,540 Kenyan shillings (KES) (approximately £2,236.53 as at 24 March 2020<sup>9</sup>) per month, while the lowest paid police officer earns 35,870 KES per month<sup>10</sup> (approximately £282.94 as at 24 March 2020<sup>11</sup>).

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<sup>1</sup> Republic of Kenya, 'Penal Code', 2010 (revised 2012), [url](#).

<sup>2</sup> Republic of Kenya, 'Constitution of Kenya' (Article 2), 27 August 2010, [url](#).

<sup>3</sup> BBC, 'Kenyans back change to constitution in referendum', 5 August 2010, [url](#).

<sup>4</sup> ICTJ, 'Institutional Reform in the New Constitution of Kenya', 21 April 2011, [url](#).

<sup>5</sup> Republic of Kenya, 'Constitution of Kenya' (Chapter 14, 243-245), 27 August 2010, [url](#).

<sup>6</sup> Amnesty International, 'Police Reform in Kenya: "A Drop in the Ocean"', 2013, [url](#).

<sup>7</sup> President Uhuru Kenyatta, 'Speech addressed to the national police service', 16 January 2017, [url](#).

<sup>8</sup> The Star, 'Kenya has 101,288 police officers, audit shows', 19 March 2019, [url](#).

<sup>9</sup> XE Currency Converter, 24 March 2020, [url](#).

<sup>10</sup> Bizna, 'Kenya Police Salaries: What police officers earn every month', 5 January 2020, [url](#).

<sup>11</sup> XE Currency Converter, 24 March 2020, [url](#).

- 3.2.5 The United States State Department (USSD) Country Report on Human Rights Practices for 2019 (USSD report 2019) repeated information from the 2018<sup>12</sup> (USSD report 2018), and noted that: ‘The National Police Service (NPS) maintains internal security and is subordinate to the Ministry of Interior and Coordination of National Government (Interior).’<sup>13</sup>
- 3.2.6 A Business Daily report, dated 13 September 2018, stated that President Kenyatta announced changes to the police service relating to command, uniform, housing and training. The reforms included integration of functions, rebranding, renaming and scrapping of some positions<sup>14</sup>.
- 3.2.7 The USSD report 2018 noted:
- ‘In September [2018] President Kenyatta announced the reorganization of the NPS, which includes the Kenya Police Service (KPS), the Administration Police Service, and the Directorate of Criminal Investigations (DCI). The KPS remains responsible for general policing and contains specialized subunits, such as the paramilitary General Services Unit, which responds to large-scale incidents of insecurity. The Administration Police Service is now comprised of units dedicated to border security, protection of critical infrastructure, and prevention of livestock theft. The DCI is responsible for all criminal investigations and includes specialized investigative units, such as the Antinarcotics Unit, the Antiterrorism Police Unit, and the Forensics Unit.’<sup>15</sup>
- Further general information about the KPS is available on the [Kenya Police Service](#) website.

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### 3.3 National Intelligence Service (NIS)

- 3.3.1 The [Constitution of Kenya](#) states: ‘The National Intelligence Service a) is responsible for security intelligence and counter intelligence to enhance national security in accordance with this Constitution; and (b) performs any other functions prescribed by national legislation.’<sup>16</sup>
- 3.3.2 The USSD report 2019 stated: ‘The National Intelligence Service collects intelligence internally as well as externally and is under the direct authority of the president.’<sup>17</sup>
- 3.3.3 The National Intelligence Service (NIS) is responsible for security intelligence and counter intelligence to enhance national security. Its mission is to safeguard Kenya from any threats emanating from within Kenya and outside Kenya. The NIS is made up of three divisions, which are the Internal Division, External Division, and Counter Intelligence Division. The Internal Division is responsible for gathering domestic intelligence. The External Division is

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<sup>12</sup> USSD, ‘USSD report 2018’ (section 1d), 13 March 2019 [url](#).

<sup>13</sup> USSD, ‘USSD report 2019’, (section 1d), 11 March 2020, [url](#).

<sup>14</sup> Business Daily, ‘Kenya police gets a new face, structure’, 13 September 2018, [url](#).

<sup>15</sup> USSD, ‘USSD report 2018’, (section 1d), 13 March 2019 [url](#).

<sup>16</sup> Republic of Kenya, ‘Constitution of Kenya’ (Chapter 14, 242), 27 August 2010 [url](#).

<sup>17</sup> USSD, ‘USSD report 2019’, (section 1d), 11 March 2020, [url](#).

responsible for gathering foreign intelligence, and the Counter Intelligence Division is responsible for gathering counter-intelligence<sup>18</sup>.

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### 3.4 Armed forces

- 3.4.1 The CIA World Factbook stated that Kenya's armed forces consists of an army, navy, and air force<sup>19</sup>.
- 3.4.2 According to the Kenyan Constitution, the Kenyan armed forces are responsible for the defence and protection of the sovereignty and territorial integrity of Kenya; can assist and cooperate with other authorities in situations of emergency or disaster; and may be deployed to restore peace in any part of Kenya affected by unrest or instability<sup>20</sup>. Recruitment into the armed forces is voluntary and recruits must be at least 18 years of age<sup>21</sup>.
- 3.4.3 The USSD report 2019 stated: 'The Kenya Defense Forces report to the Ministry of Defense and are responsible for external security but have some domestic security responsibilities, including border security and supporting civilian organizations in the maintenance of order, including postdisaster response.'<sup>22</sup>

For further information on the armed forces and links to army, navy and air force webpages, see Kenya [Ministry of Defence](#).

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Section 4 updated: 7 April 2020

## 4. Security forces capabilities

### 4.1 Surveillance

- 4.1.1 The United Nations Human Rights Council Report of the Office of the United Nations High Commissioner for Human Rights (UN OHCHR), Summary of Stakeholders Submissions on Kenya, 5 November 2019 included a submission by The Collaboration on International ICT Policy in East and Southern Africa (CIPESA), and Small Media which stated: '...the National Intelligence Service Act, 2012, limited the right to privacy and allowed the National Intelligence Service (NIS) to investigate, monitor or interfere with the communications of people under investigation by the NIS or suspected of committing of an offense. NIS interception of communications was conducted without a judicial (or other independent) authorisation.'<sup>23</sup>
- 4.1.2 The USSD report 2019 stated:

'The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority...

'Privacy International reported the National Intelligence Service has direct access to the country's telecommunications networks that allows for the

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<sup>18</sup> NIS, 'Organisational Structure', (n.d), [url](#).

<sup>19</sup> CIA, 'World Factbook, Kenya' (Military and security forces), 11 February 2020, [url](#).

<sup>20</sup> Republic of Kenya, Constitution of Kenya (Chapter 14, section 241), 27 August 2010, [url](#).

<sup>21</sup> CIA, 'World Factbook, Kenya' (Military service age and obligation), 11 February 2020, [url](#).

<sup>22</sup> USSD, 'USSD report 2019', (section 1d), 11 March 2020, [url](#).

<sup>23</sup> UN OHCHR, 'Summary of Stakeholders' submissions on Kenya', (para 67), 5 November 2019, [url](#).

interception of communications data. Furthermore, Privacy International reported the NPS also has surveillance powers, established in the National Police Service Act and the National Police Service Commission Act of 2011. Freedom House additionally reported authorities have used various types of surveillance technologies to monitor citizens. During the year the Citizen Lab published findings on the presence of Israeli-based NSO Group mobile phone spyware on two local internet service providers, Safaricom and SimbaNet.’<sup>24</sup>

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## 4.2 Effectiveness

### 4.2.1 The Amnesty International report, Police Reform in Kenya: ‘A Drop in the Ocean’, stated:

‘The Constitution significantly enhances police accountability...In a significant departure from past practice, the Constitution gives the [Inspector General of Police] IGP with authority over Kenya’s two police services operational independence, outlawing political interference with police investigations, law enforcement against particular person(s) and hiring, promotion and disciplinary sanctions. The Cabinet-Secretary for Provincial Administration and Internal Affairs can only give directions to the police on policy issues and these must be in writing...

‘The National Police Service Act (2011) regulates the administration, functions and powers of the IGP and the DIGs, the Kenya Police Service, the Administration Police Service and the Directorate of Criminal Investigations. It gives the police a robust mandate, strengthens internal accountability, and attempts to curtail interference in police operations.’<sup>25</sup>

### 4.2.2 The International Police Science Association (IPSA) and the World Internal Security and Police Index (WISPI) noted in its overview published in 2016: ‘WISPI...consists of scientific qualitative and quantitative indicators dealing with internal security and police systems. WISPI’s indicators provide the minimum limits of the rules which should be followed to ensure continuous control over standards of security services rendered to realize security of society and safety of its members’<sup>26</sup>. The indicators apply to 127 countries<sup>27</sup>. The 2016 report stated:

‘Kenya was the third worst performing country on the WISPI, and one of six sub-Saharan countries to be ranked in the bottom ten countries. Kenya scored poorly across all four of the Index domains, but particularly poorly on the capacity and process domains, where it ranked last and third last, respectively. Kenya had a slightly better outcome score of 0.456, the highest of any country in the bottom five...

‘Kenya performed poorly on both the process and legitimacy domains. Seventy seven per cent of Kenyans reported paying bribes to the police, and only 0.11 per cent of instances of theft are reported to the police. In spite of

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<sup>24</sup> USSD, ‘USSD report 2019’, (section 2a), 11 March 2020, [url](#)

<sup>25</sup> AI, ‘Police Reform in Kenya: “A Drop in the Ocean”’ (pages 10-11), 2013, [url](#).

<sup>26</sup> IPSA, WISPI ‘Overview’, 2016, [url](#).

<sup>27</sup> IPSA, WISPI ‘Home page’, 2016 [url](#).

these facts, confidence in the police at the local level remains relatively high, with 58 per cent of Kenyans expressing confidence in their local police...

'Despite performing poorly on the process and legitimacy domains, Kenya had a relatively good outcomes score, with Kenya having the best outcomes rank of any country in the bottom five.'<sup>28</sup>

- 4.2.3 In relation to police corruption, the GAN (business anti-corruption portal) website stated in June 2017:

'Corruption is rampant within Kenya's police. The Kenya National Police Service is ranked as the most corrupt institution in the country, and bribery is reported to be the only way to access the police and expedite services... Three out of four Kenyans consider most or all police officers as corrupt... Half of all Kenyans who have come into contact with the police report having paid a bribe... Corrupt police officers are rarely arrested or prosecuted for corruption crimes.'<sup>29</sup>

- 4.2.4 The Daily Nation (Kenya) report, Kenya Police tops corruption list, dated 27 March 2018, stated:

'Kenya Police has once again topped the list of most corrupt government departments in a survey by the Ethics and Anti-Corruption Commission. The study conducted in 2016 indicates that most bribes are paid at police stations, county health departments, chiefs' offices, Office of the Registrar of Persons and country commissioners' office in that order. The average bribe given out is now Sh7,081, an increase from Sh5,648 recorded in the previous year.'<sup>30</sup>

- 4.2.5 The USSD report 2018 noted: 'Impunity in cases of alleged corruption was ...common. President Kenyatta intensified his anticorruption campaign launched in 2015, and the inspector general of police continued his strong public stance against corruption among police officers.'<sup>31</sup>

- 4.2.6 The USSD report 2019 noted:

'Police corruption remained a significant problem. Human rights NGOs reported police often stopped and arrested citizens to extort bribes. Police sometimes jailed citizens on trumped-up charges or beat those who could not pay the bribes. During police vetting conducted by the National Police Service Commission (NPSC) in recent years, many police officers were found to have the equivalent of hundreds of thousands of dollars in their bank accounts, far exceeding what would be possible to save from their salaries. Mobile money records showed some officers also transferred money to superior officers.'<sup>32</sup>

- 4.2.7 The same report further noted:

'The public continued to perceive corruption as a severe problem at all levels of government. A survey during the year in the country by Transparency International found 45 percent of respondents had paid a bribe, compared with 37 percent in the previous 2015 survey. Police and authorities issuing

<sup>28</sup> IPSA 'WISPI 2016', Kenya' (page 23), 2016, [url](#).

<sup>29</sup> GAN, 'Kenya Corruption Report', June 2017, [url](#).

<sup>30</sup> Daily Nation, 'Kenya Police tops corruption list', 27 March 2018, [url](#).

<sup>31</sup> USSD, 'USSD report 2018', (Executive Summary), 13 March 2019 [url](#).

<sup>32</sup> USSD, 'USSD report 2019', (section 4), 11 March 2020, [url](#).



identification documents were cited the most for taking bribes. Corruption had increased according to 67 percent of respondents, and 71 percent believed the government was doing a poor job of combating corruption. The responses on these two questions had not changed significantly from the results of Transparency's 2015 poll.' <sup>33</sup>

4.2.8 Transparency International Kenya noted in January 2020 that:

'Kenya has obtained a score of 28 out of 100 in the global Corruption Perceptions Index (CPI)...a score which is below the global average score of 43 and the Sub-Saharan average score of 32. Since 2012, Kenya has scored between 25 and 28, out of 100, having recorded a score of 27 in 2018, depicting slow progress in the fight against corruption. In the rankings, the country is listed at position 137 out of 180 countries and territories assessed... Kenya is at a critical point where the relevant arms of government tasked with the fight against corruption need to show real outcomes, to instill public confidence in the ongoing anti-corruption efforts.' <sup>34</sup>

4.2.9 The Kenyan government's National Report to the United Nations Human Rights Council Working Group on the Universal Periodic Review, Kenya, submitted 11 November 2019, noted:

'The training curriculum for National Police Service has been reviewed to include management, research methodology, judicial procedure, information security management, psychology, cybercrime, customer care, human rights, security and safety and policing within a cultural context. The curriculum is implemented in all security training...

'Training on human rights is an integral component of the Police curriculum. The police are expected to use the knowledge gained from the training to effectively protect and respect human rights as they go about their work of maintaining law and order, especially with regard to duties involving arrest, detention, search, seizure of property, surveillance, use of force and firearms. All police officers must undergo a vetting process against set criteria on professionalism, integrity, track record of performance and psychological fitness.' <sup>35</sup>

4.2.10 The same report noted: 'In the period under review, 99 officers from the Kenya Prisons Service were trained on human rights and prevention of torture...' <sup>36</sup>

4.2.11 The USSD report 2019 noted: 'Police failed to prevent vigilante violence in numerous instances but in other cases played a protective role.' <sup>37</sup>

4.2.12 The same report stated: '...Poor casework, incompetence, and corruption undermined successful prosecutions. Police also frequently failed to enter detainees into custody records, making it difficult to locate them.' <sup>38</sup>

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<sup>33</sup> USSD, 'USSD report 2019', (section 4) 11 March 2020, [url](#).

<sup>34</sup> Transparency International, 'Kenya stagnates in the corruption perceptions...', 23 January 2020, [url](#).

<sup>35</sup> UN OHCHR, 'National report Kenya' (para 22, 32), 11 November 2019, [url](#).

<sup>36</sup> UN OHCHR, 'National report Kenya' (para 33), 11 November 2019, [url](#).

<sup>37</sup> USSD, 'USSD report 2019', (section 1a) 11 March 2020, [url](#).

<sup>38</sup> USSD, 'USSD report 2019', (section 1d,) 11 March 2020, [url](#).

- 4.2.13 The report also noted: ‘Victims’ rights NGOs reported that in some cases authorities required victims to pay bribes and to provide transportation for police to a suspect’s location to execute a legal arrest warrant.’<sup>39</sup>
- 4.2.14 The USSD Overseas Security Advisory Council (OSAC) Crime and Safety Report 2020, repeating the assessment from its 2019 report<sup>40</sup>, stated:
- ‘The Kenyan Police Service response has continued to make vast improvements over the last few years. Response to the January 2019 DusitD2 Hotel attack was significantly better than to the 2013 Westgate Mall incident, where it took four days to neutralize four terrorists and one-third of the mall suffered catastrophic damage. The DusitD2 attack ended within 20 hours, with limited damage to the hotel complex.
- ‘Despite these positive steps, police often lack equipment, resources, training, and personnel to respond to calls for assistance or other emergencies. The likelihood of the police responding to an incident often depends on availability of officers and police vehicles.’<sup>41</sup>

See also [Police oversight and complaints mechanism\(s\)](#).

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### 4.3 Human rights abuses

- 4.3.1 The Human Rights Watch (HRW) report, Kenya: Nairobi Police Executing Suspects, dated 2 July 2019, noted:

‘Since August 2018, police have shot dead, apparently unlawfully, at least 21 men and boys whom they alleged were criminals in Nairobi’s Dandora and Mathare neighborhoods alone, Human Rights Watch found. Rights activists in those neighborhoods believe that, based on the cases they know about and those reported in the media, police have unlawfully killed many more in the past year. Under Kenyan and international law, the police should only intentionally use lethal force when it is strictly unavoidable to protect life...

‘Last April alone, and in a span of just three days, police in Mathare shot dead seven men who they said were involved in crime, without apparent justification for using lethal force, Human Rights Watch found. The men were not armed, did not resist arrest, and had either surrendered or were being held by the officers at the time of the killing...

‘In May 2017, the community organization in Mathare documented police killings of 57 men and women, allegedly for links to crime, in Mathare alone in one year. Independent Medico Legal Unit (IMLU) and the Kenya Human Rights Commission, both Nairobi based human rights organizations, and the Kenya National Commission on Human Rights, a state funded constitutional institution, have over the years consistently reported on killings by police in low income areas.

‘Kenyan media frequently report on killings as part of law enforcement actions in low-income neighborhoods. In October 2018, the Star newspaper reported that police in Dandora, Mathare, and Majengo killed at least 17 people in a

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<sup>39</sup> USSD, ‘USSD report 2019’, (section 1d,) 11 March 2020, [url](#).

<sup>40</sup> USSD, OSAC, ‘Kenya 2019 Crime & Safety Report’, 14 March 2019, [url](#).

<sup>41</sup> USSD, OSAC, ‘Kenya 2020 Crime & Safety Report’, 5 March 2020, [url](#).

seven- day period. The same month, the Daily Nation reported that police killed at least 101 people in Nairobi and more than 180 people across Kenya in a nine-month period. It was not clear from the media reports whether any of these killings could be considered justified.

‘Human Rights Watch has also documented extrajudicial killings in the context of election violence and counterterrorism operations in Nairobi and the northeastern region, and at the coast in counterterrorism operations.’<sup>42</sup>

4.3.2 The Guardian report, ‘If we don’t kill these people, they will kill you’: policing Africa’s largest slum, dated 6 August 2019, stated:

‘At a meeting between police and community members in Kibera, Africa’s largest slum in Nairobi, Kenya, where crime is acutely high and mainly unreported, the two sides try to find common ground...

‘A young man asks why officers take bribes and extort money from the community...A young woman refers to the case of Carilton Maina, a 23-year-old allegedly shot dead by police months earlier. She wants the inspector to explain why suspects were not simply taken into custody...

‘The exact number of killings and enforced disappearances across Kenya is not known. Independent monitors suggest that between 2013 and 2017, at least 765 people have been unlawfully killed by police. It is alleged that 572 people have been “summarily executed” in circumstances similar to those surrounding the death of Maina...

‘In a written response, a spokesperson for Kenya’s police force said there are no policies, orders or directives to support unlawful killings.’<sup>43</sup>

4.3.3 The Reuters report, Nearly half of Kenyans surveyed by police watchdog report abuses by officers, dated 6 November 2019, noted:

‘Nearly half of Kenyans surveyed by the government’s police watchdog IPOA said they had suffered police abuse of power, according to a survey it released on Wednesday, underscoring the scale of the task the body faces in holding officers to account...

‘The study by The Independent Policing Oversight Authority (IPOA), formed in 2011, found that the public is still afraid to report police abuse, fearing victimisation and believing no action will be taken.

‘The IPOA said the incidence of police abuse reported in their survey of nearly 6,000 households marked a “significant increase” compared with its last such survey, in 2013.

‘More than 46% of respondents said they had been victims of at least one form of police abuse of power, up from 30% in the survey six years ago...Of those who said they had experienced police brutality, less than 10% had reported their case to the IPOA. Another 70% reported the abuse at their local police station but more than half of them said their report did not yield any results.’<sup>44</sup>

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<sup>42</sup> HRW, ‘Nairobi Police Executing Suspects’, 2 July 2019, [url](#).

<sup>43</sup> The Guardian, “‘If we don’t kill these people, they will kill you’...”, 6 August 2019, [url](#).

<sup>44</sup> Reuters, ‘Nearly half of Kenyans surveyed...’, 6 November 2019, [url](#).



- 4.3.4 The article, Why decades of Kenya police reforms have not yielded change, dated 25 November 2019, published on The Conversation website, stated:  
 ‘News reports of police officers involved in various crimes also habitually surface as public scandal. And according to a recent survey conducted by the Independent Policing Oversight Authority, police abuse in Kenya showed a “significant increase” over the past six years, rather than a decline.  
 ‘Several social justice centres in Nairobi also stress that police abuse has become worse. They have documented an increase in police harassment. They have reported that it’s rampant in many of Nairobi’s more impoverished neighbourhoods, where police officers habitually raid houses and execute random arrests.’<sup>45</sup>
- 4.3.5 HRW World Report 2020, published on 14 January 2020, covering events of 2019 noted:  
 ‘Lack of accountability for serious human rights violations by security forces, including extrajudicial killings and enforced disappearances, remain a major concern in Kenya, despite promises by President Uhuru Kenyatta to address key issues, including those that have in the past undermined Kenya’s ability to hold peaceful elections. Kenyan authorities failed to investigate security forces abuses, including extrajudicial killings and enforced disappearances, and hold those responsible to account.’<sup>46</sup>
- 4.3.6 The UN ‘Compilation on Kenya’ submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019, in the submission from The Committee on the Elimination of Discrimination against Women (CEDAW) stated:  
 ‘[CEDAW] expressed concern about reports of election-related gender-based violence, including of a sexual nature, during the elections in 2017. It was equally concerned about reports that the majority of the alleged perpetrators were police officers or members of other security forces, and noted with concern the delays in prosecuting perpetrators and providing redress to the victims of such violence and the Government’s apparent lack of commitment in that regard.’<sup>47</sup>  
 See also the Amnesty International report [“Kill Those Criminals” Security Forces Violations in Kenya’s August 2017 Elections](#).
- 4.3.7 HRW noted in February 2020: ‘Since December 25, 2019, police in Kenya have shot dead at least eight people in Nairobi’s Mathare, Kasarani, and Majengo settlements...The police continue to kill crime suspects and protesters in cold blood despite persistent calls to end the killings and the use of excessive force. The killings are the latest in a longstanding pattern of excessive force and unlawful killings in Nairobi’s low-income neighborhoods.’<sup>48</sup>
- 4.3.8 The same report noted:

<sup>45</sup> The Conversation, ‘Why decades of Kenya police reforms...’, 25 November 2019, [url](#).

<sup>46</sup> HRW, ‘World report 2020’, (Kenya), 14 January 2020, [url](#).

<sup>47</sup> UN OHCHR, ‘Compilation on Kenya’, (para 33), 18 November 2019, [url](#).

<sup>48</sup> HRW, ‘Kenya: No Letup in Killings by Nairobi Police’, 20 February 2020, [url](#).

‘The Police Service Act requires police officers who use lethal fire to report to their immediate superior, explaining the circumstances that necessitated the use of force. Police officers also are required to report for investigation any use of force that leads to death or serious injury to the Independent Policing Oversight Authority (IPOA), a civilian police accountability institution created in 2011 to investigate and prosecute officers implicated in abuses. In all cases Human Rights Watch documented, the police did not report the killings or initiate the process for an inquest, as required by law. In some cases, the police did not allow victims and their family members to file reports. In at least one case, the police appear to have collected and hid bullet casings instead of waiting for investigators to arrive, as is proper procedure under Kenyan law.’<sup>49</sup>

#### 4.3.9 The USSD report 2019 stated:

‘There were numerous reports the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. As of early December, the nongovernmental organization (NGO) Independent Medico-Legal Unit (IMLU) stated police had killed at least 91 persons during the year. Human rights groups also noted the government failed to provide compensation and redress to families of victims.

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

‘Between October 2018 and September [2019], IPOA received 119 complaints regarding deaths resulting from police actions, compared with 78 in the prior year, and 47 complaints regarding deaths while in police custody or on police premises.’<sup>50</sup>

#### 4.3.10 The same report noted:

‘Human rights activists reported that at times police officers in charge of taking complaints at the local level were the same ones who committed abuses. Police officials resisted investigations and jailed some human rights activists for publicly registering complaints against government abuses.

‘Research by a leading legal advocacy and human rights NGO found police used disciplinary transfers of officers to hide their identities and frustrate investigations into their alleged crimes. Many media and civil society investigations into police abuse ended after authorities transferred officers, and police failed to provide any information about their identities or whereabouts.’<sup>51</sup>

See also [Prosecution of police officers](#) and [Police oversight and complaints mechanism\(s\)](#).

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## 4.4 Prosecution of police officers

### 4.4.1 The Human Rights Watch (HRW) World Report 2019 stated:

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<sup>49</sup> HRW, ‘Kenya: No Letup in Killings by Nairobi Police, 20 February 2020, [url](#).

<sup>50</sup> USSD, ‘USSD report 2019’, (section 1a), 11 March 2020, [url](#).

<sup>51</sup> USSD, ‘USSD report 2019’, (section 1d), 11 March 2020, [url](#).

‘In July [2018], the director of public prosecutions charged an administration police officer with the killing of a Meru University student, Evans Njoroge, following investigations by IPOA. The officer was awaiting trial at time of writing. Evans was shot on March 10, 2018, at close range at the back of his head during protests by Meru university students in eastern Kenya over poor management of the institution. Such investigations were few and far between, as authorities have overwhelmingly failed to investigate and prosecute cases of widespread police killings across the country...

‘Although both Kenya Police Service and IPOA, had promised to investigate these cases, there has been little progress in holding the perpetrators to account. Many survivors did not receive post-rape medical care or counselling support.’<sup>52</sup>

4.4.2 The Reuters report, Kenyan court sentences police officer to death for killing detainee, dated 14 February 2019, noted:

‘A Kenyan court on Thursday sentenced a former senior police officer to death for killing a detainee in his custody, one of the harshest punishments over widespread police brutality in the East African country.

‘Activists have long accused Kenyan police of using excessive force with little risk of being charged or convicted. A police oversight authority set up in 2011 ended virtual police impunity and fostered prosecutions for abuses.

‘Nahashon Mutua, a former senior police officer, was convicted on Dec.13 of the murder of Martin Koome, who was found dead in a cell at a Nairobi police station where Mutua was in charge back in 2013...

‘Other officers in the station were not investigated by the IPOA in the Koome case...

“‘This milestone decision (on Mutua) reiterates IPOA’s commitment to professionalise the National Police Service through holding to account culpable officers and exonerating those who are falsely accused,” IPOA said in a statement...

‘Two other policemen were sentenced to death by the High Court last November for murdering a fellow officer and two civilians in a Nairobi bar in 2014.

‘Separately, an inquest court in the western city of Kisumu said on Thursday that 36 police officers should be held liable for the 2017 death of a six-month old baby, and called for criminal proceedings to begin.’<sup>53</sup>

4.4.3 A BBC News report, Kenya police: Nahashon Mutua jailed as baby Pendo killers convicted, dated 14 February 2019, noted:

‘Nahashon Mutua's death sentence trended on Kenyan social media within minutes of his sentencing. Not many Kenyans would have expected the outcome. Policemen in Kenya have got away with it before: brutal beatings, torture and even broad daylight killings, some caught on camera...

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<sup>52</sup> HRW, ‘World Report 2019’, (Kenya), 14 January 2020, [url](#).

<sup>53</sup> Reuters, ‘Kenyan court sentences police officer to death for killing detainee’, 14 February 2019, [url](#).

‘More officers are getting charged and prosecutors are beginning to win cases. The civilian-led Ipoa is getting plaudits for holding police officers accountable, and many Kenyans hope this new trend will be a deterrent.’<sup>54</sup>

- 4.4.4 The UN ‘Compilation on Kenya’ submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019, stated: ‘The United Nations country team noted the continued reports of incidents of abusive police conduct, including extrajudicial killings, and that in 2019, the Independent Policing Oversight Authority had reported that it was investigating 190 cases of suspected extrajudicial killings and had confirmed six convictions since its establishment.’<sup>55</sup>

See also [Effectiveness](#) and [Police oversight and complaints mechanism\(s\)](#).

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Section 5 updated: 7 April 2020

## **5. Police oversight and complaints mechanism(s)**

### **5.1 The Independent Policing Oversight Authority**

- 5.1.1 The Independent Policing Oversight Authority (IPOA) described its remit on its website:

‘The Authority considers complaints alleging misconduct or neglect of duty by the Police, or about Police practices, policies, and procedures affecting the complainant.

‘The Authority also considers incidents of death and serious injury caused by Police action. The Police have to inform IPOA about these incidents. The Authority can also investigate on its own motion....

‘Misconduct’ includes using of unreasonable force, corruption, dishonesty, perjury, threats or harassment, unlawful arrest, and a wide range of other acts.

‘Neglect of duty’ includes failure to investigate, failure to prosecute or respond to a crime, failure to provide proper care for people in custody, and failure to notify a person of a matter affecting them (such as a Court appearance).’<sup>56</sup>

- 5.1.2 The article, Why decades of Kenya police reforms have not yielded change, dated 25 November 2019, published on The Conversation website, noted that in addition to independent oversight, the IPOA was also involved in vetting police officers and revamping a community policing programme<sup>57</sup>.

- 5.1.3 The USSD report 2019 stated:

‘The governmental Independent Policing Oversight Authority (IPOA), established to provide civilian oversight of police, investigated numerous cases of misconduct. Impunity at all levels of government continued to be a serious problem. The government took limited and uneven steps to address cases of alleged unlawful killings by security force members, although IPOA

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<sup>54</sup> BBC News, ‘Kenya police: Nahashon Mutua jailed...’, 14 February 2019, [url](#).

<sup>55</sup> UN OHCHR, ‘Compilation on Kenya’, (para 29), 18 November 2019, [url](#).

<sup>56</sup> IPOA, ‘How to complain and What is misconduct...’, (n.d), [url](#).

<sup>57</sup> The Conversation, ‘Why decades of Kenya police reforms...’, 25 November 2019, [url](#).

continued to refer cases of police misconduct to the Office of the Director of Public Prosecution (ODPP) for prosecution.’<sup>58</sup>

- 5.1.4 The IPOA website lists offices in Wajir, Lodwar, Eldoret, Nakuru, Mombasa, Kisumu, Kisii, Meru, Sagana and Nairobi<sup>59</sup>. For information on the counties they serve, see the [IPOA website](#).
- 5.1.5 According to the USSD 2019 report, as of June 2019, IPOA received 3,237 complaints, bringing the total since its inception in 2012 to 13,618. IPOA defined five categories of complaints:
- Category One - murders, torture, rape, and serious injury with automatic investigation.
  - Category Two - serious crimes such as assault without serious injury, (investigated on a case-by-case basis).
  - Categories Three to Five - less serious crimes, are generally not investigated<sup>60</sup>.
- 5.1.6 The same report noted: ‘Categories Three to Five, for less serious crimes, are generally not investigated, although during the year IPOA and the IAU entered into regular dialogue about referring cases deemed less serious offenses for disciplinary action. If, after investigation, IPOA determines there is criminal liability in a case, it forwards the case to the ODPP. As of June, IPOA launched 489 investigations.’<sup>61</sup>
- 5.1.7 The Reuters article, Amid claims of police brutality in Kenya, a watchdog fails to bite, dated 23 February 2018, noted:
- ‘Western donors have given millions of dollars to help fund the Independent Police Oversight Authority in Kenya. But case files show it is struggling to bring to justice police who commit crimes...
- ‘IPOA is struggling to fulfil its remit to hold police to account. IPOA has secured convictions of police officers for committing crimes in only two cases, despite having received more than 9,200 complaints...
- ‘Now a Reuters examination of 18 active case files relating to alleged crimes by officers dating back to 2012 has exposed some of the problems the watchdog faces: lack of police cooperation and court delays that drag on for years. The case files show police frequently refuse to give evidence to investigators and repeatedly fail to show up to court.’<sup>62</sup>
- 5.1.8 The Reuters report, Nearly half of Kenyans surveyed by police watchdog report abuses by officers, dated 6 November 2019, stated:
- ‘A 2018 Reuters report found that the IPOA was struggling to fulfil its mandate. At that time, it had secured convictions of police officers for committing crimes in only two cases, despite having received more than 9,200 complaints.

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<sup>58</sup> USSD, ‘USSD report 2019’, (Executive Summary), 11 March 2020, [url](#)

<sup>59</sup> IPOA, ‘About regional offices...’, (n.d), [url](#)

<sup>60</sup> USSD, ‘USSD report 2019’, (section 5), 11 March 2020, [url](#)

<sup>61</sup> USSD, ‘USSD report 2019’, (section 5), 11 March 2020, [url](#)

<sup>62</sup> Reuters, ‘Amid claims of police brutality in Kenya, a watchdog fails to bite’, 23 February 2018, [url](#).



'In one case that drew media attention, the 28-year-old son of a British aristocrat was found dead in his cell in 2012 after he was detained during a night out. His family criticised the IPOA's investigation of the death. A years-long inquest found in 2018 that there had been attempts to cover up what had happened and a trial began in January 2019.

'The IPOA's study concluded that it was not possible to compare public confidence in the watchdog between its 2013 and 2019 surveys, because different survey methods were used.

'However, it said that survey respondents "appeared impressed by some instances in which cases of police misconduct have been handled by the IPOA and justice served", referring to one of the cases where a court sentenced a police officer to jail time for abuse.' <sup>63</sup>

5.1.9 The Human Rights Watch (HRW) World Report 2020 noted: 'In 2018, the Independent Policing Oversight Authority (IPOA), a civilian police accountability institution, told media it was investigating 243 killings by police, but the institution appears overwhelmed by the sheer volume of the cases and undermined by the lack of cooperation police. The institution secured convictions against just three officers since it started working in 2012, media reported.' <sup>64</sup>

5.1.10 In relation to the ability to access complaints mechanisms including the IPOA, the USSD report 2019 noted:

'Impunity remained a serious problem... In a few cases, authorities charged and convicted police for committing killings. Since its inception in 2012, IPOA has investigated 67 cases involving killings by police, in which 41 officers were charged with murder and six officers have been convicted. Following an IPOA investigation, in February the High Court sentenced a senior police officer to death for fatally beating a detainee with a metal bar in 2013.

'Authorities sometimes attributed the failure to investigate a case of police corruption or unlawful killing to the failure of victims to file official complaints. Victims can file complaints at regional police stations, police headquarters through the Internal Affairs Unit (IAU), and through the IPOA website and hotline. During the year the IAU launched a new hotline to report abuses. Sometimes police turned away victims who sought to file complaints at police stations where alleged police misconduct originated, directing them instead to other area stations. This created a deterrent effect on reporting complaints against police. NGOs documented threats against police officers who attempted to investigate criminal allegations against other police officers.' <sup>65</sup>

5.1.11 The same report noted: 'Between October 2018 and September [2019], IPOA received 119 complaints regarding deaths resulting from police actions, compared with 78 in the prior year, and 47 complaints regarding deaths while in police custody or on police premises.' <sup>66</sup>

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<sup>63</sup> Reuters, 'Nearly half of Kenyans surveyed by police watchdog...', 6 November 2019, [url](#).

<sup>64</sup> HRW, 'World Report 2020' (Kenya), January 2020, [url](#).

<sup>65</sup> USSD, 'USSD report 2019', (section 1a), 11 March 2020, [url](#).

<sup>66</sup> USSD, 'USSD report 2019', (section 1a), 11 March 2020, [url](#).

- 5.1.12 It also stated that: ‘Civilian authorities at times did not maintain effective control over the security forces.’<sup>67</sup>

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## 5.2 Internal Affairs Unit

- 5.2.1 The Conversation noted: ‘For internal oversight mechanisms the Internal Affairs Unit was set up under the National Police Service Act. The internal unit is responsible for handling police (mis)conduct internally and, although it is supposed to act as an independent body, its director reports to the Inspector General (IG). The main goal of the unit is to receive and investigate complaints against police officers.’<sup>68</sup>

- 5.2.2 The USSD report 2019 stated:

‘Police accountability mechanisms, including those of the IAU and IPOA, maintained their capacity to investigate cases of police abuse, although disagreements around the dismissal and reinstatement of IPOA’s CEO likely delayed some investigations. The IAU director reports directly to the NPS inspector general. Eighty-two officers [58 were recorded in the USSD report 2018<sup>69</sup>] served in the IAU, mostly investigators with a background in the Kenya Police Service and the Administration Police Service.

‘During the year the IAU also began interviews to select 150 additional officers. The IAU conducts investigations into police misconduct, including criminal offenses not covered by IPOA. Between January and September, the IAU received approximately 1,200 complaints, the number of which had increased year-to-year as police and the public became more familiar with the IAU. As required by law, the IAU relocated to offices separate from the rest of the police service in late 2018. This move also contributed to the increase in the number of cases the IAU received.’<sup>70</sup>

See also [Who is Policing the Police? Kenya’s Lane Duck Oversight Mechanism](#).

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## 5.3 The National Police Service Commission

- 5.3.1 The [Constitution of Kenya](#) outlines the establishment, composition and function of the National Police Service Commission<sup>71</sup>.

- 5.3.2 The Amnesty International report, Police Reform in Kenya: ‘A Drop in the Ocean’, published in 2013 stated:

‘The National Police Service Commission Act establishes a civilian board to oversee recruitment and appointments of police officers, review standards and qualifications, and receive complaints from the public and refer them to the Independent Policing Oversight Authority (IPOA) and other government entities for remedy...

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<sup>67</sup> USSD, ‘USSD report 2019’, (section 1d), 11 March 2020, [url](#).

<sup>68</sup> The Conversation, ‘Why decades of Kenya police reforms...’, 25 November 2019, [url](#).

<sup>69</sup> USSD, ‘USSD report 2018’ (section 5), 13 March 2019 [url](#).

<sup>70</sup> USSD, ‘USSD report 2019’, (section 5), 11 March 2020, [url](#).

<sup>71</sup> Republic of Kenya, ‘Constitution of Kenya’, (Chapter 14, 246), 27 August 2010, [url](#).

‘The National Police Service Commission (NPSC) is an independent commission established by the Constitution. It is mandated to curtail political interference with police personnel management practices and is responsible for recruitment, promotions, transfers and disciplinary sanctions of police. The Constitution requires the police to be professional, to prevent corruption, to promote transparency and accountability and apply these principles in practice.’<sup>72</sup>

5.3.3 The USSD report 2018 stated:

‘The National Police Service Commission (NPSC)... [a government body] [reports] to the National Assembly. The NPSC consists of six civilian commissioners, including two retired police officers, as well as the NPS inspector general and two deputies. The commission’s tenure ended in September; the NPSC chief operating officer was managing the NPSC until a new commission is installed. The NPSC is responsible for recruiting, transferring, vetting, promoting, and disciplining NPS...

‘The law requires that the NPSC eventually vet all serving police officers. Vetting required an assessment of each officer’s fitness to serve based on a review of documentation, including financial records, certificates of good conduct, and a questionnaire, as well public input alleging abuse or misconduct. The NPSC reported it had vetted more than more than 15,000 officers since 2012. A significant portion of the officers vetted during the year were from the traffic department. The NPSC also vetted a higher number of chief inspectors than in the past, of which the NPSC removed 50 for corruption, human rights abuses, and other reasons.’<sup>73</sup>

5.3.4 The members of the new NPSC took an oath of office on 18 March 2019 in a formal ceremony<sup>74</sup>.

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## 5.4 Ethics and Anti-corruption Commission

5.4.1 The Ethics and Anti-corruption Commission (EACC) is an independent agency that investigates cases involving police corruption<sup>75</sup>. Information on their mandate and work is available on their website [here](#).

5.4.2 The USSD report 2019 noted:

‘In January, President Kenyatta appointed a new chief executive officer of the Ethics and Anticorruption Commission (EACC), who introduced a new approach to tackling corruption that prioritizes high-impact cases, systems reviews, assets recovery, and public communication. In the new commissioner’s first five months in office, the EACC recovered assets equal to 30 percent of the corruption assets the EACC recovered over the past five years. Officials from agencies tasked with fighting corruption, including the EACC, ODPP, and judiciary, were sometimes the subjects of corruption allegations.

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<sup>72</sup> AI, ‘Police Reform in Kenya: “A Drop in the Ocean”’, 2013, [url](#).

<sup>73</sup> USSD, ‘USSD report 2018’, (section 1d), 13 March 2019, [url](#).

<sup>74</sup> Republic of Kenya Judiciary, ‘National Police Service Commission...’, 18 March 2019, [url](#).

<sup>75</sup> USSD, ‘USSD report 2018’, (section 1d), 13 March 2019, [url](#).



‘The EACC has the legal mandate to investigate official corruption allegations, develop and enforce a code of ethics for public officials, and engage in public outreach on corruption. The EACC, however, lacks prosecutorial authority and must refer cases to the ODPP to initiate prosecutions. At the end of 2018, the EACC reported having more than 319 corruption cases pending in court. A mixture of cash and land/immovable assets valued at approximately 3.2 billion shillings (\$31.4 million) were recovered in the period 2018-2019. The EACC had secured 39 convictions in the 2017-2018 period, an 80 percent conviction rate, with some cases including several individuals, making the 2017-2018 fiscal year the most successful year in the commission’s history.’<sup>76</sup>

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Section 6 updated: 7 April 2020

## 6. Arrest and detention

### 6.1 Legal rights

- 6.1.1 The USSD report 2019 noted: ‘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. Police, however, arrested and detained persons arbitrarily, accused them of more severe crimes than they had committed, or accused them of a crime to mask underlying police abuses.

‘...The law entitles persons arrested or detained to challenge in court the legal basis or arbitrary nature of their detention, but that right was not always protected.’<sup>77</sup>

- 6.1.2 The same report noted:

‘The law provides police with broad powers of arrest. Police officers may make arrests without a warrant if they suspect a crime occurred, is happening, or is imminent....

‘The constitution’s bill of rights provides significant legal protections, including provisions requiring arrested persons to be arraigned, charged, informed of the reason for continuing their detention, or released within 24 hours of their arrest as well as provisions requiring the issuance of a writ of habeas corpus to allow a court to determine the lawfulness of detention. In many cases, however, authorities did not follow the prescribed time limits. According to the attorney general in a response to a questionnaire from the Office of the UN High Commissioner for Human Rights in 2013, “an unexplained violation of a constitutional right will normally result in an acquittal.” While authorities in many cases released detainees held longer than the prescribed period, some cases did not result in an acquittal, and authorities provided no compensation for time served in pretrial detention.’<sup>78</sup>

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<sup>76</sup> USSD, ‘USSD report 2019’, (section 4), 11 March 2020, [url](#).

<sup>77</sup> USSD, ‘USSD report 2019’, (section 1d), 11 March 2020, [url](#).

<sup>78</sup> USSD, ‘USSD report 2019’, (section 1d), 11 March 2020, [url](#).

- 6.1.3 The legal rights of a person arrested and detained are available on the [Republic of Kenya Judiciary](#) website and in chapter 4 of the [Constitution of Kenya](#).

Kenya's [penal code](#) was set up in 2010 and revised in 2012 and sets out, amongst other laws the law in relation to forceful arrest<sup>79</sup>.

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Section 7 updated: 7 April 2020

## 7. Rule of law and the judiciary

### 7.1 Organisation

- 7.1.1 The Republic of Kenya Judiciary website provided information about the organisation of the judiciary and the courts system. The courts system consists of:

- The Supreme Court (the highest Court):
- The Court of Appeal
- The High Court
- The Industrial Court and the Land and Environment Court (the same level as the High Court).
- Magistrates' Courts deal with the majority of cases in Kenya. There are 116 court stations manned by at least 455 magistrates.
- Other lower courts include, Kadhis courts, Courts martial and Tribunals<sup>80</sup>.

For more detail on the types of cases that can be heard in each court, their locations and the judicial system, see [The Republic of Kenya Judiciary website](#).

- 7.1.2 The USSD report 2018 stated: 'The law provides for "kadhi" courts, which adjudicate Muslim law on marriage, divorce, and inheritance among Muslims. There were no other traditional courts. The national courts used the traditional law of an ethnic group as a guide in personal matters as long as it did not conflict with statutory law.' <sup>81</sup>

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### 7.2 Effectiveness

- 7.2.1 The Kenyan National Council on Administration of Justice [NCAJ] report, Criminal Justice System in Kenya: An Audit, published in 2016, stated:
- 'The promulgation of the Constitution of Kenya 2010, brought far much needed reforms in the Criminal Justice sector. Some of the highlights include Article 2(5) which provide that general rules of international law shall form part of law of Kenya and Article (6) any treaty or convention ratified by Kenya shall form part of law of Kenya. The other key provisions touching on Criminal Justice System include, Articles 48 to 50 of the Constitution which provide for

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<sup>79</sup> Republic of Kenya, 'Penal Code', 2010 (revised 2012), [url](#).

<sup>80</sup> Republic of Kenya Judiciary, 'Courts', (n.d), [url](#).

<sup>81</sup> USSD, 'USSD report 2018', (section 1e), 13 March 2019, [url](#).

the right of Access to Justice, the presumption of innocence and the right to a fair hearing. Article 48 provides that the state shall ensure Access to Justice for all persons and if any fee is required, it shall be reasonable and shall not impede access to Justice.’<sup>82</sup>

- 7.2.2 The USSD report 2019 stated: ‘Witness harassment and fear of retaliation severely inhibited the investigation and prosecution of major crimes. The Witness Protection Agency was underfunded, doubts about its independence were widespread, and the Supreme Court cited its weaknesses as a serious judicial shortcoming. It cooperated closely with IPOA and other investigative bodies ... Trial delays sometimes resulted because witnesses failed to present themselves, judges cancelled trial dates without notice, witnesses were not protected, prosecutors did not have police files, or legal counsel failed to appear.’<sup>83</sup>
- 7.2.3 The same report stated: ‘Individuals may use the civil court system to seek damages for violations of human rights and may appeal decisions to the Supreme Court as well as to the African Court of Justice and Human Rights.’<sup>84</sup>
- 7.2.4 The USSD also noted: ‘In February [2019] the judiciary issued the State of the Judiciary and the Administration of Justice Report for 2017-18, which cited more than 60,000 cases pending in court between five and 10 years. The judiciary improved its case clearance rate during the year and substantially reduced case backlog by increasing the number of judges sitting daily on the bench.’<sup>85</sup>
- 7.2.5 The USSD Overseas Security Advisory Council (OSAC) Crime and Safety Report 2020, repeating its assessment from its 2019 report<sup>86</sup>, stated: ‘... weaknesses in the judicial system contribute to slow prosecutions and large numbers of acquittals.’<sup>87</sup>
- 7.2.6 The Kenyan government’s National Report to the United Nations Human Rights Council Working Group on the Universal Periodic Review, Kenya, submitted on 11 November 2019, noted:
- ‘On 26th January 2017, the Judiciary launched their “Judiciary blueprint, Sustaining Judiciary Transformation: an agenda for service delivery (2017-2021)” to promote effectiveness and efficiency in the administration of justice, access to justice and judicial performance. The Agenda elaborates strategies and initiatives to enhance access to justice for all, improve integrity and ethics, embrace and utilize technology, and provide leadership and governance. Of particular significance is the plan to establish High Courts in all the 47 counties. By December 2017, 39 High Courts had been established in 38 counties. Plans are also ongoing to establish at least one Magistrates Court in

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<sup>82</sup> NCAJ, ‘Criminal Justice System in Kenya: An Audit’ (page 36), 2016, [url](#).

<sup>83</sup> USSD, ‘USSD report 2019’, (section 1d), 11 March 2020, [url](#).

<sup>84</sup> USSD, ‘USSD report 2019’, (section 1e), 11 March 2020, [url](#).

<sup>85</sup> USSD, ‘USSD report 2019’, (section 1e), 11 March 2020, [url](#).

<sup>86</sup> USSD, OSAC, ‘Kenya 2019 Crime & Safety Report’, 14 March 2019, [url](#).

<sup>87</sup> USSD, OSAC, ‘Kenya 2020 Crime & Safety Report’, 5 March 2020, [url](#).

each of the 290 sub-counties. In the financial year 2017/2018, 54 courts were undergoing construction and rehabilitation.

'The Judiciary Fund Regulations, already tabled before the National Assembly for debate and approval, provide guidelines for the effective discharge of the functions of the Judiciary.'<sup>88</sup>

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### 7.3 Independence

- 7.3.1 The USSD report 2019 stated: 'The constitution provides for an independent judiciary, although the government did not always respect judicial impartiality. The government sometimes undermined the independence of the judiciary... Reform of the judiciary continued.'<sup>89</sup>
- 7.3.2 The Bertelsmann Stiftung's Transformation Index (BTI) 2018 report on Kenya (covering the period 1 February 2015 to 31 January 2017), stated: 'Under the Kenyatta government, the judiciary has been subjected to several attempts to infringe on its independence and to undermine the reputation of its leading judges. But the judiciary has largely protected its integrity and independence, which is proven by several rulings which dismissed laws and amendments which would have restricted constitutionally guaranteed rights of freedom of expression.'<sup>90</sup>
- 7.3.3 The Freedom House Freedom in the World 2019 report noted: 'The judiciary is generally considered to be independent, but judicial procedures are inefficient. The government's refusal to comply with court orders to release Miguna Miguna [an opposition member charged with treason related offences<sup>91</sup>] and halt his deportation, and to end the shutdown of several television stations that aired Odinga's [opposition leader] swearing-in ceremony, threatened judicial independence in 2018.'<sup>92</sup>

See also [Constitution of Kenya – Independence of the judiciary](#).

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### 7.4 Fair trial

- 7.4.1 The USSD report 2019 stated:
- 'The law provides for the right to a fair public trial, although vulnerable individuals may give some testimony in closed session; the independent judiciary generally enforced this right. The law provides for a presumption of innocence, and defendants have the right to attend their trials, confront witnesses, and present witnesses and evidence in their defense. The law also provides defendants the right to receive prompt and detailed information on the charges against them, with free interpretation if necessary, including during trials; to be tried without undue delay; to have access to government-held evidence; to be represented by an attorney of their choice or to have one appointed at the state's expense if substantial injustice would otherwise result;

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<sup>88</sup> UN OHCHR, 'National report Kenya' (para 17-18), 11 November 2019, [url](#).

<sup>89</sup> USSD, 'USSD report 2019', (section 1e), 11 March 2020, [url](#).

<sup>90</sup> BTI, '2018 report on Kenya' (page 13), 2018, [url](#).

<sup>91</sup> Encyclopaedia Britannica, 'Kenya', (Kenya in the 21<sup>st</sup> century), (n.d), [url](#).

<sup>92</sup> Freedom House, 'Freedom in the World 2019', Kenya, 2019, [url](#).

and not to be compelled to testify or confess guilt, and if convicted, to appeal to or apply for review by a higher court. Authorities generally respected these rights, although they did not always promptly inform persons of the charges against them. In January 2018 Chief Justice David Maraga launched the National Committee on Criminal Justice Reforms to coordinate justice sector reform. As part of these reforms, the NCAJ continued efforts to disseminate Active Case Management Guidelines to court users committees and planned to hold at least nine regional workshops in 2019 and 2020.’<sup>93</sup>

- 7.4.2 The United Nations Human Rights Council Report of the Office of the United Nations High Commissioner for Human Rights (UN OHCHR), Summary of Stakeholders Submissions on Kenya, 5 November 2019, in the submission by AU-ACHPR (African Union- African Commission on Human and Peoples’ Rights), noted:

‘AU-ACHPR was concerned by the fact that legal aid was not “provided to suspects at the time of police inquiry”, the lack of a data-base capturing torture-related complaints in police stations, the high rate of pre-trial detainees, and the lack of speedy processes in the judicial system which continues to hinder the right to a fair trial.’<sup>94</sup>

For information on the legal right to a fair trial, see Chapter 4 section 50, of the [Constitution of Kenya](#).

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## 7.5 Juvenile justice

- 7.5.1 The Kenyan National Council on Administration of Justice [NCAJ] report, Criminal Justice System in Kenya: An Audit, published in 2016, stated:

‘The Children Act is the comprehensive law on how children who come into contact with the law are to be treated by the justice system. It provides for the actors and structures and defines their various roles. The Juvenile Justice System has not yet attained the cohesiveness, visibility and accessibility required to ensure access to justice to children when they come into contact with the justice system. The Children Magistrate has very wide powers under the Children Act to ensure just that. All magistrates have also been gazetted to listen to children’s cases. The Children Act empowers Courts to grant bail to child offenders pending their appearance before a Children’s Court.’<sup>95</sup>

- 7.5.2 The same report also stated:

‘Special protection is accorded to vulnerable groups, such as children, when they come into contact with the Criminal Justice System. The Constitution provides, in Article 53(1)(f) that every child has a right ‘not to be detained, except as a measure of last resort, and when detained, to be held - (i) for the shortest appropriate period of time; and(ii) separate from adults and in conditions that take account of the child’s sex and age’. Article 53(2) further entrenches the need for the protection of children by emphasizing that the best interest of the child is the paramount principle in dealing with any matter concerning children. The principle of the best interest of the child is also

<sup>93</sup> USSD, ‘USSD report 2019’, (section 1e), 11 March 2020, [url](#).

<sup>94</sup> UN OHCHR, ‘Summary of Stakeholders Submissions’ (para 47), 5 November 2019, [url](#).

<sup>95</sup> NCAJ, ‘Criminal Justice System in Kenya: An Audit’ (page 78), 2016, [url](#).

entrenched in the Children's Act.<sup>57</sup> Section 18 of the Children's Act further provides as follows:

- No child shall be subjected to torture, or cruel treatment or punishment, unlawful arrest or deprivation of liberty.
- Notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or to life imprisonment.
- A child offender shall be separated from adults in custody.

'A child who is arrested and detained shall be accorded legal and other assistance by the Government as well as contact with his family. Section 77 of the Children's Act also provides that where a Child is taken to Court, the Court may order, where the child is unrepresented, that the child be granted legal representation and that any legal expenses with regard to the legal representation is to be defrayed by monies provided by Parliament.'<sup>96</sup>

7.5.3 The NCAJ 'Status report on Children in the Justice System in Kenya', published in 2019, noted:

'The Children Act established the Children's Courts, which are special courts to hear cases involving children in contact and in conflict with the law other than charges of murder or cases where a child is charged together with adults....This notwithstanding, there are only two gazetted Children's Courts, namely the Milimani and Tononoka Children's Courts in Nairobi and Mombasa respectively, although all magistrates in the country have been gazetted to handle children's matters.'<sup>97</sup>

See Republic of Kenya [Children Act](#) for full text of the act.

For information on children, see [Country Background Note: Kenya](#).

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## 7.6 Alternative dispute resolution

7.6.1 The Republic of Kenya Judiciary website stated:

'The Constitution calls for promotion of alternative means of settling disputes. This means that you can go to religious leaders, government administrators, elders and other community leaders to resolve disputes; however, the Constitution also says that such processes must follow the law.

'This means that the alternative processes must uphold human rights of all persons involved in the dispute, especially women, youth and children. It also means that even if you choose to go through such an alternative process, you are still free to pursue the matter in a court of law.'<sup>98</sup>

7.6.2 The USSD report 2019 noted: 'Dispute resolution at police stations resolved a significant number of crimes, but authorities did not report or record them, according to human rights organizations.'<sup>99</sup>

7.6.3 An article published on the African Law & Business website stated:

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<sup>96</sup> NCAJ, 'Criminal Justice System in Kenya: An Audit' (page 46), 2016, [url](#).

<sup>97</sup> NCAJ, 'Status report on Children in the Justice System in Kenya' (p.9), 2019, [url](#).

<sup>98</sup> Republic of Kenya Judiciary, 'Overview', (n.d), [url](#).

<sup>99</sup> USSD, 'USSD report 2019', (section 1d), 11 March 2020, [url](#).



'The main alternative dispute resolution (ADR) methods available in Kenya are negotiation, conciliation, mediation and arbitration. There is no mandatory requirement for parties to commercial litigation to submit to ADR proceedings. However, in terms of the Civil Procedure Act, the courts may, either on the application of the parties or on its own motion, refer a commercial dispute to ADR mechanisms.

'In ADR proceedings parties generally agree that each party will bear their own costs and expenses and the parties will share the costs of any third party involved in facilitating the resolution of the dispute (example, conciliator or mediator).

'In arbitration, the costs of arbitration may be agreed upon by the parties, fixed by the arbitrator as part of the arbitral award in the absence of an agreement; or shared, with each party bearing its own legal and other expenses and the parties equally sharing the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration. ADR proceedings are confidential.

'The Kenyan Chartered Institute of Arbitrators- and the Dispute Resolution Centre and Mediation Training Institute are currently the main bodies that offer ADR in Kenya. Parties are not obliged to use these bodies. They are free to state in their agreements how the ADR proceedings will be carried out and which body will oversee the proceedings. The parties are also free to choose individual qualified arbitrators...

'The duration of arbitration proceedings in Kenya varies depending on the complexity of the subject matter, the efficiency and enthusiasm of the parties, the respective schedules of the parties and the arbitrator and his/her efficiency. Arbitration proceedings in Kenya generally take between six months and three years. A court can intervene in arbitration proceedings but the level and instances of intervention are limited...An arbitrator has power to grant interim relief and measures of protection as he may consider necessary.

'There is no mandatory requirement to disclose any documents. Parties disclose documents that are relevant to their cases. The disclosure and exchange of documents and other information is agreed upon by the parties and the arbitrator during the preliminary arbitration scheduling meetings. Certain documents are privileged. Communications between a lawyer and his/her client are strictly privileged...It is also common practice by opposing parties to enter into negotiations in an effort to settle pending matters without fear of prejudicing their clients' claims. Any document and/or statement made with the intent of settling a dispute is not admissible in court proceedings. In practice such documents are marked 'without prejudice'. Documents emanating from the official status of a person are also privilege. 'Such privilege includes the privilege of judges and magistrates and public officers in connection with official information.'

- 7.6.4 The Kenyan government's National Report to the United Nations Human Rights Council Working Group on the Universal Periodic Review, Kenya, submitted on 11 November 2019, noted:

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<sup>100</sup> African Law & Business, 'Alternative dispute resolution in Kenya', 12 January 2016, [url](#).

‘In order to unclog the court system and also ensure the speedy administration of justice, the use of Alternative Dispute Resolution has been prioritized. To this end, an Alternative Justice System’s Policy has been formulated. The Policy, which is currently undergoing stakeholder consultations, provides for alternatives to the formal court system and implores traditional justice mechanisms. This move is in line with constitutional stipulations which allow alternative forms of dispute resolution mechanisms, including traditional approaches, as long as they do not contravene the Bill of Rights, and are not repugnant to justice, morality or inconsistent with the Constitution or any written law.

‘To further address the backlog of cases, a court-annexed mediation has been introduced. Cases are resolved with the assistance of court accredited mediators, usually lawyers who are trained in mediation. The process involves the screening of a case and, if it qualifies, is referred to mediation. The agreement reached is considered legally binding by the courts.’<sup>101</sup>

- 7.6.5 The United Nations Human Rights Council Report of the Office of the United Nations High Commissioner for Human Rights (UN OHCHR), Summary of Stakeholders Submissions on Kenya, 5 November 2019, in a joint submission by a number of organisations, stated: ‘...although the State of the Judiciary and the Administration of Justice Annual Report, 2017–2018 recognizing Alternative Dispute Resolution Mechanisms as one of the key means of promoting speedy and affordable access to justice, there were only 229 Judiciary Accredited Mediators and the programme had only been rolled out in 10 of the 47 counties.’<sup>102</sup>

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## 7.7 Legal aid

- 7.7.1 The Xinhua Net report, Kenya launches guidelines to expand legal aid services to all, dated 18 December 2017, stated:

‘Kenya on Monday [18 December 2017] launched guidelines to expand legal aid services to all persons in the country.

‘Attorney General Githu Muigai told a media briefing in Nairobi that the National Action Plan on Legal Aid 2017-2022 is an indicator of the government's commitment to ensure access to justice for all as enshrined in the constitution and also in line with the international best practices and standards in the promotion and protection of human rights...

‘The National Action Plan sets out the major initiatives that will address legal aid concerns across the country while providing the necessary impetus to operationalize the Legal Aid Act 2016 and the National Legal Aid and Awareness Policy 2015.

‘The guidelines are a culmination of many process coupled with the legal experience of many lawyers who believe that the rights of all persons, no matter the circumstances are upheld.

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<sup>101</sup> UN OHCHR, ‘National report Kenya’ (para 18-19), 11 November 2019, [url](#).

<sup>102</sup> UN OHCHR, ‘Summary of Stakeholders Submissions’, (para 46), 5 November 2019, [url](#).



‘Muigai said the action plan will be a complete paradigm shift in the justice system and should be replicated in other African countries.

He added that the plan will provide a broad strategic framework on legal aid while ensuring there is continued synergy and coordination among the stakeholders so as to provide legal aid that is responsive, affordable, accessible and speedy.’<sup>103</sup>

- 7.7.2 The UN ‘Compilation on Kenya’ submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019, noted:

‘While welcoming the adoption of the Legal Aid Act, 2016 and the National Legal Aid Policy, the Committee on the Elimination of Racial Discrimination was concerned that the combined budget of the Legal Aid Fund and the National Legal Aid Awareness Fund might be insufficient. It was also concerned at reports that the Act had not been fully implemented. The Committee encouraged Kenya to continue implementing its legal aid policies to ensure equal access to justice for victims of racial discrimination, minorities and indigenous peoples, in particular by providing adequate funding and staffing for legal aid services and reducing the distances between national courts and the areas where some minority groups and indigenous peoples lived.’<sup>104</sup>

- 7.7.3 The USSD report 2019 stated: ‘The National Legal Aid Service facilitates access to justice, with the ultimate goal of providing pro bono services for indigent defendants who cannot afford legal representation. Other pro bono legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers, an international NGO, provided it.’<sup>105</sup>

- 7.7.4 The same report noted: ‘There was no government-sponsored public defenders service, and courts continued to try the vast majority of defendants without representation because they could not afford legal counsel.’<sup>106</sup>

See also [Legal Aid Act 2016](#).

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## 7.8 Bail/Bond

- 7.8.1 The Republic of Kenya Judiciary website provided the following information in relation to the right to bail/bond:

‘You have a right to be released on reasonable bond or bail conditions before pending a charge or trial, unless there are compelling reasons established to the court by the prosecution. The court should automatically grant you reasonable bail/bond terms. If it fails, you have a right to request for the same.

‘If the prosecution presents evidence in favour of your continued detention (denial of bail) you have a right to be present and to rebut that evidence

<sup>103</sup> XinhuaNet, ‘Kenya launches guidelines to expand legal aid services to all’, 18 December 2017, [url](#).

<sup>104</sup> UN OHCHR, ‘Compilation on Kenya’, (para 36), 18 November 2019, [url](#).

<sup>105</sup> USSD, ‘USSD report 2019’, (section 1e), 11 March 2020, [url](#).

<sup>106</sup> USSD, ‘USSD report 2019’, (section 1e), 11 March 2020, [url](#).

'If the court finds in favour of your continued detention, that is, that there exist compelling reasons for your freedom of movement to be limited, then the court shall inform you of those reasons.

'If you are charged with an offence that is punishable by a fine only or by imprisonment for not more than six months, you shall not be remanded in custody'.<sup>107</sup>

#### 7.8.2 The USSD report 2018 noted:

'The constitution establishes the right of suspects to bail unless there are compelling reasons against release. There is a functioning bail system, and all suspects, including those accused of capital offenses, are eligible for bail. Many suspects remained in jail for months pending trial because of their inability to post bail. Due to overcrowding in prisons, courts rarely denied bail to individuals who could pay it, even when the circumstances warranted denial.'<sup>108</sup>

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### 7.9 Death penalty

7.9.1 Kenya's constitution recognises the death penalty as a form of punishment in the penal system of the country. There are four civil offences punishable by the death penalty in Kenya – treason, murder, robbery with violence, and attempted robbery with violence. A number of military offences are also punishable by death<sup>109</sup>.

7.9.2 The AI report, Death Sentences and Executions 2018, stated Kenya is one of the: 'Countries that retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions.'<sup>110</sup>

7.9.3 The Daily Nation report, 'Ruth Kamande: Quick facts on Kenya's death sentence', dated 20 July 2018, stated:

- The Kenyan Constitution allows capital punishment, which has been practised for over 70 years.
- There were 4,500 convicts on death row.
- Kenya has no serving hangman. The last one died in 2009.
- The last executions were in 1987 – the hanging of Kenya Air Force Senior Private Hezekiah Ochuka, Pancras Oteyo Okumu and two others who were found guilty of treason. They were convicted for their involvement in the 1982 attempted coup against the government of President Daniel arap Moi<sup>111</sup>.

7.9.4 The Amnesty International (AI) report, Death Sentences and Executions 2018, published on 10 April 2019, stated:

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<sup>107</sup> Republic of Kenya Judiciary, 'Courts', (n.d), [url](#).

<sup>108</sup> USSD, 'USSD report 2019', (section 1e), 11 March 2020, [url](#).

<sup>109</sup> British Institute of International and Comparative Law, 'The Application...', (n.d), [url](#).

<sup>110</sup> AI, 'Death Sentences and Executions 2018', 10 April 2019, [url](#).

<sup>111</sup> Daily Nation, 'Ruth Kamande: Quick facts on Kenya's death sentence', 20 July 2018, [url](#).

‘In March [2018], the then Attorney-General of Kenya, Githu Muigai, appointed a 13-member task force to review the legislative framework on the death penalty and other matters and set up a framework to deal with rehearing of sentencing of persons on death row. This was in implementation of the December 2017 order of the Supreme Court in *Francis Karioko Muruatetu v. Republic*, which declared mandatory imposition of the death sentence in murder cases to be unconstitutional.

‘Despite the abolition of the mandatory death penalty for murder in Kenya, the courts exercised discretion to impose the death sentence in at least 12 cases....

‘During the year, pronouncements were made in favour of introducing the death penalty for corruption and poaching. Kevin Macharia, a lawyer, drafted a bill proposing the death penalty for corruption, economic crimes and sabotage, while Honourable Ngunjiri Wambugu, an MP for the ruling Jubilee party, declared his intention to introduce a bill in Parliament proposing the death penalty for corruption. Further, Minister for Tourism and Wildlife, Najib Balala, declared that laws prescribing the death penalty for poaching would be fast-tracked.’<sup>112</sup>

- 7.9.5 The ‘Compilation on Kenya’ submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019, noted: ‘The United Nations country team noted that there was a moratorium on the death penalty and no executions had taken place since 1987, although courts continued to hand down death sentences for capital offences. The Government had established a working group to make recommendations on the decision of the Supreme Court in which the Court had held that the death penalty was unconstitutional.’<sup>113</sup>
- 7.9.6 The Kenyan government’s National Report to the United Nations Human Rights Council Working Group on the Universal Periodic Review, Kenya, submitted 11 November 2019, noted: ‘On 24th October 2016, the President of Kenya, H.E. Uhuru Kenyatta commuted all death sentences of 2,747 death row inmates, 2,655 male convicts and 92 female convicts - to life sentences. As at June 2019, there were 810 death row inmates.’<sup>114</sup>

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<sup>112</sup> AI, ‘Death Sentences and Executions 2018’, 10 April 2019, [url](#).

<sup>113</sup> UN OHCHR, ‘Compilation on Kenya’ (para 27), 18 November 2019, [url](#).

<sup>114</sup> UN OHCHR, ‘National report Kenya’ (para 38), 11 November 2019, [url](#).

# Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Security apparatus
  - Structure
  - Police
  - Armed forces
  - Intelligence agencies
- Security forces capabilities
  - Surveillance
  - Effectiveness
  - Corruption
  - Human rights abuses
  - Prosecution of police officers involved in human rights abuses
- Arrest and detention
  - Penal Code
  - Legal rights
- Rule of law and the judiciary
  - Organisation
  - Independence
  - Fair trial
  - Effectiveness
  - Juvenile justice
  - Alternative dispute resolution
  - Access to justice
  - Legal aid
  - Death penalty

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# Bibliography

## Sources cited

African Law & Business, 'Alternative dispute resolution in Kenya', 12 January 2016, <https://www.africanlawbusiness.com/news/6067-alternative-dispute-resolution-in-kenya>. Last accessed: 3 March 2020

Amnesty International,

'Police Reform in Kenya: "A Drop in the Ocean"', 2013, <https://www.refworld.org/pdfid/510ba3de2.pdf>.

Last accessed: 4 December 2019

'Death Sentences and Executions 2018', 10 April 2019, <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

Last accessed: 2 March 2020

BBC News,

'Kenyans back change to constitution in referendum', 5 August 2010, <https://www.bbc.co.uk/news/world-africa-10876635>.

Last accessed: 24 March 2020

'Kenya police: Nahashon Mutua jailed as baby Pendo killers convicted', 14 February 2019, <https://www.bbc.co.uk/news/world-africa-47240250>.

Last accessed: 3 March 2020

Bertelsmann Stiftung's Transformation Index (BTI) 2018, report on Kenya (covering the period 1 February 2015 to 31 January 2017), 2018, [https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI\\_2018\\_Kenya.pdf](https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018_Kenya.pdf). Last accessed: 4 December 2019

Bizna, 'Kenya Police Salaries: What police officers earn every month', 5 January 2020, <https://biznakenya.com/kenya-police-salaries/>. Last accessed: 24 March 2020

British Institute of International and Comparative Law, 'The Application of the Death Penalty in Kenya: A Case of Torturous de facto Abstinence', Joy Asiema and Ongoya Elisha, (n.d), [https://www.biicl.org/files/2196\\_country\\_report\\_kenya\\_asiema.pdf](https://www.biicl.org/files/2196_country_report_kenya_asiema.pdf). Last accessed: 2 March 2020

Business Daily, 'Kenya police gets a new face, structure', 13 September 2013, <https://www.businessdailyafrica.com/news/Uhuru-Kenyatta-makes-major-changes--in-police/539546-4757732-10nqg7dz/index.html>. Last accessed: 26 February 2020

CEIC, 'Kenya Average Wage Earnings', (n.d), <https://www.ceicdata.com/en/kenya/average-wage-earnings-by-sector-and-industry-international-standard-of-industrial-classification-rev-4/average-wage-earnings>. Last accessed: 24 March 2020

Central Intelligence Agency (CIA),

'World Factbook, Kenya', 11 February 2020, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>.

Last accessed: 26 February 2020

'Military Service Age and Obligation', (n.d), <https://www.cia.gov/library/publications/the-world-factbook/fields/333.html>.

Last accessed: 3 March 2020

The Conversation, 'Why decades of Kenya police reforms have not yielded change', 25 November 2019, <https://theconversation.com/why-decades-of-kenya-police-reforms-have-not-yielded-change-127332>. Last accessed: 2 March 2020

Daily Nation,

'Kenya Police tops corruption list', 27 March 2018, <https://www.nation.co.ke/news/Kenya-Police-tops-corruption-list/1056-4359964-sc80d3z/index.html>. Last accessed: 7 November 2019

'Ruth Kamande: Quick facts on Kenya's death sentence', 20 July 2018, <https://www.nation.co.ke/news/Quick-facts-on-Kenya-death-sentence/1056-4672688-59811nz/index.html>. Last accessed: 2 March 2020

Encyclopaedia Britannica, 'Kenya', (n.d), <https://www.britannica.com/place/Kenya/Kenya-in-the-21st-century#ref1254196>. Last accessed: 10 March 2020

Freedom House, 'Freedom in the World 2019', Kenya, 2018, <https://freedomhouse.org/report/freedom-world/2019/kenya>. Last accessed: 12 December 2019

GAN (business anti-corruption portal), 'Kenya Corruption Report', June 2017, <https://www.ganintegrity.com/portal/country-profiles/kenya/>. Last accessed: 3 March 2020

The Guardian, "If we don't kill these people, they will kill you": policing Africa's largest slum', 6 August 2019, <https://www.theguardian.com/global-development/2019/aug/06/if-we-dont-kill-these-people-they-will-kill-you-policing-africas-largest-slum>. Last accessed: 12 December 2019

Human Rights Watch,

'Kenya: Nairobi Police Executing Suspects', 2 July 2019, <https://www.hrw.org/news/2019/07/02/kenya-nairobi-police-executing-suspects>. Last accessed: 4 December 2019

'World Report 2019', Kenya, January 2019, <https://www.hrw.org/world-report/2019/country-chapters/kenya>. Last accessed: 4 December 2019

'World Report 2020', Kenya, January 2020, <https://www.hrw.org/world-report/2020/country-chapters/kenya>. Last accessed: 6 March 2020

'Kenya: No Letup in Killings by Nairobi Police', 20 February 2020, <https://www.hrw.org/news/2020/02/20/kenya-no-letup-killings-nairobi-police>. Last accessed: 7 April 2020

International Center for Transitional Justice (ICTJ), 'Institutional Reform in the New Constitution of Kenya', 21 April 2011, <https://www.ictj.org/sites/default/files/ICTJ-Kenya-Institutional-Reform-2010-English.pdf>. Last accessed: 24 March 2020

Independent Policing Oversight Authority, 'How to complain and What is misconduct', (n.d), <https://www.ipoa.go.ke/how-to-complain/>. Last accessed: 19 February 2020

International Police Science Association (IPSA), 'World Internal Security and Police Index (WISPI) 2016', 2016, <http://www.ipsa-police.org/Images/uploaded/Pdf%20file/WISPI%20Report.pdf>. Last accessed: 8 January 2020



National Council for Law Reporting with the Authority of the Attorney-General, Penal Code, 2010 (revised 2012), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf>. Last accessed: 7 November 2019

National Council on Administration of Justice (NCAJ),

‘Criminal Justice System in Kenya: An Audit’, 2016, [http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal\\_Justice\\_Report.pdf](http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal_Justice_Report.pdf). Last accessed: 28 February 2020

‘Status report on Children in the Justice System in Kenya’, 2019, <https://www.judiciary.go.ke/download/status-report-on-children-in-the-justice-system-in-kenya/>. Last accessed: 10 March 2020

National Intelligence Service, ‘Homepage’, (n.d), <https://www.nis.go.ke/index.html>. Last accessed: 26 February 2020

President of the Republic of Kenya, ‘Speech by his Excellency hon. Uhuru Kenyatta, c.g.h., President of the Republic of Kenya and commander in chief of the defence forces during the official commissioning of 500 leased motor vehicles for the National Police Service at Uhuru park grounds, Nairobi’, 16 January 2017, <https://www.president.go.ke/2017/01/16/speech-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-defence-forces-during-the-official-commissioning-of-500-leased-motor-vehicles-for/>. Last accessed: 25 February 2020

Republic of Kenya,

‘Constitution of Kenya’, (n.d), <http://www.klrc.go.ke/index.php/constitution-of-kenya/>. Last accessed: 28 February 2020

‘Penal Code’, 2010 (revised 2012), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf>. Last accessed: 28 February 2020

Republic of Kenya, Judiciary,

‘Courts – Overview’, (n.d), <https://www.judiciary.go.ke/courts/>. Last accessed: 12 December 2019

‘National Police Service Commission members take oath of office’, 18 March 2019, <https://www.judiciary.go.ke/national-police-service-commission-members-take-oath/>. Last accessed: 2 March 2020

Reuters,

‘Amid claims of police brutality in Kenya, a watchdog fails to bite’, 23 February 2018, <https://www.reuters.com/investigates/special-report/kenya-police-watchdog/>. Last accessed: 19 February 2020

‘Kenyan court sentences police officer to death for killing detainee’, 14 February 2019, <https://af.reuters.com/article/topNews/idAFKCN1Q31IX-OZATP>. Last accessed: 4 December 2019

‘Nearly half of Kenyans surveyed by police watchdog report abuses by officers’, 6 November 2019, <https://af.reuters.com/article/topNews/idAFKBN1XG24Q-OZATP>. Last accessed: 4 December 2019

The Star,

Kenya has 101,288 police officers, audit shows, 19 March 2019, <https://www.the-star.co.ke/news/2019-03-19-kenya-has-101288-police-officers-audit-shows/>. Last accessed: 09 March 2020

Transparency International, 'Kenya stagnates in the corruption perceptions index', 23 January 2020, <https://tikenya.org/wp-content/uploads/2020/01/CPI-press-release-2019.pdf>. Last accessed :7 April 2020

United Nations Office of the High Commissioner for Human Rights (UN OHCHR),

'Human Rights Council Working Group on the Universal Periodic Review Thirty-fifth session 20–31 January 2020 Summary of Stakeholders submissions on Kenya', 5 November 2019, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/KEIndex.aspx>. Last accessed: 6 March 2020

'Human Rights Council Working Group on the Universal Periodic Review Thirty-fifth session 20–31 January 2020 Compilation on Kenya Report of the Office of the United Nations High Commissioner for Human Rights', 18 November 2019, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/KEIndex.aspx>. Last accessed: 6 March 2020

United States State Department (USSD),

Overseas Security Advisory Council, 'Kenya 2019 Crime & Safety Report', 14 March 2019, <https://www.osac.gov/Content/Report/03c822af-2922-4a4c-ba8b-15f4aead1599>. Last accessed: 8 January 2020

Overseas Security Advisory Council, 'Kenya 2020 Crime & Safety Report', 5 March 2020, <https://www.osac.gov/Country/Kenya/Content/Detail/Report/50c57c03-c161-4f9c-8942-182082896065>. Last accessed 7 April 2020

'2018 Country Report on Human Rights Practices', Kenya, 13 March 2019, <https://www.state.gov/wp-content/uploads/2019/03/Kenya-2018.pdf>. Last accessed: 7 November 2019

'2019 Country Report on Human Rights Practices', Kenya, 11 March 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/kenya/>. Last accessed: 24 March 2020

XE Currency Converter, 24 March 2020, <https://www.xe.com/currencyconverter/convert/?Amount=18%2C760&From=KES&To=GBP>. Last accessed: 24 March 2020

Xinhua Net, 'Kenya launches guidelines to expand legal aid services to all', 18 December 2017, [http://www.xinhuanet.com/english/2017-12/18/c\\_136835040.htm](http://www.xinhuanet.com/english/2017-12/18/c_136835040.htm). Last accessed: 6 March 2020

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#### **Sources consulted but not cited:**

Not applicable.

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# Version control

## Clearance

Below is information on when this note was cleared:

- version **1.0**
- valid from **20 May 2020**

## Changes from last version of this note

First version.

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