

Kenya

Country Overview

Politics

The Kenyan government is a three-branch republic. The executive branch is led by President Uhuru Kenyatta, who was re-elected in the 2017 election. During the general election, some civil society groups raised questions about perceived irregularities, and voting results were annulled on account of technical problems in the vote tallying. The Supreme Court ordered a new election, and the opposition responded by withdrawing from the race. The day of the new election was characterized by low voter turnout and violent protests, followed by the re-election of Kenyatta.¹

Reports from Nairobi continue to describe considerable risk of terrorist activity from the group Al-Shabaab against civilian and government targets. In January of 2019, five Al-Shabaab terrorists attacked the DusitD2 Hotel in Nairobi, resulting in the deaths of 21 people. Also in January, a small IED (improvised explosive device) was reported to have exploded in the city's central business district, injuring two people. Past attacks have reportedly included armed assaults, suicide operations, bomb and other explosive attacks, kidnappings, and attacks on aviation services and maritime vessels.² The U.S. Department of State additionally lists the occurrence of attacks and guerrilla-style raids on communities living in isolation along the Somalia border.³

Human rights groups and civil society organizations have reported that security forces designated to conduct counterterror operations have committed human rights violations in the process. These have been noted in forms of abuse such as extrajudicial killings and arbitrary arrests of human rights workers, especially among those who identify as Somalis and Kenyan Muslims and are therefore targeted for their ethnic or cultural status.⁴

Corruption is reported by the public to be a severe issue within all levels of government.⁵

Kenya has a bicameral legislative branch which is divided between the senate and the national assembly. The judicial system in Kenya is mixed, with English common law, Islamic law, and customary law jointly recognized.⁶



Economy

The World Bank classifies Kenya as a lower middle income country.⁷ According to the UN, 38.7 percent of the population lives in multidimensional poverty, despite the country being the epicenter of East African trade.⁸ The unemployment rate was estimated to be 9.3 percent in 2019.⁹ The service sector comprises the largest sector of the Kenyan economy, accounting for roughly 47.5 percent of GDP annually, followed by agricultural production at 34.5 percent. Of the 19.6 million members of the labor force, 61.1 percent of these are employed within the agricultural sector.¹⁰ The Kenyan government has taken considerable steps to implement business and infrastructure reforms in order to improve its investment climate. Consumer demand from a burgeoning middle class has increased, and the last five years have seen a five to six percent growth in GDP.¹¹

Social/Human Development

Kenya's Human Development Index (HDI) value for 2018 was 0.579, positioning the country at 147 out of 189 countries and territories.¹² The country's population has been growing rapidly in recent years, and over 40 percent of Kenyans are between the ages of 0-14.¹³

Kenya has a population of over 53 million, and is made up of 11 main ethnic groups: Kikuyu (17.1 percent), Luhya (14.3 percent), Kalenjin (13.4 percent), Luo (10.7 percent), Kamba (9.8 percent), Somali (5.8 percent), Kisii (5.7 percent), Mijikenda (5.2 percent), Meru (4.2 percent), Maasai (2.5 percent), Turkana (2.1 percent), and other (8.2 percent).¹⁴

Kenya has a large population of refugees, primarily from Somalia and South Sudan. The government announced its intention to close the largest refugee camp, Dadaab, by 2017; the camp remained open despite this initiative.¹⁵

U.S. Department of State TIP Report Summary

U.S. Department of State TIP Ranking: Tier 2 Watchlist

According to the *Trafficking in Persons Report*, trafficking or vulnerability to trafficking is found in potentially exported supply chains including agriculture, fishing, and livestock (meat and live animals). Sex trafficking is noted in gold



mining and fishing areas.¹⁶

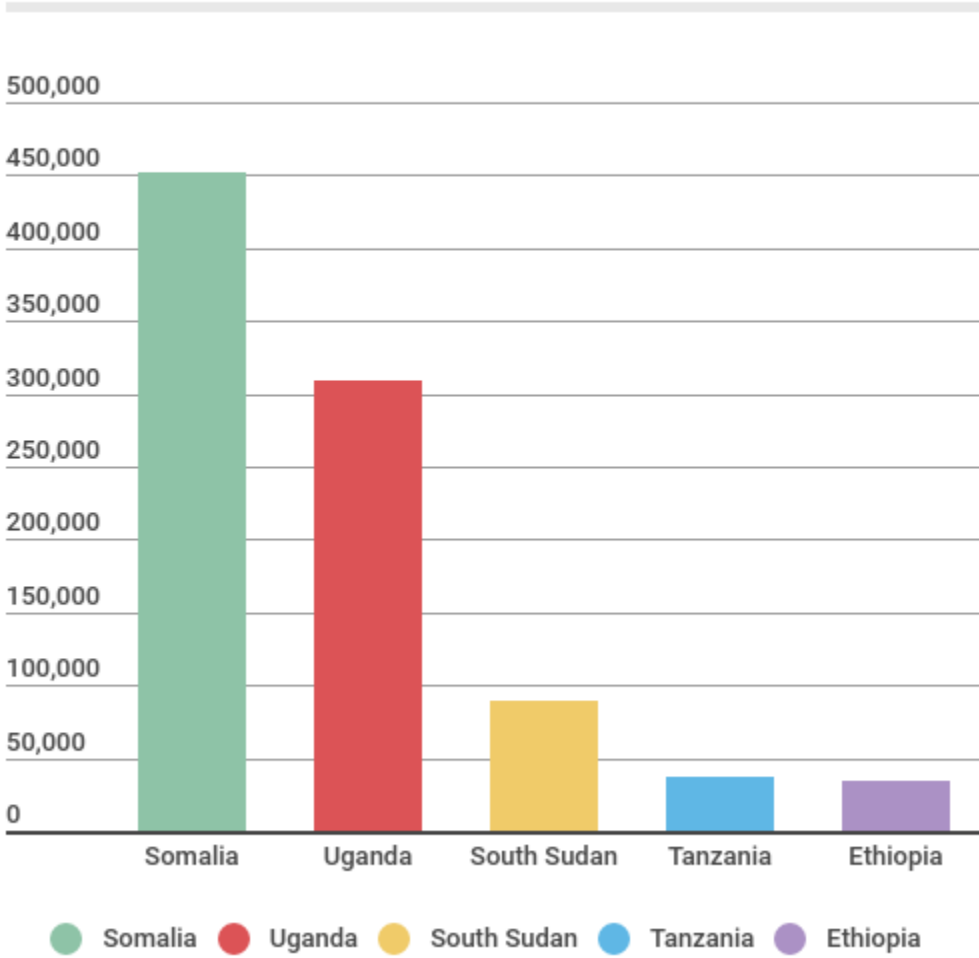
Read the full TIP Report at: <https://www.state.gov/reports/2019-trafficking-in-persons-report/>

Migrants and Other Vulnerable Populations

Kenya experiences a negative net migration at a rate of -0.2 migrant(s)/1,000 population, ranking it 107th in the world in terms of migration rates.¹⁷ Kenya's levels of social stability in comparison to some of its regional neighbors has made it a destination for refugees. There were an estimated 490,224 persons of concern in Kenya at the end of 2018, a majority of whom were refugees. About 18,500 people were considered stateless.¹⁸ The conflict in neighboring Somalia has seen around 300,000 refugees cross the border into Kenya.¹⁹ The largest source countries for migrants are Somalia, Uganda, South Sudan, the United Republic of Tanzania, and Ethiopia.²⁰



Migrants to Kenya



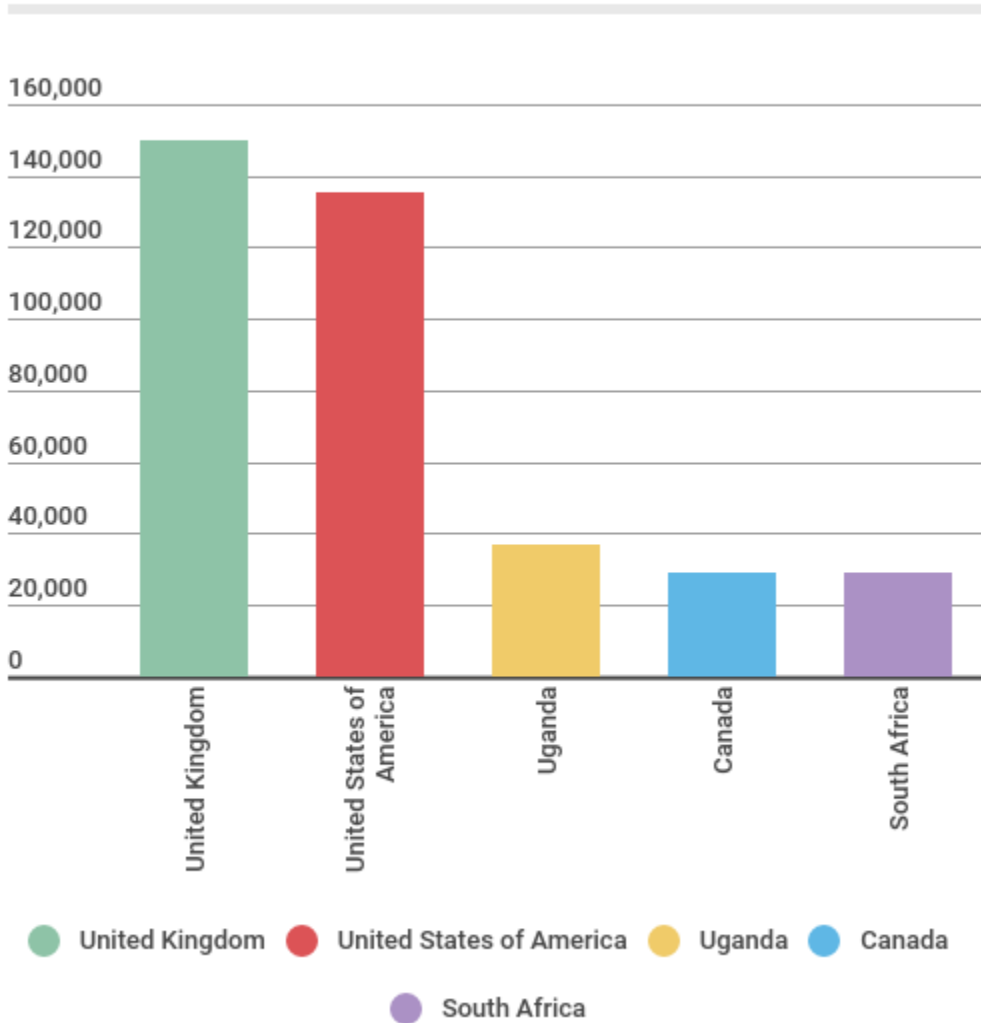
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Most out-migration has been attributed to the loss of highly skilled workers and students.²² The top migration destinations for Kenyans are the United Kingdom, the United States, Uganda, Canada, and South Africa.²³ Contrastingly, migration of low-skilled workers has also been on the increase, primarily to the Gulf Cooperation Council (GCC) countries, which include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. These workers aspire to secure domestic labor positions due to a lack of employment opportunities at home; however, they reportedly face a risk of unethical employment and unfair treatment by hiring agencies and employers. The government implemented a



ban on labor migration to the GCC in 2012, but the ban was lifted in the following year.²⁴

Migrants from Kenya



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Exports and Trade

The top exported products from Kenya in 2018 were coffee, tea, and mate, trees and plants, mineral fuels, vegetables, fruits and nuts, and apparel.²⁶



Top Commodity Exports (USD/Thousands)

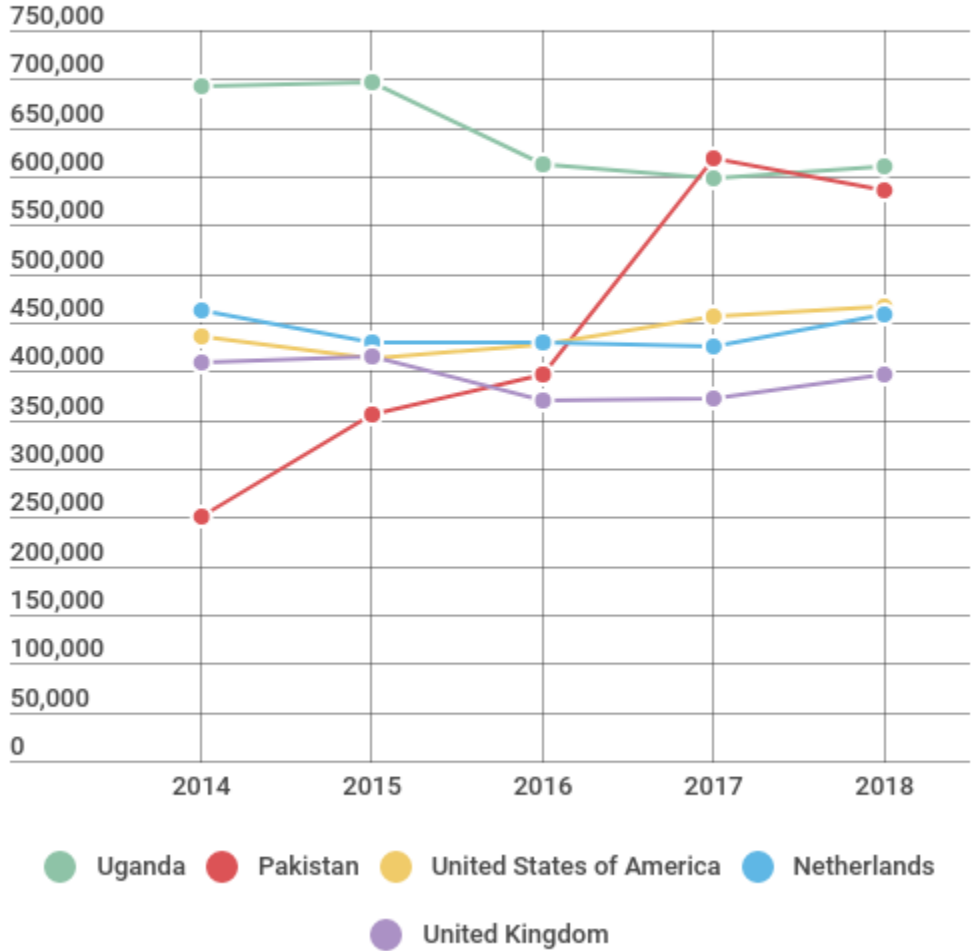


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The top importers of goods from Kenya in 2018 were Uganda, Pakistan, the United States, the Netherlands, and the United Kingdom.²⁸



Kenya Export Partners (USD/Thousands)



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Kenya was the 85th largest supplier of goods to the United States in 2018. Woven and knit apparel and edible fruit and nuts (especially cocoa, brazil, and cashew nuts) were the United States’ largest imports from Kenya.³⁰

Trafficking in Persons Risk Factor Analysis

Legal/Policy Risk Factors



Level of Legal Protection for Civil Liberties and Workers' Rights

Freedom of Association

Kenyan labor law allows for workers to form unions and bargain collectively with their employers. Members of the police, armed forces, and prison employees are barred from forming unions, striking, or bargaining collectively. Employees working in sectors which are considered to provide “essential services” are also barred from striking. While the government of Kenya is generally supportive of workers’ rights to bargain collectively, unionize, and strike, the enforcement of applicable laws is reportedly inconsistent, largely due to the insufficient enforcement capabilities of the relevant governmental authorities and resource constraints. Migrant workers often lack the ability to organize or the knowledge of their right to do so. Domestic workers are often subject to exclusion from exercising such rights as well; however, unions of domestic workers are in operation. Organizations such as the Ministry of East African Community and Northern Corridor assist these workers in the protection of their legal rights that exist under the labor laws.³¹

Working Conditions

Kenyan law provides that the minimum wages for a general laborer is to be KES 12,926 (USD 128) per month or KES 18,274 (USD 181) per month for skilled laborers. For unskilled agricultural workers, the minimum wage is KES 7,323 (USD 73), excluding housing allowances. The law limits the workweek for general laborers to 52 hours per week, and 60 for those working at nighttime. It has been reported that these laws are routinely violated by employers. Workers in the construction sector, those working in hotels, and those working in the EPZs are reported to be especially vulnerable to such abuses.³² Regulations surrounding unsafe work practices, including the right of workers to remove themselves from dangerous or hazardous working conditions, were not adequately enforced and penalties were not sufficient to deter violations. The Kenyan government has mandated that larger factories have health and safety committees employed on site. The informal sector, which comprised of 11.81 million people working in 2016, are protected under social protections and can form associations and cooperatives.³³

Discrimination

The law prohibits discrimination in employment and occupation based on the grounds of race, color, sex, age, religion, political or other opinion, nationality,



ethnic or social origin, disability, language, pregnancy, or mental status. The constitution specifically bans discrimination against women based on land ownership, access, and inheritance. The law does not explicitly prohibit discrimination based on sexual orientation or gender identity. Women earn, on average, two-thirds of the salaries of their male counterparts. It is also reported that migrant workers are routinely discriminated against in terms of hiring.³⁴

Forced Labor

Kenyan law prohibits most forms of forced labor, and according to the U.S. Department of State, authorities have made moderate advances in terms of eliminating forced labor practices.³⁵ However, penalties and enforcement capabilities are reportedly insufficient to deter violations.³⁶ Forced prison labor is also legal under Kenyan labor laws.³⁷

Child Labor

Kenyan labor laws set the minimum age for work at 16 and the minimum age for hazardous work at 18. In the informal sector, monitoring of these laws is difficult and enforcement is reportedly insufficient.³⁸ The Ministry of Labor is limited in enforcing all child labor laws due to a lack of resources. It was reported in 2016 through a study performed by UNICEF that 26 percent of children under the age of 14 participated in child labor (about five million children), notably in agriculture, mining, and fishing in rural areas, and informal vending in urban areas. Children were also reportedly exploited at high rates in domestic labor, and migrant children were frequently trafficked between rural and urban settings.³⁹

Civil Society Organizations

Human rights groups have noted ongoing intimidation of journalists and other members of civil society, especially following the 2017 elections.⁴⁰ Overall, non-governmental human rights groups are reportedly allowed to operate freely in the country.⁴¹ Human rights workers in more rural areas have reported harassment from county-level officials and security forces. There have also been occasional reports that human rights workers were harassed or intimidated by state authorities and security forces.⁴²

Immigration Policies Limiting the Employment Options or Movement of Migrants

The Citizen and Immigration Act of 2011 permits protection for stateless peoples



and provides the opportunity for eligible individuals to apply for citizenship. However, the government does not have a sufficient method to identify these individuals; therefore, many stateless people continue to experience travel restrictions and are vulnerable to trafficking risk. Asylum seekers and refugees were reported to face abuse and detention from police authorities. Refugees reside in designated camps and must receive a temporary pass to move outside of these areas. Limited travel for refugees is permitted only to those receiving specific medical services, those enrolled in public schools, and those attempting to resettle.⁴³

Ratification of ILO Conventions Related to Human Trafficking or Rights of Workers and Migrants

Conventions	Status
ILO 29 Forced Labor	In force
ILO 87 Freedom of Association and Protection of the Right to Organize	Not ratified
ILO 98 Right to Organize and Collective Bargaining	In force
ILO 100 Equal Remuneration	In force
ILO 105 Abolition of Forced Labor	In force
ILO 111 Discrimination	In force
ILO 138 Minimum Age	In force
ILO 181 Private Employment Agencies	Not ratified
ILO 182 Worst Forms of Child Labor	In force
ILO 97 Migration for Employment	In force

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Use of Export Processing Zones (EPZs)

At the end of 2016, there were 65 Export Processing Zones (EPZs) in Kenya. The United States receives 54 percent of these exports under the African Growth and Opportunity Act (AGOA). Around 50 percent of all EPZs are foreign-owned, and the other 50 percent are joint ventures between Kenyan nationals and foreign investors or locally owned firms.⁴⁵ It has been reported that labor violations are



prevalent in the EPZs, including the substitution of contract workers in full-time positions and mandatory overtime work.⁴⁶

Political Risk Factors

Political Instability or Conflict

Kenya scores a 93.5 in the 2019 Fragile States Index (FSI), placing it in the “Alert” category and ranking it 25th out of 178 countries. The FSI score scale ranges from 0 (indicating a “sustainable” political system) to 120 (indicating a political system on “high alert”).⁴⁷

Human rights groups report little progress on accountability for violence following the 2007 elections that killed over 1,100 people. Penalties have also yet to be implemented for security officers involved in the 100 deaths that occurred following the 2017/2018 elections.⁴⁸

Level of Crime and Violence

The U.S. Department of State rates the crime threat in Kenya as a Level 2, which implies that travelers should practice extreme caution. Crime threat is especially serious in Nairobi.⁴⁹ According to the UNODC, Kenya had a homicide rate of 4.8.⁵⁰ Al-Shabaab continues to be an active terrorist threat in Kenya, especially near areas bordering Somalia.⁵¹

State Persecution

Refugees in Kenya have a precarious status within the country. In 2016, the government initiated a directive to revoke the refugee status of Somalis in Kenya and announced its intention to close the largest refugee camp, Daadab. However, these directives were deemed unconstitutional by the High Court, and authorities instead worked to make voluntary repatriation an option for Somali refugees.⁵² The camp was threatened with shutdown again in February of 2019 due to security concerns.⁵³

Human Rights Watch reports that state security forces remain active in counterterrorism efforts and are deployed in Somalia and South Sudan.⁵⁴

Abuses of those within the Kenyan LGBTI community by security forces was reported to be widespread. This abuse usually takes the form of physical, psychological, and sexual abuse, in addition to violence and forced marriage. The constitution does not specifically protect members of the LGBTI community from discrimination based on gender identity, and same-sex relations are criminalized under the penal



code. While advocacy groups for LGBTI rights were permitted by authorities to register and conduct activities, NGOs reported that they experienced frequent harassment and intimidation from police forces, and even were subject to arrest for public order laws, such as those involving disturbances of peace.⁵⁵

Level of Corruption

The Transparency International Corruption Perception Index scores Kenya as 28 out of 100, where 0 signals “Highly Corrupt” and 100 signals “Very Clean”. Kenya ranks 137 out of 180 on that index.⁵⁶

Socio-Economic Risk Factors

Level of National Economic Development

Kenya’s HDI value for 2019 was 0.579, positioning it as 147 out of 188 countries and territories. When adjusted for inequality, Kenya’s HDI value falls to 0.426.⁵⁷ Despite the poverty, inequality, and low levels of development which continue to affect large portions of the Kenyan population, the country has maintained a GDP growth of around six percent in the last few years. A stable macroeconomic environment, positive investment, a competent service sector, and increased industrial initiatives have been demonstrated to influence this growth.⁵⁸

Level and Extent of Poverty

The United Nations Development Programme states that 38.7 percent of the Kenyan population is living in multidimensional poverty, with an additional 34.9 percent living near that line.⁵⁹ The main factors contributing to endemic poverty and inequality in Kenya are noted as widespread corruption and a weakened governance system. Participation in the agricultural sector comprises around 75 percent of Kenya’s population, making it the largest contributor to the nation’s GDP, followed by the tourism sector.⁶⁰

Degree of Gender Inequality

While the Kenyan constitution provides equal rights for men and women, gender-based discrimination remains a major problem within the country. The constitution allows for equal land ownership and property rights among men and women; however, the U.S. Department of State reports that customary laws typically take precedence. These laws often prevent married women from inheriting their father’s land, and also prevent widows from accessing their



deceased husband's land upon remarriage. Rape and other forms of sexual violence are criminalized, but enforcement is reportedly inadequate. One estimate referenced in the U.S. Department of State's 2018 report on human rights in Kenya states that cases of sexual violence made up 25 percent of the number of reported human rights violations in the years following the 2017 elections, and only 22 percent of these cases were brought to authorities by victims.⁶¹ In rural areas, cases of sexual violence are often settled by community arbitration mechanisms, known as *maslaha*.⁶²

Landlessness and Dispossession

Kenya lacks a single, coherent system of land tenure, as well as a legal framework for providing compensation for landless individuals. This has resulted in many land disputes between private parties and communal bodies. Following the 2007-08 election, the Truth, Justice, and Reconciliation Commission reported that land reform was a core issue. In situations where public land was occupied illegally, such as in the Nairobi informal settlement of Kibera, government authorities forcefully evicted more than 10,000 people without providing a resettlement plan. Indigenous communities also face challenges in securing their customary land rights. In 2009, members of the Ogiek community were evicted from their homes in the Mau Forest. A 2017 court ruling found that the government's actions toward these people was in violation of several human rights, and indicated that the government was required to provide restitution. However, the U.S. Department of State reports that the Kenyan government made little to no effort to implement strategies for compensation on this issue.⁶³

Environmental Factors

The main environmental risk factors in Kenya are water quality and availability, flooding, soil erosion, and desertification.⁶⁴ Drought and desertification have a particularly adverse effect on food and water security and the livelihoods of herders and farmers.⁶⁵

Documented Trafficking Risk in Key Commodity Supply Chains

Coffee

Coffee Overview



Coffee in Kenya is produced on both large estates and small-holder farms.⁶⁶ Coffee produced by small farmers is processed at cooperative mills, while estates tend to have their own mills. Coffee is sold either directly to international buyers or through auctions at the Nairobi Coffee Exchange.⁶⁷ Production consists almost exclusively of Arabica beans.⁶⁸ Germany is the largest buyer of coffee from Kenya, followed by the U.S.⁶⁹ While Kenya is recognized as the “main coffee logistics hub for Eastern Africa”, overall coffee production has been on the decline in recent years.⁷⁰

Documented TIP Risks in Coffee

The U.S. Department of Labor’s 2018 *List of Goods Made with Forced Labor and Child Labor* indicates that coffee is produced with child labor in Kenya.⁷¹ Oxfam estimates that nearly one third of coffee harvesters in Kenya are under 15 years of age.⁷² Interestingly, an ILO report notes that where child labor exists in the Kenyan coffee sector, it is actually more likely to be present on commercial plantations than on smallholder farms. Some of the key factors that were identified as reasons for child labor in the coffee sector were listed as: instigation by parents (particularly when parents working in the sector experience piece rate or quota requirements), children’s own ambitions for self-reliance, efforts to increase household income, and pressure from peers.⁷³

A 2008 ILO study of coffee plantations in Kenya found that over 20 percent of hired labor on estates was casual or part-time, as a function of both unpredictable harvest needs and a means to avoid labor laws that required benefits for full-time workers.⁷⁴ A 2002 report from the International Labor Rights Forum cited widespread abuse and harassment of female plantation workers in Kenya, including rape and physical assault by supervisors.⁷⁵

Tea

Tea Overview

Kenya was ranked as the third top exporter of tea in 2018, making it a critical sector for foreign exchange revenue. Smallholder farms operating under large cooperatives are the prominent producers.⁷⁶ In 2008, an estimate of 60 percent of all tea production came from small scale farming. 2020 estimates show that 90 percent of tea is hand-picked.⁷⁷ Tea is exported directly to foreign markets or is sold at the Mombasa Auction.⁷⁸ In 2019, the average auction prices for Kenyan tea were USD 2.21 per Kg of green tea leaf;⁷⁹ however, returns to small scale farmers are reportedly far below these estimates.⁸⁰



Documented TIP Risks in Tea

According to the U.S. Department of Labor’s 2018 *List of Goods Produced by Child Labor or Forced Labor*, tea is produced using child labor in Kenya.⁸¹ Children make up an estimated 15 percent of all agricultural sector workers in Kenya, according to tea sector specific statistics.⁸²

The Sustainable Trade Initiative (IDH) reports that in Kenya, small-scale producers do not earn a living wage themselves, making it nearly impossible for them to pay living wages to hired workers. Low earnings in combination with labor-intensive harvesting peaks may also incentivize reliance on unpaid family labor, including child labor.⁸³ Hired workers in several countries, including Kenya, are paid a piece-rate.⁸⁴

Apparel

Apparel Overview

Kenya has been a key beneficiary of the African Growth and Opportunity Act (AGOA), with its apparel sector increasing in value from about USD 8.5 million in 2002 to USD 332 million in 2014. The majority of export firms have a “U.S.-dominant market orientation,” meaning that the U.S. receives at least 80 percent of their exported product.⁸⁵ Nearly 38,000 workers were employed in EPZs for apparel production in 2014.⁸⁶ Thousands of apparel companies operate in Kenya, including 170 medium and large companies, and over 70,000 small companies.⁸⁷ Labor operates at an unfixed cost and is seen as an opportunity to make up for high costs of electricity and imported fabric.⁸⁸

Documented TIP Risks in Apparel

Twenty-one apparel companies operate in Kenya’s EPZs, where labor violations are reportedly prevalent.⁸⁹ Research has found that the use of sub-contracted labor among local/domestic workers is a common practice in Kenya.⁹⁰



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