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## U.S. Department of State

### Kenya Country Report on Human Rights Practices for 1996

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#### KENYA

After 9 years as a single-party state led by the Kenya Africa National Union (KANU), a 1991 constitutional amendment restored multiparty politics. However, President Daniel arap Moi and his KANU party continued to dominate the political system. In addition to his role as President, Moi also commands the military services, controls the security, university, civil service, judiciary, and provincial, district, and local governance systems. KANU controls a majority of the unicameral National Assembly's 200 seats. The judiciary is subject to executive branch influence.

The large internal security apparatus includes the Police Criminal Investigation Department (CID), the Paramilitary General Services Unit, the Directorate of Security and Intelligence (DSI), and the National Police. The CID and DSI investigate criminal activity and also monitor persons whom the State considers subversive. Members of the security forces committed serious human rights abuses, but fewer than in 1995.

The economy includes a well-developed private sector in trade, light manufacturing, and finance. The predominant agricultural sector provides food for local consumption, substantial exports of coffee, tea, cut flowers, and vegetables, and approximately 70 percent of total employment. Tourism remained the largest single foreign exchange earner. Tight monetary policies kept the annual inflation rate to a single digit. Annual per capita gross domestic product is \$290.

The Government's human rights record showed some signs of improvement from its very poor level in

1995, but serious problems remain in many areas. Police committed numerous extrajudicial killings and tortured and beat detainees. The Government arrested and prosecuted some police officers responsible for abuses. Authorities continued to use arbitrary arrest and prolonged detention, although with reduced frequency. Prison conditions are life threatening, and authorities infringed on citizens' privacy rights. The judiciary is subject to executive branch influence, although several judges dismissed confessions obtained through coercion. Citizens' ability to change their government peacefully has not yet been fully demonstrated at the presidential level. The Government continued to harass and intimidate those opposed to the ruling party. The Government continued to detain critics of the ruling party, including opposition parliamentarians, journalists, politicians, clergy, members of civic organizations, and human rights activists. However, the number of parliamentarians arrested continued to decline. The Government continued to limit freedom of speech, assembly, and association, and block opposition leaders' access to their supporters and electronic media. Some journalists practice self-censorship. It also continued to deny registration to new political parties and to interfere with opposition party meetings, though fewer meetings were dispersed in 1996 than in 1995. The Government has not addressed the root causes of factional violence in the Rift Valley and elsewhere in Kenya. Discrimination against women and against and among ethnic groups, and violence against women and children remained serious problems. There were few incidents of ethnic violence; however, mob violence--at times resulting in death--remained a serious problem.

The Government established a standing committee on human rights in 1996 and made some effort to conduct a dialog with human rights organizations. It responded in print to a detailed critique by one human rights organization; allowed human rights organizations to witness autopsies of several people who had died in police custody; overturned the 1995 deregistration of Clarion, a human rights nongovernmental organization (NGO), and granted bail to members of Release Political Prisoners (RPP) detained for holding an "unlicensed" meeting. The standing committee presented its first report to President Moi on December 12, but details of the report were not made public.

## **RESPECT FOR HUMAN RIGHTS**

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

#### **a. Political and Other Extrajudicial Killing**

There was one killing with political undertones, the murder of Karimi Nduthu, Secretary General of RPP in March. Unknown assailants shot and killed Nduthu in his Nairobi home. There was no specific evidence tying the Government to the murder, but RPP activists reported that the assailants took nothing of commercial value.

Police frequently used lethal force in attempts to apprehend criminal suspects. According to government figures, police killed 74 "suspected robbers" between June 1995 and June 1996. The nongovernmental Kenyan Human Rights Commission (KHRC) reported that police killed 88 people in the first 9 months of the year, while a second organization reported 74 extrajudicial killings by security forces in the first 9 months of the year, including 12 by torture. According to the Attorney General's office, 12 police officers were charged with brutality and wrongful killing in 1996.

Human rights groups criticized some of these police shootings, claiming that the victims included innocent bystanders, and criticized the Government's failure to take appropriate action against the policemen responsible for the killings. The Government argued that some of the civilian victims in such cases were killed by criminals and that other killings were justifiable killings in pursuit of armed criminals in their drive to control rampant crime, a claim disputed by some human rights organizations.

The Government prosecuted several police officers responsible for abuses, two of whom were convicted of murder.

Several persons died in police custody, reportedly as a result of torture. In March Peter Mukinyo Muhia died in police custody in Bombolulu. An autopsy showed the cause of death as internal bleeding and multiple bruises over his body inflicted while in police custody. In April Mwinyi Khamas, a Mombasa security guard, died after 3 days in police custody; the post mortem report attributed her death to shock and severe bleeding. In May Joseph Kamau Kihara died in police custody in Makuyu, reportedly from torture during questioning about a car theft, and Noah Njuguna Ndung'u died in police custody in Kandara, apparently from beatings. The autopsy performed by a police pathologist and witnessed by a family doctor and human rights organizations found that Ndung'u died after being hit on the head and chest with a blunt object which caused severe internal bleeding. There were also wound marks on both buttocks, inflicted by a sharp object. The KHRC reported 17 deaths in police custody due to torture. Many prisoners died in custody due to life threatening prison conditions, including inadequate food and medical treatment (see Section 1.c.).

Police investigated some extrajudicial killings by security forces. According to the Attorney General's office, about 25 police officers faced charges of brutality and excessive force at the beginning of the year. A police officer was charged with the murder of musician Duncan Muiru Koronjo, who was beaten to death in Nairobi in March. However, there have been no effective police investigations into some of the more controversial cases of extrajudicial killing. These include the January murder in Nairobi of Joseph Kahungu Kamau in his shop, which eyewitnesses alleged was perpetrated by a plain clothes policeman; the February shooting death of Patrick Kariuki and four other men in Nairobi in what his family called a case of mistaken identity; and the March killing by police dogs of Peter Mukinyo Muhia while in police custody in Bombolulu. There was no investigation of the beating death of Nichodemus Mango'ri in Nakuru by Youth Wingers of the ruling KANU party, allegedly because he broke a hotel window. Opposition supporters claim that KANU youthwingers usually operate with tacit or explicit police approval. In June the High Court sentenced two administrative policemen to death for killing seven men in Nairobi in 1992. These were the first policemen known to be convicted of the use of excessive force. In June police reservist John Kangu was extradited from Singapore to face trial for the November 1994 deaths of a teacher and a church attendant whom he and another reservist mistook for thieves and killed. There has been no investigation of the November 1995 beating death in Murang'a of Jonathan Muni by three police officers, one of whom reportedly had a personal disagreement with Muni. The trial of three constables implicated in the death of Charles Ileri, who died in police custody in 1994, began in January.

Police shot and killed three demonstrating students at Egerton and Kenyatta Universities on December 16 and 18. The Government announced a "thorough investigation" of the Kenyatta University shootings, but to date no report has been made public. No investigation into the Egerton slaying has been announced.

Mob violence remained a serious problem. The KHRC documented 30 cases between January and June in which suspected criminals were killed by angry crowds. These cases of "mob justice" included a father and son burned to death by mobs on suspicion of being wizards and two policemen killed in separate incidents when mistaken for thieves. The Government condemned the practice of mob justice and investigated such cases but has not arrested anyone for participation in the violence.

#### b. Disappearance

There were no reports of politically motivated disappearances in 1996.

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

The Constitution states that "No person shall be subject to torture or to inhuman or degrading punishment or other treatment."

There continued to be credible reports that police resorted to torture and brutality. The KHRC reported 90 cases of torture by police, including 17 deaths, in the first 9 months of 1996. The Attorney General's office reported that 12 police officers were charged with brutality and wrongful killing (see Section 1.a.).

According to KHRC, there were numerous cases of humiliation, intimidation, abuse and torture by police, typified by the cases below; in several instances, police use of torture resulted in death (see Section 1.a.). In March police arrested 13-year-old Phillip Eshialo in Kakamega and beat and tortured him for 10 days in connection with a bicycle theft involving his elder brother. Twenty people arrested in Kandara in May alleged that police whipped them, beat them with steel bars, pricked them in the buttocks with a sharp tool, and forced them to eat human waste. In January police detained and beat two Islamic leaders working with the Safina Party (see Sections 1.d. and 1.f.). In March police arrested and physically abused one journalist, then in May beat another (see Section 2.a.). In a particularly well-documented case, the KHRC published medical reports for the cases of Virginia Nyambura Wambui and Bernard Mirie Kariki, two of four people detained by Kiambu police in December 1995. The medical reports appeared to confirm the detainees' claims that they were whipped, kicked, beaten with sticks, and sexually abused, causing Wambui to suffer a miscarriage in her fifth month of pregnancy. All four were acquitted of robbery charges in July.

In the same report, the KHRC also published a personal statement by Josephine Nyawira Nengi describing the beatings and forced starvation that she experienced for 3 weeks while in detention following her May 1994 arrest on charges of robbery with violence. She was finally acquitted of all charges in March but detained again with 20 other members of RPP in July (see Section 1.d.). Police also reportedly abuse street children (see Section 5).

In the final weeks of 1996, there were a number of allegations of police torture. In November University of Nairobi (Kikuyu campus) student leader Solomon Muruli was reportedly detained by police for 5 days and tortured to obtain information on student unrest. The police commissioner responded to the public uproar by ordering an investigation into the allegations, but no report had been made by year's end. In December an unnamed woman was reportedly detained and tortured (beaten and sexually molested) by Kanu youthwingers; a number of similar incidents have been reported in Nakuru, with police making no effort to intervene or prevent. On December 9, a Kenyan military officer was reportedly detained and beaten by Nairobi police when he refused to make a holiday "contribution" after being stopped in his car.

Prison conditions are at times life threatening, due in part to a lack of resources, and in part to the Government's unwillingness to address deficiencies in the penal system. Prisoners are subjected to severe overcrowding, inadequate water, poor diet, substandard bedding, and deficient health care. In October 1995, Justice Emmanuel O'kubasu stated that prisons are "death chambers." The same month, Home Affairs Minister Francis Lotodo reported that 814 prisoners had died in jails in the first 9 months of 1995, due chiefly to dysentery and diarrhea. As of August 1994, Kenya's 78 prisons held a daily average of about 39,000 inmates, 12,000 of whom were awaiting trial. Prisons are severely overcrowded, averaging 30 percent above holding capacity. Some facilities, such as the Nairobi Remand Prison, are overcrowded by several hundred percent. Rape of both male and female inmates is a serious problem, as is the growing incidence of AIDS. Prisons do not have resident doctors, and only one prison had a doctor permanently assigned. A medical doctor at Kamiti prison reportedly threatened to bind

Koigi Wa Wamere and his two associates--opposition activists convicted in 1995 on charges widely assumed to be politically motivated of trying to rob a police station of its armaments with a home-made weapon--and force the three prisoners to take antidepressants. In addition, the prison officer-in-charge refused to permit the special medical treatment and food ordered for them by the court.

Officially, there is separate confinement for men, women, and children. However, there are cases in which men and women have been put in the same cells, and youths (as young as early teenagers) are frequently kept in cells with adults in overcrowded prisons and remand centers. The Government does not permit independent monitoring of prison conditions.

#### d. Arbitrary Arrest, Detention, or Exile

Despite constitutional protections, police continued to arbitrarily arrest and detain citizens. The Constitution provides that most persons arrested or detained shall be brought before a court "as soon as is reasonably practicable," which is statutorily definable as within 14 days of arrest or from the start of detention. A 1988 constitutional amendment allows police to hold persons suspected of capital offenses, such as murder and treason, for 14 days before charging them in court. A 1993 amendment to the Penal Code excludes weekends and holidays from this 14-day period. In practice, however, suspects are often held for 2 to 3 weeks or longer before being brought to court.

Persons arrested and charged are usually allowed access to their families and attorney. Prisoners, however, may be visited by family members and attorneys only at the discretion of the State. For those who have been charged, it is often possible to be released on bail with a bond or guarantees of return.

The law does not stipulate the period within which the trial of a charged suspect must begin. The Government has acknowledged cases in which persons have been held in pretrial detention for several years, usually because of backlogs. There were credible reports of pretrial detention periods in excess of 5 years. Over 30 percent of prisoners are pretrial detainees.

The Preservation of Public Security Act (PPSA) allows the State to detain a person indefinitely without charge or trial upon a determination that it is necessary for the "preservation of public security." This provision includes "prevention and suppression of rebellion, mutiny, violence, intimidation, disorder and crime, unlawful attempts and conspiracies to overthrow the Government or the Constitution." The Chiefs' Authority Act, a legacy of the colonial period, empowers local officials called "chiefs" to arrest individuals and to restrict a person's movement without trial. No persons were detained under the PPSA or the Chief's Authority Act during the year.

The Task Force on the Reform of Penal Law and Procedures, created by the Attorney General in 1993, continued reviewing and proposing new statutes related to criminal investigation, arrest, detention, questioning, charge, and bail. The Task Force had still not submitted its final report by year's end.

The police continued to detain politicians, members of civic organizations, clergy, journalists, and other government critics, though in fewer numbers than 1995. The detainees were usually held for several hours before being released without charge. In some cases, detainees were held for longer periods, from several days to as long as several months.

Arrest of political and human rights activists by security forces decreased, compared with the previous year, but remained a serious problem. In January Mombasa police arrested two prominent Islamic leaders working with the Safina party. Police beat them while in custody and threatened them with charges of car theft; they released them 3 days later (see Sections 1.c. and 1.f.). In July Nairobi police

arrested 21 members of the RPP, charging them with incitement and holding an illegal meeting, the first time in 12 months that the Government had brought charges of this nature. On August 6, however, the presiding magistrate granted bail to the detainees and set the hearing for November.

Security forces continued to harass, follow, inconvenience, and occasionally briefly detain opposition Members of Parliament (M.P.'s) and other government critics. However, the number of opposition M.P.'s arrested for sedition or incitement decreased. Nevertheless, in February, for example, security forces detained Ford-Asili M.P. George Nyanja for several hours. In July Nanyuki police arrested human rights attorney and opposition M.P. Paul Muite and several other members of Safina when they presented trophies to volleyball teams involved in a local competition. Police fired twice into the air to push back the crowd, which pelted police with stones as they took the detainees to the Nanyuki Police Station and held them for 2 hours.

The Government does not use exile as a means of political control. However, Sheik Khalid Balala, a former leader of the unregistered Islamic party of Kenya, has remained in a European country for more than 2 years because the Government has been unwilling to renew his passport.

#### e. Denial of a Fair Public Trial

Although the Constitution provides for an independent judiciary, it is subject to executive branch influence in practice. The President has extensive powers over appointments, including that of the Chief Justice, the Attorney General, and Appeal and High Court Judges. The President can also dismiss judges and the Attorney General upon the recommendation of a special presidentially appointed tribunal. Judges do not have life tenure and serve on a contract basis.

The court system consists of a Court of Appeals, a High Court, and two levels of magistrates' courts, where most criminal and civil cases originate. Judges hear all cases; there is no jury system. Customary law is used as a guide in civil matters affecting persons of the same ethnic group so long as it does not conflict with statutory law. In 1989 High Court Justice Norbury Dugdale ruled that the "bill of rights" outlined in the Constitution was unenforceable; this decision reinforced the implicit power of the executive branch over the judiciary. The decision has not been overruled.

Civilians are tried publicly although some testimony may be held in secret. There is a presumption of innocence, and defendants have the right to attend their trial, to confront witnesses, and to present witnesses and evidence. Civilians can also appeal a verdict to the High Court and ultimately to the Court of Appeals. Military personnel are tried by military courts-martial, and verdicts may be appealed through military court channels. The Chief Justice appoints attorneys for military personnel on a case-by-case basis.

Defendants do not have the right to government-provided legal counsel, except in capital cases. For lesser charges, free legal aid is not usually available outside Nairobi. As a result, poor people without an attorney may be convicted for lack of an articulate defense. Although defendants generally have access to an attorney in advance of trial, defense lawyers do not always have access to government-held evidence, since the Government can plead the state security secrets clause as a basis for withholding evidence. The Government raised court fees for filing and hearing cases by several hundred percent in 1995. The daily rate for arguing a case before a judge, for example, rose from \$10 to \$50. The Law Society of Kenya and many attorneys strongly opposed the increase, saying that the new charges would deny the majority of citizens access to the courts.

The Constitution entitles the Attorney General to take over and discontinue proceedings in private

prosecution cases. Attorney General Amos Wako has argued that citizens must first notify his office before initiating private prosecution. He has used this authority on a number of occasions to terminate cases against government officials, including a private suit by the Law Society of Kenya against Vice President Saitoti and others for allegedly embezzling funds from the treasury in the Goldenberg scandal.

There were several instances in which judges spoke out and sought to assert judicial independence. In May and August, a number of magistrates and judges called for greater judicial independence, complaining about the frequency of executive interference in court cases, and urged that the presidential power to appoint judges be transferred to Parliament. In several court cases, magistrates publicly rebuked the police for their brutal methods of interrogation and excluded confessions that were reportedly coerced. Judges have also urged that the Government publicly redress the inhuman conditions in prisons.

The Government does not currently hold political prisoners. In a well known human rights case, Koigi Wa Wamwere and his two associates were denied fair judicial process throughout most of the year. Their application for appeal of conviction was denied in July because the typing of the trial transcript had not been finished. On December 13, Koigi was granted bail on medical grounds, followed 1 month later by medical bail for his two associates. The three men remain at liberty while they pursue their appeal of conviction, but there are no indications as to when the trial manuscript typing will be finished.

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

The Constitution permits searches without warrants in certain instances "to promote the public benefit." The Police Act clarifies that policemen may enter a home forcibly if the time required to obtain a search warrant would "prejudice" their investigations. Although security officers generally obtain search warrants, they occasionally conduct searches without warrants to apprehend suspected criminals or to seize property believed to be stolen. The courts have admitted evidence obtained without search warrants to support convictions.

There were instances during the year in which police conducted searches or seizures without warrants. One of the two Safina officers detained in Mombasa in January (see Sections 1.c. and 1.d.) was repeatedly beaten and threatened until he finally agreed to allow police to enter and search his home.

Security forces continued to employ various means of surveillance, including a network of informants to monitor the activities of opposition politicians and human rights advocates. Some opposition leaders report that the Government targets them with surveillance, telephone wiretaps, and interference with written correspondence.

Although citizens are free to choose their political affiliations, the Government discourages civil servants from membership in opposition parties.

## **Section 2 Respect for Civil Liberties, Including:**

### a. Freedom of Speech and Press

Although the Constitution provides for freedom of speech and the press, the Government has interpreted broadly the existing colonial-era sedition and libel laws in order to limit free expression (see Section 1.d.). The Government has used these provisions to deny opposition parties the right to free speech. For example, security forces and local administration officials used these provisions as a pretext to disperse opposition rallies to prevent speakers from criticizing the Government. In June the President directed the

police to disperse any meetings that maligned or abused government authorities. Despite these forms of obstruction, the press, civic organizations, and the opposition continued to present their views to the public.

The print media include three daily newspapers that report on national politics. The largest newspaper, The Nation, is independent and publishes articles critical of government policies. The second largest, The East African Standard, was sold in 1995 to an investment group with close ties to the Government. Despite the new management's pledge to maintain the newspaper's independent editorial policy, it has evolved into a tabloid that is less critical of the Government. The third daily newspaper, Kenya Times, reflects KANU party views. Weekly newspapers and magazines, many of which are openly critical of the Government, also have substantial audiences. On the whole, the print media remained outspoken and independent, despite continued government harassment.

According to members of the independent press, relations between the press and the Government have improved during the year. Even in cases in which government officials requested them to suppress damaging articles, the final decision was left to the editors. While the traditional taboos surrounding the President and his family remain in effect, political cartoons picturing President Moi, often in a negative light, have appeared. In January the Government withdrew a highly controversial proposed press law that would have significantly curtailed press freedoms. Nevertheless, newspaper and magazine editors continued to be subjected to varying degrees of government pressure to censor themselves, particularly regarding President Moi's family and corruption involving his advisers.

Overt harassment and occasional detention of journalists continued but at a reduced rate from the previous year. In January Kisumu police arrested East Africa Standard reporter Dennis Oluoch in connection with an article he had written, and Eldoret police arrested Nation correspondent Evans Kanini because of an article he had written about police corruption, charging him with being drunk and disorderly, a charge subsequently dismissed by the court. In March Eldoret police arrested Nation correspondent John Wanjala and reportedly physically abused him in custody because of his press reports critical of the police (see Section 1.c.). In May Kirinyaga police beat and confiscated the camera of East African Standard correspondent Munene Kamau; Kitui police arrested East African Standard correspondent James Owuor, and Nairobi police arrested Njehu Gatabaki, Ford-Asili M.P. from Githunguri and editor of Finance magazine, and detained him for 1 week. Gatabaki was already on trial for sedition for having alleged in Finance that President Moi had foreknowledge of the assassination of then-foreign minister Robert Ouko in 1990.

In June KANU youthwingers attacked East African Standard photographer Raphael Munge during a by-election campaign in Molo, stabbed him in the hand, stole his camera, and attacked East African Standard reporter Michael Giehua in Nakuru for damaging the party's reputation with his press reports. Police offered no protection in either case. Nakuru is notorious for its rampant and unrestrained KANU youthwingers and lack of police interference, verging on collusion. In September a group of Nairobi city councillors threatened to "fix" journalists who write about land scandals and other government irregularities. The offices of the independent weekly The People were bombed by persons unknown, and the newspaper received telephoned threats to desist from "writing those dirty things" about the Government.

The Government continued its ban on a number of books, including a Kiswahili play based on George Orwell's Animal Farm and a number of works by emigre author Ngugi Wa Thiong'o. In a speech on December 31, 1995, President Moi banned distribution of the book Family Life, published by the Girl Guides Association of America. He stated that it was immoral and promoted promiscuity and directed that it be removed from the shelves of the Kenyan Girl Guides and Boy Scouts.

In May the Minister of Education directed schools to teach the KANU party manifesto. After strong public protest, he modified this directive to include opposition party manifestos as well.

The Government and ruling party's tight control of the broadcast media has fostered unbalanced and unfair reporting. The Government maintains its monopoly control of the electronic broadcast media through tight control of broadcasting, particularly radio, the principal popular news medium. It controls the Kenya Broadcasting Corporation (KBC), which operates the country's premier radio, television, and cable television stations. KBC stations typically do not criticize the Government, give a large share of news time to government or ruling party functions, and neglect to give equal reporting to opposition activities. KANU supporters also own a second television station, Kenya Television Network, which news programs with more balanced political coverage. KANU supporters opened a third television network, Stellavision, in June and a new private F.M. radio station in September. The Minister of Information continued to delay action on numerous television and radio license applications, ostensibly waiting for the recommendations on media liberalization from the Attorney General's task force, which was charged with establishing operating rules for radio and television liberalization; it has made no recommendations after 3 years.

Representatives of the international media are generally free to operate. The Government complained that its hospitality to foreign correspondents indirectly worsens the national image because foreign journalists write so many negative articles about other countries which bear a Nairobi dateline.

#### b. Freedom of Peaceful Assembly and Association

Freedom of Assembly is provided for in the Constitution but is seriously limited by the Government's use of the Public Order Act, which gives the authorities power to control public gatherings. This act prohibits meetings or processions of 10 or more persons without a license from the District Commissioner. In theory the law does not apply to persons meeting for social, cultural, charitable, recreational, religious, professional, commercial, or industrial purposes. In practice, meetings under almost all categories are subjected to the Public Order Act.

The Government continued to restrict the right of peaceful assembly by refusing to license, or by physically disrupting, opposition political meetings, despite President Moi's March 1 promise to opposition leaders that such gatherings would be permitted. The Government granted many meeting licenses, and the number of meetings dispersed was substantially fewer than in 1995. However, opposition parties reported that the Government blocked 26 public meetings of Ford-Kenya, Ford-Asili, Democratic Party, and Safina in the first 9 months of the year, compared with 72 for all of 1995. Government officials occasionally denied licenses to KANU as well, but almost always denied them to groups critical of the national party leadership.

According to press reports in January, the Nyeri district commissioner warned Safina party leaders to keep out of Nyeri, and Mombasa police stood by as ruling KANU party youthwingers blocked a Safina march to its new headquarters. In February Bondo police dispersed a meeting of women organized by the League of Kenya Women Voters. In March Nairobi police broke up an RPP meeting, Meru police blocked opposition leaders from addressing a by-election rally, and Kilifi police broke up an opposition meeting. In June Mombasa police arrested 24 opposition leaders for convening an "illegal" meeting (no license), KANU activists attacked Democratic Party supporters in Westlands (Nairobi), and police and armed KANU youthwingers blocked opposition leaders from entering Molo to campaign in the by-election there. In July police and opposition supporters clashed in Mwea when police armed with tear gas sought to disperse a licensed opposition rally. In August riot police in combat gear stopped a Democratic Party political seminar, and Nakuru police cordoned off a hotel to prevent invitees attending a women's seminar from entering. During one weekend in September, riot police disrupted three

opposition meetings (in Kiambu, Meru, and Nyandarua) and a soccer contest in Nairobi, named in honor of a martyred student dissident.

In the last quarter of 1996, authorities disrupted a number of opposition and civil society meetings, sometimes forcefully. In a 1-week period in mid-October, Lokitau police broke up a civic education seminar on voting organized by the Catholic Diocese, Turkana police disrupted a civic education seminar sponsored by the Catholic Justice and Peace Commission, Gachako police dispersed a meeting to inaugurate a new Ford-Kenya office, and Kitui police disrupted a civic education meeting and detained and allegedly beat M.P. Charity Ngilu and two female journalists. In the ensuing uproar over the latter incident, the police commissioner suspended two police officers responsible for the incident, pending inquiry. In November, antiriot police halted a civic education workshop at the Saint Joseph Pastoral Centre in Machakos sponsored by the Catholic Justice and Peace Commission. In December police disrupted two Ford-Kenya (Odinga) meetings, and Kitui police halted a seminar on the "Values of Democracy" sponsored by the National Democratic Institute.

The Government restricts freedom of association by use of the Societies Act. The act states that every association must be registered or exempted from registration by the Registrar of Societies. Twelve political parties are currently registered under this statute: KANU, Ford-Kenya, Ford-Asili, Democratic Party, Social Democratic Party, Kenya Social Congress, Kenya National Congress, Party of Independent Candidates of Kenya, Kenya National Democratic Alliance, Labor Party Democracy, and National Development Party of Kenya. The Government has denied registration to 23 parties since 1992, while at year's end, 13 parties had applications pending.

Both the Public Order and the Societies Acts seriously restrict free political organization. They inhibit opposition party members from meeting with voters. The Government also continued to discourage civil servants from membership in opposition parties (see Section 1.f.). NGO's are registered by the Government's NGO Coordination Board under the NGO Act. In May the board formally revoked the ban on the Center for Law Research International (CLARION), a legal affairs NGO that was deregistered in 1995 because of its investigations of corruption.

#### c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally does not infringe upon religious activities, except to require registration by new churches.

Government officials virulently criticized the Catholic Church and the National Council of Churches of Kenya (NCCCK) in August for their pastoral letters calling for constitutional reform and fair elections, accusing them of receiving assistance from unnamed foreigners. In September the Government accused the NCCCK of subversive activities and planning to incite ethnic clashes in the Rift Valley.

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

By law, citizens may travel freely within the country. However, the establishment of security zones in the 1992 elections and again following ethnic clashes in 1993, restricted the ability of many citizens to travel to those parts of the Rift Valley most affected by clashes. Although the security zones, such as in Molo and Burnt Forest, have not been officially lifted, access to the areas has been allowed in practice. Nonetheless, opposition party members have been stopped at police road blocks and prevented from visiting some of the areas.

The Government does not restrict emigration or foreign travel. The law requires a woman to obtain her

husband's or father's permission prior to obtaining a passport (see section 5). Civil servants must obtain government permission for international travel, which was granted in all cases.

U.N. Development Program (UNDP) assistance to thousands of displaced ethnic clash victims came to a virtual standstill in January 1995. The Government tried to persuade the UNDP to restart this program, arguing that the different ethnic groups in the affected regions were once again living, working, and trading together. In fact, many of the rural people displaced by the clashes have still not returned to their homes and remain in refugee status in urban areas. In February the Government ordered 360 families displaced by ethnic violence in Burnt Forest to return to their farms or be evicted. Government officials insisted this was not forced relocation. Reportedly, no clash victims have returned to the Olenguruone area because of continued insecurity.

The Government provides first asylum and provided it to the approximately 168,000 UNHCR-registered refugees in 1996. The refugees are mostly Somali and Sudanese, living in camps, and an undetermined number living outside camps in cities and rural areas. Somalis account for about 75 percent of the total refugee population. Although 44,000 (mostly Somali) refugees repatriated in 1995, only a few thousand returned home in 1996, mainly due to poor security combined with crop failures in returnee areas. Most of those who chose to repatriate did so because they did not want to be relocated to camps on the northeast border of Somalia after one of the largest refugee camps near Mombasa was finally closed.

The law provides for the granting of asylum or refugee status in accordance with the standards of the 1951 U.N. Convention and its 1967 Protocol Relating to the Status of Refugees. Nevertheless, when over 400,000 refugees fleeing civil strife and drought arrived in Kenya from the neighboring countries of Somalia, Sudan, Ethiopia, and Uganda in 1991, the Government suspended indefinitely the process by which it ruled on applications for refugee or asylum. Since then, a handful of affluent individuals have effectively purchased de facto Convention status, but for practical purposes, an official asylum or refugee application process no longer exists. Consequently, resettlement is not an option in Kenya.

Incidents of rape of women and young girls in refugee camps continued to occur, though Kenyan police response has improved. Acts of violence, including carjackings and banditry, still occur with frequency in the camps and the Dadaab area, which sometimes led to the injury or death of some refugees and police.

Refugees living outside the camps are vulnerable to arrest, and those who purchase false identification documents and visa are even further at risk. Hundreds of refugees and illegal aliens have been arrested in police sweeps, supposedly targeting those involved in criminal activity in Nairobi. The UNHCR was allowed to facilitate the release of refugees who were ordered to camp, but other aliens were still being held at the end of 1996.

There were no reports of expulsions of those having a valid claim to refugee status. However, in late 1996, the Government moved forcefully to prevent a mass wave of persons fleeing drought conditions from crossing the Kenya/Somalia border. Once this flow of potential refugees was halted, the Government invited UNHCR and other humanitarian organizations to provide assistance in place to these individuals.

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

The Constitution provides citizens with the right to change their government through free and fair multiparty elections, but their ability to do so has not yet been fully demonstrated at the presidential level. The 1992 presidential and parliamentary elections were marked by violence, intimidation, fraud,

and other irregularities, but opposition candidates nevertheless won 63 percent of the vote, although split among several factions, thereby giving KANU a majority of seats in Parliament.

President Moi's election victory has allowed him and his KANU party to dominate the political process. At the local level, the President exercises sweeping power over the political structure. The President appoints both the powerful provincial and district commissioners and a multitude of district and village officials.

At the national level, the Constitution authorizes the President to dissolve the legislature and prohibits debate on issues under consideration by the courts. This law, in conjunction with the Speaker of the Assembly's ruling that the President's conduct is inappropriate for parliamentary debate, has limited the scope of deliberation on controversial political issues. M.P.'s are entitled to introduce legislation, but in practice it is the Attorney General who does so. As the head of KANU, which controls 124 of the Parliament's 200 seats, the President is also able to influence significantly the legislative agenda.

The Government continued to harass and intimidate the political opposition, although less frequently than in 1995. Its monopoly of the electronic media prevented opposition parties from reaching television and radio audiences (see Section 2.a.). The license provision of the Public Order Act kept opposition leaders from meeting their supporters, and the Government's use of colonial-era sedition laws restricted freedom of expression (see Sections 2.a. and 2.b.). The Electoral Commission, which oversees all elections, lacks statutory independence, since its members are appointed by the President. The opposition has also claimed that voter constituencies are apportioned in favor of KANU, which has resulted in a KANU parliamentary majority despite only receiving one-third of the popular vote. At the local level, officials have demonstrated partiality to the ruling party during parliamentary by-elections.

Five parliamentary by-elections were held in 1996 due to the deaths or disqualifications of sitting M.P.'s. The elections were generally free and fair, although journalists and diplomatic observers reported anomalies in voter registers and incidents of vote buying and continued use of government officials and vehicles, but not violence as in 1995. During the by-election in Hamisi, KANU youthwingers insured a KANU victory by keeping opposition supporters away from the polls. In the Siakago by-election, government employees and vehicles were blatantly used in support of KANU.

In latter months of 1996, the Government made a number of efforts which in effect, criminalized dissent. In September the Government charged several leading political and human rights activists with engineering a "guerilla plot" to overthrow the Government or assassinate President Moi. That charge was not widely accepted, and the Government did not pursue it. Police who detained Nairobi University student Murali in November tried to force him (see Section 1.c.) to admit that student unrest at Nairobi University had been organized by the Safina Party. Government officials sought unsuccessfully to blame campus unrest at Egerton University near Nakuru on the opposition, specifically charging Safina. Government and police officials regularly accuse NGO's and churches involved in civic education of being "anti-Kenyan" and agents of unnamed foreign entities.

During his unprecedented March 1 meeting with leaders of the three main opposition parties, the President discussed ways to ensure fairness to all political factions. He agreed that the opposition should have greater access to the media and should receive licenses for meetings without hindrance. However, he did not follow through on these promises. Despite his promise to meet with opposition leaders in the future, no further meetings had been held by year's end.

Although there are no legal restrictions on the participation of women in politics, traditional attitudes circumscribe the role of women in politics. There was one female minister, the country's first, who was

appointed by President Moi in 1995, and seven female M.P.'s in the Assembly. In August President Moi announced that women would henceforth be represented at local and provincial levels in KANU meetings. Within the opposition, women figure most significantly in the Democratic Party, in which 25 percent of the party's national office holders are women.

Members of all tribal and ethnic groups participate in the Government and political parties. However, since white Kenyan paleontologist Richard Leakey announced his involvement in the Safina party, President Moi has repeatedly cautioned against white Kenyans' participation in political activities. Numerous tribes--including Kisii, Meru, Embu, Kamba, Kikuyu, Taita, Kalenjin, Luhya, Turkana, Somali, Maasai, Giriama, and Luo--are represented in the President's Cabinet. However, the President reportedly relies on an inner circle of advisers, drawn mostly from his Kalenjin tribe.

#### **Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

There are several well-organized and active human rights organizations. Two of these, the KHRC and RPP, not only produce regular reports on the human rights situation but also organize activities to publicize their causes. The Institute for Education in Democracy monitors parliamentary by-elections in cooperation with the Electoral Commission. Legal organizations, including the Public Law Institute, the Kenya Law Society, the International Commission of Jurists, and the International Federation of Women Lawyers, treat human rights issues as a priority.

Some opposition parties also maintain comprehensive files on human rights abuses, carefully tracking extrajudicial violence and disruption of opposition political meetings. The Kenya Social Congress Party published a detailed study of human rights violations in one district in Nyanza province. The Citizens Coalition for Constitutional Change is an umbrella organization lobbying for constitutional reform. A large pool of attorneys represent the poor and human rights defendants without charge.

Human rights NGO's work actively to engage the Government on human rights issues and cases. In its Quarterly Repression Report, the KHRC frequently adds the parenthetical note that it was unsuccessful in obtaining information from government officials on a specific case.

While the Government often criticized domestic and international human rights NGO's, it also made some efforts to reach out and engage them. It allowed human rights organizations to witness autopsies of several persons who had died in police custody. It overturned the 1995 deregistration of the NGO Clarion (see Section 2.b.). The Kenya Electoral Commission facilitated the March visit of the U.S.-based International Foundation for Election Systems to analyze the electoral system. The same month, the Government published "Human Rights Situation in Kenya: The Way It Is" in order to rebut the KHRC's December 1995 Quarterly Repression Report. Despite allegations that the Government's pamphlet was meant to appease donor nations then meeting in Nairobi, the KHRC welcomed it as the beginning of a public dialog on human rights and reiterated that any errors in its own reports were due to the Government's failure to respond to the KHRC's numerous queries for case status reports.

In May the Government fulfilled its promise to create a Standing Committee on Human Rights. The 10-member committee was empowered to "investigate alleged violations of constitutional freedoms," including abuse of power by public officials. It was tasked with drafting recommendations on human rights problems and providing these to the government agencies under whose purview the problems fall. The committee announced that it was open to, and welcomed contact with, NGO's and would serve as the point of contact between them and the Government.

The Committee does not have sufficient funding to track human rights cases and investigate complaints. Moreover, its attention to mob violence, human rights education, and its lack of authority over government officials has led some observers to question its objectives and ability to affect the human rights situation. The Committee presented its first report to President Moi on November 27, but details of the report were not made public.

### **Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status**

The Constitution prohibits discrimination on the basis of a person's "race, tribe, place of origin or residence or other local connection, political opinions, color, or creed." However, authorities did not effectively enforce all these provisions.

#### **Women**

Violence against women is a serious and widespread problem. The most recent police statistics published on the subject were released in 1994 and showed that in 1992 there were 454 cases of rape, 136 cases of attempted rape, 343 cases of indecent assault, 407 cases of defilement (e.g., child molestation), and 14 cases of incest. The statistics are probably underreported, however, since social mores deter women from going outside their families or ethnic groups to report sexual abuse. The Government has condemned violence against women, and the law carries penalties of up to life imprisonment for rape. Still, the rate of prosecution remains low because of cultural inhibitions against discussing sex, the fear of retribution, the disinclination of police to intervene in domestic disputes, and the unavailability of doctors who might otherwise provide the necessary evidence for conviction. Furthermore, traditional culture permits a man to discipline his wife by physical means and is ambivalent about the seriousness of spousal rape. This ambivalence was epitomized in the August statement by one magistrate that not all rape suspects deserved to be jailed because "some cases are not intentional," just a matter of men being "too impatient."

There were also numerous reported incidents of rape of refugee Somali women at the Dadaab camps; they were assaulted outside camp perimeters in the course of gathering firewood.

The Constitution does not specifically address discrimination based on gender, and women continue to face both legal and actual discrimination on several fronts. For example, a woman is legally required to obtain consent from her husband or father before obtaining a passport. In practice a woman must also have her husband's or father's approval to secure a bank loan. Also, women can legally work at night only in the export processing zones (EPZ's). Women have long dominated agricultural work in terms of numbers of laborers, and they have become more active in urban small business. Still, the average monthly income of women is about 37 percent lower than that of men. According to pension law, a widow loses her work pension upon remarriage, whereas a man does not. Not only do women have difficulty moving into nontraditional fields, they are also promoted more slowly than men and bear the brunt of job retrenchments.

Kenya's Law of Succession, which governs inheritance rights, provides for equal consideration of male and female children. In practice, most inheritance problems do not come before the courts. Women are often excluded from inheritance settlements or given smaller shares than male claimants. In addition, a widow cannot be the sole administrator of her husband's estate unless she has her children's consent.

Societal discrimination is most apparent in rural areas, where women account for 75 percent of the agricultural work force. Rural families are more reluctant to invest in educating girls than in educating boys, especially at the higher levels. The number of boys and girls in school is roughly equal at the

primary and secondary levels, but men outnumber women almost 2 to 1 in higher education, and literate men significantly outnumber literate women.

The nation's best known women's rights and welfare organization, Maendeleo Ya Wanawake ("Development of Women" in Kiswahili) was established as a nonpolitical NGO during the colonial era, but now operates under the close supervision of the Government. A growing number of women's organizations are active in the field of women's rights, such as the National Commission on the Status of Women, the Education Center for Women in Democracy, and the Kenyan League of Women Voters.

## Children

The system of free education in the early years of Kenya's independence (1963) has given way to a "cost-sharing" education system in which students pay both tuition and other costs. These are a heavy burden on most families. While there is mandatory schooling for all up to grade 12, there is a very high drop out rate in part because of the heavy expenses to finance education. Moreover, the shortage of schools also obviates the legally required universal schooling. The health care system for school children, which once provided periodic medical checkups and free milk, now appears to be completely defunct.

Government-drafted legislation is under debate in Parliament to establish a National Council of Children's Services to supervise the planning and financing of child welfare activities. The bill would also revamp the juvenile court system. However, both KANU and opposition M.P.'s, as well as a number of local NGO's, have faulted the bill for portraying child offenders as criminals in need of discipline. Opponents of the bill also have noted that it does not address homelessness, female genital mutilation (FGM), forced labor, sexual abuse, and education. In November, a motion outlawing FGM was defeated in parliament just one week after that same body approved a motion to implement the provisions of the Beijing Women's Conference platform, one of which called for outlawing FGM.

Despite the Government's stated opposition, FGM, which is widely condemned by international health experts as damaging to both physical and psychological health, remains widespread, particularly among nomadic people. It is usually performed at an early age. Health officials estimate that roughly 50 percent of females nationwide have undergone this procedure. According to Maendeleo Ya Wanawake, that percentage is as high as 80 percent in some districts of the Eastern, Nyanza, and Rift Valley provinces.

Economic displacement and population growth continued to fuel the problem of homeless street children. The Child Welfare Society of Kenya estimated that the number of Nairobi's street children increased from 33,000 in 1990 to 44,000 in 1996, while the Government estimates their growth at 10 percent per year. According to the Attorney General's Task Force, these children are typically involved in theft, drug trafficking, assault, trespass, defilement, and property damage. There have been credible reports that police have treated street children inhumanely.

Child rape and molestation are rapidly growing human rights abuses. There were numerous and frequent press reports of rape of young girls. The rapists were typically older than the age of 40. Those convicted received prison sentences of between 5 and 20 years, plus several strokes of the cane. Child prostitution has emerged as a major problem in urban areas, often connected with the tourist trade. There were numerous press reports on the increase in child prostitution in Nairobi and Mombasa. A provincial government study in Nyanza province found that Kisumu city had 300 male and female child prostitutes 8 years of age and above and that the practice existed in small towns throughout the province.

## People with Disabilities

Government policies do not discriminate against people with disabilities with regard to employment, education, or state services. Disabled persons are frequently denied driving licenses, however. There is also no mandated provision of accessibility for the disabled to public buildings or transportation.

#### National/Racial/Ethnic Minorities

According to the 1989 government census released in May 1994, the Kikuyu are the largest ethnic community, comprising 21 percent of the population. Luhya, Luo, Kamba, and Kalenjin (an amalgamation of nine small tribes) follow, each with more than 11 percent of the population.

Opposition politicians and local human rights groups report that the Government continued to discriminate against Rift Valley Kikuyus. They assert that provincial authorities have denied national identification cards to a substantial number of Kikuyu youths, even those born and raised there. Without identification cards these youths cannot marry, attend universities, obtain employment, or register to vote.

The Government has not been supportive--and was often critical--of private efforts to conciliate ethnic tensions in the Rift Valley. On several occasions, police blocked interparty reconciliation talks. The Government was critical of a series of meetings in August and September between Kikuyu and Kalenjin elders to foster reconciliation and facilitate resettlement of displaced people. Some government officials, for example, continued to aim harsh verbal barbs and threats at Kikuyus.

There continued to be tensions between Asian Kenyans (Kenyans of subcontinent descent) and black Kenyans; Asians are subject to official and societal discrimination. Black Kenyans generally resent Asians because of their affluence, their seeming reluctance to assimilate African culture and to employ black Kenyans in management positions, and the involvement of some, in league with influential black Kenyans, in corruption and theft of state funds. Politicians, both opposition and ruling party, from time to time sought to gain publicity by attacking Asian Kenyans, accusing them of usurping the natural inheritance of black Kenyans.

The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only ethnic group required to carry an additional form of identification to prove that they are citizens. They must still produce upon demand their Kenyan identification card and a second identification card verifying "screening." Both cards are also required in order to apply for a passport. The continued presence of Somali refugees has exacerbated the problems faced by Kenyan Somalis.

### **Section 6 Worker Rights**

#### a. The Right of Association

Except for central government civil servants, including medical personnel and university academic staff, all workers are free to join unions of their choice. The law provides that as few as seven workers may establish a union, provided that the objectives of the union do not contravene the law, and that another union is not already representing the employees in question.

The Government may deregister a union, but the Registrar of Trade Unions must give the union 60 days to challenge the deregistration notice. An appeal of the Registrar's final decision may be brought before the High Court. President Moi deregistered the Kenya Civil Servants Union in 1980. Since 1989 the Central Organization of Trade Unions (COTU) has sought to reverse this decision.

There are at least 33 unions representing approximately 350,000 workers, less than 20 percent of the country's industrial work force. Except for the 150,000 teachers who belong to the Kenya National Union of Teachers, all other unions are affiliated with the one approved central organ--the COTU. The COTU leadership, however, generally does not pursue worker's rights vigorously, so that most union activity takes place at the shop steward level, which disadvantages the average worker in disputes with management.

The Government created COTU in 1965 as the successor to the Kenya Federation of Labor and the Kenya African Workers Congress. The 1965 decree establishing COTU gives the President the power to remove COTU's three senior leaders from office and grants nonvoting membership on the executive board to representatives of the Ministry of Labor and of KANU. A 1993 High Court decision nullified an attempt to install leaders more acceptable to the Government, but the plotters refused to vacate COTU headquarters. Following a 1994 Appellate Court order, however, the Registrar of Trade Unions agreed to recognize the old COTU leadership. Although the board is comprised of the leadership of affiliated unions, it is common for KANU to provide funding and other support for the election of senior union officials. In 1995 several trade union leaders from affiliated unions sought to bring about democratic reforms in the election and appointment of labor officials, independence from the Government, and establishment of links with any political party that supports worker rights. The reelection of the COTU leadership in July indicated that there would be no major changes in the near future.

The Trade Disputes Act permits workers to strike, provided that 21 days have elapsed following the submission of a written letter to the Minister of Labor. Members of the military services, police, prison guards, and members of the National Youth Service are precluded by law from striking. Other civil servants, like their private sector counterparts, can strike following the 21-day notice period (28 days if it is an essential service, such as water, health, education, or air traffic control). During this 21-day period, the Minister may either mediate the dispute, nominate an arbitrator, or refer the matter to the Industrial Court, a body of five judges appointed by the President, for binding arbitration. Once a dispute is referred to either mediation, fact-finding, or arbitration, any subsequent strike is illegal. However, the act gives the Minister of Labor broad discretionary power to determine the legality of any strike. In 1994 the Minister used this power to declare several strikes illegal, although the required notice had been given. The Minister did not declare any strikes illegal in 1995 or 1996; however, the Government's response to wildcat strikes is usually severe. This led worker rights groups to raise the problem with the International Labor Organization's (ILO's) Committee on Freedom of Association. Several unions, including municipal workers, bank employees, and some civil servants held brief strikes for back or increased wages.

Internationally, COTU is affiliated with both the organization of African Trade Union Unity and the International Confederation of Free Trade Unions. Many of its affiliates are linked to international trade secretariats.

#### b. The Right to Organize and Bargain Collectively

While not having the force of law, the 1962 Industrial Relations Charter, executed by the Government, COTU, and the Federation of Kenya Employers, gives workers the right to engage in legitimate trade union organizational activities. Both the Trade Disputes Act and the Charter authorize collective bargaining between unions and employers. Wages and conditions of employment are established in negotiations between unions and management. In 1994 the Government relaxed wage policy guidelines to permit wage increases of up to 100 percent and renegotiation of collective agreements. Collective bargaining agreements must be registered with the Industrial Court in order to guarantee adherence to these guidelines.

The Trade Disputes Act makes it illegal for employers to intimidate workers. Employees wrongfully dismissed for union activities are generally awarded damages in the form of lost wages by the Industrial Court; reinstatement is not a common remedy. More often, aggrieved workers have found alternative employment in the lengthy period prior to the hearing of their cases.

Legislation authorizing the creation of Export Processing Zones (EPZ's) was passed in 1990. The EPZ Authority decided that local labor laws, including the right to organize and bargain collectively, would apply in the EPZ's, although it grants many exemptions in practice. For example, the Government waived aspects of the law that prevent women from working at night (see Section 6.e.). Labor and some government officials criticized health and safety conditions in the EPZ's.

#### c. Prohibition of Forced or Compulsory Labor

The Constitution proscribes slavery, servitude, and forced labor. However, under the Chiefs' Authority Act, a local authority can require people to perform community services in an emergency, although this did not occur in 1996. The ILO Committee of Experts has found that these and other provisions of the law contravene ILO Conventions 29 and 105 concerning forced labor, but noted the Government's efforts to review the Chiefs' Authority Act.

#### d. Minimum Age for Employment of Children

The Employment Act of 1976 makes the employment in industry of children under the age of 16 illegal. The act applies neither to the agricultural sector, where about 70 percent of the labor force is employed, nor to children serving as apprentices under the terms of the industrial training act. Ministry of Labor officers nominally enforce the minimum age statute, and the Government is making strong efforts to eliminate child labor, working closely with the ILO's International Program for the Elimination of Child Labor. Children often work as domestic servants in private homes, including those of relatives, in the informal sector, and in family businesses and commercial agriculture, although usually assisting parents rather than as employees in their own right. Given the high levels of adult unemployment and underemployment, the employment of children in the formal industrial wage sector in violation of the Employment Act rarely occurs.

#### e. Acceptable Conditions of Work

The legal minimum wage for blue collar workers in the wage sector has 12 separate scales, varying by location, age, and skill level. The lowest minimum wages were \$34 (1,700 shillings) per month in urban areas and \$19.50 (955 shillings) in rural areas. The minimum wage is insufficient to meet the daily needs of a worker and family. A 2 percent wage increase in August had limited impact on worker income. Most workers relied on second jobs, subsistence farming, informal sector opportunities, or the extended family for additional support.

The Regulation of Wages and Conditions of Employment Act limits the normal workweek to 52 hours, although nighttime employees may be employed for up to 60 hours per week. Some categories of workers have a shorter workweek. As is the case with respect to minimum age limitations, the act specifically excludes agricultural workers from its purview. An employee in the nonagricultural sector is entitled to 1 rest day per week. There are also provisions for 1 month of annual leave and sick leave. The law also provides that the total hours worked (i.e., regular time plus overtime) in any 2-week period for night workers may not exceed 144 hours; the limit is 120 hours for other workers. Workers in some enterprises claimed that employers forced them to work extra hours without overtime pay. The Ministry of Labor is tasked with enforcing these regulations, and there are few reports of violations.

The Factories Act of 1951 sets forth detailed health and safety standards; it was amended in 1990 to include the agriculture, service, and government sectors. The 65 health and safety inspectors attached to the Ministry of Labor's Directorate of Occupational Health and Safety Services have the authority to inspect factories and work sites. As a result of the 1990 amendments, the Directorate's inspectors may now issue notices enjoining employers from practices or activities that involve a risk of serious personal injuries. Previously, only magistrates were vested with this authority. Such notices can be appealed to the Factories Appeals Court, a body of four members, one of whom must be a High Court judge. The number of factory inspections increased dramatically in 1993 and subsequently has continued at a high level. Workers are not forced by law to remain in hazardous conditions; however, many would be reluctant to remove themselves because of the high unemployment problem.

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