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## U.S. Department of State

### Kenya Report on Human Rights Practices for 1997

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#### Kenya

President Daniel Arap Moi won reelection in December in Kenya's second general elections since the restoration of multiparty politics in 1991. While observers considered the elections imperfect, they concluded that the vote broadly reflected the popular will. In addition to his role as President, Moi also commands the military services and controls the security, university, civil service, judiciary, and provincial, district, and local governance systems. The ruling party, the Kenya African National Union (KANU) has a slim 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 Directorate of Security and Intelligence (DSI), the National Police, the Administration Police (AP), and the paramilitary General Services Unit (GSU). The CID and the DSI investigate criminal activity and monitor persons whom the State considers subversive. Members of the security forces committed serious human rights abuses, and on a larger scale than in 1996.

The economy includes a well-developed private sector in trade, light manufacturing, and finance. The large 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, despite a major setback caused by ethnic violence along the coast in August and September. Drought, followed by floods, kept upward pressure on food prices. Annual per capita gross domestic product is \$270.

Throughout the first 8 months of the year, the Government's human rights record deteriorated, with serious problems in many areas. Many aspects of the situation improved significantly in the last 4 months of the year, although human rights violations continued to occur. Police continued to commit extrajudicial killings and to torture and beat detainees. They arbitrarily arrested and detained citizens (although not for political reasons after the enactment of the reforms), and held them for prolonged periods. Prison conditions remained life threatening. The judiciary was subject to executive branch influence, and several judges complained in public about executive interference in judicial affairs. Authorities infringed on citizens privacy rights. Through the spring and summer, as the tempo of political activity quickened, government harassment and intimidation of opponents significantly increased. The Government detained critics of the ruling party, including opposition parliamentarians, journalists, clergy, and human rights activists, for periods ranging from a few hours to several days. Government authorities severely limited freedom of speech, assembly, and association, and blocked opposition leaders' access to their supporters and to the electronic media. Journalists practiced some self-censorship. The Government deployed the National Youth Service (NYS), which traditionally has provided young Kenyans job training in exchange for several years of national civilian service, to block opposition political meetings. The number of disrupted opposition political meetings and civic education workshops in the first 8 months of the year rose sharply over 1996.

Beginning in late September, however, there was a visible improvement in the human rights situation, as the bipartisan Interparties Parliamentary Group (IPPG) brokered a package of wide-ranging political reforms, which the Government enacted in early November. These paved the way for a generally free campaign and credible, if imperfect, national elections at year's end. The results broadly reflected the popular will and marked a step forward in citizen's ability to change their government peacefully, although their ability to do so has not yet been fully demonstrated at the presidential level. After denying registration to many political parties for several years, the Government finally acted on the applications and registered 16 new parties. Government disruption of opposition and civic education meetings declined in September, then halted altogether by mid-October.

Discrimination against women and violence against women and children remained serious problems. Animosity against and among various ethnic groups continued, and there were a series of incidents involving ethnic violence on the coast in August and early September, causing at least 100 deaths. Mob violence also resulted in many deaths. After 1½ years in operation, the Government's standing committee on human rights has yet to make public any of its reports or make a visible impact on the human rights situation. The Government arrested and prosecuted a number of police officers for abuses. It also directed police not to harass journalists or carry guns when covering public meetings. In February the Government acceded to the United Nations Convention Against Torture and directed police not to torture or beat detainees, albeit with limited results.

## **RESPECT FOR HUMAN RIGHTS**

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

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

Prior to September, security forces continued to use lethal force frequently and committed extrajudicial killings. According to government figures, police killed 94 suspected criminals in 1997. The nongovernmental Kenyan Human Rights Commission (KHRC) reported that police killed 123 people in the period from January through September, including at least 12 by torture. Human rights groups criticized police "recklessness" and eagerness to open fire, as well as the Government's failure to take appropriate action against most policemen responsible for killings. Hundreds of prisoners died in custody due to life threatening prison conditions, including inadequate food and medical treatment (see

## Section 1.c.).

In February Administration Police in Migori shot and killed Frederick Adhiambo. The police report stated that the police opened fire when Adhiambo charged them with a knife, a claim contradicted by the local KHRC monitor who reported that Adhiambo was shot in the head inside his house. In March Nairobi police shot and killed Anthony Chege Muthoni, a student scheduled to enter the University of Nairobi.

The same month University of Nairobi student leader Solomon Muruli died in a mysterious fire in his dormitory room. A week before his death, Muruli positively identified a senior police officer as one of the men who abducted and tortured him in November 1996. Shortly before his death, he received a letter threatening his life if he proceeded to identify police officers in connection with his abduction. The public inquest into Muruli's death is continuing.

While the majority of the police killings occurred during the pursuit of criminal suspects, a number involved innocent bystanders. In January Brother Larry Timmons, a Catholic monk, was shot and killed by two Administration Police officers responding to an alleged robbery in Njoro near Nakuru. Police initially described the incident as an accident, but church officials termed the incident "suspicious," noting that Timmons had recently confronted local government officials over corruption.

There are indications that some of the people who died in police custody were victims of torture. These included Moses Macharia Gicheru in Pangani, Ali Hussein Ali in Wajir, and Lomurodo Amodoi in Lokichoggio (see Section 1.c.). According to credible accounts, the notorious Makuyu "flying squad" police unit tortured a number of detainees, several of whom died, including Joseph Mwangi Muiruri, Irungu Kimani, Noah Njuguna Ndung'u, Joseph Ndung'u Njoroge, James Gitau Kuanju, and Julius Mwangi Njoroge. There were also credible reports that security forces beat and brutalized citizens in the Likoni and Kwale areas of the coast, in connection with searches for the raiders who perpetrated ethnic attacks in August and September. Reportedly, several of these victims were beaten to death (see Section 1.c.).

Police investigated some extrajudicial killings by security forces, and several police officers faced prosecution. According to the Attorney General's office, at least 15 police officers were charged with brutality, excessive force, and wrongful killing in 1997. In the course of the year, a police officer was charged with murder in the death of Anthony Chege Muthoni, and police constable Francis Kimanzi Mabaya was charged with the murder of Brother Timmons. The Government charged 11 police officers with murder in the December 1996 death of 2 Kenyatta University students, and 3 police officers and 1 army corporal with murder in the June death of Ali Hussein Ali. After the latter four men were discharged by the court in October, the Government opened an inquest file and the first public inquest is scheduled for February 1998. The inquest into the July 1995 death from torture of Rosemary Nyambura finished, and the magistrate recommended that the police officers responsible be arrested and charged with murder. The Government also launched inquests into the following deaths in police custody: Moses Macharia Gicheru in Pangani, John Kibuki Kanini in Lari, and Lomurodo Amodoi in Lokichoggio. In response to a KHRC query, the Government launched an inquest into the November 1996 death of Francis Munahi from torture while in police custody in Nyang'ori. Inquests into the 1996 police killing of Egerton University student Festo Etaba Okonya and the 1996 death in police custody of Amodoi Achakar Anamilem are continuing, and an inquest into the 1996 death in police custody of Francis Munahi is scheduled to open January 1998.

There have, however, been no effective police investigations into many cases of extrajudicial killing. There have, for example, been no investigations of the deaths in police custody of Joseph Mwangi Muiruri, Irungu Kimani, Noah Njuguna, and Julius Mwangi Njoroge. Police made no arrests in

connection with the deaths of 14 civilians during proreform rallies on July 7 ("Saba Saba") in several cities. A number of these individuals are known to have died at the hands of police. The Government announced public inquests into the fatal shootings of Paul Njore Macharia and student David Kanuni Mutugi in Thika, and four people in Nyahururu on July 7. According to an eyewitness, a police woman shot Mutugi at point blank range as he knelt pleading before her. The authorities usually explain that the lack of investigation of extrajudicial killings is because no official complaint has been filed. But the form required for filing complaints is available only at police stations, which are often "out" of the forms or not forthcoming in providing them. There is also considerable skepticism of a process that assigns the investigation of police abuse to the police itself.

Prior to September, KANU youthwingers perpetrated a number of violent attacks, some involving fatalities. Human rights activists charge that the youthwingers were operating with tacit or explicit police approval, and several cases lend credence to this charge. All but one of the KANU youthwingers who beat Evans Baraza Obango to death in a Nairobi slum in March were released by the police; an investigation into the incident was completed and the file was forwarded to the Attorney General for action. Prior to the IPPG initiative, President Moi and other KANU leaders called upon KANU youthwingers on a number of occasions to help the police put down proreform rallies or threatened that the youthwingers would prevent rallies. There were also cases, however, in which the police intervened to protect opposition and nongovernmental organization (NGO) leaders from attacks by KANU youthwingers, particularly in the last 4 months of the year.

There was a major outbreak of ethnic-targeted violence along the coast in August and early September, resulting in at least 100 deaths and thousands of people fleeing to safe havens in Mombasa or inland. Most of the victims were immigrants from upcountry Kenya who had settled along the coast, and the attacks reflected indigenous ethnic animosity and economic discontent toward the upcountry settlers. However, there were indications that the violence had political roots, with local KANU political leaders reportedly involved in the planning. The efforts of security forces to contain the violence were slow and piecemeal, allowing the violence and the exodus of refugees to continue for many weeks.

Deadly attacks and revenge counterattacks occurred frequently between Pokots and Marakwets, Turkanas and Samburus, and Maasais and Kisiis. There were also incidents of ethnic-targeted violence and killing in Isiolo, Meru/Nyambene, Garissa, and Kilgoris. In early 1997, the KHRC published a special report, "The Forgotten People," which detailed a series of raids from Ethiopia into Kenya involving pillage, rape, and torture at the hands of tribal bandits and Ethiopian army troops who entered Kenya searching for fleeing Ethiopian rebels.

Mob violence increased during the year. Human rights observers attribute this to lack of confidence in the police and the judicial process. The KHRC documented 99 deaths by mob violence in the period from January through September, compared with 95 deaths by mob violence in the whole of 1996. "Mob justice" most often is inflicted on individuals suspected of criminal activities. Occasionally strangers or social misfits were targets. The Government condemned the practice of mob justice and arrested and charged 358 people in court with participating in incidents of mob violence.

#### b. Disappearance

There were no reports of politically motivated disappearances.

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

The Constitution states that "no one shall be subject to torture or degrading punishment or other

treatment." However, security forces continued to use torture as a method of interrogation and to punish both pretrial detainees and convicted prisoners. On February 11, the Government acceded to the U.N. Convention Against Torture, although it denied that torture was a problem in Kenya, apart from isolated instances. Several days later, Commissioner of Police Duncan Wachira directed police not to beat suspects during interrogation. Despite the Commissioner's directive, however, the use of physical violence by the security forces and credible reports of police abuse and torture continued. The KHRC reported at least 55 cases of torture by police in the first 9 months of 1997. In 12 instances, police torture resulted in death (see Section 1.a.).

In January police tortured Yusuf Haji, who reported that four policemen whipped him in the Kibera section of Nairobi in the presence of the Provincial Commissioner. In February, 15 people charged with robbery in Kibera told the court that they had been tortured in police custody. In March eight people charged with theft in Nairobi told the court that they had been tortured by police. Mandera primary school teacher Mohammed Abdi Aden reported that he had been tortured by police for failing to produce a national identification card on demand. A number of the approximately 200 people arrested in connection with an August 8 proreform rally that turned violent, resulting in four deaths, reported that they were subjected to torture, starvation, and inadequate medical attention in Kamiti maximum security prison in Nairobi. Other reported cases of police torture included Charles Ritho Gicheru in Nyeri in August, a 17-year-old student named Mugeti in Kisii in August, and James Kobi Masagala in Thika in September. There were credible reports that police tortured several people arrested in connection with the outbreak of ethnic violence on the coast during the summer. Police also reportedly abuse street children (see Section 5).

Security forces used excessive force to break up several proconstitutional reform rallies in Nairobi from May to August. They fired tear gas into crowds and beat participants and bystanders at random. Police also beat journalists (see Sections 1.d. and 2.a.). Police deployed in the Likoni and Kwale areas of Coast province to stem ethnic violence there engaged in random beatings of local people, causing several deaths. There are credible reports that the police also committed several rapes (see Section 1.d.).

During the year the Government investigated some allegations of police torture and prosecuted some members of the police. Three police constables were sentenced to 10 years in prison for torturing prisoner Charles Ileri in Embu in 1994; two policemen were arrested and charged in the January 1994 detention and torture of Truphena Obwaka Shirako in Langas in Uasin Gishu District, but no verdict has been reached yet. Human rights activist Josephine Nyawira Ngengi has filed suit against the Government claiming damages for illegal confinement, torture, and harassment by Nakuru police in 1994. In November Police Commissioner Wachira disbanded the notorious Makuyu "flying squad" police unit (see Section 1.a.) that reportedly frequently beat and tortured detainees, often demanding bribes. (At year's end, however, area Members of Parliament stated that only two police officers had been transferred, while the other 28 continued working in Makuyu.) There has, however, been no official investigation into the reported torture of Jane Wambui and Virginia Nyambura Wambui in Kikuyu Town in December 1995, although the two women had the charge of robbery against them dismissed on the grounds they had been tortured.

Prison conditions are often life threatening, due both to a lack of resources and 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. According to the Government, 631 prisoners died in jails during the year, due chiefly to anemia, heart attack, malaria, typhoid fever, dysentery, tuberculosis, and AIDS. The country's 78 prisons are severely overcrowded, averaging 30 percent above holding capacity with a daily average of 34,775 inmates in 1996. Some facilities, such as the Nairobi Remand Prison, are overcrowded by several hundred percent. In late 1996, the Government released over 4,000 prisoners imprisoned on lesser charges to alleviate prison

overcrowding.

Rape of both male and female inmates is a serious problem, as is the growing incidence of AIDS. Disease is widespread in prisons and the death rate is high. Prisons do not have resident doctors, and only one prison had a doctor permanently assigned. In January prisoners held in Kamiti Maximum Prison refused to appear in court because they had been barred from seeing their attorneys and were being denied food and medicine. Prisoners are sometimes kept in solitary confinement far longer than the maximum 90 days allowed by law. Prisoners and detainees report that they are frequently denied the right to contact their relatives or lawyers. Prisoners are subjected to torture and inhuman treatment by police.

Officially, men, women, and children are kept in separate cells. However, there are reports of men and women being placed in cells together, 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 persons arrested or detained shall be brought before a court within 24 hours in noncapital offenses and 14 days in capital cases. A 1993 amendment to the Penal Code excludes weekends and holidays from this 14-day period. The law does not stipulate the period within which the trial of a charged suspect must begin. Suspects are often held for weeks, even months, before being brought to court. The Government has acknowledged cases in which persons have been held in pretrial detention for several years. Persons arrested and charged are statutorily allowed access to their families and attorney, however, this right is often not honored. Prisoners may be visited by family members and attorneys only at the discretion of the State. This privilege is often denied. For those who have been charged, it is often possible to be released on bail with a bond or guarantees of return.

The parliamentary reforms passed in November repealed the detention without trial provisions of the Preservation of Public Security Act (PSA), the provision under which particularly troublesome political activists had been imprisoned in years past. The reforms also greatly reduced the powers of local officials called chiefs under the Chiefs' Act (formerly Chiefs' Authority Act). The authority of chiefs to restrict movement of people was repealed and, while they still have the power to detain people, they must take them immediately "to the nearest police station." The reforms also repealed the Vagrancy and Outlying Districts Acts, whose broad discretionary powers had been used to detain people or restrict movement.

The Task Force on the Reform of Penal Laws and Procedures, created by the Attorney General in 1993, submitted its final report to the Attorney General in December. The report recommended seven new bills to reform the criminal justice system.

Through the first 8 months of the year, security forces continued to harass, follow, inconvenience, and occasionally briefly detain opposition Members of Parliament (M.P.'s), NGO officials, clergy, journalists, and other government critics. The detainees were usually held for several hours then released without charge. In a few cases, they were held for weeks or months. One KANU dissident experienced an escalating pattern of harassment, which began when his business was "staked out" by police officers, and there was minor vandalism to his property. This escalated to attacks on patrons of his hotel, and death threats against his family, and culminated with the resurrection of a 1994 criminal case against

him. The charges were dropped when he withdrew his dissident candidacy. He then encountered further threats and intimidation when he ran opposite President Moi in the December 1997 parliamentary race.

Harassment of political and human rights activists in the first 8 months of 1997 functioned to opposition political positions and human rights advocacy (see Section 4). In February police charged into and clubbed Safina activists, journalists, and members of the Release Political Prisoners (RPP) pressure group in a market town near Nyeri. In April Kitui police surrounded the home of opposition presidential candidate Charity Ngilu and kept her blockaded inside overnight (see Section 2.b.). Following the outbreak of ethnic violence on the coast in August, police arrested KHRC investigator Alamin Mazrui, Safina founder Khelef A. Khalifa, and National Democratic Union leader Ali S. Chizondo, releasing them on bond several days later. Harassment of opposition and human rights activists, however, diminished greatly with passage of the IPPG-brokered reforms.

The KHRC charged police and security forces with abetting disorder in the far north districts of Marsabit and Moyale. Police arbitrarily arrested and tortured citizens, especially members of the Borana tribe, in the course of their efforts to repress banditry in the border region over the past several years.

The Government does not use formal exile as a means of political control. It did, however, prevent Sheik Khalid Balala, a self-styled leader of the unregistered Islamic Party of Kenya (IPK), from returning to Kenya in 1994, and then effectively kept him in exile in Germany for 3 years. In July the Government allowed Balala to return to Kenya.

#### e. Denial of 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 those of Chief Justice, 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 2 levels of magistrates' courts, where most criminal and civil cases originate. The Chief Justice is a member of both the Court of Appeals and the High Court, which undercuts the principle of judicial review. President Moi's appointment of Zacchaeus Chesoni in December as Kenya's Chief Justice raised widespread protest among legal experts, who argued that the lack of independence Chesoni displayed as Chairman of the Kenya Electoral Commission did not augur well for the prospects of judicial independence.

Statements by President Moi on matters before the courts are a major problem plaguing the judicial system. They are often tantamount to interference with the independence of the judiciary. For example, in 1997 President Moi directed the courts not to "interfere" in internal KANU party matters. Another problem is the power that the Constitution gives the Attorney General to 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.

On several occasions, judges spoke out and sought to assert judicial independence. In March the Chairman of the Kenya Magistrates' and Judges' Association publicly criticized government interference in the judiciary and restrictions imposed on the freedom of association of magistrates and judges. A Nairobi judge overruled President Moi's February directive to the courts not to entertain disputes arising within political parties. These two justices have not been transferred or otherwise negatively affected by

their public statements. In the past, judges who made public criticisms or issued rulings against the Government have been punished with transfer to isolated places or nonrenewal of their contracts.

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. Civilians are tried publicly although some testimony may be given in closed session. Judges hear all cases; there is no jury system. 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 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; out of reach for most citizens.

Critics of the Government--politicians, journalists, lawyers, students--have been harassed through abuse of the legal process. In a study of the judiciary published in early 1997, the International Bar Association concluded that there has been "a persistent and deliberate misuse of the legal system for the purpose of harassing opponents and critics of the Government." Many opposition M.P.'s, student leaders, and human rights activists have one or more court cases hanging over their heads, often for months or even years.

The Government did not hold any political prisoners at year's end. In January the Government released on bail the last two of the three prisoners in the well known human rights case of Koigi Wa Wamwere. Koigi and his two associates had been denied a fair judicial process in their 1993 conviction on apparently politically motivated charges of armed robbery. In October the KHRC and the Release Political Prisoners organization presented the Attorney General with a list of 774 persons they claimed were political prisoners, either imprisoned or out on bail pending trial on sedition or related political cases. Among these were James Apiny Adhiambo, convicted of participation in a 1982 failed coup attempt, and the "Koigi Three" defendants. In December the Government released Apiny and dropped all charges against the Koigi Three.

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

Although the Constitution provides that "no person shall be subjected to the search of his person or his property or the entry by others on his premises," it permits searches without warrants "to promote the public benefit." The Police Act permits police to enter a home forcibly if the time required to obtain a search warrant would "prejudice" their investigation. 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.

Prior to September, security forces closely monitored the activities of dissidents. They followed and otherwise harassed a number of them. Security forces employ various means of surveillance, including a network of informants to monitor the activities of opposition politicians and human rights advocates. Opposition leaders, students, and others report that the Government targets them with surveillance, telephone wiretaps, and interference with written correspondence. One leader of the constitutional

reform movement, for example, frequently changed his place of residence to avoid surveillance. In March seven leaders from various universities informed the press that they were being stalked and threatened by government security forces.

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 of the press, the Government has interpreted broadly several existing colonial-era laws to limit free expression (see Section 1.d.). It has used these laws to disperse opposition rallies and to prevent speakers from criticizing the Government. Some independent periodicals report that the business community is under pressure from the Government to refrain from advertising in their magazines, pushing some to the edge of insolvency. The court conviction in June of the independent weekly, *The People*, for defaming an adviser to the President, and the accompanying award of a record \$180,000 (10 million shillings) in damages, sent fear through the independent press. A High Court judge, however, set aside the award in November, requiring the publication to pay only court costs. In September Nakuru police detained Joseph Kaiuki, editor of the *Rift Valley Times*, and held him incommunicado for 4 days because of a report in his paper critical of the same presidential advisor.

In spite of these pressures, the press, civic organizations, and the opposition continued to present their views to the public, particularly in the print media. However, government pressure leads journalists to practice some self-censorship.

On the whole, however, the print media remained candid and independent, despite continued government pressure and harassment. Weekly newspapers and magazines, many openly critical of the Government, have substantial audiences. 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 newspaper, *East African Standard*, is controlled by an investment group with close ties to the Government and the ruling KANU party. 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.

According to members of the independent press, relations between the press and the Government have greatly improved in recent years. Even when government officials have requested the independent press to suppress damaging articles, the final decision has been left to the editors. While the traditional taboos surrounding the President and, to a lesser extent, his family remain in effect, political cartoons picturing President Moi, often in a negative light, appear frequently in the independent press. 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.

There were a number of instances of overt harassment and occasional detention of journalists in the first 8 months of the year, which dropped off dramatically in the last 4 months. In January police disrupted what they called an "illegal" press conference called by Democratic Party leaders to protest denial of campaign meeting licenses. In February police seized *Nation* photographer Susan Musoke as she was photographing delays and extortion in the issuing of new identity cards and held her for 2 hours before

releasing her. The same month, police beat up two Daily Nation reporters in Mathara, a suburb of Nairobi, for photographing identity card registration. In March Police Commissioner Wachira directed police not to harass journalists. There were, nevertheless, further incidents of police harassment of journalists. GSU troops beat two journalists covering the ethnic violence in Likoni in August. The September-October parliamentary reform dialog and legislation noticeably improved the behavior of security forces toward journalists.

The Government maintains a near monopoly over the electronic broadcast media through tight control of broadcasting--particularly radio, the principal news medium for most Kenyans. It controls the Kenya Broadcasting Corporation (KBC), which operates the country's premier radio, broadcast television, and cable television networks. KBC stations do not criticize the Government and give a large share of news time to government or KANU party functions and scant coverage to opposition activities. KANU supporters also own two other television networks--Kenya Television Network (KTN), which airs news programs with somewhat more balanced political coverage, and Stellavision (STV). KTN which provided the only effort at balanced television news coverage, is limited to the Nairobi metropolitan area. But even this limited openness is now threatened by the purchase of KTN late in the year by the Standard Newspaper Group, which is sympathetic to the Government.

The Government, moreover, continued to delay action on numerous radio and television license applications. The Ministry of Information explains that it is waiting for the recommendations on media liberalization from the Attorney General's task force on press law. That task force is now into its fourth year with no sign of any recommendations. There was some movement on radio licensing during the year. The Government granted broadcast licenses to Royal Media Services (owned by a leading KANU supporter), the British Broadcasting Corporation (BBC), Universal Entertainment, and Kitcom Africa. However, it ignored more than 50 outstanding radio and television applications, many of long standing. The Nation Newspaper Group, the most respected media organization in Kenya, has been waiting almost 6 years for a license to go into the broadcast media, highlighting the arbitrariness of the broadcast licensing process.

The government monopoly of the broadcast media fosters unbalanced and unfair reporting. This monopoly severely limited the opposition's ability to communicate with the electorate, since the KBC is the only source of current information for most Kenyans outside the Nairobi area. An indicator of the Government's tight control over the broadcast media was the suspension of two KTN news editors for over 2 months for showing footage of police beating people in their homes and in a church during the July 7 proreform rally. In September the two men were reinstated, but in different positions.

The parliamentary reforms passed in early November somewhat improved the outlook for freedom of speech and the press. In November, the chairman of the Electoral Commission directed the KBC to accord equal treatment to all political parties and to provide all registered parties participating in the campaign 25 minutes of free radio and television broadcast time. Although the KBC slightly increased its coverage of the opposition during the election campaign, access by political parties to KBC remained heavily biased in favor of KANU and President Moi. Moreover, the KBC coverage of the opposition was generally negative, whereas it was uniformly positive towards KANU.

Representatives of the international media are generally free to operate. The Government complains that its hospitality to foreign correspondents indirectly worsens Kenya's national image because foreign journalists write so many negative articles about other countries that bear a Nairobi dateline. However, in September President Moi met informally with the local and international press for the first time in memory in an effort to improve relations.

The Government continued its ban on 30 books and publications on grounds of sedition or immorality.

These included "Development Agenda," Kenneth Matiba's "Return to Reason," "The Quotations of Chairman Mao Tse Tung," and Salmon Rushdie's "Satanic Verses," and the Catholic periodical, Inooro. However, the parliamentary reforms eliminated sedition as a ground for censorship of publications, and they called for the creation of a board to review the decision to prohibit these publications and to review any future ban on publications.

Despite constitutional provisions for free speech, academic freedom is circumscribed by both school administrators and security forces. Administrators and police frequently take harsh action against even peaceful student demonstrations, whether over political or bread-and-butter issues, forcefully dispersing and sometimes arresting students. Student leaders report that they are sometimes followed and even threatened by government security forces (see Sections 1.e. and 1.f.). A number of student activists have been expelled from universities in recent years because of political activities, and most have been refused readmission.

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

The Constitution provides for freedom of assembly, although the Government's use of the Public Order Act, which gave the authorities power to control public gatherings, seriously restricted this right for many years. The act prohibited meetings or processions of 10 or more persons without a license from the District Commissioner. Through the first 8 months of the year, the Government continued to restrict the right of peaceful assembly by refusing to license, or by forcefully disrupting, opposition political meetings and civic education workshops sponsored by churches and NGO's.

Continuing an increase in disruptions in the last quarter of 1996, the number of meetings blocked or disrupted by the Government surged in the first 8 months of the year. The Government continued to approve few applications by opposition parliamentarians to hold political meetings, effectively blocking them from meeting with their constituents. Their applications were either routinely denied as a "threat to security," or just not acted on. Police disrupted a large number of opposition political meetings, including by-election campaign rallies in January and March. In February police charged into and beat up a group of Safina party activists in a marketplace near Nyeri. Over a single weekend in April, police disrupted three separate meetings by opposition leaders Raila Odinga, Charity Ngilu, and Kijana Wamalwa, shooting and seriously wounding Wamalwa's bodyguard.

Ruling KANU party leaders, on the other hand, had no trouble obtaining meeting licenses. They usually do not even bother to apply for licenses, since the police do not interfere with their meetings even without a license. The few KANU meeting license applications refused, or meetings disrupted, were those of KANU leaders critical of, or at odds with, the national party leadership.

The Government also blocked a series of constitutional reform rallies and meetings. Security forces broke up rallies in Nairobi on May 3 and 31, June 1 and 19, and July 7, the last resulting in 14 deaths (see Section 1.a.). The Government deployed the National Youth Service (NYS), which traditionally has provided young Kenyans job training in exchange for several years of national civilian service, to block opposition political meetings. The Government blocked a proreform rally on Madaraka Day, June 1, by placing all the reform leaders it could find under house arrest. In the face of increasing domestic and international criticism, the Government then allowed two reform rallies to proceed, one in Mombasa on July 21 and one at Uhuru Park in Nairobi on August 8. The latter turned violent leaving four persons dead, including two policemen.

Following domestic and international criticism of the spate of disruptions in April, Police Commissioner Wachira warned that police who misused firearms at political gatherings would be punished "according

to the law." A few days later, Minister of State Kalweo announced that police covering public functions would bear only clubs and tear gas, not guns. Two administration policemen were detained and charged in the Wamalwa shooting. Following the enactment of the parliamentary reforms in November, Commissioner Wachira directed the police to remain neutral in the election campaign and offered round-the-clock police protection to all presidential candidates. Both of these directives were effectively implemented and markedly improved the election atmosphere.

One of the November reforms was revision of the controversial Public Order Act, replacing the requirement that public meetings must be licensed with a simplified requirement that organizers merely notify the local police of planned meetings. The revision expressly excluded "meet the people" tours by politicians from the notification requirement and provided that only a senior police officer could halt a meeting on the grounds of "clear, present or imminent danger of a breach of the peace or public order.

Prior to enactment of the IPPG reforms, the Government repeatedly criticized NGO's and the concept of civic education, accusing NGO's of engaging in covert activities and questioning their patriotism because of their foreign funding. Civic education, President Moi declared, is unnecessary in Kenya. The Government gave form to this hostility in a February circular directing local officials that NGO's sponsoring civic education are "a threat to the security of the state and their activities must be curtailed." The authorities disrupted numerous civic education workshops through the spring and summer. In April the Catholic Church protested the continued government "harassment and intimidation" of its civic education workshops in Turkana District.

Meeting disruptions began to taper off after the IPPG started its reform dialogue at the end of August. In September police blocked four opposition political meetings and three civic education meetings, and in October three opposition political meetings and two civic education meetings. They allowed many other meetings to take place in various places around the country. Following passage of parliamentary reforms in early November, there were very few government disruptions of opposition and civic education meetings, police interventions largely involved potentially violent situations.

The Government used the Societies Act to restrict freedom of association. The act requires every association to be registered or to be exempted from registration by the Registrar of Societies. For the past 3 years, however, the Government refused to act on a number of political party registration applications. However, in November following passage of the parliamentary reforms, the Government finally acted on pending party applications, increasing the number of registered political parties from 12 to 26. Some are tiny, inactive groups, others such as Safina are potentially major parties. The Islamic Party of Kenya (IPK), however, remained unregistered. The party is challenging the 1994 denial of registration in the courts.

At mid-year, a shadowy group, "Jeshi La Mzee" ("the old man's army"), surfaced whose purpose was apparently to harass reformers calling for significant constitutional changes. The group was active in disrupting several proconstitutional reform rallies in Nairobi. Reformers charged that Jeshi La Mzee was a "terrorist gang" recruited and paid by KANU leaders to attack reform rallies. The group has been inactive since early August.

NGO's are registered by the Government NGO Coordination Board under the NGO Act. The Government has used this structure to put pressure on the nongovernmental National NGO Council. In July it directed the Council to compile a list of "political NGO's," presumably to carry out President Moi's threat of deregistering all "political NGO's." When the Council refused, the President threatened to withdraw its operating permit, accusing it of diverting funds intended for civic education to finance subversive organizations. The Government did not carry out this threat.

### c. Freedom of Religion

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

The Government did interfere with some activities sponsored by churches, notably civic education, which it perceived as disguised support for opposition political parties. In the first 8 months of the year, the authorities disrupted numerous civic education workshops sponsored by the Catholic Church and the National Council of Churches of Kenya (NCCCK), the major Protestant umbrella organization (see Section 2.b.).

On July 7, pursuing demonstrators who had taken refuge inside security forces stormed All Saints Cathedral in Nairobi. They beat the demonstrators. After originally denying that the incident occurred, the police later apologized. This desecration was, however, a product of government intolerance of political dissent, not of religious persecution.

### 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 during the 1992 elections and again following ethnic clashes in 1993, restricted the ability of many citizens to travel in large parts of Kenya. In the first 8 months of 1997, opposition leaders were blocked on a number of occasions from visiting, or forced to leave, certain locations. In May, for example, KANU youthwingers roughed up opposition leader Raila Odinga in Kapsabet and forced him to flee, while police stood by and watched. President Moi stated in April that no opposition politicians should "dare step into Rift Valley," stirring fears that "KANU zones" closed to the opposition would be restored.

Many of the rural people displaced by the violent ethnic clashes in Rift Valley in 1991-93 have still not returned to their homes and remain displaced in urban areas. Late in the year, the Government made some efforts in the Molo area (northern Rift Valley) to regularize land ownership for some of the displaced there. Many of the thousands of people displaced by the violence in Coast Province in the late summer remained afraid to return to their homes because of a fear of renewed violence. (Voter turnout in Likoni was less than 37 percent, the lowest in the country.)

The Government does not restrict emigration or foreign travel. However, the law requires a woman to obtain her husband's or father's permission in order to obtain a passport (see Section 5). Civil servants must get government permission for international travel, which is normally granted.

The Government offers first asylum and provided it to the approximately 180,000 United Nations High Commissioner for Refugees (UNHCR)--registered refugees who live in official camps. An undetermined number of refugees live outside camps in cities and rural areas. Somalis account for about 80 percent of the total refugee population, followed by a large number of Sudanese, and a scattered number of other nationalities from across the region. A total of less than 2,700 refugees, mostly Ethiopians, were repatriated in 1997.

At the direction of the Government, the UNHCR took steps to close the three refugee camps near the coastal city of Mombasa. Two of these camps were effectively closed in August and some 7,000 people living there moved, against their expressed wishes, to camps near the Somali and Sudanese borders. Many of the refugees in the remaining Mombasa camp have registered to return to Somalia rather than relocate to another camp in Kenya. However, this repatriation has not yet occurred, and significant

numbers of people in this camp appear likely ultimately to accept relocation within Kenya.

In July the authorities began rounding up hundreds of refugees and other aliens in urban areas. During these roundups, police often detained any African foreign national they happened across regardless of whether the person had proper documentation or not. Entire families were picked up, treated roughly during arrest, and then kept in detention for days or sometimes weeks under harsh conditions. The treatment of these detainees improved somewhat following foreign embassy and UNHCR intervention. However, the arrests continued, albeit at a much slower pace.

The position of refugees and improperly documented aliens became even more precarious when, on September 6, President Moi criticized refugees for abusing Kenya's hospitality and verbally ordered the UNHCR to remove all refugees from the country. A few days later, the Government told the UNHCR it had 1 month to remove all refugees. However, President Moi subsequently relaxed his order to expel refugees from the country, suspended the roundup of aliens, and established a mechanism for direct communication between his office and the UNHCR.

The law provides for the granting of asylum or refugee status in accordance with the standards of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. Nevertheless, when over 400,000 refugees fleeing civil strife and drought arrived 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 status 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.

Incidents of rape of women and young girls in refugee camps continued to occur, though police attention to the problem slightly improved this situation. Acts of violence, including carjackings and banditry, still occur with frequency in the camps and the Dadaab area (near the Somali border), which sometimes led to the injury or death of some refugees and police. Late in the year, flooding displaced 20,000 of the refugees in these camps.

Despite the apparent hardening of the Government's policy toward refugees, there were no reports of expulsions from the country of those having a valid claim to refugee status. However, early in the year, the Government moved forcefully to prevent a mass wave of persons fleeing drought conditions in Somalia from crossing the border. Once this flow of potential refugees was halted, the Government invited the UNHCR and other humanitarian organizations to provide assistance in place to these individuals. The Government followed the same procedure when a similar situation occurred in late 1996.

### **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, although their ability to do so has not yet been fully demonstrated at the presidential level. The December 29 presidential election, despite numerous logistical and other flaws, generally reflected the will of the people. The 1997 presidential and parliamentary elections were marked by much less violence and intimidation than the 1992 polls, and by less fraud, and other irregularities. Opposition candidates won 60 percent of the vote, but these votes were split among four main and several fringe parties, thereby giving KANU a majority of seats in Parliament and President Moi a mandate to dominate the political process for another 5 years.

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. In past elections, many local officials actively assisted the ruling KANU. However, in the December elections there was a real effort to delink provincial government officials from the campaign and polling processes. Before the campaign began, the Government issued instructions enjoining provincial and local officials from partisan involvement; nearly all local government and security officials adhered to these directives.

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 a ruling by the Speaker of the Assembly 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 now controls a slim majority of parliament seats, the President is also able to influence significantly the legislative agenda.

Government harassment and intimidation of the political opposition significantly increased in the first 8 months of 1997, but the last 4 months of the year saw a marked easing of this interference. Although the government monopoly of the electronic media prevented opposition parties from reaching television and radio audiences, this situation improved somewhat towards the end of the year, as the parliamentary reforms mandated more evenhanded coverage of opposition activities (see Section 2.a.). In the first 8 months of the year, the licensing provision of the Public Order Act prevented opposition leaders from meeting their supporters, and the Government's use of other colonial-era sedition laws restricted freedom of expression (see Sections 2.a. and 2.b.). The IPPG reforms ameliorated somewhat the lack of statutory independence of the presidentially appointed Electoral Commission, which oversees elections, by nearly doubling its size. The President appointed the new members from a list proposed by opposition parties. However the opposition continued to charge that voter constituencies were gerrymandered in favor of KANU.

The two-step process of new national identity card issuance, followed by voter registration, was flawed. The process of applying for the new generation identity card went relatively well; about 11 million of the 13.3 million eligible citizens, i.e., age 18 and above, applied before the close of the application process in February. Actual issuance of the new cards, however, was often very slow and sometimes occurred months after the application.

The voter registration drive in May-June registered slightly more than 9 million people. There were, however, numerous inefficiencies in the process, including registration sites running out of application forms and cards issued with errors. There were, moreover, widespread and credible allegations of bribery in the registration process. In addition, hundreds of thousands of young people who had reached the voting age of 18 were unable to register to vote. Because they were too young to have received older model identity cards and because of the inefficiency of the new card issuance, they did not receive their new cards before voter registration closed. Possession of an old or a new model card was a prerequisite for voter registration. This disenfranchisement is widely seen as a result of inefficiency rather than politically inspired, although there were claims that many youths were denied identification cards for ethnic and political reasons (see Section 5).

The violence that erupted along the coast in August (see Section 1.a.) was ethnically targeted against "upcountry" immigrants who tend to vote for the opposition. The violence, reportedly organized in part by local KANU politicians, probably effectively disenfranchised large numbers of opposition supporters.

The 3-week presidential and parliamentary campaigns in December were largely free of government interference. Election meetings occurred without hindrance, and most local government officials kept

their distance from the campaign. Although there were numerous problems with ballot distribution on the December 29-30 election days, the voting for president largely reflected the will of the people. The overwhelming majority--95 percent--of the 210 parliamentary elections likewise appear to have reflected the popular will, although there were credible reports of vote rigging in 10 to 12 constituencies.

Although there are no legal restrictions traditional attitudes circumscribe the role of women in politics. Women are seriously underrepresented at decisionmaking levels in the Government. The new Parliament elected on December 29 included four female M.P.'s, down from seven in the last Parliament. Within the opposition, women figure most prominently in the Democratic Party and the Social Democratic Party. A group of women in Nairobi formed the Women's Political Caucus early in the year to lobby for issues of concern to women and to increase the influence of women on government policy. A parliamentary proposal that one-third of the parliamentary seats be reserved for women was defeated in April. The IPPG reform legislation requires that half of the nominations for the 12 nominated M.P.'s be women.

Members of all tribal and ethnic groups participate in the political process. However, since white paleontologist Richard Leakey announced his involvement in the Safina party in 1995, President Moi has repeatedly cautioned against the participation of white Kenyans in political activities. (Nonetheless, one white Kenyan was reelected as an M.P. on a KANU ticket in this year's election.) Numerous tribes--including the Kisii, Meru, Embu, Kamba, Kikuyu, Taita, Kalenjin, Luhya, Turkana, Maasai, Giriama, Luo, and Somali--are represented in the President's Cabinet. (Significantly, two of the largest tribes--the Kikuyu and the Luo--were excluded.) However, the President reportedly relies on an inner circle of advisers, drawn mostly from his Kalenjin tribe. There is widespread anti-Asian sentiment, which some opposition political leaders have sought to use for their own ends (see Section 5).

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

There is a growing number of human rights organizations in Kenya. These include the KHRC, the Kenya Antirape Organization, the Legal Advice Center, the Catholic Justice and Peace Commission, the Protestant NCCK, the Release Political Prisoners pressure group, and the Center for Governance and Development (CGD). There is also an array of legal organizations, including the Public Law Institute, the Law Society of Kenya (LSK), the International Commission of Jurists (ICJ/Kenya), and the International Federation of Women Lawyers (FIDA/Kenya), that are concerned with human rights.

NGO's and some opposition parties maintain comprehensive files on human rights abuses. The Kenya Social Congress (KSC) Party has published several detailed studies of human rights violations in Nyanza Province. The Safina party tracks extrajudicial violence and disruption of opposition political meetings. A number of attorneys represent the poor and human rights defendants without compensation, though they can meet only a small percentage of the need and are largely concentrated in urban areas.

The KHRC produces a "Quarterly Repression Report" cataloging the human rights situation in the country, as well as a steady stream of special reports. It organizes activities to publicize special causes, such as its campaign against police killing. The Institute for Education in Democracy (IED) and other NGO's monitor elections in cooperation with the Electoral Commission. The IED, along with the Catholic Church and the Protestant NCCK, monitored the sequential steps in the electoral process, including identity card registration, voter registration, election monitor training, media access, and the actual elections (nomination of candidates, campaign, and polling day).

Prior to agreement on the IPPG reform package, the Government's relations with human rights groups,

domestic and international, were poor. It regularly criticized human rights organizations and other NGO's and disrupted their meetings and workshops. Police disrupted the launch of the KHRC's campaign against police killing in January (see Section 2.b.). The following month, policemen kicked and beat up a KHRC monitor in Nairobi for collecting signatures for a petition against police violence. In August Mombasa police detained KHRC board member Professor Alamin Mazrui in connection with the outbreak of ethnic violence on the coast (see Section 1.d.).

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. In August it issued a formal response to Amnesty International's Memorandum of Concern over the Kenyan human rights situation issued in May. Amnesty International welcomed the dialog with the Government but still expressed "serious concerns about the human rights situation in Kenya." During an August visit, Amnesty International discussed the human rights situation with numerous senior government officials. The Attorney General's Office responded in detail to foreign embassies' human rights inquiries. The Electoral Commission facilitated the March visit of the U.S.-based International Foundation for Election Systems to analyze the electoral system.

The Government Standing Committee on Human Rights established in May 1996 has maintained a low profile and kept its distance from most pressing human rights problems. After a year and a half, it has not made any public report of its findings or activities. The 10-member committee is empowered to "investigate alleged violations of constitutional freedoms," including abuse of power by public officials. It is tasked with drafting recommendations on human rights problems and providing these to the government agencies under whose purview the problems fall. The committee presented its first report to President Moi in November 1996, but details of the report have not been 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, the authorities did not effectively enforce all these provisions.

### **Women**

Violence against women is a serious and widespread problem. The number of rapes reported to police has increased from 1,274 in 1993 to 1,455 in 1995 and 1,020 in the first 6 months of 1996. KHRC figures on assaults on women and girls rose from 4,580 in 1994 to 4,889 in 1995 and 3,674 in the first half of 1996. The available statistics probably underreport the number of incidents, 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 publicly 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, wife beating is prevalent and largely condoned by much of Kenyan society. Traditional culture permits a man to discipline his wife by physical means and is ambivalent about the seriousness of spousal rape. There were continued incidents of rape of refugee Somali women at the Dadaab camps, where women were assaulted outside camp perimeters in the course of gathering firewood.

Women experience a wide range of discriminatory practices, limiting their political and economic rights and relegating them to second class citizenship. The Constitution extends equal protection of rights and freedoms to men and women, but long lacked a specific prohibition of discrimination on grounds of gender. This was corrected by the parliamentary reforms of November, which amended the Constitution to include discrimination on the grounds of gender as one of the Constitutionally prohibited forms of discrimination. Constitutional provisions on citizenship, however, continue to discriminate against women by allowing men, but not women, to automatically bequeath citizenship to their children. While the Government has ratified international conventions on women's rights, it has not passed domestic enabling legislation. The task force on laws relating to women, established by the Attorney General in 1993, has yet to make its report.

Levels of education and literacy are widely different for men and women. The number of boys and girls in school is roughly equal at the primary level, and then becomes increasingly disproportionate until men outnumber women almost 2 to 1 in higher education. Literate men significantly outnumber literate women.

Women continue to face both legal and actual discrimination in other areas. For example, a woman, is legally required to obtain the consent of her husband or father before obtaining a national identity card or a passport. In practice, a woman must also have her husband's or father's approval to secure a bank loan. Women can legally work at night only in the export processing zones (EPZ's). According to pension law, a widow loses her work pension upon remarriage, whereas a man does not.

The 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. A widow, moreover, cannot be the sole administrator of her husband's estate unless she has her children's consent.

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. 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. 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 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, including FIDA, the National Council of Women of Kenya, the National Commission on the Status of Women, the Education Center for Women in Democracy, and the League of Kenyan 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 dropout rate in part because of the heavy educational expenses. 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.

Female genital mutilation (FGM) which is widely condemned by international health experts as damaging to both physical and psychological health, is practiced by certain ethnic groups and remains widespread, particularly in rural areas. Health officials estimate that as many as 50 percent of females nationwide have suffered FGM. According to Maendeleo Ya Wanawake, the percentage is as high as 80 to 90 percent in some districts of the Eastern, Nyanza, and Rift Valley provinces. FGM is usually performed at an early age. President Moi has issued two presidential decrees banning FGM, and the Government prohibits government-controlled hospitals and clinics from practicing it. So far, however, there is no law banning FGM. In 1996 Parliament defeated a motion outlawing FGM just 1 week after it passed a motion to implement the Beijing Women's Conference platform, one provision of which called for ending FGM.

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 45,000 this year, while the Government estimates their growth at 10 percent per year. These children are often involved in theft, drug trafficking, assault, trespass, and property damage. According to a 1997 Human Rights Watch report, these street children face harassment as well as physical and sexual abuse from the police and within the juvenile justice system simply because they are poor and homeless. They are held in deplorable conditions in crowded police station cells, often without toilets or bedding, with little food, and inadequate supplies. They are often incarcerated with adults and frequently beaten by police.

Child rape and molestation are rapidly growing problems. There are frequent press reports of rape of young girls, with rapists often middle aged or older. Legally, a man does not "rape" a girl under 14 if he has sexual intercourse with her against her will; he commits the lesser offense of "defilement." The penalty for the felony of rape can be life imprisonment, while the penalty for defilement is up to 5 years' imprisonment. Men convicted of rape normally receive 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 have been numerous press reports regarding the rapid increase in child prostitution in Nairobi and Mombasa. A provincial government study in Nyanza province last year found that Kisumu city had 300 male and female child prostitutes as young as 8 years of age 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 are no mandated provisions 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 Kenya's then 22 million people. Luhya, Luo, Kamba, and Kalenjin (an amalgamation of 9 small tribes) follow, each with more than 11 percent of the population.

Opposition politicians and local human rights groups report that the Government continues 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.

There is widespread resentment by African Kenyans toward Asians living in Kenya. The large Asian community consists of second and third generation Asians with full Kenyan citizenship and smaller body of recent immigrants. Many African Kenyans resent people of Asian descent for their affluence, and their reluctance to assimilate African culture and to employ black Kenyans in management positions. They also see Asians as taking jobs and commercial opportunities away. The involvement of some Asians in corrupt activities with government officials further fuels popular resentment.

Politicians, both opposition and ruling party, from time to time sought to appeal to majority prejudices by attacking Asian Kenyans, accusing them of exploiting and usurping the natural inheritance of African Kenyans. In March opposition leaders Kenneth Matiba and Raila Odinga verbally attacked Asians and called for the expulsion of "some Asians." President Moi led the response in rejecting this racist diatribe, but at times even he resorted to racist attacks, as in his criticism in September of one Asian member of the constitutional reform movement, using typical slurs directed at the Asian community.

The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only group required to carry an additional form of identification to prove that they are citizens. They must 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-member Kenya National Union of Teachers, all unions are affiliated with the one approved central organ--the COTU. The COTU leadership generally does not pursue worker's rights vigorously. As a result, 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 composed of the leadership of affiliated unions, it is common for KANU to provide funding and other support for the election of senior

union officials. For the past few years, trade union leaders from affiliated unions have 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 1996 indicated that there would be no major changes in the near future. During the period prior to the scheduled 1997 national election, some trade union leaders began pushing COTU to take part in the election reform dialogue. The COTU leadership took a progovernment position.

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.

The Minister used this power to declare strikes by bank workers and bus drivers illegal, although the required notice had been given. The Government's response to wildcat strikes is usually severe. Several unions, including municipal workers, and other civil servants held brief strikes for back or increased wages. Air traffic controllers and pilots, as well as the powerful independent Kenya National Union of Teachers (KNUT), initiated successful job actions, e.g., strikes, sick-outs, and work slowdowns, without government reprisal. This is due to civil aviation workers' critical place in the tourist economy and the potential to adversely affect the country's international air safety reputation. The Government quickly settled the teacher's wage dispute rather than risk antagonizing the well-organized and influential teachers before the general election. Notwithstanding their success, workers' rights groups continue to raise the general problem of the Government's harshness towards labor with the International Labor Organization's (ILO) Committee on Freedom of Association.

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 ensure 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 continued to criticize health and safety conditions in the EPZ's.

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

The Constitution proscribes slavery, servitude, and forced labor, including forced and bonded labor by children. 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 1997. The ILO Committee of Experts has found that these and other provisions of the law contravene ILO Conventions 29 and 105 concerning forced labor.

#### d. Status of Child Labor Practices and Minimum Age for

##### Employment

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. Kenya is a signatory to ILO Convention 138, which sets the minimum working age at 15, but applies a more stringent standard.

Children often work as domestic servants in private homes, including those of relatives. Although there is no widespread pattern of children being used as forced or bonded labor, which is prohibited by law (see Section 6.c.), there are some cases, mostly in rural areas, of children being loaned as workers to pay off debts. There are many instances of children working in the informal sector, mostly in family businesses. In commercial agriculture, children usually assist parents, who are small shareholders, rather than work as employees in their own right. However, deteriorating economic conditions have given rise to more child labor in the informal sector, which is difficult to monitor and control. In addition, there has been an increasing number of underage girls employed in the sex industry (see Section 5). 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. The annual 2 percent wage increase had a 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 wage 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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