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## U.S. Department of State

### Kenya Country Report on Human Rights Practices for 1998

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#### KENYA

President Daniel Arap Moi was reelected in 1997 in Kenya's second general election since the restoration of multiparty politics in 1991. President Moi's Kenya African National Union (KANU) again won a majority in the 1997 parliamentary elections, and has a slim majority of 113 of 222 seats in the unicameral National Assembly. While observers considered the 1997 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 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, and the paramilitary General Services Unit. The CID and the DSI investigate criminal activity and monitor persons whom the State considers subversive. Members of the security forces continued to commit serious human rights abuses.

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 1997. Drought, followed by floods, kept upward pressure on food prices. Annual per capital gross domestic product is \$270 (16,200 shillings).

The Government's overall human rights record generally was poor; although there was some improvement in a few areas, serious problems remain. Police committed an increased number of extrajudicial killings, and continued to torture and beat detainees, use excessive force, rape, and otherwise abuse persons. Prison conditions remained life threatening. Police arbitrarily arrested and detained citizens, though they did so less frequently for political reasons. The Government arrested and prosecuted a number of police officers for abuses; however, most police who perpetrated abuses were neither investigated nor punished. Lengthy pretrial detention is a problem, and the judiciary is subject to executive branch influence. The authorities infringed on citizens' privacy rights. The Government limited freedom of speech and of the press, and carried on a campaign of harassment against the tabloid press, which is often critical of the Government. Police at times harassed, beat, and arrested journalists. The Government at times restricted freedom of assembly, and police used force to disperse demonstrators and protestors. The Government restricted freedom of association. Police disrupted fewer public meetings than in previous years, and security force harassment of dissidents diminished. The 1997 general election represented a step forward in citizens' ability to change their government peacefully, although their ability to do so has not yet been fully demonstrated at the presidential level. The Government deregistered several nongovernmental organizations (NGO's). The Government's Standing Committee on Human Rights, which got off to a slow start after its 1996 establishment, issued its first public report in December. Discrimination and violence against women and abuse of children remained serious problems. Female genital mutilation is widespread, and child prostitution is a major problem. Muslims complain of government discrimination, and societal discrimination against certain ethnic groups is a problem. Animosity continued against and among various ethnic groups, with a major outbreak of ethnic violence in Rift Valley causing more than 100 deaths. The Government limits some worker rights. Child labor is a problem, and there were instances of forced child labor. Mob violence also resulted in many deaths.

## **RESPECT FOR HUMAN RIGHTS**

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

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

Security forces continued to use lethal force and committed a number of extrajudicial killings. According to government figures, police killed 69 suspected criminals during the year. However, the nongovernmental Kenyan Human Rights Commission (KHRC) reported that police killed 164 persons from January through September (compared to 123 persons during the same period in 1997), including at least 10 by torture. Human rights groups regularly criticize police lack of restraint in employing lethal force, as well as the Government's failure to take appropriate action against policemen accused of extrajudicial killings.

Most police killings occurred during the pursuit of criminal suspects; however, a number involved innocent bystanders. Family members of Joseph Ole Pirei, who was killed by police in Kitengela, insist that he was not a suspected carjacker, as claimed by the police, but was waiting by the roadside for a "matatu" (private bus) to take him to work. William Kiarie Ndonga was shot and killed by the Thika police in July for no apparent reason. In the same month, Nairobi police shot and killed James Ocholla Odhiambo in a case of mistaken identity. Two police officers were arrested and charged in Odhiambo's death.

There are indications that some of the persons who died in police custody were victims of torture (see Section 1.c.). Vincent Nyumba Kiema was beaten by Kitui police constable Charles Kiema in April and later died in the hospital from injuries suffered during the beating. According to the KHRC, Sheikh Mohammed Yahyah died in Bangale following torture in the course of a security operation by the army.

In February Alfred Kang'ethe died after beatings by Uthiru police. In March Moses Muthoka Mukele died in police custody in Kitui after apparently being beaten. The same month, Ali Hussein Ali died in police custody in Garissa from severe trauma caused by heavy blows, according to the medical report. The Government denied police had anything to do with these cases except that of Ali Hussein Ali, for which three policemen were arrested and charged, and Kang'ethe, for which hearings were scheduled to begin in late January 1999.

Hundreds of 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, and several police officers faced prosecution. According to the Government, 15 police officers were charged with brutality, excessive force, and unlawful killing. The authorities charged Bungoma policeman Elly Owino with the murder of Eric Onyango Juma, and a Dagoretti policeman with the shooting murder of Nicholas Cheserek. Police launched an investigation into the police shooting death of Simon Githinji Kigera, also a policeman, in Nairobi, but there had been no reported progress in the investigation at year's end. A police investigation into the shooting death of former Rwandan Minister Seth Sendashonga was ongoing at year's end. In separate cases, Kitui authorities charged Assistant Chief Simeon Mwandingga with inciting the mob killing of Kamwila Kamungu, and another Assistant Chief, Josephine Matalu, with instigating the beating death of Kiema Mwisuve. (Chiefs are appointed by the Government and have limited police powers.) Police opened an investigation into the June shooting death of Pastor Simeon Kiti Mwangome (or Mwangalee) by Kilifi police. Police claimed that he was the leader of a gang of thieves, but his relatives insisted that it was a case of mistaken identity. However, there were no effective police investigations into many other cases of extrajudicial killing. The authorities usually attribute the absence of an investigation into an extrajudicial killing to the failure of citizens to file official complaints. However, the form required for filing complaints is available only at police stations, which often lack the forms or are not forthcoming in providing them. There also is considerable public skepticism of a process that assigns the investigation of police abuse to the police themselves.

Hearings are ongoing in some of the cases from the previous year. Public inquests into the January 1997 deaths of Catholic lay brother Larry Timmons in Njoro and University of Nairobi student Solomon Muruli were scheduled to continue in February 1999. Inquests also were scheduled for early 1999 into the 1997 deaths in police custody of Moses Macharia Gicheru, and Lomurodo Amodoi. No investigations into the 1997 deaths in police custody of Joseph Muangi Muiruri, Irungu Kimani, Noah Njunguna Ndung'u, Joseph Ndung'u Njoroge, James Gitau Kuanju, or Julius Mwangi Njoroge had been undertaken by year's end.

KANU youthwingers perpetrated a number of violent attacks during the year, some involving fatalities. Human rights activists charge that youthwingers operate with tacit or explicit police approval. Police took no action against youthwingers in Kitui in January after they beat to death Kiema Mwisuve based on allegations that he robbed the local assistant chief's home (see Section 1.c.). In 1997 President Moi and other KANU leaders had called upon youthwingers on a number of occasions to help police. No complaint had been filed and no action had been taken at year's end in the 1997 case in which KANU youthwingers beat to death Evan Baraza Doanyo.

There was a major outbreak of ethnic violence in the Laikipia and Njoro districts of the Rift Valley province in January, which resulted in more than 100 deaths and the displacement of thousands of persons (see Section 2.d.). Numerous persons were raped; persons also were hacked with machetes, and homes were burned (see Section 5). In both areas, security forces failed to respond to early warning signs of rising ethnic tension, and were slow to respond after the outbreak of violence, allowing it to continue unchecked for several days. When security forces finally were deployed in large numbers, the

violence quickly subsided, except for sporadic incidents.

As in the ethnic violence in the Rift Valley in 1991-93 and on the coast in August 1997, there were credible charges of involvement by local politicians belonging to both KANU and the opposition in the January ethnic clashes in the Rift Valley. There is no compelling evidence to support charges that the Government itself instigated the violence; however, the Government clearly did little to prevent the violence and its response to the clashes was slow, inefficient, and insufficient to contain the violence once it started. The Akiwumi Ethnic Clash Investigation Commission, a government-appointed body composed of three judges, initiated hearings in August on the cause of ethnic clashes. The commission compiled evidence on coast and Rift Valley ethnic violence that implicated both government and opposition politicians in instigating ethnic clashes.

Deadly attacks and revenge counterattacks, part of a longstanding pattern of cattle rustling, continued between Pokots and Marakwets in Trans Nzoia in the northwest. There were also sporadic incidents of ethnic-targeted violence and banditry in Isiolo, Meru/Nyambene, Garissa, Trans Mara, and on the coast. In October in Wajir district in the northeast, Boran tribesmen, reinforced by Oromo kinsmen from Ethiopia, raided camps of the rival Degadia ethnic group. Approximately 150 persons were killed, many more were wounded and more than 50 persons, mostly teenage girls, were kidnaped.

According to the KHRC, 139 persons were killed in mob violence during the year, compared with 132 such deaths in 1997. Human rights observers attribute mob violence to a lack of public confidence in the police and the judicial process. The great majority of mob violence victims, who died by lynching, beating, or burning, were persons suspected of criminal activities, including robbery, cattle rustling, and membership in terror gangs. However, the social acceptability of mob violence also provided cover for personal vengeance under the guise of "mob justice." Occasionally, social misfits and strangers were the targets of mob violence, including at least 16 persons killed on suspicion of practicing witchcraft. The most notable of these were the beating and burning deaths of 10 rumored "witches" one night in September in a Kisii village. Some local Christian ministers praised the perpetrators for "saving" the villages from Satan. Villagers in Teso also beat Francis Mogaka to death when he stopped to help a young boy whom he had hit when the boy ran across the road in front of his car. The Government has criticized the practice of mob justice and arrested and charged a number of persons in court with participation in incidents of mob violence.

In August a terrorist's car bomb exploded behind the U.S. Embassy in Nairobi, killing more than 200 persons and injuring thousands.

#### b. Disappearance

There were no reports of politically motivated disappearances.

Bandits kidnaped numerous persons during raids in the north and east. In October more than 50 persons, mostly teenage girls, were kidnaped following a raid in the Wajir district (see Section 1.a.). There are reports that some of these girls had returned home by year's end.

#### 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 and physical violence as methods of interrogation and to punish both pretrial detainees and convicted prisoners. Although police authorities issued strong directives against the use of torture by police in 1997, the problem persists. The KHRC

reported 98 cases of torture, and several cases of indiscriminate beating of groups of persons by police in the period from January to September, with 10 of the individual cases resulting in death (see Section 1.a.).

There were numerous allegations of police use of excessive force and torture. Detainees routinely claimed that they had been tortured, making it difficult to separate real from fabricated incidents. Among the more credible allegations of police torture reported by the KHRC were the cases of: Schoolteacher Gabriel Lokong, who was tortured in March by West Pokot police when he tried to prevent them from molesting female students; Patrick Kamende Mwakazi, who was tortured by Karatina police; Elizabeth Wairimu Rindiri, who was tortured by Nyeri police; Alfred Nyakundi Moreri, who was tortured by the now-disbanded Muranga flying squad (a police unit); Juma Makoko, who was tortured by Mombasa police; and Jackson Kigunju and four others, who were tortured by Kerugoya police. According to organizations that work with street children, police also abuse street children (see Section 5). According to press reports, Meru police tortured a 10-year-old boy in December for allegedly stealing a videotape cassette. Police used excessive force in breaking up demonstrations and strikes and beat citizens (see Sections 2.b. and 6.a.). In February police beat demonstrators peacefully protesting the Government's slow response to ethnic violence in the Rift Valley, and in May police beat 10 Members of Parliament (M.P.'s) and several other persons taking part in a peaceful meeting to discuss the lack of security in the region (see Section 2.b.). Police used excessive force in December in rounding up illegal aliens, and there were unconfirmed reports that police raped female illegal aliens (see Section 2.d.).

KANU youthwingers carried out a number of violent assaults, including an attack at a Lanet bus stop in Nakuru in January and an attack against striking teachers in Kisumu in October. The police failed to respond to these attacks.

During the year the Government investigated some allegations of police use of excessive force and torture, and prosecuted several police officers. According to the Government, 15 police officers were charged in court. Mombasa police launched an inquiry into the police shooting of Edward Kahindi Mwatua. The courts sentenced police officer George Araka Ochillo in January to

2-years' probation for shooting Rose Warigia in September 1995. However, apart from the torture case of Gabriel Lokong, there were no official investigations into cases involving police brutality.

Caning is used as punishment in cases such as rape (see Section 5).

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. Police subject prisoners to torture and inhuman treatment. 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. Prisoners are sometimes kept in solitary confinement far longer than the maximum 90 days allowed by law.

According to the Government, 536 prisoners died in jails during the year, compared with 631 in 1997, due chiefly to anemia, heart attack, malaria, typhoid fever, dysentery, tuberculosis, and AIDS. The country's 83 prisons are severely overcrowded, averaging 30 percent above holding capacity with a daily average of 33,610 inmates.

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 (some young teenagers) are frequently kept in cells with adults in overcrowded prisons and remand centers. Prisoners and detainees report that they frequently are denied the right to contact relatives or lawyers.

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. The Penal Code specifically 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 often are 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. In April the High Court ordered the release of murder suspect Josphat Tunga Nyambu, who had been held for 3 years in remand. Murder suspect Timothy Karani reportedly has been kept in custody in Embu for 11 years without being charged.

The law provides that families and attorneys of persons arrested and charged are allowed access to them, although this right often is not honored. Family members and attorneys may visit prisoners only at the discretion of the State. This privilege often is denied. For those who have been charged, it often is possible to be released on bail with a bond or other assurance of the suspect's return.

The reforms passed in late 1997 repealed the detention without trial provisions of the Preservation of Public Security Act, the provision under which particularly troublesome political activists had been imprisoned in past years. Amendments to the Chiefs' Act reduced the powers of local officials. The authority of chiefs to restrict movement of persons was repealed and, while they still have the power to detain persons, the detained must be taken 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 persons 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 1997. The report recommended seven new bills to reform the criminal justice system. One of these, the Community Service Order Act passed by Parliament in December, subjects those convicted and sentenced to less than 3 years to community service rather than custodial sentence, thus potentially reducing the prison population.

Security forces occasionally made irregular arrests, such as the detention of newspaper photographer Raphael Munge in Nakuru in June for photographing police arresting street vendors (see Section 2.a.), and the arrest of Francis Tulel, Secretary of the Catholic Peace and Justice Commission for Eldoret Diocese for cattle rustling (see Section 2.c.). Security forces also arrested striking teachers in October (see Section 6.a.), and student demonstrators. However, police harassment and detention of opposition M.P.'s, NGO officials, clergy, and other government critics greatly decreased during the year, a result of the late 1997 reforms. Overall, police behavior toward journalists also continued to improve, though a number of journalists were arrested on dubious charges of publishing information "likely to cause alarm to the public," and some were beaten (see Section 2.a.). In May a KHRC member and a journalist were arrested and held incommunicado for 4 days before being released on bail. A progovernment group called NGO Watch had accused them of theft. In December police arrested over 500 persons lacking proper documentation during a crackdown on illegal aliens (see Section 2.d.).

The Government does not use formal exile as a means of political control.

#### e. Denial of Fair Public Trial

Although the Constitution provides for an independent judiciary, in practice the judiciary is subject to executive branch influence. The President has extensive powers over appointments, including those of the Chief Justice, the Attorney General, and Appeal and High Court judges. The President also can 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.

President Moi has made statements on matters that were before the courts in years past, but did not do so during the year. However, there were other indications of executive interference. In April and May, for example, the High Court granted virtually automatic injunctions against tabloid publications at the request of senior government officials. Another problem has been the Attorney General's constitutional power to discontinue proceedings in private prosecution cases. Arguing that citizens must first notify his office before initiating private prosecution, Attorney General Amos Wako has used this authority on a number of occasions to terminate cases against government officials. However, on several occasions judges acted to assert judicial independence. In July a High Court judge overturned a government order closing four tabloid publications on the grounds that they were not registered (see Section 2.a.). In September the High Court stayed a government order deregistering five Muslim NGO's pending judicial review. That same month, the High Court overturned a government order canceling the broadcast license of an independent media company (see Section 2.a.). In October the courts instructed the police to desist from blocking the offices of the Kenya National Union of Teachers, which was coordinating a nationwide strike. In December the courts lifted the ban on Kenneth Matiba's book, "Return to Reason." Judges who ruled against the Government in the past sometimes were punished with transfer or nonrenewal of contracts, although during the year no retaliatory action against justices was observed.

The court system consists of a Court of Appeals, a High Court, and two levels of magistrate 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. 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.

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 also can appeal a verdict to the High Court and ultimately to the Court of Appeals.

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 persons 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. Court fees for filing and hearing cases are high for ordinary citizens. The daily rate of at least \$33 (2,000 shillings) for arguing a case before a judge is beyond the reach of most citizens.

In the past, critics of the Government--politicians, journalists, lawyers, students--have been harassed through abuse of the legal process. In a 1997 study of the judiciary, the International Bar Association found "a persistent and deliberate misuse of the legal system for the purpose of harassing opponents and

critics of the Government." During the year, the picture was mixed, but on balance improved, as the number of cases in which the Government apparently interfered decreased from previous years. However, a number of opposition M.P.'s, student leaders, and human rights activists still had one or more court cases pending, often for months or even years.

The Government did not hold any political prisoners during the year. James Apiny Adhiambo, who was convicted of participating in a 1982 failed coup attempt, was released in December 1997. Of the 774 persons listed by the KHRC as political prisoners in 1997, most were released, although some were convicted of criminal charges.

#### 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. Nairobi police searched the offices of several tabloid publications and one NGO, the National Convention Executive Council, without warrants.

Traditionally, security forces have monitored closely the activities of dissidents, following or otherwise harassing them. They employ various means of surveillance, including a network of informants to monitor the activities of opposition politicians and human rights advocates. In years past, opposition leaders, students, and others reported that the Government often targeted them with surveillance, telephone wiretaps, and interference with written correspondence. During the year, there were few such reports. The Nation newspaper complained to the Government that DSI agents followed some of its journalists after President Moi publicly criticized reports in the newspaper (see Section 2.a.).

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

#### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press; however, the Government broadly interprets several existing colonial-era laws to limit free expression. Reforms passed in late 1997 somewhat improved the degree of freedom of speech and the press, and there was a significant growth in the number of periodicals critical of the Government. Nonetheless, the Government systematically harassed elements of the press, and there were sporadic incidents of police harassment and beating of journalists. Police dispersed demonstrators to prevent criticism of 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. 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. Government pressure led journalists to practice some self-censorship, although this problem was less serious than in previous years.

On the whole, the print media remained candid and independent, despite continued government pressure and harassment. There was a large increase in tabloid publications in late 1997 and early in the year, most of which were vehemently critical of the Government. Reporting in these tabloids ran the gamut from revealing insider reports to irresponsible rumor mongering.

The mainstream 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, the East African Standard, is controlled by an investment group with close ties to the Government and the ruling KANU party. It is generally, although not automatically, supportive of the Government. The third daily newspaper, the Kenya Times, reflects KANU party views.

Relations between the press and the Government have 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. Most of the previous taboos against discussion of the President and his family have fallen into disuse, and there is open and often irreverent commentary on both in the tabloid press. Less-than-favorable stories on President Moi appear frequently in the independent press. Police harassment of journalists in the course of their duties continued to decline, but this improvement was not uniform.

A pattern of systematic government harassment of the tabloid press emerged in the spring and summer. In March President Moi threatened tabloid publications, which he termed "gutter press," with unspecified action if they continued to tarnish his and his Government's name. In April and May, police made several raids on the offices of tabloid publications, confiscating documents and detaining some staffers. At the request of senior government officials, the High Court issued a series of injunctions enjoining these publications from printing allegations of corruption by government officials and associates of President Moi. In July the Government effectively banned, by refusing registration, three tabloid publications--the Star, the Post on Sunday, and Finance. It also declared the Kenya Confidential illegal for failing to register, while ignoring several unregistered pro-KANU publications. Nairobi policemen immediately confiscated copies of all four publications from street vendors. However, later that month the High Court stayed the government order pending judicial review. The publications then continued publishing without apparent restraint. In early September, police detained two journalists for several days for publishing the "unregistered" Kenya Despatch.

There were also sporadic incidents of police harassment of journalists, including the arrest in April of the editor of the Dispatch for publishing an article containing "alarming information," the arrest of East African Standard photographer Bill Kinuthia in May for taking pictures of a murder scene, and the beating and arrest in June of newspaper photographer Raphael Munge for photographing Nakuru police arresting street vendors (see Section 1.d.). Also in May, police arrested and held incommunicado a journalist accused of theft by a progovernment group, NGO Watch. In October Nyeri police beat two journalists covering the nationwide teachers' strike. In June the Nation protested that DSI agents were following its reporters after President Moi publicly criticized some of the newspaper's reports. Two other incidents also suggested government harassment. Arsonists who burned the Colourprint press plant, which often prints opposition material, had ties to an individual close to the Government. In March the Kenya Revenue Authority, whose chairman publishes its leading competitor, froze the bank account of the highly respected and pro-opposition Economic Review, for nonpayment of taxes. As a result, the Economic Review ceased publishing.

The Government maintains a near-monopoly over the electronic broadcast media through tight control of broadcasting--particularly radio, the principal news medium for most citizens. 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. The KTN, which provides the only somewhat balanced television news coverage, is restricted to the Nairobi metropolitan area.

The Government continued to delay action on a large number of radio and television license applications through most of the year, highlighting the arbitrariness of the broadcast licensing process. The Ministry

of Information and Broadcasting explains that it was waiting for the recommendations on media liberalization from the Attorney General's Task Force on Press Law. That Task Force made its initial report in December, but still has several outstanding issues to resolve. In 1997 the Government issued four broadcast licenses, three to friends of the ruling KANU and one to the British Broadcasting Corporation. In May after a delay of 7 years, the Government finally issued a broadcast license to the Nation Media Group, the country's largest media organization. However, it restricted the license area to Nairobi, and it delayed issuing broadcast frequencies until late in the year. In September the Ministry approved two radio and television broadcast licenses, one to a Muslim group and one to a Christian group with close ties to KANU. According to the Ministry, 22 of the 100 broadcast license applications made to date have been approved.

At the beginning of the year, the Nation attempted to circumvent the licensing blockade by purchasing the East African Television Network (EATN), which already possessed nationwide radio and television broadcast licenses. The Minister of Information and Broadcasting quickly stepped in and cancelled the EATN's broadcast license. However, in September the High Court ruled that the Minister had no jurisdiction to cancel a broadcast license and ordered the license reinstated to the EATN. The Nation Media Group anticipates inaugurating broadcast services in early 1999, using either the EATN nationwide licenses or its own restricted licenses.

Government control of the broadcast media fosters unbalanced reporting. This monopoly severely limited the opposition's ability to communicate with the electorate in the 1997 general elections, as the KBC is the only source of current information for most persons outside the Nairobi area.

During the 1997 election campaign the Electoral Commission directed that the KBC accord equal treatment to all political parties but this directive was never implemented fully. KBC coverage remained heavily biased in favor of KANU and President Moi. Moreover, the KBC'S limited coverage of the opposition, was generally negative, compared with uniformly positive coverage of KANU.

Representatives of the international media are free to operate.

A total of 79 publications are banned, including such works as "The Quotations of Chairman Mao Zedong" and Salmon Rushdie's "Satanic Verses." The courts lifted the ban on the Catholic periodical Inooro in 1997, and in December lifted the ban on Kenneth Matiba's "Return to Reason." The 1997 reforms eliminated sedition as a ground for censorship of publications, and directed that a board be established to review existing, and future, publication bans. This Board, the Prohibited Publications Review Board, was established during the year.

Despite constitutional provisions for free speech, school administrators and the security forces limit academic freedom. They frequently take harsh action against even peaceful student demonstrations, whether over political or bread-and-butter issues, forcefully dispersing and sometimes arresting students. A number of student activists have been expelled from universities in recent years because of political activities, and most have been refused readmission. Student leaders report that they are sometimes followed by government security forces.

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

The Constitution provides for freedom of assembly; however, the Government at times restricts the right in practice. For many years the Government used the Public Order Act to control public gatherings and to restrict this right. The 1997 reforms revised the act, replacing the requirement that public meetings be licensed with a requirement that organizers instead notify the local police of planned meetings. Under

this new formulation, government disruptions of public meetings declined significantly.

Most police disruptions of public meetings involved potentially violent situations, including labor and other protest demonstrations. However, several incidents involved flagrant interference with freedom of assembly. In February Nairobi police beat and arrested demonstrators peacefully protesting the Government's slow response to ethnic violence in Rift Valley. In May Trans Nzoia police beat 10 M.P.'s and several members of the audience of a peaceful meeting to discuss the lack of security in the region. In October Kitui police forcibly disrupted a public meeting organized by opposition M.P. Charity Ngilu. Police also disrupted other public meetings, including a strike by nurses in Webuye in January; a meeting of striking bank workers and a rally of opposition supporters in Kamukunji Grounds in Nairobi in March; a strike by sugar factory workers in Kisumu in April; a protest by street vendors against demolition of their kiosks in Nairobi in May and again in July; several meetings of tea farmers and coffee farmers in the spring; a strike by teachers in October; and an opposition rally in Nakuru in November.

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 years the Government refused to act on a number of political party registration applications. However, following passage of the 1997 reforms, the Government acted on pending and long overdue party applications, increasing the number of registered political parties from 12 to 26. However, the Government refused to reverse its 1994 denial of registration of the Islamic Party of Kenya.

The Government has long been at odds with NGO's, many of which it accuses of being "subversive" and of working with the opposition to overthrow the Government. 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 1997 the Board 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," but the Council refused. In March President Moi warned NGO's that they risked deregistration if they associated with the constitutional reform lobby group, the National Convention Executive Council (NCEC). From time to time, other government officials threatened that NGO's would be deregistered for "sedition." In September, 1 month after the terrorist bombing of the U.S. Embassy in Nairobi, the NGO Board deregistered five Muslim NGO's without detailing the charges or giving them a chance to defend themselves. Many Muslims severely criticized the closures. The next week, the High Court stayed the Board's decision, then in December, reversed it and reinstated three of the NGO's.

### 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. However, the Government periodically arrested and briefly detained some members of several small and controversial Kikuyu traditional religious sects, charging that they were coercing women to undergo the practice of female genital mutilation and males to undergo circumcision rites.

In April police arrested Francis Tulel, Secretary of the Catholic Peace and Justice Commission for Eldoret Diocese, for cattle rustling. Some observers believe that Tulel was arrested for his activities with the Peace and Justice Commission.

Muslim leaders charge that the Government is hostile toward Muslims. In September the Government deregistered five Muslim NGO's for allegedly supporting terrorism (see Section 2.b.).

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

By law, citizens may travel freely within the country. This right largely was respected during the year, in contrast to 1997, when opposition leaders on several occasions were blocked from visiting, or forced to leave, certain locations.

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 and M.P.'s must get government permission for international travel, which is granted routinely.

Many of the rural residents displaced by the violent ethnic clashes in Rift Valley in 1991-93 still have not returned to their homes and remain displaced in urban areas. In 1997 the Government made some efforts to regularize land ownership for some of the displaced persons in the Molo region. Some of the several thousand persons displaced by ethnic clashes on the coast in August 1997, in Rift Valley in January, and in the

Pokot-Marakwet region throughout the year, likewise have not returned to their homes due to fear of renewed violence.

The Government offers first asylum and provided it to the approximately 172,000 refugees registered by the United Nations High Commissioner for Refugees (UNHCR), who live in official UNHCR camps. An undetermined number of refugees live outside the camps in cities and rural areas. Somalis account for about 80 percent of the total refugee population, followed by large numbers of Sudanese, and a scattered number of other nationalities from across the region. Approximately 1,800 refugees, mostly of Ethiopian or Somali ethnic background, were repatriated during the year.

The law provides for the grant of asylum or refugee status in accordance with 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 the process by which it ruled on applications for refugee status or asylum. Since then, a handful of affluent individuals have effectively purchased Convention status but, for all practical purposes, an official asylum or refugee application process ceased to exist. However, in September the Government agreed to meet with the UNHCR and work out a procedure for officially documenting refugees and asylum seekers. The details of implementing this agreement have yet to be established.

At the direction of the Government, the UNHCR closed two of the three refugee camps near the coastal city of Mombasa in 1997. At the time these two camps were closed, over 7,000 camp residents were moved against their wishes to camps near the Somali and Sudanese borders. Nearly all of the roughly 1,500 refugees who remained in the third Mombasa camp have registered to return to Somalia rather than relocate to another camp. In December, after trying to repatriate or relocate the residents of the remaining coastal camp, the Government ordered a halt to all assistance to this camp and took steps to forcefully dismantle it. There were reports that the Government occasionally used harsh measures to close the camp.

In August, as a result of a review in security procedures following the terrorist bombing of the U.S. Embassy in Nairobi, the authorities instructed all refugees residing outside of a UNCHR camp to report to the nearest immigration office. All refugees who complied with this instruction were ordered to depart the country within 14 days. In September hundreds of refugees and other aliens in urban areas were rounded up and kept in harsh conditions. The police used excessive force in rounding up aliens, and

there were unconfirmed reports that, in some instances, police raped female aliens. As a result of UNHCR interventions those refugees ordered to depart the country were allowed to remain beyond the original 14 days while their cases are reviewed. The status of refugees outside of UNHCR camps and improperly documented aliens is the topic of negotiations between the Government, which wants to move these refugees into camps, and the UNHCR, which wants to ensure that this is done in a humane way.

Conditions in the camps vary and while some provide well for refugees, others lack adequate food, water, and medical care. Incidents of rape of women and young girls in refugee camps continued to occur (see Section 5). Following a slightly improved security climate in 1997 as a result of increased police attention, the situation deteriorated. Acts of violence, including carjackings and banditry, occur regularly in the camps and the Dadaab area near the Somali border, and resulted in several injuries to refugees, and the death of one police officer. Despite the renewed 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.

### **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 1997 general elections, despite numerous logistical and other flaws, generally reflected the will of the electorate. They 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 in Parliament and President Moi a mandate to rule for another 5 years. The overwhelming majority--95 percent--of the 210 parliamentary elections also apparently reflected the popular will, although there were credible reports of vote rigging in 10 to 12 constituencies. (The representatives who hold the remaining 12 seats in the 222-member Parliament are nominated by political parties, in proportion to the number of seats they hold in Parliament.)

At the local level, the President exercises sweeping power over the administrative 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, there was a real, if imperfect, effort in 1997 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 prohibition, 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 controls a slim majority of parliamentary seats, the President also is able to influence significantly the legislative agenda.

There was much less government harassment and intimidation of the political opposition than in 1997, following the late 1997 reforms that repealed the public meeting licensing provision of the Public Order Act. Nevertheless, in March police raided the offices of the NCEC and disrupted opposition rallies in Nairobi in March and in Nakuru in November (see Section 2.b.). In January opposition Democratic Party leader Muai Kibaki and his lawyer, who are challenging legally the results of the 1997 presidential

election, received anonymous death threats.

The 1997 reforms also improved the independence of the presidentially-appointed Electoral Commission, which oversees elections, by nearly doubling its size, with opposition-nominated members. Only one parliamentary election was held during the year, a September by-election in to replace the deceased M.P. in Kieni. International and domestic observers found that election to be both free and fair, and efficiently run, in contrast to the problems in the 1997 general election.

Although there are no legal restrictions, traditional attitudes circumscribe the role of women in politics. Women are seriously underrepresented at decision-making levels in the Government. The new Parliament included eight female M.P.'s (four elected and four nominated), up slightly from seven in the last Parliament (six elected and one nominated). The Women's Political Caucus, formed in 1997, is continuing to lobby over issues of concern to women and to increase the influence of women on government policy. A parliamentary proposal that one-third of parliamentary seats be reserved for women was defeated in 1997. However, the growing role and activism of women in the political system was demonstrated by the new Constitutional Review Commission, in which Parliament acceded to the demands of women for representation by reserving one-third of the 25 commission seats for women.

Members of all ethnic groups participate in the political process. Many tribes--including the Kisii, Meru, Embu, Kamba, Kikuyu, Taita, Kalenjin, Luhya, Turkana, Maasai, Giriama, and Somali--have members in the President's Cabinet. 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). There is one Asian member of Parliament.

In October the Safina party nominated a blind woman to fill its single nominated parliamentary seat.

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

The number of human rights organizations is growing. These include the KHRC, the Kenya Antirape Organization, the Legal Advice Center, the Catholic Justice and Peace Commission, the Protestant National Council of Churches of Kenya, the Center for Governance and Development, and the Release Political Prisoners pressure group. An array of legal organizations, including the International Commission of Jurists-Kenya, the International Federation of Women Lawyers (FIDA)-Kenya, the Law Society of Kenya, and the Public Law Institute, also are concerned with human rights.

NGO's and some opposition parties maintain comprehensive files on human rights abuses. A number of attorneys represent the poor and human rights defendants without compensation, although they can meet only a small percentage of the need, and are concentrated largely in urban areas.

The KHRC produces a "Quarterly Repression Report" that catalogs the human rights situation in the country, as well as a number of special reports on pressing human rights issues. During the year, it published reports on police brutality, prison conditions, and security force behavior in the remote Garissa area. 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 other organizations, closely monitored every step in the 1997 electoral process, a task they are continuing in subsequent by-elections.

Prior to the late 1997 reforms, government relations with human rights groups, domestic and

international, were poor. The Government regularly criticized human rights organizations and other NGO's and occasionally disrupted their meetings and workshops. During the year, government disruptions of human rights organizations were rare, reflecting the improved security force behavior following the reforms. Nevertheless, the Government deregistered five Muslim NGO's in September for alleged terrorist connections (see Section 2.b.).

While the Government often has criticized domestic and international human rights NGO's in the past, it also has made some effort to reach out and engage them. It allowed human rights organizations to witness some autopsies of persons who died in police custody. In 1997 it issued a formal response to Amnesty International's May Memorandum of Concern over the human rights situation. During the year, the Attorney General's Office responded in detail to foreign embassies' human rights inquiries.

The 10-member Government Standing Committee on Human Rights established in 1996 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. Since its establishment, the Committee has maintained a low profile and kept its distance from most contentious human rights problems. It issued its first public report in December. This was a general overview of human rights laws and definitions that made only a cursory reference to torture and other forms of official human rights abuses, and provided only very general recommendations. The Committee's investigation into the August 1997 violence along the coast, which was published in the same report, was more comprehensive.

In October the Parliament passed a resolution to create an Ombudsman's office that would be charged with addressing complaints about inefficiency, corruption, nepotism, and abuse of power by public servants.

## **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. According to the Government, 903 cases of rape were reported to the police during the year. However, the available statistics probably underreport the number of incidents since social mores deter women from going outside their families or ethnic groups to report sexual abuse.

The law carries penalties of up to life imprisonment for rape. However, 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 is no law specifically prohibiting spousal rape. Throughout the year, the media reported a steady stream of cases of violence against women, including widespread spousal abuse. The resulting publicity and public criticism often forced the police to take punitive action against the perpetrators of violence. 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 (see Section 2.d.).

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 late 1997 reforms, which amended the Constitution to include discrimination on the grounds of gender as one of the constitutionally prohibited forms of discrimination. However, constitutional provisions on citizenship, continue to discriminate against women by allowing men, but not women, to bequeath citizenship to their children automatically. 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. Seventy percent of illiterate persons in the country are female.

Women continue to face both legal and actual discrimination in other areas. For example, a woman legally is required to obtain the consent of her husband or father before obtaining a national identity card or a passport. In practice, a woman also must have her husband's or father's approval to secure a bank loan. Women legally can work in industrial activities at night only in the export processing zones (EPZ's), although this restriction generally is not enforced. 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 often are excluded from inheritance settlements, particularly if married, or given smaller shares than male claimants. Moreover, a widow 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 businesses. Nonetheless, the average monthly income of women is about 37 percent lower than that of men, and women hold only about 5 percent of land titles. Not only do women have difficulty moving into nontraditional fields, they also are promoted more slowly than men and bear the brunt of layoffs. 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 the 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 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 schooling for all up to grade 12, there is a very high dropout rate in part because of the heavy educational expenses. There are an estimated 4 million children between 6 and 14

years of age who are out of school. Moreover, legally mandated universal schooling does not occur in practice because of a shortage of schools. The health care system for school children, which once provided periodic medical checkups and free milk, is now 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. The press reported the deaths of several girls from the practice of FGM. 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 Eastern, Nyanza, and Rift Valley provinces. FGM usually is 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