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KENYA

Kenya is a republic dominated by a strong presidency. President Daniel Arap Moi, who has led the Kenya Africa National Union (KANU) and served as President since 1978, was reelected most recently in 1997, in the country's second general election since the restoration of multiparty politics in 1991. Since independence in 1963, no president ever has left office in consequence of an election, and KANU has controlled both the presidency and the national legislature continuously, although other parties were illegal only from 1982 to 1991. KANU again won a majority in the 1997 legislative elections and at year's end, after KANU victories in all by-elections held during the year, KANU members held 118 of 222 seats in the unicameral National Assembly. While there were numerous flaws in the 1997 elections, observers concluded that the vote broadly reflected the popular will. In addition to his role as President, Moi is the commander in chief of the armed forces and he controls the security, university, civil service, judiciary, and provincial, district, and local governance systems. The judiciary is subject to executive branch influence.

In addition to the armed forces, there is a large internal security apparatus that includes the police Criminal Investigation Department (CID), the National Security Intelligence Service (NSIS, formerly the Directorate of Security and Intelligence, DSI), the National Police, the Administration Police, and the paramilitary General Services Unit (GSU), which details members on a rotating basis to staff the 700-man Presidential Escort. The CID investigates criminal activity and the NSIS collects intelligence and monitors persons whom the State considers subversive. Members of the security forces continued to commit serious human rights abuses.

The large agricultural sector provides food for local consumption, substantial exports of tea, coffee, cut flowers, and vegetables, and approximately 70 percent of total employment. Although many sectors continued to be dominated by state-owned monopolies, the nonfarm economy includes large privately owned light manufacturing, commercial, and financial sectors. Tourism was second only to tea exports as the largest single source of foreign exchange. Since 1997 major international financial institutions have suspended nonproject assistance due to widespread government corruption associated with a lack of transparency and accountability. During the year, annual per capita gross domestic product remained virtually unchanged in real terms, at an amount equivalent to about \$278. The spread of HIV/AIDS, which was estimated to have infected about 14 percent of the adult population, as well as drought and famine in some rural areas during the year, exacerbated economic problems.

The Government's overall human rights record was generally poor, and serious problems remained in many areas; while there were some signs of improvement in a few areas, the situation worsened in others. Security forces 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 persons. 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, intimidation, and economic pressure against newspapers that often were critical of the Government. Police repeatedly harassed and arrested journalists. However, the Government partially relaxed its domination of domestic broadcast media.

The Government repeatedly restricted freedom of assembly, and police used force to disperse demonstrators and protestors. The Government restricted freedom of association. Police disrupted public meetings, and security forces harassed and arbitrarily detained political dissidents, including opposition party legislators. The Government at times interfered with the activities of religious groups. Police shot and killed five unarmed worshippers at a mosque, and the Government published a report accusing several religious denominations and other groups of satanism. Citizens' ability to change their government peacefully has not yet been demonstrated fully. The Government continued to limit the independence of its Standing Committee on Human Rights, and the President continued to criticize nongovernmental human rights organizations. Violence and discrimination against women and abuse of children remained serious problems. Female genital mutilation (FGM) remained widespread, child prostitution increased as economic conditions deteriorated, and the spread of AIDS created many orphans. There was some discrimination against the disabled, and discrimination and violence against religious and ethnic minorities remained problems. The Government continued to exacerbate ethnic tensions by discriminating against many ethnic groups; interethnic tensions continued to result in numerous violent conflicts and some deaths. There were reports of an increasing number of ritual murders associated with traditional indigenous religious practices, which contributed to growing public concern about satanism. The Government continued to limit some worker rights. Child labor remained a problem, and there were instances of forced child labor. Violence by mobs and by nongovernmental armed groups from neighboring countries 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 63 suspected criminals and another 151 suspects/detainees died in police custody from January to October. However, the nongovernmental Kenyan Human Rights Commission (KHRC) reported that police killed 187 persons from January to September (compared to 164 persons during the same period in 1998), including at least 24 by torture. The Independent Medico-Legal Unit, which observes and performs postmortems on suspected victims of torture, recorded 39 cases of death from "internal hemorrhage due to external trauma" (i.e., torture) of individuals in police custody during the first 8 months of the year. Police lacked restraint in employing lethal force, and the Government generally failed to take appropriate action against members of the security forces accused of extrajudicial killings. Although Assistant Commissioner of Police Stephen Kimenju apologized to citizens at a human rights meeting in December 1998 for police torture and abuse, which he said occurred at the behest of politicians, the Police Commissioner's office withdrew the apology 2 days later.

In January police opened fire on a crowd of rice farmers in Mwea who were protesting the rice purchasing and selling practices of the National Irrigation Board, a state-owned entity that monopolizes rice distribution; police killed two of the farmers.

In March police shot and killed Ibrahim Kullow Hussein and nearly killed his brother, apparently while arresting them for robbery. The surviving brother, who denied the robbery charges, accused police of taking him and his brother to a remote location to execute them summarily.

In June police in Mombasa shot and killed two suspected criminals, Victor Polo and Vincent Odhiambo, during an arrest.

On August 13, police killed five Muslim worshipers in the Anas Bin Malik Mosque in Chai village, near Mombasa. A dozen policeman went to the mosque during a religious

ceremony to arrest a man accused of assault. One policeman, Peter Ndirangu, entered the mosque to make the arrest. An altercation ensued, and other police officers shot indiscriminately through the windows and killed Imam Mohamed Ali Mwatakucha, Said Ali Mwajefwa, Ali Mohamed Mwadida, Neru Bakari Marika, and Alfano Matano Mwagoga. As the worshippers fled, someone slashed Ndirangu with a farm tool, killing him. Muslim leaders accused police officials of taking two of the victims, who they believe survived the mosque shooting, to a remote location, and of killing them. Post mortem studies indicate that at least two of the worshippers died from gunshot wounds to the head, fired from a distance of less than 6 feet. The Government charged two police officers, Julius Mugambi M'nabere and Stephan Musau Kilonzo, with murder. The case is pending before the court.

In September police ambushed, shot and killed two armed men as they arrived at a bank in downtown Nairobi; the police had been informed in advance that they intended to rob the bank.

Most police killings occurred during the pursuit of criminal suspects; however, a number involved innocent bystanders. Ahluwalia Subir Ahluwalia died in April when police, responding to his family's report of a burglary at their home, opened fire on him, his mother, and sister as they rushed Ahluwalia's father to the hospital for gunshot wounds suffered at the hands of the robbers. The family claims that, although it was late at night and the police could not see the victims, the police began shooting without warning. On September 15, Mwanzia Mutuku, a Nairobi bank worker, was shot and killed when police raided and opened fire on a night club below Mutuku's apartment.

Some of the persons who died in police custody apparently were victims of torture. According to the KHRC, David Muragi, a grammar school student, died at home on February 3 after spending a night in the Rumuriti town prison. Before dying, he told his family that a police officer had beaten him. Police claimed that a mob had beaten Muragi for theft prior to his arrest. Elijah Kimani Mwaura's family alleged that police beat him to death in February while he was in custody in the Webuye police station. Francis Muchai claims to have witnessed two Kiambu police officers torture and beat to death Peter Kariuki on July 17 while he was in police custody. The 25-year-old Kariuki was arrested for theft a few hours earlier. According to press reports, four warders at the Kamiti Maximum Security Prison beat Kennedy Ouko Nyanoti in July, then dropped him off at a hospital, where he lay in a coma for 6 days before dying. On July 9, Jacob Anaseti (also known as Jacob Wanyoni Masese) and Ramadhani Barula (also known as Ramadhan Bakari) died of internal bleeding while in police custody in Bungoma; they were among 78 passenger van touts arrested during a countrywide strike by passenger van drivers (see Section 6.a.). Ephantus Njagi Nguthi died in late December 1998 from a fractured skull and other injuries that he reportedly received while in custody in Matanya, Laikipia district. Police reportedly had beaten his testicles. Two officers were arrested in the case.

In December 1998, Godwin Mukhwana, a member of the Presidential Escort, reportedly shot and killed Jamal Abedi and Henry Musyoka, the driver and tout of a passenger van driver, after their vehicle blocked a Presidential Escort vehicle; Mukhwana was arrested and charged with two counts of murder on December 16, 1998. The case was pending at year's end.

At year's end, several other cases of 1998 extrajudicial killings remained unresolved. Police opened an investigation into the June 1998 shooting death of Pastor Simeon Kiti Mwangoma (or Mwangalee) by Kilifi police, but took no further action; police maintain Mwangoma was the leader of a notorious gang. Police opened no investigation into the 1998 police shooting death of Simon Githinji Kigera, also a policeman, in Nairobi; police maintain they shot in self defense. The State opened no investigation and took no other action in the death of Vincent Nyumba Kiema due to a police beating; in the death after torture by army personnel of Sheik Mohammad Yahyah; and in the death in police custody in Kitui of Muthoka Mukele after he apparently was beaten. Army officer Aden Almi and police officers Faneis Malaba Mbiya and Kennedy Bitange faced charges of murder in connection with the death in police custody in Garissa of Ali Hussein Ali; the

case was pending at year's end. The trial of the suspects in the 1998 murder of Seth Sendashonga was ongoing at year's end. In separate cases, Kitui authorities charged assistant chief Simeon Mwandingga with inciting the 1998 mob killing of Kamwila Kamungu, and another assistant chief, Josephine Matalu, with instigating the 1998 beating death of Kiema Mwisuve (see Section 5). There were no known developments in the case of the 1998 death of Alfred Kang'ethe after beatings by the Uthiru police.

A public inquest into the January 1997 death of Catholic lay brother Larry Timmons in Njoro had not concluded at year's end. The inquest into the death of University of Nairobi student Solomon Muruli resulted in a court ruling that he most likely committed suicide. Inquests also continued into the 1997 deaths in police custody of Moses Macharia Gicheru and Lomurodo Amodoi. There were 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.

There were no effective police investigations into many other cases of extrajudicial killings by members of the security forces. 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.

Hundreds of prisoners died in custody due to life-threatening prison conditions, including inadequate food and medical treatment (see Section 1.c.). The Government recorded 196 deaths in prisons from January to October.

Interethnic violence in rural areas continued to cause many deaths (see Section 5).

Mob violence increased. According to the KHRC, 157 persons were killed in mob violence between January and September, compared with 139 such deaths in all of 1998. The Government recorded 183 deaths due to mob violence between January and September. 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." On November 9, a group of about 100 students at the Sang'alo Institute of Science and Technology beat and killed the Institute's principal, whom the students accused of mismanagement.

Occasionally, mobs killed members of their communities on suspicion that they practiced witchcraft (see Sections 2.c. and 5). There were no known statistics about the number of deaths during the year due to mob violence against persons suspected of practicing witchcraft, which resulted in 16 deaths in 1998. In January in the town of Moyale, near the Ethiopian border, a group of armed men in uniform shot and killed an Islamic cleric, assistant kadi Haji Hassan Muhammad, who reportedly sympathized publicly with the Oromo ethnic insurgency in Ethiopia. Residents of the area have long alleged that members of the armed forces of the Government of Ethiopia often cross into the country to kill or kidnap alleged sympathizers of the Oromo Liberation Front (OLF).

b. Disappearance

George Matata, a student protest leader at state-owned Moi University in Nairobi, reportedly disappeared on October 20; students rioted to protest his reported disappearance and authorities briefly closed the university. Matata reappeared a few days later and claimed that police in Eldoret had abducted, tortured, and released him; however, no evidence in support of that allegation was reported. There were no other 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 and physical violence as methods of interrogation and to punish both pretrial detainees and convicted prisoners. Although police authorities periodically issue directives against the use of torture by police, the problem persists. Human rights organizations and the press highlighted scores of cases of torture, and several cases of indiscriminate beating of groups of persons by police during the year. Common methods of torture practiced by police included hanging persons upside down for long periods, genital mutilation, electric shocks, and deprivation of air by submersion of the head in water. The KHRC counted 24 torture related deaths in the first 9 months of the year (see Section 1.a.).

There were numerous allegations of police use of excessive force and torture. The KHRC recorded 323 cases of police brutality in the first 9 months of the year. 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 and the press were the cases of: Jeremiah Kasuku, who was assaulted and illegally detained in January in Keiyani by GSU officers and District Officer S. Kepketch (see Section 1.d.); Peter Macendu, who was whipped and beaten unconscious by six policemen in February in Kerugoya; Julius Muhoro Mugo, who was tortured for 2 days by CID officers sometime before March; Duncan Ndwega, a CID officer, who was tortured by the Flying Squad (a quick response, antitheft unit of the police force) in April; Geoffrey Mbuthia Nduati, who claims that police unleashed dogs on him while he was in custody in September in Nyeri's Karatina Police Station; and Johnnes Musyoka Kimonyi, who attributes his loss of eyesight to beatings by police in Buru Buru.

In February David Makali, the editor of Expression Today, a Nairobi-based newspaper, reportedly was kidnapped by a group of unidentified men who drove him to Karura Forest outside Nairobi and tortured him there. Makali later identified one of his assailants as a man shown in press photographs engaged in beating the Reverend Timothy Njoya during a protest march on June 10, and asserted credibly that he is a member of the Jeshi la Mzee group of KANU Youth organized and employed by Fred Gumo of the Office of the President (see Section 2.a.). Makali's assailants allegedly demanded information about the whereabouts of the author (then in hiding) of an article published in Expression Today that asserted the complicity in drug trafficking of senior government officials including Gumo.

According to organizations that work with street children, police also beat and abuse street children (see Section 5). The WEMA Street Girls Center sought to press charges against two Mombasa police officers for raping a 13-year-old street girl in May. The girl identified the officers, Mwingi Chula and Peter Ndwiga, who were arrested in May and await trial.

Residents of Balessa and El Hadi in the north credibly accused security forces, both army and police, of beating or torturing residents of those villages on May 22-23, during an operation to flush out OLF insurgents who crossed the border from Ethiopia. A group of five persons, including a Catholic priest and two nurses who visited Balessa and El Hadi on May 23, documented the beatings and torture of six of the most seriously injured persons both through photographs and in detailed written accounts of the victims' oral statements; some of this evidence was published in a Nairobi newspaper, together with letters of protest from village leaders, on May 29. Although a military team dispatched to investigate the incident found no evidence to substantiate the claims, the army's rules of engagement for joint security operations reportedly permitted the use of nonlethal force, including beatings, to obtain from noncombatants information needed to achieve operational objectives.

Police repeatedly used excessive force in breaking up demonstrations and beat citizens

(see Sections 2.b. and 6.a.).

During the vote counting following a January 16 National Assembly by-election in Eastern province, police used wooden clubs and tear gas to disperse a crowd outside the vote counting hall that was protesting the announcement of a narrow victory by the KANU candidate based on the counting of contested ballot boxes (see Section 3); police then entered the vote counting hall and beat opposition members of the National Assembly and the leading opposition candidate in the election.

On January 30-31, police in Nairobi used tear gas, beatings with wooden clubs, stones, and rubber bullets to disperse a demonstration by university students that became violent after being blocked by police; the students were protesting senior government officials' transfer of public land in Karura Forest near Nairobi for free or at prices far below market prices to persons who had allegedly supported KANU financially in the 1997 elections (see Sections 2.b. and 3). Severe police beatings injured dozens of students, including several who were hospitalized.

On February 26, police used tear gas and police dogs to block National Assembly Members of Parliament (M.P.'s) and farmers from holding a rally in Eldoret (see Section 2.b.).

On April 13, in Nyanza province, police beat and then arrested opposition M.P. James Orengo, who was speaking publicly in a town market place against unaccountable transfers of public land by provincial and county government officials (see Sections 1.d., 2.a. and 2.b.); police also used tear gas to disperse Orengo's audience.

Squads of "KANU Youth," including the Jeshi la Mzee squad allegedly organized and paid by Fred Gumo of the Office of the President, and Nairobi police used beatings and tear gas to disrupt a peaceful rally staged by various religious and civil society groups on June 10 to protest the Government's handling of the constitutional review process (see Section 3). Presbyterian Reverend Timothy Njoya was one of several persons who were beaten and seriously injured. After the KANU Youth initiated violence, police joined them in beating protesters, whereupon students and unemployed youths joined the protest, which degenerated into street battles and looting.

On June 20, in Machakos, police resorted to tear gas and force to break up a public meeting held by KANU and opposition M.P.'s to discuss issues of concern to the Kamba ethnic group (see Sections 2.b. and 5). In a separate event the same day, the Meru police chief, in an attempt to stop M.P.'s from holding a public meeting, reportedly punched and kicked opposition M.P. James Orengo (see Section 2.b.).

On October 21, police used force to disperse a demonstration by students of the Kabete Technical Institute protesting an allegedly illegal allocation of public land to a local church; the demonstration became violent and students threw rocks at police after the police prevented the students from leaving the campus and then entered the grounds of the Institute (see Section 2.b.).

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, 12 police officers were charged and sentenced during the first 9 months of the year, and the Government recorded only five reported cases of torture during that same period. In October the High Court awarded Elias Mbabu approximately \$70,000 (4.8 million shillings) for police brutality he suffered in 1994. The court also ordered the arrest of the offending officers.

Caning continued to be 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 and prison warders subject prisoners to torture and inhuman treatment (see Section 1.a.). Rape of both male and female inmates, primarily by fellow inmates, is a serious problem, as is the increasing 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 sometimes are kept in solitary confinement far longer than the maximum 90 days allowed by law.

According to the Government, 196 prisoners died in jails during the first 9 months of the year, compared with 536 in 1998 and 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 in 1998 (latest available figures).

Officially, men, women, and children are kept in separate cells. However, there are reports of men and women being placed in cells together. Women sometimes lack access to sanitary napkins and often have only one change of clothes, leaving them naked during washing of their laundry. Young teenagers frequently are kept in cells with adults in overcrowded prisons and detention centers. Youth detention centers are understaffed, and inmates have minimal social and exercise time. Some young inmates remain for years in the centers, as their cases await resolution. Prisoners and detainees report that they frequently are denied the right to contact relatives or lawyers (see Section 1.e.).

In July press reports highlighted the substandard conditions in the prisons. Although in August Shariff Nassir, who was then Minister for Home Affairs and in charge of the prison system, stated that prisons were heavily congested and that the Government intended to present a bill to Parliament to improve prison conditions, no action was taken by year's end.

The Government does not permit independent monitoring of prison conditions, although some independent NGO's work with the Government in evaluating torture cases and performing autopsies on deceased prisoners. In October officials of Kimiti Maximum Security Prison denied U.N. Special Rapporteur for Torture Nigel Rodley access to that facility, despite a government agreement to grant him full access (see Section 4). The Government apologized and claimed that this happened because Rodley had arrived at the prison at a time different from his scheduled appointment. There were reports of torture at Kamiti Prison; however, Rodley had not released his report by year's end.

d. Arbitrary Arrest, Detention, or Exile

Despite constitutional protections, police continued to arrest and detain citizens arbitrarily. The Constitution provides that persons arrested or detained shall be brought before a court within 24 hours in noncapital offenses and within 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. The KHRC reported that murder suspect Timothy Karani has been in custody in Embu for 12 years without being charged, a claim that the Government has neither confirmed nor denied.

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 Community Service Order Act passed by Parliament in 1998 subjects those convicted and sentenced to less than 3 years to community service rather than custodial sentence,

thus potentially reducing the prison population; however, the Government has yet to implement the act.

Police arrested and briefly detained many students in connection with the late January ecological and political protests against nontransparent transfers of public land in Karura Forest by senior government officials (see Sections 1.c. and 3). Police released the students soon after the protest without charging them.

On February 2, police arrested three opposition M.P.'s who were prominent critics of the Karura Forest land transfers (see Sections 1.c. and 3): James Orengo, Njehu Gatabaki, and David Mwenje. The Government charged them with inciting riots in connection with violence that arose from late January protests against those land transfers.

On February 7, 81 members of the small traditional Mungiki religious order of the largely pro-opposition Kikuyu ethnic group were arrested and held without bail until March 16, on charges of coercing members to take illegal oaths to oppose the Government, holding illegal meetings, and possessing offensive weapons (see Section 2.c.).

On April 13, police in Nyaza province beat and arrested prominent opposition M.P. James Orengo, who introduced a motion of no confidence in President Moi in the National Assembly in 1998 (see Section 1.c.). Orengo and his supporters were arrested while he spoke publicly in a town market against nontransparent transfers of public land by provincial and county officials and were charged with disturbing the peace and with malicious damage to property. Orengo was released on bail the next day, following protests by other opposition M.P.'s. The case was pending at year's end.

In September CID officers arrested opposition M.P. George Kapten for defaming a public official. He had accused the President of being at the heart of a major financial scandal, in an interview published in August in Finance Magazine. Kapten was released on bail, but in November he was charged for subversion in connection with the same interview; he died at his home on December 25 (see Sections 1.e. and 2.a.).

Police arrested a number of journalists on charges of publishing information "likely to cause alarm to the public" (see Section 2.a.).

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, 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. Although judges have life tenure (except for the very few foreign judges who are hired by contract), the President has extensive authority over transfers.

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.

There were some indications of executive interference. Several cases involving opposition M.P.'s have been ongoing for years, with the courts repeatedly postponing the hearings, thereby requiring the M.P.'s to appear periodically in court or risk fines or imprisonment. In early August, the courts fined several publishers of small, pro-opposition weeklies for printing without proper licensing (see Section 2.a.); the courts had not invoked this colonial-era law in many years. Opposition M.P. George Kapten was charged in September with defamation of a public official, and in November with subversion, for

stating that President Moi was the prime suspect in the Goldenberg financial scandal, involving businesspersons who reportedly defrauded the Government of hundreds of millions of dollars with the apparent complicity of senior government officials (see Section 1.d.).

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 reported.

However, judges occasionally demonstrated independence. For example, in June Justice Richard Kuloba acquitted Mereko Ole Kokoyo of murder charges and criticized the Attorney General's office for not presenting any evidence, creating unwarranted delays, and making unjustified requests for adjournment.

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.

President Moi's appointment of chief public prosecutor Bernard Chunga as Chief Justice of the Supreme Court upon Zachaeus Chesoni's death in September was widely criticized in the legal community as tending further to reduce the independence of the judiciary; Chunga was widely perceived as having been zealous in prosecuting critics of the Government, and as having primary loyalties to the President personally. After Moi's 1998 appointment of Chunga as lead counsel of the Commission on Ethnic Clashes, the Commission was less vigorous in calling witnesses to testify about the role of government officials in instigating and allowing ethnic violence (see Section 5).

The judiciary faced many accusations of corruption. In March Chief Justice Zachaeus Chesoni was accused of taking a \$450,000 (30 million shilling) bribe to rule in favor of a plaintiff in a case. Soon thereafter, a businessman accused Justice Richard Kuloba of taking a \$75,000 (five million shilling) bribe. In 1998 the Chief Justice appointed a special judiciary commission chaired by Justice Richard Kwach to report on the problems of the judiciary. The Kwach Commission cited "corruption, incompetence, neglect of duty, theft, drunkenness, lateness, sexual harassment, and racketeering" as common problems in the judiciary. The Commission recommended amending the Constitution to allow for the removal of incompetent judges, introducing a code of ethics, improving the independence of the judiciary, overhauling the Judicial Services Commission (the administrative branch of the judiciary), and shifting prosecutorial responsibilities from the police to the judiciary. Upon receipt of the report, the Chief Justice in late 1998 appointed another commission to investigate modalities of implementing the Kwach Commission's recommendations for improving the judiciary. No action was taken on those recommendations by year's end.

There are no customary or traditional courts in the country. However, the national courts use the customary law of an ethnic group as a guide in civil matters affecting persons of the same ethnic group so long as it does not conflict with statutory law. This is done most often in cases that involve marriage, death, and inheritance issues and in which there is an original contract founded in customary law. For example, if a couple married under national law, then their divorce is adjudicated under national law, but if they married under customary law, then their divorce is adjudicated under customary law. Citizens may choose between national and customary law when they enter into marriage or other contracts; thereafter, however, the courts determine which kind of law governs the enforcement of the contract.

Civilians are tried publicly, although some testimony may be given in closed session. The law provides for a presumption of innocence, and for defendants to 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. Judges

hear all cases. In treason and murder cases, the deputy registrar of the High Court can appoint three assessors to sit with the High Court judge. The assessors are taken from all walks of life and receive a sitting allowance for the case. Although the assessors render a verdict, their judgment is not binding. Lawyers can object to the appointments of specific assessors.

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 or other major cities. As a result, poor persons 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, as 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 \$25 (2,000 shillings) for arguing a case before a judge is beyond the reach of most citizens.

Critics of the Government--politicians, journalists, lawyers, and 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." Authorities continued during the year to arrest opposition M.P.'s and student leaders (see Sections 1.b. and 1.d.), and 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.

In July the High Court dismissed a legal challenge to President Moi's 1997 reelection filed by Mwai Kibaki, chairman of the Democratic Party; Kibaki's brief alleged that Moi had rigged the election through the Electoral Commission (see Section 3). The High Court dismissed Kibaki's electoral petition on the grounds that he had failed to comply with a legal requirement to serve a copy of the petition on the President personally, despite acknowledging the factual accuracy of Kibaki's claim that presidential security consistently had denied him personal access to Moi. In December the Court of Appeal upheld the High Court's decision on the same grounds.

In August the Court of Appeal sentenced Post on Sunday editor Tony Gachoka to 6 months in prison for contempt, stemming from articles he wrote in February alleging that Supreme Court Chief Justice Zaccheus Chesoni and other members of the judiciary took large bribes to rule in favor of businesspersons implicated in the Goldenberg scandal. The court refused to allow Gachoka to present oral evidence. Among the panel of seven judges he faced were three he accused by name in his writings. The contempt prosecution of Gachoka was initiated by Attorney General Amos Wako, whom Gachoka also had identified in his published writings, as having conspired to cover up the Goldenberg scandal. Because the highest court had original jurisdiction over the case, the editor could not appeal its decision (see Section 2.a.). However, the President pardoned Gachoka, who was released on November 3, after serving 74 days of his sentence.

In November the High Court suspended the court martial of an army major accused of stealing stationery on the grounds that the army had denied him his choice of attorney--opposition M.P. James Orengo. In response the army contended that the constitutional right to representation by counsel of one's choice did not extend to members of the armed forces.

Gachoka was the only political prisoner reported during the year.

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

At times authorities infringed on citizens' privacy rights. 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.

During the year, Nairobi police searched the offices of several tabloid publications and one NGO, the National Convention Executive Council, without warrants. The police continued repeatedly to conduct massive warrantless searches ("sweeps") for illegal immigrants and firearms in residential neighborhoods of major cities (see Section 2.d). The KHRC recorded 3,280 arrests during sweeps between January and August. Residents complained that police who entered homes on the pretense of searching for weapons often asked for radio, television, and video receipts and permits and demanded bribes to refrain from confiscating those items in the absence of such documents.

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. Some opposition leaders, students, journalists and others continued to report that the Government subjected them to surveillance, telephone wiretaps, or interference with written correspondence.

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 restrict free expression. Reforms passed in late 1997 have improved the degree of freedom of speech and of the press, which while still limited is substantially greater than either 5 or 10 years ago, and the number of periodicals critical of the Government continues to grow. During the year, the Government also partially relaxed its domination of domestic broadcast media. Nonetheless, the Government sporadically harassed elements of the print media; there were also several incidents of harassment and beating of journalists. Police repeatedly dispersed demonstrators to prevent criticism of the Government (see Sections 1.c. and 2.b.). Some independent periodicals reported that the business community came under pressure from the Government to refrain from advertising in these magazines, keeping some on 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.

On the whole, the print media remained candid and independent. There is a large variety of weekly tabloid publications highly critical of the Government. Reporting in these tabloids ran the gamut from revealing insider reports to unsubstantiated rumor mongering.

The mainstream print media include four daily newspapers that report on national politics. The largest newspaper, the Nation, is independent and often 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 People, formerly a weekly, is owned by an opposition politician and is highly critical of the Government. The fourth daily, the Kenya Times, which has a small circulation and is struggling to keep afloat financially, reflects KANU party views.

A pattern of sporadic government harassment of the print media continued. On December 20, President Moi, speaking to delegates to a KANU conference in Nairobi, criticized The Nation and The People newspapers, stating that they practiced "terrorism and distortion." Moi advised the delegates not to buy those newspapers. Moi was widely quoted as saying that the media are the worst enemies of democracy. Moi's remarks were broadcast nationally on state-owned radio. Energy Minister Lotodo told a gathering of political

supporters that no journalist "should set foot" in West Pokot (an area of intense cattle rustling), and that any journalist who went there risks harsh punishment. An assistant minister in the Office of the President, Fred Gumo, a member of the Luhya ethnic group, threatened in February to have journalists who publish articles critical of his ethnic group beaten. A few days earlier, a group of thugs abducted, beat, and released Expression Today editor David Makali (also a Luhya), saying that they were angry about and sought to find the author of an article that Makali published in February, which asserted that government officials were complicit in narcotics trafficking. Makali subsequently identified one of his aggressors, and asserted that he has been employed by Gumo (see Section 1.c.), but later withdrew a request that Gumo and the alleged assailants be prosecuted. In May the Kenya Union of Journalists and the Media Institute issued a statement that alleged that during the preceding 12 months there had been a "steady rise in cases of open violence against journalists by state agents and lately, by gangs of the payroll of powerful individuals."

The Government also has attempted to intimidate the pro-opposition press by selective prosecution of journalists under a colonial-era section of the Penal Code that criminalizes the publication of information likely to cause fear or alarm. Johan Mwangi Wandeto, a journalist for the People, was arrested on March 8 for publishing a story that alleged that bandits held up the presidential escort. People journalist Mohammed Sheikh was arrested in June for publishing an "alarming" article. The editor of The Dispatch, Maneno Mwikwabe, is facing similar charges for articles he wrote in 1998.

Harassment of the tabloid press continued. In early July, police raided the offices of the Nairobi printing firm Junior Graphics and confiscated films and four printing plates for The Concord Weekly, the Weekly Express, the Metropolitan, the Dispatch and the Citizen. The Concord publisher Paul Kimani subsequently faced charges of publishing without proper licensing. In August police raided the offices of the Metropolitan, arresting employees Oliver Litodo and Mula Mulamula for similar reasons. Police made a sweep of Nairobi print media vendors in September, confiscating sexually oriented magazines.

A weekly and a biweekly publication--the Post on Sunday and Finance--which were refused registration in 1998, continued publishing in early 1999 without apparent restraint. However, The Post on Sunday was forced to suspend publication in August, following the conviction of its editor Tony Gachoka and the associated fine of about \$14,000 (Ksh 1 million) imposed on the publication (see Section 1.e.). On August 20, Gachoka received a 6-month jail sentence from the Court of Appeal for contempt of court (libel against the judges), stemming from articles he wrote accusing government officials of corruption (see Sections 1.d. and 1.e.).

CID officers arrested opposition M.P. George Kapten, and he was subsequently charged with defaming a government official and with subversion, in connection with an interview, published in August in Finance Magazine, in which he indicated that President Moi was implicated in the Goldenberg finance scandal (see Section 1.d.).

The Government maintained tight control over the electronic broadcast media--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 three other television networks--Kenya Television Network (KTN), which airs news programs with somewhat more balanced political coverage, Stellavision, and Citizen TV, which began broadcasting during the year. The KTN is restricted to the Nairobi metropolitan area. Citizen Radio covers much of central Kenya, whereas Citizen TV can be viewed only in parts of Nairobi. Their news programs during the year were quite objective. Family TV and Radio, a Christian broadcasting network, began broadcasting television and radio in the Nairobi metropolitan area in midyear. Nation Radio began broadcasting in October, and Nation Television followed in December, providing independent media coverage.

The Government continued to delay action on a large number of radio and television license applications through most of the year, reflecting the arbitrariness of the broadcast licensing process. The Ministry of Information, Transport, and Communication, formerly the Ministry of Information and Broadcasting, explained 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 1998, but still has several outstanding issues to resolve, including the manner of selection of the 13-member Media Commission, which would act as an independent body issuing broadcast licenses. In 1997 the Government issued four broadcast licenses, three to friends of the ruling KANU and one to the British Broadcasting Corporation (BBC). In May 1998, after a delay of 7 years, the Government finally issued a radio and television 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 the same year. Nation Media Group received in 1999 authorization for radio broadcasts in Nairobi, Mombasa, Kisumu, and Nakuru, and began radio transmission to Nairobi in October and television broadcasts to the capital in December. Nation also sued the Government for permission to broadcast radio and television nationwide, but the case was still before the courts at year's end. The Ministry for Information, Transport and Communication has licensed a total of 12 television and 20 radio stations to date, although only 5 private television stations (KTN, Citizen, Family, Nation, and Stellavision) and 7 private radio stations (Citizen, Family, Sayare Rehema, Capital, Nation Radio, BBC Nairobi, and BBC Mombasa) are operational. In 1998 the Ministry approved radio and television broadcast licenses for a Muslim group and for a Christian group. In March the Ministry of Information, Transport, and Communication licensed four religious organizations to operate a radio station and three television stations: one Islamic station, and three Christian stations in the coastal, central and western regions. At year's end they had been assigned broadcasting frequencies, but had not yet begun to broadcast.

The KBC remained the only domestic source of current information for most persons outside the Nairobi area. This continued severely to limit the ability of opposition leaders and other critics of the government to communicate with the electorate.

During the 1997 election campaign the Electoral Commission directed that the KBC accord equal treatment to all political parties; however, this directive was not 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. Opposition politicians accused the Government of using similar tactics in the year's by-elections.

Representatives of the international media remained free to operate.

The Government does not restrict access to the Internet. There are about 20 domestic Internet service providers, which generally are privately owned. Internet access is limited only by economic and infrastructural factors, and is fairly widespread in urban areas. A total of 79 publications remained 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 1998 lifted the ban on opposition leader 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. The Prohibited Publications Review Board was established in 1998.

Despite constitutional provisions for free speech, school administrators and the security forces continued to limit academic freedom. They frequently took harsh action against even peaceful student demonstrations, whether over political or bread-and-butter issues, forcefully dispersing and sometimes arresting students (see Sections 1.c., and 2.b.). Although private universities were not prohibited and some existed, the State owned, subsidized, and administered most universities and other institutions of higher education, and most post-secondary students attended institutions owned, administered, and

subsidized by the State, due in part to their lower fees. President Moi, as chancellor of all state universities, appoints the vice chancellors, who managed the institutions under the supervision of the Ministry of Education. 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 government security forces sometimes follow them (see Sections 1.c. and 1.f.).

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly; however, the Government restricts the right in practice. The Public Order Act, which the Government used for many years to control public gatherings and to restrict this right, was amended in 1997; the requirement that public meetings be licensed was replaced by the less restrictive requirement that organizers notify the local police in advance of planned public meetings. In 1998 government disruptions of public meetings declined significantly; however, this improvement was not sustained during the year. Authorities repeatedly disrupted public demonstrations about which organizers duly informed the police in advance; government officials claimed that the organizers lacked authorization to hold public gatherings, whereas there no longer appeared to be any basis in domestic law for requiring specific authorization. In September President Moi stated that government officials should deny "permits" (for public demonstrations) to politicians who use public rallies to abuse other leaders; however, officials now have legal authority to cancel planned public gatherings only if there are simultaneous meetings previously scheduled for the same venue, or if there are specific security threats.

Some public assemblies that police dispersed, such as many assemblies of passenger van drivers and touts during their work stoppage in July, were already violent before police disrupted them (see Section 6.a.). However, other public assemblies that police disrupted, including some student and political protest demonstrations, either were nonviolent or became violent only after police forcibly and egregiously restricted their attempted exercise of freedom of assembly (see Section 1.c.); however, demonstrating students repeatedly initiated violence.

In mid-January, during the vote counting following a National Assembly by-election in Eastern province, police forcibly dispersed a nonviolent although verbally abusive crowd outside the vote counting hall that was protesting perceived election-rigging (see Sections 1.c. and 3). In late January, police in Nairobi forcibly dispersed a demonstration by university students protesting the nontransparent transfer of public land in Karura forest by senior government officials; the demonstration became violent after police blocked its march (see Sections 1.c. and 3). In February police forcibly blocked opposition M.P.'s and farmers from holding a rally in Eldoret (see Section 1.c.). On April 13, in Nyanza province, police forcibly dispersed an assembly in a town marketplace of persons who were listening to a speech by opposition M.P. James Orengo (see Sections 1.c., 1.d., and 2.a.). In June in Nairobi police and groups of hired "KANU Youth" violently disrupted a march by religious and NGO leaders protesting the Government's handling of the constitutional review process; only after the police and KANU Youth initiated violence did this peaceful protest grow and become violent (see Sections 1.c., 2.c., and 3.). Also in June, police in Machakos forcibly broke up a public meeting organized by a group of KANU and opposition M.P.'s to discuss issues of concern to the Kamba ethnic group; police said that the participants had no permission to gather (see Section 1.c.). Also in June, the Meru police chief, in an unsuccessful attempt to stop M.P.'s from holding a public meeting, reportedly punched and kicked opposition M.P. James Orengo (see Section 1.c.). On July 11, police used tear gas to break up several impromptu gatherings that four opposition M.P.'s held in Embu and Meru, saying they had no permission to hold a public meeting. Also in July, police in Nakuru disrupted gatherings of supporters of the political group Saba Saba Asili, and police in Keiyo disrupted a public meeting organized by opposition M.P. Tabitha Seii. In October police in Kabete forcibly dispersed a demonstration by students of the Kabete Technical Institute protesting an allegedly illegal allocation of public land; the demonstration became violent after the police forcibly blocked a planned student march off the campus (see Section 1.c.).

The Government continued to use the Societies Act to restrict freedom of association. The act requires that every association be registered or exempted from registration by the Registrar of Societies. For years after opposition parties again were legalized in 1992, the Government refused to act on a number of political party registration applications. However, since the enactment of reform legislation in 1997, the Government has acted on some long-pending applications, increasing the number of registered political parties from 12 to 23. However, the Government continued to refuse to reverse its 1994 denial of registration of the Islamic Party of Kenya (IPK), which was involved in a number of violent confrontations with police in 1992 (see Sections 2.c. and 5). The United Democratic Movement and Saba Saba Asili political parties still are awaiting registration, the latter since 1997.

The Government continued to criticize publicly and intimidate NGO's, many of which it accuses of being "subversive" and of working with the opposition to overthrow the Government. The Government NGO Coordination Board under the NGO Act registers NGO's. 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 to deregister all "political NGO's," but the Council refused. In March President Moi again publicly stated that NGO's were trying to destabilize the country by channeling foreign funds to antigovernment student and labor organizations and using foreign funds to organize seditious mass protests. In early April, the Office of the President instructed all district governments to monitor NGO's within their districts with a view to ensuring that NGO's either advance government-approved objectives or cease to operate; however, NGO's did not subsequently report an increase in government monitoring (see Sections 4 and 6.a.).

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respects this right in practice; however, while groups generally were allowed to worship freely, the Government at times interfered with other activities by religious groups.

The Government requires religious organizations to register with the Registrar of Societies, which reports to the Office of the Attorney General. The Government allows traditional indigenous religious organizations to register, although many choose not to do so. Once registered, religious organizations enjoy tax-free status and clergy are not subject to duty on purchased goods. Religious organizations generally receive equal treatment from the Government; however, some small splinter groups have found it difficult to register due to their inability to define their status as more than an offshoot of a larger religious organization. The Government has not granted registration to the Tent of the Living God, a small Kikuyu religious group banned during the single party-era.

The Government at times disrupted public meetings that religious groups organized or participated in for political reasons. On June 10, police and hired groups of KANU Youth violently broke up a demonstration arranged by Protestant, Catholic, and Muslim organizations to protest the Government's intention to have Parliament revise the Constitution. Police and KANU Youth beat some clergy participating in the demonstration, including the Reverend Timothy Njoya (see Sections 1.c., 2.b., and 3).

In March the Government for the first time issued broadcasting licenses to religious organizations; three Christian stations and one Islamic station were licensed, but did not begin broadcasting during the year (see Section 2.a.).

Muslim leaders continued to charge that the Government is hostile toward Muslims. Muslims complain that non-Muslims receive better treatment when applying for proof of citizenship. According to Muslim leaders, government authorities more rigorously scrutinize the identification cards of persons with Muslim surnames and require them to present additional documentation of their citizenship (i.e., birth certificates of parents and,

sometimes, grandparents). The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only group whose members are required to carry an additional form of identification to prove that they are citizens. Ethnic Somalis must produce upon demand their Kenyan identification card and a second identification card verifying screening. Both cards also are required in order to apply for a passport. Although this heightened scrutiny originated as an attempt to deter illegal immigration, a senior official of the Supreme Council of Kenya Muslims alleged that it increasingly affects all Muslims.

Despite 1997 legal reforms and the subsequent registration of a large number of political parties, the Government refused to reverse its 1994 denial of registration of the Islamic Party of Kenya (IPK) on the grounds that the IPK had been involved in a number of violent confrontations with police in 1992 (see Section 2.c). On March 6, Muslim groups demonstrated in Machakos against alleged religious persecution by city authorities. The Muslims claimed that the municipal authorities had confiscated equipment used by the Ukunda Muslim Propagation Group. The town clerk claimed that the group had conducted open-air meetings without seeking authority from the city council and had disparaged Christianity verbally, although permission to assemble publicly no longer is required by domestic law, and the Constitution provides for freedom of speech (see Sections 2.a. and 2.b.). In August police killed five Muslim worshipers in the Anas Bin Malik Mosque in Chai village, near Mombasa (see Section 1.a.). In December some Muslim leaders objected to the Government's announcement that it would demolish a mosque in the town of Embu in the central highlands; however, the Islamic community was divided over this issue, because the mosque was built under controversial circumstances (see Section 5).

The Government continued to arrest and prosecute members of a religious group based in the largely pro-opposition Kikuyu ethnic group (see Section 5). On February 7, 81 members of the small traditional Mungiki order were arrested and refused bail (see Section 1.d.). The Government accused them of requiring adherents to take illegal oaths, holding illegal meetings, and possessing offensive weapons. They were released in mid-February. The Government also continued to deny registration to another small Kikuyu religious group, the Tent of the Living God, whose leader the Government arrested in the late 1980's. The Tent's membership has diminished greatly since opposition political parties again were legalized in 1992.

Purporting to practice witchcraft reportedly is a criminal offense under colonial-era laws; however, persons generally are prosecuted for this offense only in conjunction with some other offense, such as murder. Witchcraft traditionally has been a common explanation for diseases of which the causes were unknown. Although many traditional indigenous religions include or accommodate belief in the efficacy of witchcraft, they generally approve of harmful witchcraft only for defensive or retaliatory purposes and purport to offer protection against it. The practice of witchcraft is widely understood to encompass attempts to harm others not only by magic, but also by covert means of established efficacy such as poisons.

In August the Government presented to Parliament and thereby effectively published the 1994 report of Presidential Commission of Inquiry into Devil Worship, which President Moi appointed in 1994 in response to public concern, articulated chiefly by Christian clergy, about a perceived resurgence of witchcraft, ritual murders, and other ostensibly "satanic" practices associated with aspects of traditional indigenous religions (see Section 5). The widely-publicized document included numerous reports of ritual murder, human sacrifice, and cannibalism, and of feats of magic allegedly done by using powers acquired through such acts. It also reported that "satanists" had infiltrated nonindigenous religious groups including Jehovah's Witnesses, the Church of Jesus Christ of the Latter-Day Saints (Mormons), and the Church of Christ Scientist (Christian Scientists) as well as other organizations including the Masonic Order (Freemasons) and the Theosophical Society, making them "doorways" to satanism. Most members of the commission were senior members of mainline Christian churches; a deputy director of the CID also served on the commission.

It was learned during the year that the State dropped cattle rustling charges against Francis

Tulel, the secretary of the Catholic Peace and Justice Commission for Eldoret Diocese, shortly after arresting him in April 1998.

In January in Moyale, a town near the Ethiopian border, a group of armed men in uniforms shot and killed an Islamic cleric, assistant kadi Haji Hassan Muhammad, who reportedly sympathized publicly with the OLF (see Section 1.a.).

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

By law citizens may travel freely within the country and there were no reported violations of this right. However, police routinely stop vehicles and check vehicles' safety and drivers' documents on roads throughout the country. Many vehicles often are in disrepair, and many drivers often lack required documentation. Police often demand bribes at such checkpoints.

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). However, in practice, adult women often are able to circumvent this restriction by claiming to be unmarried. 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. Some of the several thousand persons displaced by ethnic clashes in Rift Valley in 1998, and in the Pokot-Marakwet region throughout the year, have not returned to their homes due to fear of renewed violence (see Section 5).

The Government offers first asylum and provided it to the approximately 180,000 refugees registered by the United Nations High Commissioner for Refugees (UNHCR), who lived in official UNHCR camps. An undetermined number of refugees live outside the camps in cities and rural areas. Somalis accounted 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 2,000 refugees, mostly of Ethiopian or Somali ethnic background, were repatriated during the year. Police periodically performed nighttime sweeps in urban areas in part to round up illegal immigrants and refugees who remain outside the designated camps illegally (see Section 1.f.); police arrested about 2,000 persons during a single August sweep in Mombasa and more than 600 during a September 2 sweep in Nairobi. However, many persons arrested in sweeps bribe their way out of detention. Those with refugee status are sent to refugee camps. Very few are prosecuted, and fewer still are repatriated.

The law provides for the grant of asylum or refugee status in accordance with the provisions of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol; however, since 1991 the Government has suspended the process by which it once ruled on applications for refugee status or asylum. Since then, a handful of affluent individuals effectively have purchased refugee status but, for all practical purposes, an official asylum or refugee application process has ceased to exist. The UNHCR provides qualified applicants with refugee status mandate letters, which government officials recognize, pending enactment of legislation that the Government has drafted to reestablish a mechanism for granting refugee status or asylum.

Since 1997 the UNHCR, at the direction of the Government, has closed five refugee camps near the coastal city of Mombasa and relocated over 7,000 camp residents against their wishes to camps near the Somali and Sudanese borders. In August the UNHCR transported 480 Somali refugees from Mombasa to a camp in Kakuma.

On July 5 and again on August 22, the Government closed the border with Somalia; it subsequently intensified its nighttime sweeps in urban areas in an effort to stem inflows of

weapons, illegal goods, and persons. The border remained officially closed at year's end. However, many applicants for refugee status continued to enter the country overland from Somalia.

Incidents of rape of women and young girls in refugee camps continued to occur (see Section 5). Acts of violence, including carjackings and banditry, occur sporadically in and around the camps and the Dadaab camps near the Somali border, and resulted in several injuries to refugees. There was an incident of ethnic violence among Sudanese refugees of different clans in the Kakuma camp in the northwest (see Section 5).

President Moi repeatedly has made public statements blaming refugees for increases in violent crime and arms smuggling and repeatedly has issued decrees ordering refugees to leave the country. Pursuant to these decrees, authorities often have confiscated UNHCR letters that affirm their status from refugees and issued deportation orders. Nevertheless, there were no reports of the forced expulsion from the country of persons with 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; however, their ability to do so has not yet been demonstrated fully. The National Assembly has never had an opposition majority. 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, less fraud, and less overt use of government resources to assist KANU candidates, than the 1992 polls; due to greater fragmentation, the opposition was widely perceived to pose less of a challenge to Moi's reelection than it had in 1992. Opposition candidates won 60 percent of the vote, but these votes were split among four main and several fringe parties, thereby enabling Moi to win reelection for another 5-year term and giving KANU a narrow majority in the unicameral National Assembly. KANU victories in 1998 and 1999 by-elections (four caused by the deaths of sitting opposition M.P.'s and one by a defection to KANU) increased KANU's majority in the National Assembly to 118 of 222 seats. The High Court required one by-election by overturning a 1997 opposition victory; the court continued not to take action on any opposition challenges to KANU victories in 1997.

During the year, courts dismissed on technical grounds a legal challenge to Moi's 1997 reelection filed by Mwai Kibaki, chairman of the opposition Democratic Party, who contended that Moi's reelection was rigged; the courts refused to hear Kibaki's challenge on the grounds that he had failed to fulfill a legal requirement to serve a petition on President Moi personally, while acknowledging the factual veracity of Kibaki's claim that presidential security consistently denied him personal access to Moi (see Section 1.e.).

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 elections many local officials actively assist the ruling KANU. There were allegations of partisan electoral abuses by local officials in several of the by-elections in late 1998 and 1999.

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. The President significantly influences the legislative agenda. However, in November the National Assembly amended the Constitution to give the National Assembly the power to hire its own staff and to vote its own budget, despite President Moi's long-expressed opposition to this amendment.

The Government continued to use both physical beatings and arbitrary arrest and

prosecution to harass and intimidate opposition M.P.'s and to restrict their freedom of speech and assembly (see Sections 1.c., 1.d., 1.e., and 2.b). The Government's domination of domestic broadcast media, especially outside major urban centers, continued to restrict severely the ability of opposition politicians to communicate with citizens, especially with inhabitants of rural areas (see Section 2.a.).

Several credible reports indicate that in recent years, including 1997, KANU electoral campaigns received substantial financing derived from the nontransparent transfer of state assets organized by the Office of the President with the knowledge of President Moi. There were credible detailed reports that senior government officials transferred public land in Karura Forest for free or at far-below-market prices to persons who financially or otherwise supported KANU in the 1997 elections, including employees of the Office of the President, such as advisor Joshua Kulei, and members of Moi's informal circle of advisors drawn predominantly from his Kalenjin ethnic group. The recipients reportedly resold that land at much higher prices to the National Social Security Fund and to private developers. Companies linked to Rashid Sajjad, one of KANU's principal financiers, reportedly received particularly large amounts of land in Karura Forest. These nontransparent transfers of public land in Karura Forest were the subject of several protest demonstrations during the year, including a student demonstration in January, in connection with which police arrested three opposition M.P.'s (see Sections 1.c. and 1.d.). Such transfers of public lands were not limited to Karurua Forest. In February the mayor of Mombassa, Najib Balala, lost central government support and resigned his office after various problems reportedly including his unsuccessful efforts to block nontransparent transfers of public land in Mombassa; the land reportedly was transferred to Rasid Sajjad and to a clergyman of the African Inland Church, of which President Moi is a member. KANU reportedly also had received nontransparent financing in recent years in connection with large, unrecorded, and therefore duty-free imports of sugar by Sajjad. Opposition parties lacked comparable sources of election campaign financing.'

Reforms enacted in 1997 ameliorated the lack of independence of the presidentially appointed Electoral Commission, which oversees elections, by nearly doubling its size to include members nominated by the opposition. Five parliamentary by-elections were held during the year, with KANU winning all the seats. Vote buying occurred and reportedly was widespread, police prevented some opposition politicians from holding political rallies during some by-election campaigns, and police forcibly dispersed a crowd protesting perceived election rigging outside a hall where votes were being counted (see Sections 1.c., 2.a., and 2.b.). During an April by-election, KANU Youth members reportedly stoned and injured opposition M.P. Charity Ngilu, who was detaining a KANU Youth member she had caught distributing money at a polling place. KANU candidates benefitted materially from targeted preelection government spending on public works and free government food handouts in by-election districts, from more ample campaign financing, and from preferential coverage on state-owned radio, which remained, in most rural areas, the only domestic radio and the principal medium of public communication (see Section 2.a.). Although the voting process generally went fairly smoothly and was run efficiently, after the September by-elections the Electoral Commission called on authorities to investigate allegations of vote buying and fraud.

Since 1996 a broad coalition of NGO's and religious organizations has mobilized public opinion in support of a reform of the Constitution to reduce the power of the presidency. In 1997 the National Assembly enacted the Constitution of Kenya Review Act, which was amended in 1998 to create a Constitutional Review Commission (CRC) to recommend changes in the Constitution. In late January, the Government announced that it would convene the CRC in February; however, the constitutional reform process stalled in mid-February, when political parties were unable to agree how seats on the CRC should be divided among the parties. In 1998, when the legislation creating the CRC was enacted, KANU and opposition party leaders had agreed that the KANU would have five seats and opposition parties would have eight; however, in February the KANU insisted on having a majority of the seats, to reflect its majority in the Parliament. On February 21, the Catholic Archbishop of Nairobi publicly accused KANU of deliberately derailing the constitutional review process; President Moi denied that KANU was to blame, warned

against "dancing to the tune of foreigners," attacked NGO's for subversive and antisocial activities, and noted that the National Assembly had full authority to amend the Constitution. In May Moi proposed that the constitutional reform process be transferred to the KANU-dominated National Assembly. On June 10, in Nairobi, religious groups, NGO's, opposition parties, and students demonstrated against Moi's proposal; police and squads of KANU Youth including the Jeshi la Mzee squad allegedly organized by assistant minister Fred Gumo of the Office of the President brutally dispersed the demonstration and widespread rioting ensued (see Sections 1.c., 2.b., and 2.c.). Although demands by religious leaders and NGO's to restart the stalled constitutional reform process mounted during the second half of the year, Moi continued to insist that only the National Assembly was competent to review the Constitution, and the constitutional reform process remained stalled at year's end. However, in December the National Assembly created a Parliamentary Select Committee to review the existing Act and help form a Commission; a church-led group formed the next day, creating a parallel process. In August county council elections in Garissa County reportedly were marred by fighting between members of the Aulyan and Abduwak clans of the Somali ethnic group, during which persons were killed (see Section 5).

Elected local councils exist, but the executive branch of the central Government has arrogated most of the revenues and functions that they had at independence. Although rural and municipal councils are authorized by law to provide a wide range of health, education, and infrastructure services, in practice their functions have been reduced to some oversight of nursery schools, secondary and tertiary roads, markets, and natural resources such as forests. Most councils lack sufficient financial autonomy and revenues to perform adequately even these limited services.

Although there are no legal restrictions, traditional attitudes circumscribe the role of women in politics. Women are underrepresented seriously at decision making levels in the Government. The new National Assembly included eight female M.P.'s (four elected and four nominated), up from seven in the last session. The Women's Political Caucus, formed in 1997, continued to lobby over issues of concern to women and to increase the influence of women on government policy. A constitutional amendment that would have reserved one-third of parliamentary seats for women was defeated in 1997. However, in 1998 the National Assembly reserved for women one-third of the 25 seats on the Constitutional Review Commission.

Although the President's Cabinet included persons from many ethnic groups, approximately one-third of the ministers were either Kalenjin or Luhya. At year's end there were only two ministers from the country's largest ethnic group, the Kikuyu, and no minister from the third-largest ethnic group, the Luo; both the Kikuyus and the Luos tend to support opposition parties. The President continued to rely on an inner circle of advisors, drawn largely from his Kalenjin ethnic group. However, in April Moi appointed to the long-vacant position of vice president a person affiliated with the largely pro-opposition Kikuyu ethnic group (see Section 5). There is one nominated Asian M.P.

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

The number of human rights organizations continued to grow. These include NGO's such as 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, People Against Torture, the Independent Medico-Legal Unit (IMLU), 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, advocate human rights.

Several NGO's maintain comprehensive files on human rights abuses. A number of attorneys represent the poor and human rights defendants without compensation, although they can handle only a small percentage of those who need assistance, and are

concentrated chiefly in Nairobi and other large cities.

The President instructed government officials to monitor NGO's carefully, and government officials including the President continued to intimidate, and threaten to disrupt human rights organizations and other NGO's (see Section 2.b.). In March President Moi publicly alleged that FIDA-Kenya supported prostitution and other things that he considered social evils, and said that this was proof that NGO's were interested in subverting and destroying African moral values. According to a KBC news report, he added that he soon would reveal a list of names of subversive NGO's and their antisocial activities; however, the President did not release such a list by year's end.

The Government allowed human rights organizations to witness some autopsies of persons who died in police custody. The Attorney General's Office generally responded in detail to foreign embassies' human rights inquiries.

The KHRC produces a "Quarterly Human Rights Report" (formerly the "Quarterly Repression Report") that catalogs the human rights situation in the country, as well as special reports on pressing human rights issues. During the year, it published a report on women refugees in Kenya. The Institute for Education in Democracy and other NGO's monitor elections in cooperation with the Electoral Commission and diplomatic missions.

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. However, it is subordinate to the Office of the President, its chairman is a longstanding KANU loyalist, it has received sufficient funds to fill only 8 of its 27 authorized staff positions, and it has been relatively inactive. Since its inception, the Committee has maintained a low profile and kept its distance from most contentious human rights problems. In October the chairman of the Committee asked the National Assembly to enact legislation giving the Committee greater autonomy and independence; no such legislation was enacted by year's end. In December the Committee launched a human rights journal, Haki Zetu.

In October 1998, 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. As of year's end, the Attorney General had not drafted a bill to turn the resolution into law.

The Government generally facilitated a 10-day fact-finding visit in September by the U.N. Special Rapporteur on Torture; however, officials at the Kamiti Maximum Security Prison denied him access (see Section 1.c.).

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, government authorities did not enforce effectively many of these provisions. There is credible evidence that the Government sponsored large-scale ethnic violence during the early 1990's; there are some indications that some government officials have at least tolerated and in some instances instigated ethnic violence on a smaller scale during the late 1990's.

Women

Violence against women is a serious and widespread problem. According to the Government, 1,329 cases of rape were reported to the police during the first 9 months of the year, compared to 903 in all of 1998. The available statistics probably underreport the

number of incidents, as 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, although actual sentences are usually no more than 10 years. The rate of prosecution remains low because of cultural inhibitions against publicly discussing sex, fear of retribution, disinclination of police to intervene in domestic disputes, and unavailability of doctors who otherwise might provide the necessary evidence for conviction. Moreover, wife beating is prevalent and largely condoned by much of 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 Nation, a leading Nairobi daily, for several months reserved a full page in each issue for coverage of domestic violence. The resulting publicity and public criticism often forced the police to take punitive action against the perpetrators.

There were continued incidents of rape of refugee Somali women at the Dadaab refugee camps, where women were assaulted outside camp perimeters in the course of gathering firewood, and occasionally within the camps themselves (see Section 2.d.). A KHRC report noted a yearly average of over 100 reported cases of rape among refugee women. The UNHCR initiated a program to distribute firewood to refugees. The program reduced the incidence of rape outside the camps, but such crimes remain a problem.

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 only in 1997 was the Constitution amended to include a specific prohibition of discrimination on grounds of gender. However, constitutional provisions allow only males automatically to transmit citizenship to their children. The Government has not passed domestic enabling legislation to implement international conventions on women's rights. The Task Force on Laws Relating to Women, established by the Attorney General in 1993, has yet to make its report. Parliament passed in May a motion on gender equality, although the resolution has no power of law.

Levels of education and literacy for men and women differ widely. Although the number of boys and girls in school is roughly equal at the primary level, men substantially outnumber women in higher education. 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 married woman legally is required to obtain the consent of her husband before obtaining a national identity card or a passport.

The Law of Succession, which governs inheritance rights, provides for equal consideration of male and female children; however, 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.

Most customary law disadvantages women, particularly in property rights and inheritance. For example, under the customary law of most ethnic groups, a woman cannot inherit land, and must live on the land as a guest of male relatives by blood or marriage.

Women make up about 75 percent of the agricultural work force, and have become active in urban small businesses. Nonetheless, the average monthly income of women is about two-thirds that of men, and women hold only about 5 percent of land titles. Women have difficulty moving into nontraditional fields, are promoted more slowly than men, and bear the brunt of layoffs. Societal discrimination is most apparent in rural areas. 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 Swahili) was established as a nonpolitical NGO during the colonial era, but now is aligned closely with the ruling party. 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 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. Although the law mandates that schooling be available for all up to grade 12, there is a very high dropout rate in part because of large educational expenses. There are an estimated 4 million children between 6 and 14 years of age who are out of school. The legally mandated universal schooling also 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. Human Rights Watch released in September a report on corporal punishment in Kenya, which cited widespread excessive caning and abuse of pupils by teachers. According to September press reports, teachers at the Mobamba Secondary School in Kisii so severely beat a student that the boy died of internal injuries.

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 severe injuries to 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 it; however, no law bans FGM.

Economic displacement and the spread of AIDS continued to fuel the problem of homeless street children. The number of Nairobi's street children is over 50,000, and the Government estimates that their numbers grow at 10 percent per year. These children often are involved in theft, drug trafficking, assault, trespassing, and property damage. According to a 1997 Human Rights Watch report, street children face harassment as well as physical and sexual abuse from the police and within the juvenile justice system. They are held in extremely harsh conditions in crowded police station cells, often without toilets or bedding, with little food, and inadequate supplies. They often are incarcerated with adults and frequently beaten by police. In May the director of a Mombasa street girls center sought to sue two police officers accused of raping a 13-year-old street girl (see Section 1.c.).

The problem of child rape and molestation is growing. There are frequent press reports of rape of young girls by middle-aged or older rapists. There were repeated reports of molestation or rape of children by schoolteachers, mostly in rural areas. Legally, a man does not "rape" a girl under age 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 is a major problem in Nairobi and Mombasa, often connected with the

tourist trade. Child prostitution has grown considerably due both to economic contraction and to the spread of AIDS, which has created many orphans. Residents in Kisumu have formed the Organization for the Protection Against Child Prostitution to combat the growing problem.

There were reports that children were killed for body parts by persons practicing healing rituals associated with traditional religions.

People With Disabilities

Government policies do not discriminate officially against the disabled with regard to employment, education, or state services. However, disabled persons frequently are denied licenses to drive. There are no mandated provisions of accessibility for the disabled to public buildings or transportation.

Religious Minorities

About 38 percent of the population are at least nominally Protestant Christians, and about 28 percent are Roman Catholic. Between 10 and 20 percent of the population, concentrated in the coastal, eastern and northern regions, practice Islam.

Muslims increasingly perceive themselves to be treated like second-class citizens in a country that is predominantly Christian. Some Muslims believe that not only the Government but also the business community deliberately have impeded development in predominantly Muslim areas, notably the coastal region. They also believe that the national business community, dominated by largely Christian ethnic groups from inland "up-country" areas including the Kikuyu, deliberately allocates to non-Muslims most of the jobs it creates in predominantly Muslim areas including the coastal area. Capricious assertion of authority by largely Christian security forces in the bandit-infested northeast, which is largely Islamic, has long contributed to Muslim mistrust. In recent years, the absence of effective government in southern Somalia and the OLF insurgency in southern Ethiopia have strained Christian-Muslim relations further by causing the Government to increase security force presence and operations in northeast, where many security force members may find it hard to distinguish Kenyan Muslims from ethnically and culturally similar members of Somali militias or the OLF (see Sections 1.a and 1.c.).

There continued to be instances of sporadic violence between Christians and Muslims. In April a large fight broke out between Christians and Muslims in Eldoret. The two sides exchanged insults and then fought during simultaneous open-air prayers held in the town square. Although some persons reportedly were stabbed with knives, no fatalities were reported. In December following the Government's announcement that it intended to demolish a mosque in a town in a predominantly Christian region, some Muslim leaders in the coastal region threatened publicly to destroy all Christian churches in predominantly Islamic areas; however, the Islamic community was divided on this issue (see Section 2.c.).

During the year there were reports of ritual murders associated with aspects of traditional indigenous religions. The victims, generally teenaged children, reportedly were killed and parts of their bodies removed for use in traditional rituals by persons seeking renewed youth or health. The Report of the 1994 Presidential Commission of Inquiry into Devil Worship, presented to the Parliament in August, contained similar reports from recent years (see Section 2.c.).

Mob violence against persons suspected of practicing witchcraft resulted in the deaths of at least 16 persons in 1998. In one instance a mob in a Kisii village beat and burned to death 10 rumored "witches." Some local Christian ministers praised the perpetrators for "saving" the villages from Satan. No statistics on the number of mob killings of suspected witches during the year were known. However, unsubstantiated accusations of the practice of witchcraft or satanism appeared increasingly common.

National/Racial/Ethnic Minorities

The country's population of almost 29 million was divided into more than 40 ethnic groups, among which there were frequent and credible allegations of discrimination, as well as sporadic interethnic violence. In general each ethnic group has a distinct primary language and is concentrated in a distinct region; however, the languages of some groups are very similar to the languages of related ethnic groups. In private business and in the public sector, members of virtually all ethnic groups commonly discriminated in favor of other members of the same group when able to do so. Neighborhoods in large cities tended to be segregated ethnically, although interethnic marriage has become fairly common in urban areas. Political cleavages tended to correlate with ethnic cleavages.

According to the 1989 government census, the Kikuyu are the largest ethnic community, constituting 21 percent of the population. Luhya, Luo, Kamba, and Kalenjin follow, each with more than 11 percent of the population.

Ethnic-regional differences continue to pose obstacles to political and economic liberalization. Members of President Moi's Kalenjin ethnic group (a coalition of nine small ethnic groups) and other traditionally pastoral Nilotic ethnic groups are represented disproportionately and hold key positions in the Government, the ruling KANU party, the GSU and the Presidential Escort. Many members of these groups appear to believe that economic and political liberalization would be likely to harm their groups, and to favor other groups. The Kikuyu and the closely related Kamba, Meru, and Embu groups make up more than a third of the country's population; members of these groups also dominate much of private commerce and industry and have tended to support opposition parties since they again were legalized in 1992. The Kikuyu, the largest, best-educated, and most prosperous ethnic group, dominated the country under its first president, Jomo Kenyatta, a Kikuyu.

It is estimated credibly that during the 1990's more than 400,000 persons were forced to relocate or were displaced within the country by ethnic violence, fear of ethnic violence, or dispossession. Most of these expulsions occurred between 1991 and 1994; during those years, disproportionately many of the victims were members of the relatively prosperous Kikuyu and related ethnic groups who had lived outside the home regions of those groups. Many of the victims were not only displaced but also dispossessed of land or businesses, and remain without restitution or compensation; several thousands were killed. There is substantial evidence that senior members of the Moi Government organized and funded much of this ethnic violence and large-scale dispossession. Some observers viewed this violent interethnic redistribution of wealth as a means of building or funding a political coalition to prevent the Kikuyus and related groups from regaining control of the State after the Government's need for external financing forced it to accede in 1991 to donors' demands to relegalize opposition parties and to hold multiparty elections in 1992. Ethnic violence entailing somewhat smaller numbers of expulsions that victimized various ethnic groups including Luos and Luyhas occurred in the coastal region in late 1997 and in the Rift Valley region in early 1998; local authorities generally did little to stop this violence and appear to have instigated much of the 1997 violence in the coastal region.

In August a presidential Commission on Ethnic Clashes, a government-appointed panel of three judges formed in 1998, submitted to President Moi its report on the cause of ethnic clashes that occurred in the Rift Valley in 1992 and 1997, the Coast province in 1997, and the areas of Molo and Laikipia in 1998. Many of the hearings were public, and witnesses often directly accused local politicians of abetting the combatants, although they rarely provided other than hearsay evidence. However, key churches and NGO's claim that a number of witnesses were prevented from testifying, especially after, half way through the investigation, the Government changed the Commission's aggressive prosecutor John Nyagah Gacivih to the more progovernment Deputy Attorney General Bernard Chunga (see Section 1.e.). At year's end, the Government had not released the report or announced that it was taking any formal action on its findings.

Attacks and revenge counterattacks, part of a longstanding pattern of cattle rustling, continued between Pokots and Marakwets/Keiyos in Trans Nzoia in the northwest, Boranas and Somalis in North Eastern province, Ormas and Somalis in Eastern Province, and Kuria and Luos in the west, resulting in scores of deaths (see Section 1.a.). At least 40 persons were killed in a March 4 cattle raid by Pokots on Turkana in the Turkwell Gorge area. At least 15 persons were killed in an October 24 cattle raid by Pokots on the Marakwet village of Tot; raiders killed 10 women and children waiting for polio vaccinations at a health clinic. Also in October in the Rift Valley members of the Njemps and Turkana ethnic groups fought each other and burned each others' houses after some inebriated Turkana men reportedly killed an Njemps herdsman.

Members of the coastal Bajuni, Mijikenda, and Digo communities accused the Government of denying them their rights to land, and of favoring members of inland "up-country" ethnic groups, who migrated to the coast largely during the period when Kenyatta was president.

The Government has singled out the overwhelmingly-Muslim ethnic Somalis as the only group whose members are 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 also were required in order to apply for a passport. The continued presence of Somali refugees has exacerbated the problems faced by citizens of Somali ethnicity (see Sections 2.c. and 2.d.). In February fighting between members of different clans of Sudanese in Kakuma refugee camp wounded 20 persons (see Section 2.d). In August, during county council elections in Garissa county, there was fighting between the Aulyan and Abduwak clans of the Somali ethnic group, between which there were longstanding tensions over grazing and water rights (see Section 3). A resurgence of fighting between the same clans in December reportedly caused hundred of families to flee the area.

There is widespread resentment among citizens of African ethnicity toward Asians living in the country. The Asian community constitutes between 0.5 and 1 percent of the total population and consists of second and third generation Asians with full citizenship and a smaller body of recent immigrants. Many African Kenyans resent persons of Asian descent for their affluence, and for their reluctance to assimilate African culture and to employ blacks, particularly 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 appeal to majority prejudices by attacking Asian citizens, accusing them of exploiting and usurping the natural inheritance of African citizens. In June opposition Democratic Party secretary general Joseph Munyao, in a speech that purportedly represented official party policy, accused Asians of "fleecing" the country and warned that their KANU connection would not "last forever" and they would be "called to account when their time comes." Although President Moi on occasion formally has rejected racist diatribes, at times he has resorted to racial attacks and slurs.

During the year, police sweeps for illegal immigrants targeted and caught many persons from the Indian subcontinent (see Sections 1.f. and 2.d.).

Section 6 Worker Rights

a. The Right of Association

The law provides that all workers, except for central government civil servants, including medical personnel and university academic staff, are free to join unions of their choice. In practice, workers employed in export processing zone (EPZ) firms, and those working in many restaurants and small firms, face dismissal if they join unions. Since 1980, when the Kenya Civil Servants Union was deregistered for political reasons, civil servants also have been denied union membership. However, the new head of the civil service announced in

August that the Government may reregister the union. The law provides that as few as seven workers may establish a union, so long as the objectives of the union do not contravene the law, and that another union is not representing the employees in question already.

Unions must apply to and be granted registration by the Government. The Government also 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.

There are currently 36 unions representing approximately 600,000 workers, about one-third of the country's formal-sector work force. All but four of these unions are affiliated with the one approved national federation--the Central Organization of Trade Unions (COTU). The major exception is the 260,000-member Kenya National Union of Teachers, which represents more than one-third of all unionized workers. The COTU leadership generally does not pursue workers' rights vigorously. As a result, most union activity takes place at the shop steward level and not at the industrial level where most labor-related decisions are made, thereby placing the average worker at a disadvantage in disputes with management. Many COTU unions have evolved into de facto ethnic groupings.

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. Although the board is composed of the leadership of affiliated unions, it is common for political parties, especially KANU, to provide funding and other support for the election of senior union officials. For the past few years, leaders from affiliated unions have sought to bring about democratic reforms in the election of union leaders, independence from the Government, and establishment of links with any political party that supports worker rights. The reelection of the COTU leadership in 1996 indicated that there would be no major changes in the near future. Prior to the 1997 national elections, some trade union leaders began pushing the COTU to take part in the election reform dialog. 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. By law members of the military services, police, prison guards, and members of the National Youth Service may not strike. 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 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 mediation, factfinding, or arbitration, any subsequent strike is illegal. Moreover, the act gives the Minister of Labor broad discretionary power to determine the legality of any strike.

The Minister has used this power to declare strikes by bank workers and teachers illegal, although the required notice had been given. In late 1997, the Kenya National Union of Teachers (KNUT) called a nationwide strike, which the Government quickly settled with pay increases of over 200 percent spread over 5 years, rather than risk antagonizing the influential teachers before the election. The Government's failure to implement the second phase of the promised pay hikes in 1998 resulted in a late 1998 strike by the KNUT. The Government declared the strike illegal. Security forces dispersed meetings of striking teachers, arrested many teachers and KNUT officials, and closed KNUT offices. The strike ended after 15 days when the Government refused to renegotiate. Towards the end of the year, the Government and the KNUT were again in negotiation regarding implementation of the agreed-upon salaries. Relations between the KNUT and the Government continue to fester, and anticipated downsizing of the civil service is expected to add further fuel to simmering labor disaffection.

The Government's response to wildcat strikes in the past has been severe. During the year, there were considerably fewer strikes. In June police used a heavy hand to end a work stoppage by private mini-bus operators. Police did not intervene in a September strike by Nairobi city hall employees. 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, the 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, the 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 generally are 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 in industrial activities at night. In practice, workers in EPZ firms face dismissal if they join unions (see Section 6.a.). 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 persons to perform community services in an emergency. The ILO Committee of Experts has found that these and other provisions of the law contravene ILO Conventions 29 and 105 concerning forced labor. There are some cases, mostly in rural areas, of children being loaned as workers to pay off debts.

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 efforts to eliminate child labor, working closely with the COTU and the ILO's International Program for the Elimination of Child Labor. The problem received considerable media attention during the year.

Children often work as domestic servants in private homes. Forced or bonded labor by children is prohibited by law; however, there were some instances in which it occurred (see Section 6.c.). There are many instances of children working in the informal sector, mostly in family businesses. Children usually assist parents on family plots rather than seek employment on their own. However, deteriorating economic conditions have given

rise to more child labor in the informal sector, which is difficult to monitor and control, and is a significant problem. Significant percentages of workers on coffee, sugar, and rice plantations are children. In addition, there has been an increasing number of underage children employed in the sex industry (see Section 5). In view of the high levels of adult unemployment and underemployment, the employment of children in the formal industrial wage sector in violation of the Employment Act is less common but not unknown.

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 \$41 (2,886 shillings) per month in the largest urban areas and \$22 (1,540 shillings) in rural areas. These rates are exclusive of a mandated 15 percent housing allowance as well as traditional benefits.

The minimum wage is insufficient to provide a decent standard of living for a worker and family. The annual 2 percent wage increase has 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 21 days 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 agricultural and other workers. 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 now may 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 has increased significantly since 1992. A new section stipulates that factories that employ at least 20 persons have a health and safety committee with representation from workers. However, according to the Government, less than half of the very largest factories have instituted health and safety committees. The vast majority of factories have yet to comply with the new provision. 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 and the resulting risk of loss of their job.

Trafficking in persons.

Although there are no laws that specifically prohibit trafficking in persons, there are potentially applicable laws against kidnapping and abduction. There were no reports that persons were trafficked in, to, or from the country during the year. In past years, there has been anecdotal evidence that citizens were trafficked to Saudi Arabia under the guise of employment opportunities, and that South Asians were trafficked into the country to work in sweatshops.

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