

Kenya (68)

KENYA ASSESSMENT

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40

Country Information and Policy Unit

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1.1 This assessment has been produced by the Country Information & Policy Unit, Immigration & Nationality Directorate, Home Office, from information obtained from a variety of sources.

1.2 The assessment has been prepared for background purposes for those involved in the asylum determination process. The information it contains is not exhaustive, nor is it intended to catalogue all human rights violations. It concentrates on the issues most commonly raised in asylum claims made in the United Kingdom.

1.3 The assessment is sourced throughout. It is intended to be used by caseworkers as a signpost to the source material, which has been made available to them. The vast majority of the source material is readily available in the public domain.

1.4 It is intended to revise the assessment on a 6-monthly basis while the country remains within the top 35 asylum producing countries in the United Kingdom.

1.5 The assessment will be placed on the Internet, <http://www.ind.homeoffice.gov.uk/>. An electronic copy of the assessment has been made available to the following organisations:

Bilag
A-D
ej
vedlagt

Amnesty International UK

Immigration Advisory Service

Immigration Appellate Authority

Immigration Law Practitioners' Association

Joint Council for the Welfare of Immigrants

JUSTICE

Medical Foundation for the care of Victims of Torture

Refugee Council

Refugee Legal Centre

UN High Commissioner for Refugees

II. GEOGRAPHY

2.1 The Republic of Kenya straddles the equator on the East Coast of Africa and has a total area of 580,367 sq km (224,081 sq miles). The capital of Kenya is Nairobi. The other major city being Mombasa. Kenya is bordered by the Indian Ocean to the east, Somalia to the northeast, Ethiopia and Sudan to the north, Uganda to the west and Tanzania to the south. The climate varies with altitude from hot and humid in the coastal region, to much cooler inland where the highlands have their base at about, 1,500m above sea level. Rainfall is greatest at the coast and in the west of the country, near Lake Victoria and in the highlands. Most of the north of the country remains very dry. [1]

2.2 Kenya is made up of over forty different ethnic groups ranging in size from a few hundred to more than a million members. The 1999 census put the population at 28.7 million. At mid-2001 the population was officially estimated at 30,765,916. On a linguistic and cultural basis, the people have been divided into four broad groups; Bantu, Nilotic, Nilo-Hamitic (Paranilotic) and Cushitic. Persian and Arab influence in the coastal area is reflected in the Islamic culture. About 15% of the population live in urban areas, mostly in Nairobi and Mombasa. The towns also contain the majority of the non-African minorities which, according to figures from the 1989 census, were made up of approximately 89,185 Asians, 34,560 Europeans, and 41,595 Arabs. Both Kiswahili and English are used on a daily basis and Kikuyu and Luo are widely understood. The Luo and Luhya were the traditional inhabitants of the Lake Victoria basin. The Luhya consists of sixteen groups, and like the Kalenjin, which consists of a number of distinct Nilotic ethnic groups that share the same linguistic and cultural traditions, the term Luhya is a creation of the colonial period. Most Kalenjin are semi-nomadic pastoralists and traditionally did not practice agriculture. The Kikuyu, of the Bantu-language group, are Kenya's largest ethnic group. Most of the population hold traditional African beliefs, although there are significant numbers of African Christians.

[1][21][32d][70]

The Economy

2.3 Agriculture continues to dominate the Kenyan economy. About 70% of the working population made their living on the land in 2000, compared with 80% in 1980. Kenya's leading crop is tea, followed by coffee and horticultural produce. Estimates for unemployment rate range from the official 25 percent to more than 50 percent. [1]

(For further information on geography, refer to Europa Yearbook Publication 2001 - 42nd Edition - Source [77])

III. HISTORY

The December 1997 Presidential and Parliamentary Elections.

3.1 Presidential and Legislative elections, took place concurrently on 29 December 1997 but were undermined by poor organisation and logistical difficulties, although with less violence, intimidation and fraud than the 1992 elections. Opposition candidates won almost 60% of the vote, but these votes were split among four main and several smaller parties. Daniel Arap Moi, and the Kenya African National Union (KANU), was therefore returned for a fifth and final term. KANU also won a majority of 4 National Assembly seats over the combined opposition. KANU victories in the 1998 and 1999 by-elections (four of which were caused by the deaths of sitting opposition MP's and one by defection to KANU) have since increased the ruling party's majority in the National Assembly to 118 of 222 seats. [1][2]

3.2

PRESIDENTIAL RESULTS		
Daniel Arap Moi	2,445,801	40.64%
Mwai Kibaki	1,895,527	31.49%
Raila Odinga	665,725	11.06%
Michael Wamalwa	505,542	8.40%
Charity Ngilu	469,807	7.81%
Martin J. Shikuku	36,302	0.60%
NATIONAL ASSEMBLY COMPOSITION		
KANU		107
Democratic Party (DP)		39
National Development Party (NDP)		.21

FORD-Kenya	17
Social Democratic Party (SDP)	15
Safina	5
FORD-People	3
FORD-Asili	1
Kenya Social Congress	1
Shirikisho	1

The above table refers to the composition of the National Assembly immediately following the 1997 elections and includes the 12 nominated members appointed by the president. [1][24b]

3.3 In January 1998, Democratic Party (DP) leader Mwai Kibaki lodged a petition in the High Court challenging the validity of the December 1997 elections and the election of President Moi. In July 1999, the High Court dismissed Mr Kibaki's 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 Mr Kibaki's claim that presidential security had consistently denied him access to President Moi. In December 1999 the Court of Appeal upheld the High Court's decision on the same grounds. The 1997 elections were overseen by a group of local organisations and international observers. The observers concluded that whilst the elections were imperfect, the vote broadly reflected the popular will. Three NGOs, the Institute for Education in Democracy, the Catholic Justice and Peace Commission and the National Council of Churches of Kenya (NCCK) issued a 260 page report on the 1997 elections. They blamed maladministration for the low turnout in certain parts of the country. Supporters of the ruling party (KANU) fought opposition party agents on 1 January 1998 after results of the 1997 presidential elections were declared. KANU supporters of Westlands former MP Fred Gumo invaded the Westlands constituency counting hall attacking and pushing Democratic Party agents from the building. The fighting started moments after Westlands election officials announced DP presidential candidate Mwai Kibaki the winner with President Daniel arap Moi coming second. Westlands is Kenya's third largest constituency. [2][17][30i][32b]

3.4 Under the current Constitution President Moi may not stand for a further term of office. With elections due to take place by December 2002, the issue of succession has fuelled power struggles within the leading opposition parties. However, nowhere is the battle for power greater than within KANU itself. The position of party chairman is held by Moi himself and, in violation of party rules no elections for this post have been held for 6 years. As well as the party chairmanship, KANU members are also jostling for the Nation's vice presidency. Politics in Kenya have traditionally been tribally based. There are 221 parties set to contest the election and there is, at the moment, no single candidate for opposition who could gain support to mount an effective single challenge to the president. However, in January 2002 the co-ordinating committee of the National Alliance announced plans to unite six opposition parties ahead of the General Election. They are Democratic Party of Kenya (DP), Ford-Kenya, National Party of Kenya (NPK), Ford-People, Social Democratic Party (SDP) and Ford-Asili. The group's spokesman Dr Noah Wekesa said that the Opposition was working on details of forming the next government, adding that the idea of fielding one presidential candidate was part of their plan. With failing health, should President Moi be unable to continue in office, it is the vice President who assumes the presidency for 90 days pending fresh elections. The existing incumbent George Saitoti is a Kikuyu in the Maasai outcountry of Kajiado, in the Rift Valley but he has been deserted by his own people who voted for the opposition leader Mwai Kibaki in the 1997 elections. [27][68][52][55a]

3.5 Observers have suggested that President Moi may seek to amend the constitution, which is currently under review in order to extend his office by at least a further term. The announcement by one of President Moi's cabinet ministers, on 10 July 2000, suggested that KANU had launched a campaign for the head of state to amend the constitution in Moi's favour. In August 2001, a senior MP from the NDP put forward a motion to allow extension of the current parliament by up to five years. If passed, the motion proposed would change the Kenyan constitution and mean that the presidential and parliamentary elections due to take place by December 2002, might not take place. The motion seeks to extend parliament "when Kenya is at war, or during the process of comprehensive review of the constitution". Professor Yash Ghai's Constitution of Kenya Review Commission is currently working on changes to the constitution and is expected to present a draft to parliament by June 2002. At a joint conference in August 2001, party delegates from both the ruling KANU and the NDP gave their leaders the go ahead to merge the two groups to form a new party. The newly appointed Energy Minister Raila Odinga who was leader of the National Development Party said that the unprecedented merger would take place as soon as legal and technical aspects of the move had been worked out. In March 2002, Odinga said that the National Development Party would dissolve itself after the adoption of the merger resolution followed by the election of the New Party's National officials. In September 2001, nine new seats were created ready for the merger [32bv][47c][62b][68][32h][32j]

3.6 At the end of January 2002, Members of Parliament asked the Attorney General to work out a retirement package for President Moi when he steps down. The Attorney General has been criticised for failing to honour a resolution by Parliament, which required him to draft a retirement benefit Bill for the head of state. In February 2002, five KANU MPs proposed that Mr Uhuru Kenyatta, the Local Government Minister becomes President Moi's successor. In February 2002, a new party constitution proposed that the new KANU Chairman be given sweeping powers. They ensure that President Moi, should he remain party chairman and if KANU win the next General Election, may continue to wield wide authority over national affairs, even after he steps down from the presidency in January 2003. On 13 March 2002, President Moi performed his last State opening of Parliament and appealed for national unity in the unfolding battle to succeed him. The General Election at the end of 2002, will mark the first time in Kenya's history that a President formally hands over to his successor. President Moi took over after Mzee Jomo Kenyatta died in office in 1978. [32k][32q][32s][32t]

(For history prior to December 1997 refer to Europa Yearbook Publication 2001 - 42nd Edition - Kenya Section - Source [77])

IV STATE STRUCTURE

PART I

The Constitution

Political System

The Judiciary

Military Service

PART II

Internal Security

Legal Rights / Detention

Prisons

Medical Services

Educational System

4. INSTRUMENTS OF THE STATE.

A. Political system

4.1 Kenya was a one-party state between 1969 and December 1991, when the Constitution was amended to legalise a multi-party political system. Political parties, organisations and associations are required to register under the Societies Act or be exempted from registering by the Registrar of Societies. With the registrations in May 2001 of the United Agri Party of Kenya and in October 2001 of the Mau Mau War Veterans Association there are now more than 40 political parties currently registered; the Government has however, denied registration to a number of parties since 1992. Two political parties are currently awaiting registration, The United Democratic Movement and Saba Saba Asili; the latter has been waiting since 1997. Two organisations are currently banned, the February Eighteenth Resistance Army (FERA) (see paragraph 5.56) and the Islamic Party of Kenya (IPK) (see paragraphs 5.51 - 5.54). While parties remain unregistered they are prohibited from participating in the political process. According to the chairman of the newly formed United Agri Party of Kenya Mr George Kinyua, they will articulate farmers' wishes and aspirations which the government has ignored. [1][2][32bl][32df][32ee][53c]

4.2 The central legislative authority is the unicameral National Assembly in which there are 210 directly elected Representatives, 12 members appointed by the President, from nominees of political parties in proportion to party strength, and two ex-officio members, the Attorney General and the Speaker. The maximum term of the National Assembly is five years from its first meeting (except in wartime). Executive power is vested in the President, the Vice-President and the Cabinet. The President appoints both the Vice-President and the Cabinet. Election of the President for a five-year term is by direct popular vote. Rules for nominated MPs was an important Inter-Party Parliamentary Group (IPPG) reform. [1]

Current political situation.

4.3 In February 1999 President Moi reiterated his commitment to fight against corruption and stressed that those involved in corruption or condoning it would be prosecuted. In 1998, the National Development Party (NDP) began co-operating with KANU as a way of opening channels of constructive dialogue and to assist in finding solutions to national problems. Divisions emerged within the NDP over its new found co-operation with KANU leading to the resignation of the NDP's deputy leader Professor Geoffrey Ole Maloiy. Calls for NDP MPs to abandon their co-operation were rejected. In April 1999 the NDP leader, Raila Odinga stated that the NDP had no plans to merge with KANU and reiterated that the NDP's co-operation with KANU was for the sake of constitutional reforms. A 'Daily Nation' (Kenyan newspaper) article dated 18 October 2000, stated that pressure was mounting within KANU to shift the parliamentary constitutional review process from Odinga to a different politician. It also states that the NDP leader is understood to still enjoy support among some of the ruling party's top organ. In December 2000 Raila Odinga said he wanted to build a broad-based alliance with the

ruling KANU party to achieve the goals common to both, but he did not want a merger. President Moi welcomed the NDP's decision to have deeper working relations with KANU. He was asked whether he was positioning himself to succeed President Moi in 2002 but denied this saying he had never been an opportunist. However, in June 2001, in a cabinet reshuffle, President Moi appointed Raila Odinga (NDP) as Energy Minister and his NDP colleague Adhu Awiti appointed Minister for Planning while two other NDP Members of parliament, Peter Odoyo and Joshua Ojode are now assistant ministers. [32t][32v][32ai][34c][34g][49b][63f][63g]

4.4 During 1998 the arrest of top Treasury officials by the Kenya Anti-Corruption Authority (KACA) sparked a dispute between the then Director of the KACA, John Harun Mwau and Finance Minister, Simeon Nyachae. Charges against the officials were dropped pending an investigation. Mwau was suspended and then dismissed, following an enquiry into his performance. It was reported on 1 June 2000, that the Kenya Anti-Corruption Authority had questioned Cabinet Minister Kipng'eno arap Ng'eny over a 250 million Shilling loss incurred by the now defunct Kenya Posts and Telecommunications Cooperation. The Parastatal lost the money in a single deal during Mr Ng'eny's 14-year tenure as managing director. Mr Ng'eny could become the first high-ranking Government official to be taken to court by KACA. In January 2000 KACA was declared an "illegal" organisation by Kenya's Constitutional Court. They rendered KACA's existence as baseless by constitutional irregularities. The Court upheld that the activities of the organisation were not only illegal and unconstitutional but that it undermined the prosecution powers and authority of both the attorney general and the police commissioner. [24h][24i][30j][32h][36b][43g][73a]

4.5 In January 1999 a by-election took place in Makueni constituency (Eastern Province) following the death of the Social Democratic Party (SDP) MP who previously held the seat. The counting of votes was interrupted when the SDP disputed ballot boxes from 10 polling stations. The vote counting was marked by incidents of violence leaving two MPs beaten and in need of hospital treatment. KANU eventually won the seat. One of the MPs battered by the police said he would institute legal proceedings to seek redress. [30k][32bx][34i]

4.6 In January 1999, NDP leader, Raila Odinga, said that the party's planned leadership code of conduct bill, to be introduced in Parliament during 1999, aimed to bar corrupt people from being elected to public positions. Odinga said he did not expect any opposition against the bill. The beginning of 1999 also saw the defection of a number of politicians to KANU. SDP MP Samuel Kiminza and two SDP councillors defected to the ruling party on 5 February 1999, together with a FORD-K councillor. Following a Cabinet reshuffle on 18 February 1999, Simeon Nyachae the former Finance Minister resigned after being appointed to the post of Minister of Industrial Development. [32s][33j][35c]

4.7 In April 1999, President Moi re-appointed George Saitoti as the country's Vice-President. Saitoti had previously served as Vice-President under Moi for nine years until the 1997 elections. The post of Vice-President had been vacant since the December 1997 elections. Professor Saitoti retains a post in the June 2001 reshuffle as Minister of Home Affairs, Heritage and Sports. On 6 April 1999, the High court suspended the entire Anti-Corruption Authority Board (KACA) including the appointed Director, Justice Aaron Ringera following an application by the suspended KACA board director, John Harun Mwau. Later in April 1999, the Vice-President faced a motion of no confidence in Parliament brought by Mbita MP, Otieno Kajwang. One of the main reasons behind the motion was Mr Kajwang's belief that Professor Saitoti could not hold the office because he had not been cleared of his alleged involvement in the Goldenberg scandal (see Annex D). The no-confidence motion failed in June 1999. On 19 July 1999 businessman Nassir Ibrahim Ali linked President Moi, Vice-President George Saitoti and Mr Joshua Kulei with the Goldenberg scandal. He claimed to be in possession of a letter signed by the President, which implicated him in the affair. The Attorney General directed the Commissioner of Police to investigate the letter, meanwhile Mr Ali was deported to Dubai. On 28 July 1999 several MPs filed a motion of no confidence in the government. [30n][32ao][32bp][32bs][33k][34s][36c][39e][63e]

4.8 On 24 April 1999, Kenyan police fired in the air as running battles broke out between youths loyal to rival opposition leaders at a rally. Gangs supporting James Orengo (FORD-Kenya) and Raila Odinga (National Development Party) clashed at the start of a fundraising rally. The fighting started as Orengo supporters attempted to stop the fundraising rally by Odinga in Ugunja in western Kenya. On 26 April 1999, KANU increased its narrow majority in Parliament by winning two by-elections in seats previously held by opposition parties. KANU scored comfortable victories in the Tigania and Mumtomo constituencies in rural eastern Kenya, although polling was marred by opposition parties claims of vote buying and violence in which one opposition leader, Charity Ngilu of the Social Democratic Party, was injured. [30o][30p]

4.9 In June 1999, the Registrar of Societies decided not to register the United Democratic Movement (UDM) led by KANU MP's, Cyrus Jirongo and Kipruto Arap Kirwa. This prompted the party to appeal to the High Court to order its immediate registration. On 9 June 1999, former Ford-Kenya officials launched a new party called the People's Power Movement. Its interim chairman is Mr Audi Ogada. It has not yet been registered. [32be][32bk][32bl]

4.10 In June 1999, police raided the Attorney General's Chambers and the Immigration Department in a crackdown on corrupt civil servants. They arrested 30 government officials and seized an unknown amount of money and volumes of documents. The move came four days after President Moi announced his Recovery Strategy. On 23 July 1999, President Moi appointed Dr Richard Leakey as head of the Civil Service. This was part of a big shake up at the top of the Civil Service, which also saw several top jobs going to the private sector. Dr Leakey and his team were given a mandate by the President to change the culture of corruption and inefficiency in the public service. The appointments were welcomed by Kenya's business and opposition leaders, as well as by international donors. The new head of the Civil Service said he had the full backing of the President. On 26 March 2001 the Kenyan Government announced that Dr Richard Leakey resigned from the post of Head of the Civil Service after completing his task of launching efficiency reforms. Dr Leakey's appointment was seen as a signal to the IMF and other donors who had suspended aid because of the high level of corruption. President Moi wanted to show he was serious about cleaning Kenya up. Dr Leakey has been replaced by former ambassador to Britain and permanent secretary to the Ministry of Foreign Affairs, Sally Kosgei. A news article published on 28 March 2001, stated that a permanent secretary retired by Dr Leakey had returned to government the previous day. Mr Kaguthi left Government abruptly just 2 days before Christmas in 1999, a year before reaching the mandatory retirement age of 55. Following Dr Leakey's resignation, two senior officials who were closely linked with him were sacked. [30u][30v][30x][32ah][39b][49k][57b]

4.11 In July 1999, six councillors and two other people appeared in court charged with the murder of Githurai Councillor Charles Maina Njuguna in Ruiru in June 1999. The suspects included the Mayor and his deputy. The accused were remanded at the Kamiti Maximum Security Prison. In July 1999, Safina MP Paul Muite was arrested and charged with the theft of Sh31 million from a land-buying company in 1992. He claimed that the charges were fabricated and was freed on a bond of Sh4 million. Muite linked the court case to his role in trying to unravel the Goldenberg case (see Annex D). On 12 July 1999, thirteen opposition MP's from the NDP said that they would oppose a planned no-confidence motion against President Moi, stating it was tribally motivated. On 17 July 1999, MP James Orengo (Ford-K) and two of his aides were arrested when they visited Kisumu Police station and demanded the release of more than 300 touts arrested in an earlier swoop. Mr Orengo and his team were detained when they stormed the police station. Amongst those held with the MP was the chairman of the unregistered People's Power Movement (see paragraph 4.9). Mr Orengo was later moved to another police station to defuse tension. [30t][32bj][32cd][32ce][44b]

4.12 On 5 September 1999 the ruling party won both the Nithi and Saikago by-elections, in the latter KANU achieved a majority of just over 2,000 over the Democratic Party. The following day President Moi reshuffled his cabinet, and reduced the number of

government ministries from 27 to 15. However, the size of the cabinet was not reduced and not one minister lost his place. The reorganisation saw several ministries merged including Education with Science and Technology. The regional and East African Co-operation Ministry was scrapped. The head of the Civil Service welcomed the reductions. However the reshuffle, which had been expected to result in far greater changes, was widely criticised in other quarters. Opposition MP's claimed that the pairing of ministers would lead to confusion and effect the economy. Even the Government's partners in the NDP were lukewarm about the changes with General Secretary Charles Maranga saying that the president had his priorities upside down. The cabinet reshuffle was quickly followed by an announcement of government plans to retrench some 60,000 state employees as part of its Civil Service cut back programme. It was announced that trimming of the government's 225,916 workforce would commence in October 1999. [52b][55]

4.13 At a press conference on 28 October 1999, NDP MP Peter Oloo Aringo claimed that President Moi's support for party leader, Raila Odinga, was abetting intimidation within the party ranks. Mr Aringo, who was accompanied by fellow MP Dr Shem Ochuodho, alleged that the president had ruined the party by lending Mr Odinga police and provincial administration support which the NDP boss used to intimidate party members, thus promoting a culture of violence. The NDP leadership responded angrily to the two MP's criticism and threatened them both with expulsion. On 31 October 1999, Safina secretary-general Mwandawiro Mganga resigned. Although party officials linked his departure to financial difficulties, observers believe it was inevitable following the departure of Richard Leakey and allegations that implicated party leader, Paul Muite, in the Goldenberg case (see paragraph 4.11). [32y][32aa][32ab]

4.14 On 11 November 1999, the Kenyan Parliament voted to cut presidential powers for the first time when members supported a historical constitutional amendment by 185-0. The amendment carried gave parliament the power to appoint its own Clerk of the House. The President previously appointed the powerful Clerk, a post that involves managing everything from the assembly's agenda to its budget. This had effectively given the President control over parliament. The result represented a humiliating set back for Moi who had been vocal in his opposition of the Bill. [52a]

4.15 On 25 December 1999, Ford Kenya MP George Kapten died at his home in Kitale. Mr Kapten, MP for Kwanza, had been charged in September 1999 with defamation of a public official, and in November 1999 with subversion following comments regarding the Goldenberg scandal (see Annex D). Some opposition MP's expressed suspicion of foul play in the death of Mr Kapten and following a post-mortem examination his family commissioned three independent tests to establish the cause of death. On 10 March 2000, 11 opposition MP's called for a select committee to investigate the death of Mr Kapten. This followed an announcement by the Kapten family that there were contradictions in the independent pathologist's reports. However, the two pathologists who issued the reports denied the family's claims. In October 2000, Mugirango South MP Enoch Magara, a prominent member of a new alliance of opposition and government MPs calling for constitutional reform, died in a road accident in the western town of Kisumu. A police spokesman claimed it was from a tyre burst. Two members of the newly formed Muungano wa Magwezi and a former NDP secretary general Charles Maranga said that Mr Magara's death came when he was deeply involved in pro-democracy activities. [2][32k][32ab][32a][34o][49c]

4.16 On 16 January 2000, President Moi announced that a bill seeking to bar sitting MP's from forming new political parties would be tabled for debate in Parliament. On 30 January 2000, Cabinet Minister Kipkalia Kones broke down in tears during a rally claiming his life was in danger after his supporters had fought with those of an assistant minister. He said that there was a plan to kill him and revealed that youths had stoned him three times at Siongiroi and attacked his official car. [32e]

4.17 During February 2000 the Kenya Ports Authority (KPA) Chairman Jonathan Mturi came under considerable verbal attack. Following changes of some senior personnel in

January 2000, Mturi's critics, among them some 30 MP's, accused him of trying to eliminate managers not from the Coast Province. They accused Mturi of tribalism and called for him to be sacked. The head of the Civil Service defended the KPA Chairman. He said that the changes, which comprised of dismissals, retirement and transfers, were part of reforms to enhance efficiency. Coastal leaders have also pledged their support for Mturi. KANU Chief Whip, Sammy Leshore and his deputy Mohammed Shidiye were shot and left for dead on the evening of 21 February 2000. The attack occurred shortly after the vehicle in which the two MP's were travelling was involved in a collision. The gang stole Ksh17,000 from the pair who were later taken to hospital by a passing motorist. The incident led to renewed calls for a Bill to allow all MP's to carry guns, a similar motion was debated in 1998 but was lost. Also in February 2000, the Head of the Civil Service reaffirmed that the "Recovery Team" enjoyed the full backing of senior members of the government. He announced that public service salaries would be raised in the new financial year to attract and retain competent people. [32ar][32ay][32az][33c][34m]

4.18 On 18 March 2000, three top NDP officials, including Secretary-General Charles Maranga, resigned. The three accused the party of having lost its original vision. In a quick response the NDP termed the resignations as "good riddance". The NDP said the three MP's had absconded their duties during the past 5 months and were instead working for rival parties. In November 2000 the Chairman of Olkejuado County Council, Mr Daniel ole Muyaa, gathered the support of 33 of the district's 57 councillors to turn a special council meeting into a forum to remove supporters of vice-president George Saitoti. They were stripped of their posts as powerful council committee chairmen. After the meeting some of the councillors said that Saitoti was not "a true and genuine son of the Massai community". Daniel ole Muyaa is claimed to be an agent of powerful politicians out to see Saitoti smoked out of the second most powerful office in the country. Civic leaders said that Mr Muyaa was fighting the Vice President so as to divert attention from the scandalous sale of a 290-acre farm land, sold to members of his family, which was previously owned by the council. In January 2001, MPs and lawyers reacted sharply to the Attorney General's, Amos Wako, charge that the IMF pressured his office to rush through the Prevention of Corruption Bill through Parliament. The KANU rebel MP blamed it on what he called the Government's inability to act in time, despite the fact that the IMF gives its information on time. [32am][32ap][32aq][32ct]

4.19 On 24 July 2000, the Mombasa Municipal Council sacked 1,090 workers employed irregularly. The Council also dismissed seven junior officials suspected to have been involved in jobs scandal. The sackings brought to an end an embarrassing row over which the Mayor was twice summoned to Nairobi by the Minister for Local Authorities. The sackings also resulted in Town Clerk, Maurice Mumba being sent on forced leave pending investigations into allegations of abuse of office. The Minister for Local Government Mr Joseph Kamotho directed Mombasa Municipal Council to lose 1,300 of its staff by the end of 2001 in order to privatise some of its services. In January 2001, three people died and more than 20 others were injured when a group of armed youths tried to disrupt a Ford-Kenya campaign rally in South Mugirango. The Electoral Commission of Kenya threatened to authorise the deployment of a special police unit in South Mugirango if campaign violence continued. [32g][32at][32cv]

The Constitutional Review process

4.20 Since 1996 a broad coalition of NGO's and religious organisations has mobilised 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. In August 1998, the terms of reference for a Constitutional Review Body were finally agreed. These provided for a body with two functions; firstly to examine federal and unitary systems of government and recommend the best one; and secondly to make recommendations to improve the electoral system. Within this framework, it was agreed that the body would be charged with examining the systems of government to look at the composition and functions of the organs of state and to look at adequate checks and balances and accountability. Provision was made for Constitutional Review Commission, National and District Fora for consultation. The Constitution of Kenya Review

Commission Act 1998 was enacted in December 1998. This provided for the establishment of a 25-member commission within 30 days. Under the terms of the act the commission was to derive its members from political parties, 13 members, religious organisations, 3, the Women's Political Caucus, 5, and the civil society, 4. The Act also stipulated that a person who has held office as a judge, an appellant judge or a lecturer in law for the past 15 years would chair the commission and that the Attorney General would serve as an ex-officio commissioner. [2][12][33i]

4.21 Early in January 1999, the National Convention Executive Council (NCEC) stated it would set up a "people's constitutional review forum" to parallel the Review Commission. Members of the convention, which included opposition politicians and religious leaders, cast doubt on the Commission's ability to independently spearhead the reform process. Also in January 1999, 26 non-parliamentary political parties demanded more representation in the Constitutional Review Commission. In February 1999, with the review body still not set up, talks reached a sticking point over the nominees for the Constitutional Review Commission. In 1998 when the Constitutional Review Commission was set up, KANU and opposition party leaders had agreed that KANU would have 5 seats and the combined opposition would have 8. However, KANU were now insisting on a majority of seats to reflect its majority in Parliament. Four of the appointing authorities to the Review Commission threatened to sue the Attorney General over the failure to reach agreement of the nominees. On 21 February 1999, the Catholic Archbishop of Nairobi publicly accused President Moi of deliberately derailing the constitutional review process. [2][32u][32aj][34n]

4.22 In May 1999, President Moi proposed that the constitutional reform process be transferred to the KANU dominated National Assembly. Under this plan, Moi stated that at least two credible lawyers should be hired to draw up a new draft constitution to be tabled in Parliament for debate and adoption, arguing that the 4.5 billion Shillings set aside for the review process should instead be used to alleviate poverty. President Moi's statement met with angry reactions from a cross-section of civil leadership and the people. The NCEC stated it was clear that the President and KANU did not favour a democratic process, and a comprehensive reform of the constitution would make it impossible for KANU to rig elections. In June 1999, opposition MP James Orengo called for mass action to block President Moi's plan to refer the stalled constitutional review process back to Parliament. Upon being faced with mass protests President Moi then suggested his plan was not final but was aimed at finding a solution to the stalemate. On Budget Day (10 June 1999) scores of people were injured when riot police, accompanied by hired groups of KANU youth, tried to stop a peaceful demonstration headed for Parliament to protest at the President's plan. Witnesses saw police beat dozens of protesters including Presbyterian clergyman Timothy Njoya. One of the men photographed beating Rev. Njoya was arrested on 15 June 1999. [2][30q][32bq][42b]

4.23 On 7 July 1999, police fired tear gas and rubber bullets at dozens of demonstrators seeking constitutional reform who were trying to block highways leading into Nairobi. The protests coincided with Saba Saba day (seventh of the seventh), a date upon which, since 1990, various opposition groups have come together to press the KANU government for greater constitutional reform. The same day about 10,000 Kenyans converged on the Kamukunji Stadium in Nairobi for an opposition rally calling for a new constitution. Addressing the gathering legislators led by James Orengo (Ford-K) called for a national strike. There were no signs of policemen during the rally. Three days before Saba Saba day in 2000, President Moi issued a terse statement warning that the "security of the State was not negotiable and never would be now or in the future". In the statement, the President equated the clamour for a multi-party system as a threat to security and vowed to act ruthlessly. On Saba Saba day the crowds defied the odds and attempted to gather at the Kamukunji Grounds. On the 20 August 2000 it was reported that ruling party activists disrupted an opposition rally in Nairobi by wielding clubs, stones and bottles. They had blocked the entrance to Parliament to keep government critics from discussing constitutional reform. Members of the youth wings of KANU and the allied NDP stormed the stage where James Orengo, a member of the FORD-Kenya party, was to address a demonstration. Several people were seriously injured. [30s]

[32bi][32cd][32ce][32cu][62a]

4.24 Although demands by religious leaders and NGO's to restart the constitutional review process mounted during the second half of 1999, Moi continued to insist that only the National Assembly was competent to review the Constitution. The constitutional review process remained stalled until 15 December 1999 when the National Assembly created a Parliamentary Select Committee to review the existing Act and help form a commission. This development, achieved with the support of the NDP, put KANU in the driving seat for the Constitutional review. The debate, which ultimately led to the establishment of a 27-member committee, was punctuated with drama and confusion. A number of opposition members boycotted the debate and instead attended a meeting called by religious leaders to discuss the review (see paragraph 4.24). As a consequence of most of the opposition's departure, the motion to establish a Parliamentary Select Committee, moved by NDP leader, was carried unanimously by the 112 MP's present. The motion carried specified which MP's would sit on the committee; the list comprised of 14 KANU and 13 opposition MP's and provided for the participation of representatives from all political parties with seats in the National Assembly. The following day a furious row ensued in parliament during which a number of the nominated MP's made it clear that they refused to serve on the contentious committee. MP's from DP, SDP, Safina, Ford People, and a section of Ford Kenya joined a chorus of protests leading to the speaker announcing that no MP would be forced to serve on the committee against their wishes. The House Business Committee was left with the power to fill vacancies without further endorsement of the National Assembly. Raila Odinga was then nominated as chairman of the Parliamentary Select Committee. [2][32bb][32cj]

4.25 Also on 15 - 16 December 1999 a meeting organised by religious leaders of all faiths took place at Ufungamano House in Nairobi. Its purpose was to work out how they would review the constitution. Delegates attending including NGO's and opposition MP's, mandated the religious leaders to steer the process of establishing a people driven review, parallel to the Parliamentary one. [2][32ck]

4.26 Between 14 and 16 January 2000 there was violence on the streets of Nairobi as rival gangs in the constitutional debate battled it out. Scores of people were injured and both university and private property was destroyed during daylong battles between students and hired thugs. One group was allied to the Parliamentary Select Committee, the other claimed to support Ford-K MP James Orengo. On 13 January 2000, Mr Orengo and fellow opposition MP Shem Ochuodho were attacked by four youths as they left the Professional Centre in Nairobi. Police at the scene reportedly failed to intervene. The following day the same thugs, who were later identified as NDP activists, beat up an insurance clerk and an innocent passer-by outside parliament. On 18 January 2000, Mr Orengo was arrested and charged with inciting public violence, a charge that related to a statement he had made on 10 January 2000. The four youths alleged to have attacked him were set free the same day after recording statements. A section of political and religious leaders condemned the arrest and prosecution of Mr Orengo terming the move as "selective application of justice, which amounts to sanctioning violence by the state". Mr Orengo's arrest had followed a presidential directive to the Commissioner of Police to crack down on those who instigated the violence. A lawyer, Mirugi Kariuki, criticised Moi's directives - he said that under the Constitution and Police Act, the Commissioner of Police was supposed to operate without taking directives from any powers or authority. The lawyer added that it was obvious from Moi's statements that he wanted Mr Orengo arrested and not his assailants. Meanwhile, opposition MP Njeru Kathangu claimed that Moi's directive was targeted at those opposed to the Parliamentary Select Committee. [32cm][32cn][32co][32cp]

4.27 On 29 January 2000, a young people's lobby vowed to disrupt proceedings of the Parliamentary Select Committee that is reviewing the constitution. During a highly charged rally at the Kamukunji Grounds in Nairobi the young people and their leaders said they would go for a people-driven review. Student speakers threatened violence against any member of the committee in the city and revenge attacks against NDP aligned youths. The meeting witnessed the creation of Muungano Wa Vijana Wazalendo

(MVUWA), a youth movement comprising of students, Mungiki members, hawkers, touts and jua kali artisans. The movement called for a revolt "for the youth to free themselves from the hatred spearheaded by our leaders". The following day outspoken Cabinet Minister Shariff Nassir warned that the students would live to regret any attempt to stop the committee from doing its work. Also, in January 2000, the Federation of Women Lawyers announced that they would not submit their views to the Parliamentary Select Committee. Explaining the federation's stand, chairperson Ms Martha Koome said that the committee "was set up unilaterally and illegally". [32bf][32bt][32cq]

4.28 On 26 February 2000, several people were injured when riot police tear-gassed and clubbed a mammoth crowd that had turned up for a meeting organised by MVUWA in Thika. A MVUWA official later claimed that the government was panicking at the prospect of youth forming an alliance to address national issues. He said that the government had been given until 1 May 2000 to accept a people-driven constitutional review process or face non-violent civil action. [32ca]

4.29 The bill by Attorney General Amos Wako proposed that parliament nominate fifteen members to the Constitution Review Commission. The President would then appoint those nominated as a matter of formality. The new bill proposes a national referendum on the constitutional review process. Kimiili MP Mukhisa Kituyi (FORD-K) said the MPs planned to defeat the motion because it was a ploy by the Government to hijack and manipulate the reform process. He went on to say that for the Bill to be defeated, 77 MPs needed to either vote against it or abstain and for it to go through it needed the support of 145 MPs. He also said that the democratic and multi-party process had failed because of inept political leadership driven by tribal influence. Parliament finally passed the Bill on 25 July 2000 after most opposition members and some KANU backbenchers walked out. The motion was rushed through the crucial second-reading, committee and third-reading stages and awaits the President's assent to become law and lead to the formation of a commission to review the Constitution. On 26 November 2000, pro-Raila Odinga youths violently broke up a public hearing run by the faiths-led initiative, Ufungamano. The attack on the meeting came just one day after opposition leader Mwai Kibaki threatened to use opposition and rebel KANU MPs to block any resolutions to Parliament of the Constitution Review Commission. The commission, chaired by Professor Yash Pal Ghai, was formed out of the parliamentary review team led by Odinga. At the end of March 2001, Ufungamano and the rival parliamentary-led constitutional review initiative agreed to undertake a common process. One of the conditions for the merger hinged on the understanding that constitutional review amendments would take a back seat during the time of the review. Ufungamano, KANU and the National Development Party achieved the merger after 3 months of negotiations brokered by Professor Ghai. The Law Society of Kenya has warned the Constitution Review Commission against being rushed into completing the review process before the General Election expected in early 2003. [32au][32de][32dx][43i][43j][69]

4.30 In May 2001 a group of evangelical church officials went to court seeking to halt the operations of the Constitution of Kenya review Commission. Eleven officials of the United Christian Churches of Kenya lodged a notice announcing they would seek court orders to block the operations of the commission on the grounds that it was illegal. Sources close to the group said the application would question Professor Yash Ghai's qualification to head the commission and the inclusion of the Ufungamano group. The officials demanded to be allowed to nominate 12 members to the expanded commission. The Constitutional Review Bill was withdrawn from Parliament in June 2001. It would have to be published afresh because it was flawed. Speaker Francis Kaparo had asked the attorney General Amos Wako to take back and correct The Constitution of Kenya (Amendment)(No. 1) Bill, 2001. He said that lapses and blunders within the Bill "create fertile grounds for the Acts of Parliament to be declared unconstitutional by courts on the application of anyone wishing to derail the reform process". At the start of a three-day consultative meeting of the 27 commissioners the Constitution of Kenya Review Commission, later in June 2001, Professor Yash Ghai announced radical changes which included the appointment of Dr Oki Ooka Ombaka from Ufungamano as the first vice-chairman and another Ufungamano commissioner Ms Abidi Ali-Aroni as the second vice-

chairperson. Dr Ali-Aroni replaced Professor Idha Salim. Professor Ghai said that the new legislation requires that gender questions are considered in the appointment of new vice chairpersons. [32dy][32dz][32ea]

The Judiciary

4.31 The Constitution provides for an independent judiciary; however, in practice the judiciary is often corrupt and subject to executive branch influence. The President has extensive powers over appointments, including those of the Attorney General, the Chief Justice and Appeal and High Court Judges. The President can also dismiss judges and the Attorney General upon the recommendation of a special presidentially appointed tribunal. 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 Kenya Court system consists of a Court of Appeal, a High Court, and two levels of Magistrates' Courts, where most criminal and civil cases originate. The Chief Justice is a member of both the High Court and the Court of Appeals; this undercuts the principle of judicial review. There were some indications of executive interference in the judiciary. On 9 October 2000, a Homa Bay court sentenced MP Shem Ochuodho to over 3 years in prison for violent assault on a political rival during the 1997 election. While violence may have occurred some observers believe the court may have applied the law unfairly because some KANU MPs, despite credible allegations of violence during the campaign, were not charged. As a result of Ochuodho's conviction there were a number of protests and on 19 October 2000 Court Justice Barbara Tanui overturned the conviction and ordered a new trial. Ochuodho was released but immediately rearrested by the police, a statement was taken regarding the case and then he was released on bail. In 2000 the judiciary faced many accusations of corruption. 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 of the judiciary. There are no customary or traditional courts in Kenya. However, the national courts use the customary law of an ethnic group as a guide in civil matters as long as there is no conflict with statutory law. The law provides for a presumption of innocence, for defendants to have the right to attend their trial, to confront witnesses and to present witnesses and evidence. Defendants do not have the right to government-provided legal counsel, except in capital cases. Judges hear all cases. [2]

4.32 Military personnel are tried by military court-martial and verdicts may be appealed through military court channels. The Chief Justice appoints attorneys for military personnel on a case-by-case basis. [2]

4.33 In December 2000, Kenya launched a family Court specifically to deal with among other issues, wills, adoption and custody for children, divorce and burial disputes. The launch of the family Court Division of the nation's High Court was performed by the Chief Justice, Bernard Chunga. This brings to three the number of judicial Divisions under the government's ongoing reform programme. The other Divisions deal with commercial and criminal law. Lawyer Gibson Kamau Kuria said the launch was evidence of the judiciary's commitment to reforms. The family Court would be headed by Justice Joyce Aluoch. The Chief Justice explained that the section would not deal with aspects of juvenile law, which he said are purely criminal. Experts claim there are some 6,627 family-related cases pending before Kenyan Courts. These relate to succession, adoption, divorce and married women's property Act. [35a][38]

4.34 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 of Nairobi or other major cities. As a result, poor persons may be convicted for a lack of an articulate defence. Although defendants have access to an attorney in advance of trial, defence 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 2,000 Shillings (about \$25) is beyond the reach of most Kenyans. Lengthy pre-trial detention is a problem. [2]

4.35 Critics of the Government such as 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 to arrest opposition MPs, journalists and student leaders during 2000 and a number of opposition MPs, student leaders and human rights activists still had one or more court cases pending during 2000, often for months or even years. Three Kenya Human Rights Commission employees and nine members of the Commission and Citizens Coalition for Constitutional Change (4Cs) were detained in prison for several days awaiting sentencing for holding an illegal gathering. Human rights organisation viewed the arrests as a veiled effort by the Government to prevent civic education exercises throughout the country. The Attorney General subsequently dropped the charges. On 15 February 2001, Johan Wandetto, a journalist for the People newspaper, who was arrested in February 1999, was sentenced to 18 months in prison for writing a report that "risked causing harm". In the past, Judges who ruled against the Government sometimes were punished with transfer or non-renewal of contracts. However, during 2000, no retaliatory action against justices was reported. Judges occasionally demonstrated independence. (See paragraph 5.59). [2]

4.36 In April 1999, a seminar on the criminal justice system took place in Nyeri. At its conclusion the seminar recommended the immediate start of legislative reforms to bring Kenyan establishments, practices and procedures in tandem with international standards to which Kenya is a signatory, and to outlaw the inhuman regime of discipline and punishment of suspects. The seminar recommended that strict compliance with the Prisoners Act and Regulations would radically change the outlook of Kenya's prisons. One recommendation was that time spent on remand should also be taken into account when determining the length of sentence for people convicted. The three-day seminar was organised by the judiciary, Public Law Institute and United Nations Development Programme. Participants came from the judiciary, PLI, Attorney General's Chambers, police, prisons, probation and children's department, the provincial administration and the Law Society of Kenya. In July 1999, it was announced that the government would amend the Evidence Act to ensure that only confessions made before a trial magistrate would be admissible in court. Allegations of forced confessions through beating and torture are common in Kenya. In 2000, The Attorney General's constitutional power to discontinue proceedings in private prosecution cases was a problem. He argued that citizens must first notify his office before initiating private prosecution. He used this authority on a number of occasions to terminate cases against government officials. [2][32ak][43a]

The death penalty

4.37 Kenya still retains the death penalty although no executions have been carried out since 1988. The death penalty is mandatory for murder, treason, robbery with violence or attempted robbery with violence and for administration of an unlawful oath to commit a capital offence. By law the death penalty may not be imposed on anyone under 18 at the time of the offence, a pregnant woman or an insane person. During 1998, 168 people were sentenced to death and more than 900 people were under sentence of death by the end of the year. Many prisoners on death row have died as a result of the appalling prison conditions. Defendants charged with murder or treason are tried in the High Court and if convicted have a right of appeal to the Court of Appeal. Defendants charged with robbery or attempted robbery with violence are tried in the Magistrates Court and if convicted have the right to appeal to the High Court and then the Court of Appeal. The cases of prisoners sentenced to death, once the appeals process has been exhausted, are automatically passed to the President. Under section 27 of the Constitution, which provides for the Prerogative of Mercy, the President has the right to pardon or commute the sentence of any person convicted of any offence. On 29 March 2001, a court in Kenya sentenced two men to death for robbing twenty-nine American tourists. The men,

both Tanzanian nationals, were carrying a rifle and a sword when they held up the tourists' vehicles in the Masai Mara game park two years ago. [9][12][49]

Security forces

4.38 The Kenyan security forces comprises of the armed forces, a large internal security apparatus that includes the police Criminal Investigation Department (CID), the National Security Intelligence Service (NSIS) Service (see paragraph 4.44), the National Police, the Administration Police and the paramilitary General Services Unit (GSU), which details members on a rotating basis to staff the 700-person Presidential Escort. The CID investigates criminal activity and the NSIS collects intelligence and monitors persons whom the state considers subversive. In 1999, parliament passed and implemented laws that removed arrest authority from the NSIS and separated the organisation from the CID. [2]

4.39 The Special Branch, formed in the colonial era, deals with matters of intelligence and state security, but has since had its role enhanced to deal with presidential security. The CID primarily investigates non-political crimes but have a mandate to investigate political crimes as well, which are monopolised by the Special Branch. The Police Reserve assists regular police officers in their duties. They are not required to be full time, and most are recruited from the civil service. They are only employed during emergency periods such as riots, demonstrations and national events. Special Police Officers are similar to the Police Reserve and are appointed to deal with specific missions. The Administrative Police are supposed to be distinguishable from the regular police and are involved in land and housing evictions, demonstrations, riot control and border patrols. Some officers serve in government institutions as gate keepers or reception watchers and at district level they guard administration figures. The General Service Unit is the paramilitary wing of the police force. They are mobilised whenever the Government feels a situation is volatile. [20]

4.40 There are several other units and branches within the police force such as the Stock Theft Unit and the Anti-Poaching Unit as well as the Prosecutions Branch, the Traffic branch, the Dog Section and the Mounted Branch. The Home Guards are a colonial legacy and are used only in areas that have a nomadic community. City Commission 'Askaris' are employed in Nairobi as council security guards and they enforce the city commission's by-laws. [20]

4.41 In October 2000, a 127-page internal police report titled, "Report of the Committee on the State of Crime in Kenya 1997 to 1998", was leaked to the press. The report, the result of a two-year study conducted by a five-person police team to study problems in the police force, concluded that the police force was unable to address crime due to poor management, corruption, a breakdown in discipline and a disregard for rules. Members of the security forces continued to commit serious human rights abuses. The Police, in particular, continued to commit extrajudicial killings, torture and beat detainees. They have also been found to use excessive force, rape and otherwise abuse persons. The Police have increasingly disrupted public meetings and used force to disperse demonstrators and protesters. On 1 January 2000 police attached to the Ng'araria Chief's Camp in Murang'a allegedly beat 10 year old Joseph Ndung'u Nyoike to death, for suspected theft. Two police officials were arrested after an autopsy report indicated the boy had died from beatings. The case remains under investigation. On 15 January 2000 police from the Mukuruwei-ini police station allegedly beat Philip Machau to death after he was caught stealing a piece of second-hand clothing. An inquest into the case is still ongoing. On 23 March 2000, Philip Kipkoech Kirui, a brother of a nominated local councillor, died after being transferred from prison in Londiani to the local hospital for treatment allegedly he was tortured. The case is still pending. In November 2000, police disrupted a rally by the Muungano wa Mageuzi in Eldoret. Opposition politicians condemned the disruption, which left several people injured. In February 2001, a policeman was charged with the murder of a university student, Allan Mbiti, who was the son of High Court Judge Gideon Mbiti. Kwanzi MP Noah Wekesa had called for the resignation of the Police Commissioner Philemon Abong'o. During 2000 the Government

arrested and prosecuted a number of police officers for abuses; however, most police who perpetrated abuses were neither investigated nor punished. [2][32ba][32bg][32bo][71]

4.42 Security forces, especially members of the police, the GSU and the CID continued to use force and committed a number of extrajudicial killings. According to government figures, police killed 120 suspected criminals and another 39 suspects and detainees died while in police custody by the end of 2000. The KHRC reported that police killed 198 persons during 2000 (compared to 243 in 1999), including 49 by torture. Police often 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. On 30 April 2000 there were reports that Sophia Nyaguthii Mbogo, a pregnant 21 year old woman, died in custody at the Kagio Police Post reportedly after she was beaten by a policeman. No arrests were made in the case; however an inquest held before the Principal Magistrate's Court at Kerugoya is still ongoing. On 4 September 2000, prison guards at the King'ong'o Prison in Nyeri killed 6 inmates who were attempting to escape. Officials initially claimed that the guards shot them as they fled; however there were conflicting reports that the 6 died from blows to the head and severe beatings after recapture. In October 2000 the Attorney General, Amos Wako, published Kenya National Human Rights Bill 2000 to formally establish a commission to promote and protect human rights in the country. As reported in the People newspaper, the commission, known as Kenya National Human Rights commission would monitor the government's compliance with its obligations under international treaties and conventions on human rights. The commission was expected to investigate the rampant abuse of human rights in Kenya including extrajudicial killings by the police and deaths caused by politically instigated ethnic clashes among other things. According to the newspaper the bill was submitted to parliament for approval, although several 1998 cases of extrajudicial killings remained unresolved at the end of 2000. [2][30i][39h]

4.43 Some official efforts have been made to investigate and punish police abuses. In August 1999, police killed five Muslim worshippers in the Anas Bin Malik Mosque in Chai village near Mombasa. Within one month of the killing the Government charged two police officers with the killings; they were released on bail and are still awaiting trial. On 29 June 2000, the High Court sentenced police constable Felix Nthiwa Munyao to life in prison for beating his wife to death in 1998. He had beaten his wife so severely that she went into a coma and died 5 months later. The case was widely publicised because the police refused to charge Munyao with a crime until his wife had died. Police brutality was an issue in the news in July 2001. MP James Orengo and greenbelt movement co-ordinator Professor Wangari Maathai were arrested at Uhuru Park after participating in a tree-planting ceremony to mark Saba Saba day (7th July). They were both later released. The police did not allow the meeting to take place and a large contingent of riot police were sent to disrupt it. Also in July 2001 police ordered 7 men from a bus and then executed them. The police had searched the men for weapons, recovering three pistols, then ordered them to lie faced down on the ground before opening fire. Ten officers were involved in the shooting and they claim the seven men were killed in a shoot-out. Witnesses have contradicted the claims. The Kenyan Human Rights Commission termed the killings 'extrajudicial'. [2][34u]

4.44 January 1999 saw the creation of the National Security Intelligence Service under the stewardship of retired Brigadier Wilson Boinett. The new service replaced the Directorate of Security Intelligence which was associated with brutality, torture and outright abuse of human rights. It was a dreaded institution, occasionally misused by politicians to settle political scores. A report on Kenyan TV suggested that the civilian National Security Intelligence Service would offer a better-trained and thoroughly professional service. Its remit is confined to gathering intelligence and informing the government of any threats to security. Torture would not be condoned in the service and any officer accused of malpractice would be punished. In August 1999, a special crime prevention police unit was launched to curb the influx and trafficking of illegal arms in the wake of an increasing number of carjackings at gunpoint. [39g][72b]

4.45 The Kenyan authorities made it clear that mechanisms exist, under the present law, to lodge complaints against members of the police. It is also possible to bring a private civil case against the police, but it is too costly for ordinary citizens. Cases against individual members of the police have succeeded. There are various human rights bodies and lawyers active in Kenya who are willing to support an individual complaint against the police, but Amnesty International report that the current complaints procedure is fraught with difficulties and fails to protect the victims of violations. There were no effective investigations into many cases of killings by members of the security forces. The authorities sometimes attribute the absence of an investigation into an alleged 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 is also widespread scepticism of a process that assigns the investigation of police abuse to the police themselves. [2][9][24d]

4.46 In a 1997 study of the judiciary, the International Bar Association found "a persistent and deliberate misuse of the legal system for the purpose of harassing opponents and critics of the Government". During 2000, authorities continued to arrest opposition MPs, journalists and student leaders. A number of MPs, student leaders and human rights activists still had one or more court cases pending during the year, often for months or even years. [2]

4.47 Early in 2000, the Government instituted the Community Services Order (CSO), a program whereby petty offenders perform community service rather than serve custodial sentence. There are currently 11,000 petty offenders participating in the program. This program may help overcrowding; however, there was no indication of this by the end of 2000. [2]

4.48 The Constitution states that "no one shall be subjected to torture or degrading punishment or other treatment"; however, human rights organisations and the press highlighted scores of cases of indiscriminate beating of groups of persons by the police, during 2000. On 19 August 2000, violence broke out at Nairobi's Kamukunji grounds, for which the KANU/NDP youth alliance claimed responsibility on 24 August 2000. The youths vowed to disrupt Mr James Orengo's rally and accused the Ford Kenya MP of deliberately scheduling his meeting to coincide with that of President Moi and National Development party leader which was to be held at Ganjoni on the same day. It was reported that one person died and there were serious injuries to many others. In November 2000, police in anti-riot gear violently dispersed a fund-raising meeting in the western town of Homa Bay. Shem Ochuodho, an opposition MP had convened the meeting. In September 2000, the president ordered the Kenyan Police to clamp down on any rally convened by his critics, especially the Muungano wa Mageuzi, a new non-party movement spearheaded by James Orengo, opposition legislator. [2][35e][43b]

4.49 On 23 May 2000 members of the Kenyan military, together with members of the police, attacked Kenyan herdsmen of the Gabbra community at the Baresa water point in Marsabit District, Eastern Province. More than 70 herdsmen were stripped, tortured and threatened with execution. After investigations into this incident, no one was arrested. Judicial proceedings against law enforcement officers accused of torturing or killing prisoners usually occurred only after sustained pressure, and were subject to long delays. On 10 June 2000, scores of demonstrators were hurt by police when participants at a rally organised by pro-democracy advocates and church groups decided to march on the Kenyan Parliament. Demonstrators were prevented from reaching parliament by police officers that violently broke up the march using batons, teargas, stun grenades and water cannons. The Reverend Timothy Njoya, who led the march, was attacked by two men, believed to be members of Jeshi la Mzee (the Old Man's Army), a pro-government group who used their fists, boots and sticks to beat him to the ground and broke his arm while uniformed police watched. Following a public outcry, one man was later arrested and charged with assault but was released on bail. There were several violent incidents between pro-government supporters and opposition supporters during

opposition rallies in 2000. On 26 November 2000, in Kisumu, pro-government youths forcibly disrupted a meeting of the Ufungamano Commission a church-led constitutional review commission. The youths threw Molotov cocktails, burned vehicles and severely beat several people. Police did not intervene. [2][74]

4.50 In March 2000, it was announced that more police officers were being moved into Nairobi to curb the deteriorating security in the city. During the previous month two KANU MP's were seriously injured in a shooting (see paragraph 4.17) whilst four police officers were killed in the city. During the same month the Head of the Civil Service announced that a detachment of the Kenya Army would be used to curb insecurity in the country. The new military wing was to be retrained and re-equipped in order that it may oversee patrolling of poorly policed borders. A report on 8 August 2000 stated that two policemen were among six suspects seized in a hunt for the gunmen who grabbed a 12 million Shilling payroll for Kenya Railways workers. The seized officers were a corporal attached to Industrial Area police station and a sergeant from the railways police. [32bc][41][43h]

V. HUMAN RIGHTS

V.A HUMAN RIGHTS - Issues

Overview

5.1 The Constitution of Kenya states that "no one shall be subject to torture or degrading punishment or other treatment". In February 1997, Kenya became a signatory to the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Although authorities periodically issue directives against the use of torture by police, the problem persists. Human rights organisations, churches and the press highlighted numerous cases of torture and several cases of indiscriminate beating of persons by police during 2001. There were numerous allegations of police use of excessive force and torture. The Kenya Human Rights Commission (KHRC) believe that police brutality is widespread and estimated that there were numerous cases during 2001. According to organisations that work with street children, police also beat and abuse street children. Police repeatedly used excessive force and beat persons when breaking up demonstrations and opposition parties' rallies. Police forcibly dispersed several protests after they became violent, injuring some persons. Following President Moi's December 2000 ban on all future rallies by Muungano wa Mageuzi, police prevented or forcibly dispersed all rallies held by the group, which resulted in several injuries and arrests. In February 2001, Nairobi erupted in two days of violence when police attacked street hawkers, firing into the crowd. [1][2][71b][74]

5.2 There have also been allegations of rape of women by police, prison and other officials and is reportedly widespread. Amnesty International believes that rape and sexual abuse of women in custody always constitutes torture and ill-treatment. In a positive move, the Government outlawed caning in schools and introduced a bill on children's rights in Parliament. Amnesty stated that torture compounded by the denial or restriction of access to medical treatment, is routinely used to extract confessions. Well-known political prisoners have been harassed and ill-treated, and defendants can be held beyond the legal time limits, which is then rarely challenged by the courts. [31][71b][74]

5.3 According to the 2001 US Department of State Report (issued March 2002), the Government's human rights record was poor, and although there were improvements in some areas, serious problems remained. The KHRC reported that police killed 251 persons during 2001 (compared to 198 persons in 2000), including at least 49 by torture. During 2001, the number of human rights organisations continued to grow. These include NGOs such as the KHRC, the Kenya Antirape Organisation, the Legal Advice Centre, the Catholic Justice and Peace Commission, the Protestant National Council of

Churches of Kenya, the Centre for Governance and Development, People Against Torture, the Independent Medico-Legal Unit (IMLU), Muslims for Human Rights (MUHURI) and the Release Political Prisoners pressure group. An array of legal organisations, including the International Commission of Jurists-Kenya, FIDA, the Law Society of Kenya and the Public Law Institute, advocate human rights. Several NGOs 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. Government officials including the President continued to intimidate and threaten to disrupt human rights organisations and other NGOs. [2]

Freedom of Speech and the Media

5.4 The Constitution provides for freedom of speech and the press, however, the Government broadly interprets existing laws to restrict free expression. The Government continued to harass, beat and arrest elements of the media during 2001. The print media has been relatively independent for several years and since 1992 has multiplied and become more outspoken. There was further liberalisation of the electronic media during 2001, including radio, television and Internet communications, tariffs of which have been reduced for learning institutions. At the end of October 2001, a Kenya Gazette notice laid out the Miscellaneous Amendments Bill 2001, with several amendments to the Book and Newspapers Act. Changes were also proposed to the Films and Stage Plays Act. If enacted, the Bills would hinder the growth of the media and limit democratic space. In November 2001, the churches, MPs, media owners and journalists called for the withdrawal of the Bill. The new law would make it an offence to sell or distribute any book or newspaper without giving copies to the Registrar of Societies. Offenders would risk a fine of Ksh 20,000 or a maximum of six months in jail or both. The law would require distributors, agents and vendors to obtain an undertaking from publishers that they had complied with the law. The Bill was tabled in Parliament on 13 November 2001. Unlike previous years, the Government did not pressure businesses against advertising with opposition media during 2001. While there was no overt official government pressure on journalists, individual journalists reported that they were pressured by government officials and other influential persons to avoid reporting on issues that could harm the interests of these persons or expose their alleged wrongdoings. The Government attempted to intimidate the pro-opposition press and with arrests and pressure and by selective prosecution of journalists under a colonial-era section of the Penal Code that criminalises the publication of information likely to cause fear or alarm. [2][33c][32aw][32ax][55f]

5.5 The Government continued to loosen its control over electronic broadcast media in and around Nairobi, while maintaining its dominance of broadcast services to regional towns and rural areas, where the majority of the country's population live. Kenya Broadcasting Corporation (KBC) remained the only domestic source of current information for most persons outside the Nairobi area; stations operated by other media companies, including 12 radio stations, operate primarily in Nairobi and its outlying areas. The Government controls KBC, and KBC's monopoly on broadcasting nationally continued to limit severely the ability of opposition leaders and other critics of the Government to communicate with the electorate outside the capital. The Government through the Communications Commission of Kenya (CCK), continued to delay action on a number of radio and television licence applications on the grounds that it was reorganising and regularising its products' licensing. In June 2001, the Government announced that it would not issue any more licences to broadcast in Nairobi until new policies were in place. According to the Ministry, there were 120 applications for radio/television licences pending at the end of 2001. Private organisations that have been issued with frequencies to broadcast, but have not done so, include the Pentecostal Church, Pete Aviation and Maritime Media Services. The Catholic Church, which reportedly was allocated radio and television frequencies for Nairobi, did not begin broadcasting by the end of 2001. [2]

5.6 In January 2001, the CCK ordered the closure of Citizen Radio and Television for unpaid licensing fees and improper use of communications equipment. However, Citizen claimed that the closure, which only affected its operation outside of Nairobi, was politically motivated. In 2000 after appealing, the order in the Courts the Courts upheld CCK's order. Citizen then appealed to the highest court, the Court of Appeal. In April 2001, when Citizen moved its broadcast equipment from borrowed space on government-controlled towers to a new location on the outskirts of Nairobi, the CCK sealed Citizen's offices, confiscated equipment, and detained its owner. Citizen appealed the Government's action and the court ruled that the Government had acted properly in seizing the equipment. The CCK subsequently stripped Royal Media, Citizen's parent company, of its broadcasting licences. Citizen's owner appealed that ruling; the appeal was still pending at the end of 2001. [2]

5.7 In April 2000, during a speech to Parliament, Julius Sunkuli, Minister of State in the Office of the President, criticised ethnic vernacular radio stations as being tribal and a detriment to national unity. In August 2000, President Moi's request that the Attorney General draft a law to force radio stations to broadcast only in English or Kiswahili drew negative public reaction, which caused several Government officials to deny that the Government intended to ban vernacular broadcasting. No such law was implemented by the end of 2001. [2]

5.8 Despite constitutional provisions for free speech, the Government and school administrators continued to limit academic freedom. There were six private universities and six universities owned, subsidised and administered by the Government. Most post-secondary students attended Government-run institutions, partly because of their lower fees. President Moi, as chancellor of all state universities, appoints the vice chancellors, who manage 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 re-admission. Students claim that the Government interferes in student elections to ensure sympathetic student leaders. [2]

Freedom of Religion

5.9 The Constitution provides for freedom of religion and the Government generally respects this right in practice; however, while groups were generally allowed to worship freely, on occasions the Government interfered with other activities of religious groups. The Government requires new religious organisations to register with the Registrar of Societies which reports to the Office of the Attorney General. The Government allows traditional indigenous religions to register, although many choose not to. Once registered, religious organisations enjoy tax-free status, and clergy are not subject to duty on purchased goods. Religious organisations 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 organisation. The Government has not granted registration to the Tent of the Living God, a small Kikuyu religious order banned during the single-party era (pre-1992). However, with the arrival of a multiparty system in 1992, the Tent of the Living God virtually disappeared. [3]

Freedom of Assembly & Association

5.10 The Constitution provides for freedom of assembly; however, the Government restricts this right in practice. Authorities continued to disrupt public demonstrations, despite the organisers informing the police in advance. Government officials claimed that the organisers lacked authorisation to hold public gatherings, even though there no

longer appeared to be any basis in domestic law for requiring specific authorisation. In August 2000, President Moi repeated his September 1999 statement that government officials should deny "permits" (for public demonstrations) to politicians who use rallies to abuse other leaders. [2]

5.11 Police forcibly disrupted public assemblies, including some political protest demonstrations. President Moi's 2000 statement barring Muungano wa Mageuzi [MWM (Movement for Change)] from holding public meetings has been aggressively enforced, although there is no legal basis for this policy. President Moi said that licences should only be given to registered political parties, and that the Government would ban events by any "lobby groups, some religious organisations, and non-governmental organisations whose aims and operations were sinister". On 4 February 2001, police beat and arrested James Orendo when he notified them of a planned MWM rally; On 8 February 2001, police declared the planned rally illegal, forcibly prevented it and arrested numerous persons. In October 2001, 70 people who were members of Release Political Prisoners (RPP) were arrested for holding an unlawful meeting. Police officers had responded with tear gas and had beaten the RPP members with batons and hockey sticks. Student protests and riots occurred frequently during the year and police forcibly dispersed several protests after they became violent, which resulted in injuries. In 2000, President Moi was quoted widely in the press calling for action against the Mungiki cultural and political group and police disrupted several of the group's meetings and marches during 2001. During 2001, authorities began allowing the Mungiki to hold public meetings without interference; however, in November 2001 the police initiated a crackdown and arrested several members of the group, including Mungiki leader Ibrahim Waruinge. In October 2001, police in Nairobi seized dozens of anti-Moi leaflets issued by a Muslim group calling itself The Friends of Al-Aqsa, Kenyan Chapter. In his Kenyatta Day speech, President Moi had criticised the Muslims for demonstrating against the United States attack on Afghanistan following the, 11 September 2001, attack on the World Trade Centre in New York. [2][44b][29c]

Employment Rights

5.12 The law provides that all workers are free to join unions of their choice; however, the Police Act prohibits members of the national police force from joining unions. On 10 December 2001, the Labour Commissioner registered the Union of Kenya Civil Servants, which granted civil servants the right to join unions for the first time since 1980. The law provides that as few as seven workers may establish a union, as long as the objectives of the union do not contravene the law and no union is already representing the employees in question. Unions must apply to and be granted registration by the Government. The Government may also de-register a union, but the Registrar of Trade Unions must give the union 60 days to challenge the de-registration notice. An appeal of the Registrar's final decision may be brought before the High Court. [2]

People Trafficking

5.13 Although there are no laws that specifically prohibit trafficking in persons, there are applicable laws against kidnapping and abduction that could potentially be used to prosecute traffickers. In January 2001, the authorities arrested and deported six Sudanese on suspicion of running an operation to smuggle Kenyans to the Middle East to work. The Government does not have any programs that specifically target trafficking; however, several NGOs provide service to persons who may have been victims of trafficking. [2]

Freedom to Travel/Internal Flight

5.14 The Government does not restrict emigration or foreign travel. Civil servants and MP's must obtain government permission for international travel, which is routinely granted. Kenyans may freely travel within the country. Many of the rural residents in the Rift Valley, who were displaced by the ethnic clashes in 1991-1993, remain displaced in urban areas. Some of the several thousand people displaced by the Rift Valley clashes of 1998, and in the Pokot-Marakwet region during 1999, have not returned to their homes for fear of renewed violence. There are Kikuyu communities spread all around Kenya, and Kikuyus, who may have been displaced by ethnic clashes in the Rift Valley are able to freely travel to other parts of Kenya where they could integrate with other Kikuyu communities outside of the Rift Valley. [2][23h]

B. HUMAN RIGHTS: GENERAL ASSESSMENT

5.4 In the above-cited Amnesty reports (see paragraph 5.1), Amnesty International detailed the following examples of torture reported to them by persons who cited maltreatment by the security forces. Death threats, beatings on different parts of the body, burns, adopting uncomfortable postures for prolonged periods of time, sexual abuse and humiliation of both men and women, electric shocks and forced exercise. Women had been raped. Complaints were also received of being held in a flooded cell filled with two inches of water for lengthy periods. In extreme cases the pulling out of fingernails and toenails and near-asphyxiation were also cited. An Amnesty International report released in June 2001 stated they had compelling evidence that many acts of torture committed by the police were not investigated. Investigations which do take place are inadequate, poorly conducted and lengthy. The most basic documentary evidence needed to substantiate claims that torture had been committed by the police, such as the Medical Examination Report (P3 Form) is not widely accessible to victims of torture. P3 Forms are only located at police stations, which actively discourages victims from requesting the form and often police refuse or are reluctant to give a form to a complainant. [7][8][82]

5.5 The Government does not permit consistent independent monitoring of prison conditions. In general it does not permit domestic NGOs to visit prisons; however, some independent NGOs work with the Government in evaluating torture cases and performing autopsies on deceased prisoners. In July 2000, foreign diplomatic officials visited Kimiti Maximum Security Prison and Langata Women's Prison. In March 2000, the United Nations Special Rapporteur for Torture, Nigel Rodley, released a report on his visits to several prisons in 1999. Rodley noted the problems of limited access by observers, poor sanitation and health care, and overcrowding. Newly-appointed Commissioner of Prisons, Abraham Mariach Kimakil announced on 13 December 2000, changes in the management of prison affairs. He said the prisoners' human rights should be a priority to the warden, and warned that any warden found violating their rights would be dealt with firmly. Kimakil said that medical facilities would be available to all prisoners and no prisoner would be discriminated against. He promised to establish a public relations office to deal with the public on matters pertaining to the running of prisons and that all prisons would soon be open to the public and the media in order to avert any suspicions. In July 2001 Amnesty International said that out of the 17 recommendations made following the UN Special Rapporteur's visit in 1999, the government of Kenya had only implemented five, most of which fell under two bills awaiting debate in Parliament. The report stated that the government still "appeared to be condoning torture" and it criticised the statement made two years ago by Major Marsden Madoka who urged Kenyans to "forget" about allegations of widespread acts of torture committed by the security forces. The Amnesty International report "Ending the Cycle of Impunity" also questioned the commitment of Nairobi to ending police torture. [2][32bv][32dw][36d][82]

5.6 In a report issued on 25 August 2000 in the Daily Nation newspaper of Kenya, an

American Catholic priest, Father Kaiser, was found dead after having been shot in the head. He was a human rights activist and had served as a missionary in Kenya for 36 years. He was an outspoken critic of the government and its human rights record. It was reported on 27 August 2000 that the Priest was carrying, on him at the time of his murder, documents linking two cabinet ministers to tribal clashes in the Rift Valley. Father Kaiser had been a vocal critic of the tribal clashes that rocked the Rift Valley Province prior to the 1992 and 1997 general elections and which mainly targeted the Kikuyu community to evict them. In October 2000, United States Congressmen in the 435-member House of Representatives condemned what they called the assassination of Father Kaiser. They have also called for a private investigation into the deaths of five other clerics. [32bw][43c][57a][60]

5.7 Mystery surrounded the deaths of the clerics (see paragraph 5.6) with their killers still unknown. Madeline Albright had pledged that the US government would be monitoring the investigations into Father Kaiser's death. A news report on 19 December 2000 stated that the United States Department of State was working closely with the Federal Bureau of Investigators to conduct an independent investigation into the death of Father Kaiser. Forensic evidence and final interviews are yet to be analysed. The FBI released a report into Fr Kaiser's death on 19 April 2001, giving the verdict as suicide following years of suffering depression-related illnesses. Many journalists wanted to know from Attorney General Amos Wako whether the report was final. Mr Wako then urged anyone with "fresh evidence" on Fr Kaiser's death to present it to his office. Following this, 26 Bishops demanded a public inquest into the American Priest's death saying that the FBI report had raised many questions. In August 2001, reacting to this the US Department of Justice refused to review the FBI's finding that Fr Kaiser had committed suicide. There was a memorial Mass held at the spot where Fr Kaiser's body was found to commemorate the first anniversary of his death. [32ds][32dt][32du][32dv][34][43k][43l]

5.8 The number of organisations engaged in monitoring human rights in Kenya is growing. These include NGO's such as the Catholic Justice and Peace Commission, the Centre for Governance and Development, the IMLU, the Kenya Antirape Organisation, the Legal Advice Centre (LAC), the Protestant National Council of Churches of Kenya, People Against Torture, Release Political Prisoners and the independent Kenyan Human Rights Commission (KHRC). An array of legal organisations, 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, are also concerned with human rights. NGO's and some opposition parties maintain comprehensive files on human rights abuses. These organisations remain extremely active, produce regular reports on the human rights situation and also organise activities to publicise their causes. The KHRC produces a "Quarterly Repression Report". A number of attorneys represent the poor and human rights defendants without compensation, although they can meet only a small percentage of the need, and are concentrated largely in urban areas. The Government regularly criticised, intimidated and threatened to disrupt NGO's. In March 1999, President Moi publicly stated that NGO's were trying to destabilise the country by channelling foreign funds to anti-government student and labour organisations and using the money to organise seditious mass protests. In April 1999, the Office of the President instructed all district governments to monitor NGO's within their districts with a view to ensuring that they either advance government policy or cease to operate. However, NGO's did not subsequently report an increase in government monitoring. In July 2001 NGO's in Nyanza were warned against sending negative reports about the country to foreign donors by Provincial Commissioner John Nandasada. He told other organisations officials to project a positive image of their respective NGO's by doing what was expected of them. [2][17][32dr]

5.9 In July 1996, the Government established a Standing Committee on Human Rights to investigate alleged humanitarian abuses by the Kenyan authorities. However, the committee is subordinate to the Office of the President, and it has only received sufficient funds to fill 8 of its 27 authorised staff positions. Since its inception, the Committee has maintained a low profile and kept its distance from most major problems. In October 1999, the Committee requested that the National Assembly enact legislation giving the

Committee greater autonomy and independence; no such legislation was enacted by the end of 1999. In May 1999, a Trade Union witness to the Standing Committee on Human Rights expressed the view that the government was the leading violator of human rights in Kenya. [1][2][32aw]

5.10 In October 1998, 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. The Government has recognised that certain laws, which violate human rights, are bad and began to review them. Many Kenyans have questioned the Government's commitment to human rights reform. Nevertheless the Government has stated its commitment to upholding its national and international obligations on torture and has confirmed its policy on taking action against those who abuse the law. In February 1999 the KHRC called for the police to go beyond admitting responsibility for violating people's human rights and undertake to compensate the victims, following the shooting of Getrude Andi in the leg during a police operation in Mandizini. [2][9][32ag]

5.11 In July 1999, Kenya held its first National Anti-Torture Week. At a meeting it was put to the Attorney General, Amos Wako, that the judiciary join forces with the police to form a powerful and ruthless team of torturers. Wako was asked to set a precedent and put all persons accused of committing torture on trial which would send a powerful message to all would-be torturers. However, the Attorney General defended his office saying that the judiciary was independent and he could not be seen to interfere. He further stated that in the last year or so 60 police officers had been charged either with murder or assault or involved in inquests into causes of death resulting from police action. Amnesty International lists Kenya as one of five countries where there are persistent, severe and systematic violations of human rights. The most pressing demand from rights groups, who presented the Attorney General with a petition at the meeting, is for the establishment of an independent investigative unit to deal with torture allegations. At present this is done by the police. A non-governmental organisation, recently launched, which offers free legal services to torture victims is People Against Torture (PAT). The police stated they were responding to suggestions to set up an independent unit. A group of senior officers visited the United Kingdom in early 1999 to look at the British Police Complaints Authority and there are recommendations that a similar authority be started in Kenya. The police also stated they were introducing a human rights training programme. [50a]

5.12 In March 2000, it was reported that the first ever criminal and civil proceedings against President Moi of Kenya were likely to be filed in British and Belgium courts during that summer. KHRC and London based Kenya Movement for Democracy and Justice (KMDJ), Amnesty International, and Redress were working together to seek redress on behalf of Kenyan victims of ethnic clashes and police torture. The responsibility of KHRC was to collect evidence and materials in respect of mass killings, destruction of property, displacement and widespread torture of individuals by the Kenyan police. [40]

Prison conditions

5.13 Prison conditions are extremely harsh and often life threatening, with severe overcrowding, inadequate water, poor diet, substandard bedding and deficiencies in health care. Prisons do not have resident doctors, only one prison has a doctor permanently assigned. There have been incidents where medical treatment of prisoners has been blocked. The country's prisons reportedly hold 2 to 3 times their estimated combined capacity of 15,000 inmates. While the prison population has increased steadily over the last several years, prison facilities have not. According to the Government, 658 prisoners died in prison during the first 10 months of 2000, compared with 196 in the first 9 months of 1999. This was due mainly to tuberculosis, dysentery, anaemia, malaria, heart attack, typhoid and HIV/AIDS. Officially men, women and children are segregated, however, there are cases where they have shared the same cells. Young teenagers are frequently kept in cells with adults in overcrowded prisons and detention centres. Rape of both male and female inmates, primarily by fellow prisoners, is a serious problem and

increasing incidence of AIDS. In December 2000, the Kenyan Government rejected calls by anti-AIDS and human rights campaigners to make condoms available to prisoners countrywide. Prisons Commissioner Abraham Kamalkil said this would legalise sex in the country's prisons. He went on to say "The Prisons Act precludes sexual activities in prison, so supplying inmates with condoms means condoning the activities". Prisoners reported that they were frequently denied the right to contact relatives or lawyers. The Government does not permit independent monitoring of prisons. In 1998, The Community Service Order Act was passed by Parliament. This provides for those convicted and sentenced to less than three years imprisonment to do community service rather than serve a custodial sentence, thus potentially reducing the prison population. By the end of 1999 the Government had failed to implement the act. [2][8][9][12][35h]

5.14 In January 2000, responding to public allegations of unacceptable detention conditions, the Government sent a fact-finding team to Kodiaga Prison, which found that the prison conditions were acceptable as stated in the United States Department Report 2001. In September 2000, the Attorney General said that some prisons were "unfit for humans". On 4 September 2000 in an alleged attempted escape, by eight prisoners, at Kingongo Prison in the Nyeri District six of the eight died and a number of prison officials were badly hurt. The two other men are said to have got away. All eight men were awaiting execution. Even though the police report stated that they had been shot by prison officers to prevent their escape a post-mortem revealed that none of the bodies had bullet wounds and gave the cause of death as falling from a height. In October 2000, Amnesty International sent an independent pathologist to perform autopsies on the six prisoners. This revealed that the bodies had been subjected to repeated blunt trauma, injuries that were not consistent with a fall. A report released in June 2001 by the standing committee on human rights stated that the six prisoners had been murdered and were killed to cover up a plot by warders to facilitate the escape of a fellow inmate Goeffrey Ipomai. The committee chaired by Prof Onesmus Mutungi recommended that the warders responsible be punished and the families of the prisoners be fully compensated. In September 2001 a crime suspect went to see a doctor four months after he was allegedly tortured by detectives. He had told a retired Kamiti Prisons medical-in-charge that he had been brutalised by the investigators and tortured into confessing to the murder of land dealer Mr Lawrence Githinji Magondu. [2][11c][30w][32dq][34t][59]

V.HUMAN RIGHTS - Specific Groups

Women

5.15 According to an Amnesty International report in March 2002, police statistics over the years have shown an increase in the number of reported rapes; 515 in 1990 and 1,675 in 2000. The report claims that these figures are likely to reflect an under-reporting of rape and not its actual incidence. Local women's groups believe that the true figures are much higher. According to the Government, 1,199 cases of rape were reported to the police in Nairobi during 2001 compared with 1,148 in 2000. Domestic violence against women is a serious and widespread problem. A study by Kangemi Women Empowerment Centre, a small group based in one of Nairobi's largest low-income communities, claimed that three out of every five women in the community were victims of domestic violence, and that one third of the women had suffered sexual abuse. The study noted that women rarely reported the violations because they believed perpetrators would not be punished and no protective or remedial action would be taken. Kenya has agreed to be bound by international human rights standards such as the United Nations (UN) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which was ratified by the Kenyan government in 1984. [2][31]

5.16 The law carries penalties of up to life imprisonment for rape, however, sentences usually are 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 might provide the evidence for conviction. Traditional culture permits a man to discipline his wife by physical means and is ambivalent about the seriousness of spousal rape. Wife beating is prevalent and largely condoned by society. There is no law prohibiting spousal rape. Since 1994, the Federation of

Women Lawyers (FIDA) has collaborated with the police to stop domestic violence. Police generally view domestic violence against women as a family matter, not a crime. FIDA have trained over 800 police officers about gender issues. A Domestic Violence Bill was published in November 2000. Maendeleo Ya Wanawake, the nation's best known women's rights and welfare organisation, was established as a non-political NGO during the colonial era, but is aligned closely with the ruling party. A growing number of women's organisations 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 Centre for Women and the League of Kenyan Women Voters. The Domestic Violence Bill, if passed by Parliament, will lead to establishment of an Act. [2][32by]

5.17 In November 2001, a public forum was hosted by Nyaribari Chache MP Simeon Nyachae in order to launch his vision for Kenya, which placed high emphasis on women's rights issues. A consultant with the Collaborative Centre for Gender and Development, Dr Elishiba Kimani, shared the stage with Mr Nyachae. His campaign machinery chose the occasion for Dr Kimani to deliver a paper, Gender and Economic Recovery, on economic recovery, written from a gender perspective. The paper generated debate, especially from women in the audience, who forced Mr Nyachae to keep affirming that he was committed to the empowerment of women and supported the Affirmative Action Bill which seeks 33 percent representation of women in Parliament and Councils. In October 2001, the Democratic Party picked its two nominees for the East African Legislative Assembly (The East African Community consists of representatives from Kenya, Tanzania and Uganda making up a 27-member assembly in order to promote cross-border trade and free movement within the community). The DP's nomination of women has set a precedent on gender, meaning that of the five KANU slots, at least two will have to go to women in line with the East African Community. In November 2001, President Moi made clear that women who occupy high positions in Kenya owed their elevation to fair competitions and not benevolent legislation. President Moi said that any attempt to erode the credibility of women was itself a form of oppression. [32ab][32ad][44a]

5.18 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. The Government has not yet passed domestic enabling legislation to implement international conventions on women's rights; however, the Attorney General submitted to Parliament, three Bills designed to protect women's rights: The Domestic Violence (Family Protection) Bill, The National Commission on Gender and Development Bill and the Equality Bill; all of which were still pending at the end of 2001. [2]

5.19 In July 1999 it was estimated that 95% of commercial sex workers in the heart of Nairobi's Red Light District were HIV-positive. Desperate women sell their bodies for as little as 20 shillings (the equivalent of about US\$ 0.30 when reported). For 500 shillings some women agree to a client's request not to wear a condom. Most of the women did not learn about safe sex until it was too late. Following intensive education efforts by NGOs the majority of sex workers now claim to practice safe sex but most ordinary Kenyans do not. In August 1999, the new Permanent Secretary in the Ministry of Health called for the legalisation of abortion in a bid to prevent the rising numbers of abortion related deaths. Prostitution is illegal, however it still remains a problem. [2][50a][51]

Children

5.20 In December 2001, the Children's Bill was passed. The Bill has provisions to ensure children's welfare and provide them with basic rights. In March 2002, the Children's Act came into force. In the new law, a person who witnesses a child's rights being abused can seek redress from the High Court. The Act also outlaws child labour and any form of discrimination against children. In February 2002, a pupil was caned to death by his teacher. The District Education Officer said the teacher was reportedly punishing the boy for failing a mathematics test. The teacher has been interdicted pending the outcome of police investigations. The teacher fled the institution when he sensed that the boy was dead. The hunt for him continues. In another incident, in March 2002, a pupil was whipped by his teacher allegedly for failing to complete his homework. The head teacher at the school confirmed that eight other pupils suffered injuries with three being seriously hurt. In 2001, the Government outlawed corporal punishment in schools. [32af][32ah][32ak]

5.21 Kenya is party to the charter that ratified the Convention on the rights of Children 10 years ago. The findings contained in a national survey in 2001, reveal that three out of four Kenyans are ignorant of core issues appertaining to children's welfare like the then Children's Bill. The 'Say Yes to Children Campaign' in Kenya was launched by Vice President George Saitoti in July 2001 and requires people to agree with 10 underlying principles on improving and protecting the lives of children ranging from education to HIV/AIDS, discrimination to armed conflict. Also in July 2001, a local oil company launched a community initiative to help children with various disabilities. Mobil Oil announced that it would set aside KSh400,000 every month for the next year toward the initiative. [32di][32cz]

5.22 Economic displacement and the spread of AIDS continue to fuel the problem of homeless street children. In 2000, the number of Nairobi's street children exceeded 60,000 an estimated 20% increase from 1999. These children are often 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. Street children are also subject to frequent arrest simply because they are homeless and vagrancy is a criminal offence in Kenya (Vagrancy Act, Chapter 58 of the Laws of Kenya). The police frequently conduct several roundup operations of street children. There are some shelters for street children and NGOs and human rights activists work with the children. NGOs have assisted street children in filing preliminary complaints with the police about police misconduct. As reported on 27 July 2000, by the Kenya news agency quoting the Rift-Valley provincial administrator, Francis Baya, who said that to date there were 860,000 AIDS orphans in the country. Baya called for serious action against the problems affecting Kenyan children, as they comprised 60% of the country's total population of 28 million, besides forming the basis of future productive investment. [2][16][58]

23. Inued. There are frequent press reports of rape of young girls, with rapists often middle-aged or older. There were repeated reports of molestation and rape of children by schoolteachers, mostly in rural areas. Legally, a man does not rape a girl under the age of 14 if he has sexual intercourse with her against her will; he commits a lesser offence of defilement, which carries a penalty of five years imprisonment. Men convicted of rape normally receive prison sentences of between 5 and 20 years, plus several strokes of the cane. Under Kenyan law, rape is classified under "Offences against Morality" and identifies three types of rape; rape, defilement and incest, which are classified according to the age of the victim. In 2000, teachers at the Top Station Primary School in Kitale allegedly raped several students. In a letter to the Minister of Education, FIDA demanded that the Government dismiss these teachers. The authorities investigated the allegations and one teacher was charged; however, in May 2000, he was acquitted for lack of evidence. [2][31]
24. The new Children's Act which came into force in March 2002 outlaws child labour and any discrimination against children; however, the executive director of the Child Welfare Society of Kenya, Mr Julius Kaberere, said that more resources were required for the Act to be enforced. The Act also stipulates that those found guilty of infringing on the rights of children will be liable to a jail term not exceeding 12 months or a fine of up to Ksh50,000 (US \$650) or both. According to the United States Department of State Report, covering 2001, issued 4 March 2002, there were instances during 2001, especially in rural areas, of children being loaned out as workers to pay off family debts. Unlike 2000, there were no reports that children were killed for body parts by persons practising healing rituals associated with traditional religions. In February 2002, Kenya signed an international agreement to ratify a protocol officially banning the recruitment of child soldiers. The agreement was signed by 14 nations. The agreement states that "no person under the age of 18 shall be subject to compulsory recruitment into regular armed forces", and imposes an obligation to the states "to raise the minimum age for voluntary recruitment to at least 16 years". [2][32af][32am]

i) Female Genital Mutilation

5.25 Female Genital Mutilation (FGM), which is widely condemned by international health experts as damaging to both physical and psychological health, is practised by certain ethnic groups and remains widespread, particularly in rural areas. It is usually performed at an early age and according to a report issued, by Government and UNICEF, in December 2001, 38 percent of women nationwide have undergone FGM. The percentage of girls undergoing the procedure is as high as 80 to 90 percent in some districts of eastern, Nyanza and Rift Valley provinces, according to the women's rights organisation Maendeleo Ya Wanawake. President Moi has issued two decrees banning FGM and the Government prohibits government-controlled hospitals and clinics from practising it. In December 2001, President Moi outlawed the circumcision of girls under the age of 17 and introduced prison terms and penalties of up to Ksh50,000 (US \$640). However, in some rural communities FGM is still practised despite efforts by the Government, churches and civic groups to stamp it out. [2][55e]

Ethnic Groups

5.26 The Constitution prohibits discrimination based on race, tribe, place of origin or residence or other local connection, political opinion, colour or creed; however, government authorities do not enforce effectively many of these provisions. There is credible evidence that the Government sponsored large-scale ethnic violence during the 1990s, and there were some indications that some government officials have at least tolerated and in some cases instigated ethnic violence on a smaller scale since that time. Although the President's Cabinet included persons from many ethnic groups, approximately one third were Kalenjin or Luhya. At the end of 2001 there were two ministers from the country's largest ethnic group, the Kikuyu. In July 2001, the Government appointed four Luo NDP MPs to the Cabinet. However, the President continued

to rely on an inner circle of advisors, drawn directly from his Kalenjin ethnic group. There is one nominated MP who is of Asian origin. In 1999, President Moi appointed a person affiliated with the Kikuyu as Vice President. Estimates for the main minority groups in Kenya show that there are Kikuyu (20%), Luhya (14%), Luo (11%), Kamba (10%), Kalenjin (11%), Kisii (5%), Meru (5%), Somalis and nomadic minorities (2.5%), Maasai (1%) and others (1.5%) including Okiek and Aweer. [2][76]

5.27 Members of the coastal Bajuni, Mijikenda and Digo communities accused the Government of denying them rights to land and of favouring members of inland "up-country" ethnic groups. The Government has singled out the overwhelmingly Muslim ethnic Somalis as the group whose members are required to carry an additional form of identification to prove that they are citizens. The continued presence of and at times criminal activities by Somali refugees have exacerbated the problems faced by citizens of Somali ethnicity. Members of the Kalenjin (President Moi's ethnic group) and other Nilotic ethnic groups are represented disproportionately and hold key positions in the Government, the ruling KANU party, the GSU and the Presidential escort. [2]

Religious Groups

5.28 Foreign missionary groups of various faiths operate in the country, and the Government generally has permitted their assistance to the poor and their founding of schools and hospitals. The missionaries openly promote their religious beliefs and have encountered little resistance. The Government celebrates several national holidays that also are religious holidays including Christmas, Good Friday, Easter Monday, Idd-ul-Gitr, Idd-ul-Azha and Diwali. In April 2000, William Ruto, Assistant Minister in the Office of the President, speaking after the discovery of "cult" killings in Uganda, was quoted as saying that the Government would crack down on religious groups that endanger the safety of their adherents; however, there was no reported harassment of religious groups, and no action was taken at the end of 2001. Muslims leaders have charged that the Government is hostile toward Muslims. Muslims complain that non-Muslims receive better treatment when requesting citizenship documents. [3]

i) Mungiki

5.29 The Government historically has been unsympathetic to tribal groups that have engendered protest movements. The Government frequently harassed and periodically arrest and detain members of the Mungiki, a small, controversial, cultural and political movement based in part on Kikuyu ethnic traditions, which espouses political views and cultural practices that are controversial in mainstream Kenyan society. The sect's organising secretary said that the estimated following of the movement is now 3.5 million. A special report on 8 March 2002, in the Nation Newspaper stated that "beneath the veneer of religion, praying to Mount Kenya, circumcising women, sniffing snuff and making animal sacrifices", Mungiki is protected. In October 2001, the Mungiki sect announced that they intend to field parliamentary candidates in various parts of the country. On the same day, police in Nyandarua and Laikipia districts jointly mounted an operation to stop a planned meeting by the sect. Leaders of the sect eventually called off the meeting in order to avert a clash with the security forces. The sect's national chairman, Mr Maina Njenga, told reporters in Nakuru town that he was disappointed that the Government had outlawed the rally even after the sect's members had informed the police about their plan to hold a public meeting. In March 2002, 20 people were hacked to death and left 28 seriously injured in overnight riots on an estate in Nairobi. Seven people were arrested. Members of the Mungiki went on the rampage after three of their members were killed by the estate's vigilantes, known as "Taliban". Minister in charge of Internal Security, Julius Sunkuli, declared that security would be stepped up in the area. On 6 March 2002, Embakasi MP David Mwenje and 31 others, among them were Mungiki sect leader Ndura Waruinge and Taliban group head David Peter Ochieng were arrested. [44c][32ay][32az][32ba][32be][32bg]

ii) Kenyan Asians

5.30 The Asian community comprises between 0.5% and 1% of the population and includes second and third generation Asians with full citizenship as well as a smaller body of recent immigrants. Many persons of African descent resent those 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 from Africans. 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. Chenge Mbitiru, Democratic Party MP from Laikipia West, called Asians "the greatest economic enemies" of the country. In early September 2000, he called for

"Kenyans" to isolate "Asians" unless the government acted to constrain them. The MP reportedly said that President Moi should consider expelling Asians "or allow the Kenyan people to force them to leave through mass action". However, no action was taken in response to the MP's statements, and he did not make any subsequent similar statements. On 2 June 2000 President Moi appointed Africa's first woman judge of Asian origin. [2][43d]

5.31 There have been reports of the Asian community being threatened or coming under attack by groups of African Kenyans; however, President Moi has made it clear that threats to any individual community were unacceptable, and that the police would take action to protect all and maintain the law. On closer inspection very few of the attacks turned out to be politically motivated and were regarded as acts of common criminality. Such crimes have become common occurrences and Asians, who are commonly believed to keep money and valuables in their homes, are popular targets. However, such burglaries are by no means restricted to Asians or Asian households, nor is there any evidence that the Asian community is at any greater risk than other ethnic communities who are perceived to be well off (including Europeans and black Africans themselves). There is one Asian Member of Parliament. [2][23a][23g][48a]

iii) Ethnic Somalis

5.32 The Kenyan authorities have targeted Kenya's indigenous ethnic Somalis as the only ethnic group required to carry an additional form of ID to prove their citizenship. The continued presence of large numbers of Somali refugees in Kenya (approximately 80% of Kenya's refugee population) has further exacerbated the problems faced by Kenyan Somalis. However, there were, prior to the 1997 elections, 14 Somali MPs and Somalis are also represented in the Cabinet. Since June 1999, seven people were killed during fighting between members of the Abduwak and Auliyen clans of the Somali ethnic group just west of Garissa. In August 1999 fighting between the same two clans reportedly marred county council elections in Garissa County, some deaths were reported following clashes. Worsening gun violence between the clans led to a partial curfew being imposed in Garissa from 13-20 December 1999. During the curfew the General Service Unit of the police force arrested several people violators. When announcing the lifting of the curfew, the Provincial Commissioner said it had achieved its intended goal of restoring peace. In January 2000, four people were killed in central division of Isiolo District after fighting erupted between Degodia and Ajuran (Somali) clans. The District MP, Mr John Chege confirmed that 2 people were killed on 16 January 2000 while others were shot dead on 18 January 2000. He appealed to clan elders to urgently convene a peace meeting to resolve the problem. [2][20][23d][30r][33d][35b]

Homosexuals

5.33 In common with a number of other African leaders President Moi has verbally attacked homosexuals and lesbians on various occasions. Sections 162 to 165 of the Penal Code outlaw homosexual behaviour and attempted homosexual behaviour between men, referring to it as "carnal knowledge against the order of nature". The penalty is 5 to 14 years' imprisonment. Lesbian relations, though not specifically mentioned under the law could, depending upon interpretation, be subscribed under the above reference as this applies equally to women as to men. In practice, The Federation of Women Lawyers (FIDA) advise that whilst men are occasionally prosecuted for homosexual offences, they are not aware of any cases where women have been prosecuted. It is unlikely that action would be taken against a homosexual male unless some other offence was involved. There is fairly strong social pressure against individual instances of homosexuality and lesbianism such as from family members, it is not however, much of an issue in the public domain. There is no strong antagonistic feeling towards homosexuals but neither is there an active gay community to provoke it. Discreet homosexuals are unlikely to face prosecution or persecution. In March 2002, a 70 year old Kenyan woman, Grace Wanjiru Ndungu, went to court demanding the right to inherit a piece of land belonging to her deceased "husband" - another woman. The practice of women marrying other women is common in some of Kenya's ethnic groups. Ms Ndungu's lawyer said that he will base his appeal on traditional laws, which recognise such unions. He told the British Broadcasting Corporation that inheritance cases involving such couples had been "settled in African courts even during colonial rule".<

C. HUMAN RIGHTS: Specific Groups

Women

5.15 According to the Government, 165 cases of rape were reported to the police in Nairobi during 2000, compared to 155 cases in 1999. These statistics probably underreport the number of incidents, as many women would be unlikely to go outside their families or ethnic groups to report sexual abuse. A study by Kangemi Women Empowerment Centre, a small group based in one of Nairobi's largest low income communities, claimed that three out of five women in the community were victims of domestic violence, and that one-third of the women had suffered sexual abuse. The study noted that the abused women rarely reported the violations, because they believed that nothing would change. Although the validity of the study is unproven, the basic figures reflect other published figures and anecdotal evidence. [2]

5.16 The law carries penalties of up to life imprisonment for rape, however sentences usually are 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 might provide the evidence for conviction. Traditional culture permits a man to discipline his wife by physical means and is ambivalent about the seriousness of spousal rape. Wife beating is prevalent and largely condoned by society. There is no law prohibiting spousal rape. Since 1994, the Federation of Women Lawyers (FIDA) has collaborated with the police to stop domestic violence. Police generally view violence against women as a family matter, not a crime. FIDA has trained over 800 police officers about gender issues. A Domestic Violence Bill was published in November 2000. Statistics according to the Daily Nation newspaper, show that in 2000 the media reported some 50 deaths, most of them women, and another 69 injuries resulting from domestic violence. In 1998, FIDA reported that 60 women had been killed in domestic violence. For a long time, victims of domestic violence, especially women who are abused by their husbands, have found themselves in a "Catch 22" situation - they literally have nowhere to run. This is because in a patriarchal society like Kenya's, the matrimonial home is the man's. The Domestic Violence Bill, if passed by Parliament, will lead to establishment of an Act. [2][32by]

5.17 The Constitution was amended in 1997 to include discrimination based on gender. There are a number of women's rights and welfare organisations present in Kenya. The most well known of these, Maendeleo Ya Wanawake, was established as a non-political NGO during the colonial era, but is now aligned closely with KANU. A growing number of organisations are concerned with women's rights, including the FIDA, the National Council of Women of Kenya, the National Commission on the Status of Women, the Education Centre for Women in Democracy and the Kenyan League of Women Voters. On 5 October 1998, President Moi officially opened the 29th biennial convention of the International Federation of Women Lawyers in Nairobi. He stated that the government were committed to protecting women and other vulnerable groups. Women are seriously under-represented at decision-making levels in the Government. The National Assembly elected in December 1997 included eight female MPs. In 1997, The Women's Political Caucus was formed lobbied the Government over issues of concern to women and to increase the influence of women on Government policy (see paragraph 4.20). July 2000 saw the demise of the once powerful Kenya Women Political Caucus. A new women's lobby group called Women's Political Network was created in August 2000, by one of the two splinter groups. The chairperson of this new lobby group is Charity Kaluki Ngilu for whom an eleven-member board assists. She said that the split had occurred in the Kenya Women Political Caucus because the chairperson had abandoned it. On 2 June 2000, a woman judge, Lady Justice Kalpana Hasmukhrai Rawal became Africa's first woman judge of Asian origin. She was elevated from a Commissioner of Assize to the position of High Court judge, by President Moi, bringing the total number of women on the bench to six. [2][33g][43d][61]

5.18 In May 1999 the Kenyan Parliament passed a motion that sought the establishment of a commission for gender equality in the country. The commission is to promote respect for protection, development and attainment of gender equality. The motion was moved by the then NDP leader Raila Odinga, who called on the government to come up with a policy to deal with the rising cases of violence against women. In May 1999, an

Appeal Court Judge, Richard Kwach, stated that the constitutional provision, which stops Kenyan women from automatically bestowing citizenship on a non-Kenyan husband, was not discriminatory. The judge was speaking during a Federation of Kenya Women Lawyers public debate which focussed on women's rights to equal citizenship and marital property. [32av][35f]

5.19 In July 1999 it was estimated that 95% of commercial sex workers in the heart of Nairobi's Red Light District were HIV-positive. Desperate women sell their bodies for as little as 20 shillings (the equivalent of about US\$ 0.30 when reported). For 500 shillings some women agree to a client's request not to wear a condom. Most of the women did not learn about safe sex until it was too late. Following intensive education efforts by NGOs the majority of sex workers now claim to practice safe sex but most ordinary Kenyans do not. In August 1999, the new Permanent Secretary in the Ministry of Health called for the legalisation of abortion in a bid to prevent the rising numbers of abortion related deaths. [50b][51]

Female Genital Mutilation

5.20 Female Genital Mutilation (FGM), which is widely condemned by international health experts as damaging to both physical and psychological health, is practised by certain ethnic groups and remains widespread, particularly in rural areas. It is usually performed at an early age and health officials estimate that roughly 50% of females nationwide have undergone the procedure. Maendeleo Ya Wanawake puts the percentage in some districts of the Eastern, Nyanza and Rift Valley provinces, as high as 80% to 90%. President Moi has issued two presidential decrees banning FGM, and the Government prohibits government-controlled hospitals and clinics from practising it; however, no law in Kenya bans FGM. According to statistics compiled by a group of NGOs in Marakwet, only 169 girls suffered FGM in December 1999, compared to 12,000 girls during the same month in the previous 4 years. The authorities in Kenya have designed a national plan of action for the elimination of FGM. The plan is to be implemented in three phases covering 1999-2019. In December 2000, a magistrate in the Rift Valley ruled in favour of Ednah Chebet Kandie and Beatrice Jepkosgei Kandie, two sisters who sued their father over his traditional right to force them to undergo FGM. The court in the Rift Valley issued a permanent injunction on their father, Puis Kandie, stopping him from allowing his daughters 17 year old and 15 year old, respectively, to undergo the process without their consent. The order was welcomed by human rights activists as an important step towards ending the practice. In September 2001 twenty parents were fined £17 each for forcing their daughters to be circumcised in the first ruling of its kind in Kenya. The parents admitted subjecting their daughters to FGM. [2][30ab][49d][57c]

Children

5.21 The system of free education, in place during the early years of Kenya's independence, has given way to a "cost-sharing" system in which students pay both tuition fees and other costs. These are a heavy burden to most families. Although the law mandates that schooling be available for all up to grade 12 and that it be compulsory, there is a very high drop out rate due to the high cost of educational expenses. However, in September 2001 the Government announced that it was designing a programme to make primary education free. It is expected that the implementation of the programme would begin in January 2003. There are an estimated 4 million children between the ages of 6 and 14 who are out of school. A second reason why universal schooling does not occur is the shortage of schools. The health care system for school children, which once provided medical check-ups and free milk, is now defunct. Corporal punishment of students, including caning, by teachers is widespread in schools. A newspaper article in October 2000, published an article about a Kenyan teacher who caned an 11 year old boy to death for failing a mathematics test. The boy, Edwin Mogire Nyakundi, was among five pupils at the school in western Kenya whom the teacher had caned. A post-mortem examination showed that the boy had died of cardio-respiratory arrest following the beating. However, in April 2001 the Government banned corporal punishment following the violent beating of students, but the Headmaster of the best boys' school claimed that

the schools had lost control. In November 2000, a new bill to protect the rights of children was put before MPs. The Bill is the outcome of a task force on children's law headed by Lady Justice Effie Owuor. The Government has pledged to implement all the provisions of the Children's Bill when it is enacted. Attorney General Amos Wako said when the bill becomes law, the government will use all the available resources to safeguard the rights of children. In June 2001 teachers launched their code of ethics which would make the Headteachers' Association responsible for monitoring professional performance of teachers and making recommendations for penalties to be meted out on errant teachers. [2][32bz][32cg][32dn][63d][73b][75]

5.22 Kenya is party to the charter that ratified the Convention on the rights of Children 10 years ago. The findings contained in a national survey in 2001, reveal that three out of four Kenyans are ignorant of core issues appertaining to children's welfare like the Children's Bill. The 'Say Yes to Children Campaign' in Kenya was launched by Vice President George Saitoti in July 2001 and requires people to agree with 10 underlying principles on improving and protecting the lives of children ranging from education to HIV/AIDS, discrimination to armed conflict. Also in July a local oil company launched a community initiative to help children with various disabilities. Mobil Oil announced that it would set aside KSh400,000 every month for the next year toward the initiative. [32do][32dp]

5.23 Economic displacement and the spread of AIDS continue to fuel the problem of homeless street children. In 2000, the number of Nairobi's street children exceeded 60,000 an estimated 20% increase from 1999. These children are often 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. Street children are also subject to frequent arrest simply because they are homeless and vagrancy is a criminal offence in Kenya (Vagrancy Act, Chapter 58 of the Laws of Kenya). The police conduct several roundup operations of street children. There are some shelters for street children and NGO's and human rights activists work with the children. NGO's have assisted street children in filing preliminary complaints with the police about police misconduct. In January 1999 two jurists said that the Kenya Constitution was vague regarding children's rights. They claimed it failed to give a standard definition of a child. Whilst addressing a child workshop Mr Muthoga, the Chairman of Africa Network for the Prevention and Protection against Child Abuse and Neglect, Kenya chapter, said children's rights were threatened by lack of food, water, shelter and medical care. He called on child rights activists to ensure that the Constitutional Review Commission (see paragraphs 4.20 - 4.29) was fully sensitised on the rights of a child. On 27 July 2000, as reported by the Kenya news agency quoting the Rift-Valley provincial administrator, Francis Baya, as saying that to date there were 860,000 AIDS orphans in the country. Baya called for serious action against the problems affecting Kenyan children, as they comprised 60% of the country's total population of 28 million, besides forming the basis of future productive investment. [2][16][32w][58]

5.24 The problem of child rape and molestation continued to grow. There are frequent press reports of rape of young girls, with rapists often middle-aged or older. Legally, a man does not rape a girl under the age of 14 if he has sexual intercourse with her against her will; he commits a lesser offence of defilement, which carries a penalty of five years imprisonment. Men convicted of rape normally receive prison sentences of between 5 and 20 years, plus several strokes of the cane. On 9 June 2000, the Nairobi Chief Magistrate ordered Julius Sunkuli, the Minister of State in the Office of the President, to appear before the court to face rape charges brought by FIDA on behalf of Florence Nangini Mpayei who claimed that Sunkuli had raped her in his office when she was 14 years old. In September 2000, the court dropped the case at the behest of Mpayei. In October 2000, fourteen male teachers were interdicted by the Teachers Service Commission over illegal sexual relationships with their pupils. Child prostitution is a major problem in Nairobi and Mombasa, often connected with the tourist trade. Child prostitution has grown due to both economic contraction and the increase in the number of orphans due to the spread of HIV/AIDS. In February 1999, the Minister for Education

and Human Resource Development announced that more than 3 million children under the age of six had no access to early childhood care. He stated that Kenya had 23,344 early childhood care and development centres with an enrolment of 1,064,125 children and a teaching force of 36,201, but the participation rate was only 35%. Real progress had been hindered by poverty, which affected participation in many development programmes including basic education. The Minister also announced that infant mortality had increased by 20% in the last five years. More than 90,000 children were among the 1.5 million Kenyans living with the AIDS virus. During 1999 there were reports of ritual murders associated with aspects of traditional indigenous religions. The victims were generally teenage children who were reportedly killed and had parts of their bodies removed for use in traditional rituals by persons seeking renewed youth or health. [2] [32af][49e]

5.25 The Employment Act of 1976 makes the employment of children under the age of 16 illegal. It is estimated that there are over 4 million child labourers in Kenya. Children often work as domestic servants in private homes. There are many instances of children working in the informal sector, mostly in family-owned businesses. Children often assist parents on family plots rather than seek employment on their own. A significant number of workers on coffee, sugar and rice plantations are children, who usually work in family units. Forced or bonded labour by children is prohibited by law; however, there reportedly were instances in which it occurred, primarily in rural areas as a form of family debt repayment. [2]

Homosexuality

5.26 In common with a number of other African leaders President Moi has verbally attacked homosexuals and lesbians on various occasions. Sections 162 to 165 of the Penal Code outlaw homosexual behaviour and attempted homosexual behaviour between men, referring to it as "carnal knowledge against the order of nature". The penalty is 5 to 14 years' imprisonment. Lesbian relations, though not specifically mentioned under the law could, depending upon interpretation, be subscribed under the above reference as this applies equally to women as to men. In practice, The Federation of Women Lawyers (FIDA) advise that whilst men are occasionally prosecuted for homosexual offences, they are not aware of any cases where women have been prosecuted. It is unlikely that action would be taken against a homosexual male unless some other offence was involved. There is fairly strong social pressure against individual instances of homosexuality and lesbianism such as from family members, it is not however, much of an issue in the public domain. There is no strong antagonistic feeling towards homosexuals but neither is there an active gay community to provoke it. Discreet homosexuals are unlikely to face prosecution or persecution. [28][49a][53a] [53b]

Minorities and Ethnicity

5.27 The Constitution prohibits discrimination based on race, tribe, place of origin or residence or other local connection, political opinion, colour or creed. The authorities do not effectively enforce all these provisions and there were frequent and credible allegations of discrimination among ethnic groups, as well as sporadic interethnic violence. There is credible evidence that the Government sponsored large-scale ethnic violence during the early 1990's, and there were indications that some government officials have at least tolerated and in some instances instigated ethnic violence on a similar scale since that time. Although the President's Cabinet included persons from many ethnic groups, approximately one third were Kalenjin or Luhya. At the end of 2000 there were two ministers from the country's largest ethnic group, the Kikuyu, and no minister from the third largest ethnic group, the Luo; both the Kikuyu and the Luo tend to support opposition parties. However, in 1999, President Moi appointed a person affiliated with the Kikuyu as Vice President (see paragraph 4.7). There is one nominated MP who is of Asian origin. Estimates for the main minority groups in Kenya show that there are Kikuyu (20%), Luhya (14%), Luo (11%), Kamba (10%), Kalenjin (11%), Kisii (5%), Meru (5%), somalis and nomadic minorities (2.5%), Maasai (1%) and others (1.5%) including

Okiek and Aweer. [2][76]

5.28 Members of the coastal Bajuni, Mijikenda and Digo communities accused the Government of denying them rights to land and of favouring members of inland "up-country" ethnic groups. On 7 June 2000, police in Molo prevented the KHRC from holding a civic education drive for the Ogiek community at Tinet Forest. A spokesman for the KHRC claimed the police had deliberately prevented the visit in an attempt to deny the Ogiek their rights. Ethnic-regional differences continue to pose obstacles to political and economic liberalisation. Members of the Kalenjin (President Moi's ethnic group) and other Nilotic ethnic groups are represented disproportionately and hold key positions in the Government, the ruling KANU party, the GSU and the Presidential escort. In September 2001 Muslims sued the Government over restrictions imposed on ethnic Arabs who apply for passports and birth certificates. The restrictions were imposed by the Attorney General through the Principal Litigation counsel Ms Wanjiku Mbiyu who said it was mandatory for a passport seeker of Arabic origin to present copies of his grandparents' birth certificates to prove his or her citizenry. The Attorney General said that the conditions being enforced by the Immigration Department were aimed at curbing people of questionable nationalities from securing Kenyan passports. [2][32dl]

Previous Ethnic Clashes

5.29 Ethnic clashes first broke out in October 1991 in Nandi District on the border of Rift Valley, Nyanza and Western Provinces, and continued throughout 1992. According to Human Rights Watch, two years of violence in the Rift Valley had by 1993 forced 300,000 people to flee their homes. The Government's policy with regard to the return of the remaining displaced people was been ambiguous. Senior government officials openly expressed reluctance to allow their return to their former homes, and Parliament voted in November 2000 against a proposal for resettlement. President Moi made a statement in November 1999 that those remaining displaced in the Rift Valley should return and that "maximum security" would be ensured, but local human rights observers questioned the commitment behind this statement. Some opposition parties accused the government of covertly inciting the violence as a means of undermining the multi-party system reforms. By mid-January 1992 the ethnic clashes were so widespread that the Roman Catholic Bishops issued a pastoral letter, condemning the incidents and castigating the government's failure to take action. Certain officials said the bishops were abusing their authority, and had issued inflammatory statements inciting violence. Speculation continued as to whether the violence was a spontaneous response to the political upheaval or instigated by the government to prove its prediction that ethnic violence would be the result of a change to multi-partyism. In April 1992 the NCKK published a report entitled "The Cursed Arrow: Organised Violence Against Democracy in Kenya" that linked the violence to high-ranking government officials. In May 1992, an official Parliamentary Select Committee was set up to investigate the violence, which released a 238 page report in September 1992. The report verified that the attacks had been politically motivated. The most damning indictment of direct government involvement in the clashes came from the report. The report verified that the attacks were politically motivated and had been orchestrated by Kalenjin and Massai individuals close to the President, including Vice-President George Saitoti and MPs Ezekiel Barngetuny and Nicholas Biwott. The Kiliku Report, as it became known, supported the widely held view that government administrators abetted the violence. The Committee found that numerous Kalenjin government officials and security officers had contributed to the violence. The Committee unanimously agreed that the provincial administration and security forces, by often refusing to assist clash victims and releasing attackers who had been arrested, did not react to the situation with the required urgency. Further clashes occurred in 1993 in the Rift Valley and on the borders between lands occupied by the Maasai, Kikuyu and Kalenjin tribes. Foreign observers who toured the affected area in mid 1993 accused the Government of failing to contain the violence. On 3 September 1993, the Government announced the establishment of security zones in the worst hit areas around Molo, Londiani and Burnt Forest. Human rights groups and opposition parties complained that these regulations gave too much power to the security forces. However, at the end of 1993 there were no reports that this new authority had been

grossly abused. [1][14][19][21][22][66][77]

5.30 Tribal clashes which occurred in the first half of 1993, described by church organisations as the most serious since independence, were most acute in the Rift Valley and on the borders of the land occupied by the Massai and the Kikuyu tribes. In May, during serious riots and clashes with the police in Nakuru, the capital of the Rift Valley province, a number of prominent opposition MPs were arrested. The rapid escalation in violence prompted a group of opposition MPs to call on the UN to intervene. Kalenjin leaders from the Rift Valley meanwhile, whilst themselves allegedly conniving in the dispossession of Kikuyu farms, warned the Kikuyu not to create conflict. Foreign observers who toured the Rift Valley in mid-1993 accused the government of failing to contain the fighting and of pursuing a policy of 'ethnic cleansing'. President Moi sealed off part of the Rift Valley in September 1993, ostensibly to prevent further hostilities, although the opposition claimed that his real aim was to suppress criticism of the government. In October 1993 some 500 Massai fighters killed a number of Kikuyu who had taken refuge in churches near Nanok. Church sources accused government troops of involvement in the violence. At the end of October 1993, after three attacks on police stations in different parts of the country, President Moi accused his opponents of fomenting a civil war and gave the police wide-ranging powers to respond to the spiralling violence. Although most of the raids were by Kikuyu, one raid on a police base near Nairobi was carried out by Massai. Five prominent Kikuyu, who were arrested in connection with the other raids included the human rights activist Kiogi Wa Wamwere who had been released earlier in 1993 following his arrest on charges of treason. (See section on Prominent People). [65]

5.31 William ole Ntimama, the minister of local government, openly supported the Massai in their conflict with the Kikuyu and became increasingly active both as a champion of his own Massai people and as a defender of the government position. Mr ole Ntimama himself a Massai, argued that with the introduction of multi-party system, the survival of the smaller ethnic groups has been threatened and that "*majimboism*" (federal government or regional autonomy) was "the only way out to safeguard the interests of smaller tribes and check colonisation and oppression experienced" in the Rift Valley at that time. (If implemented, *majimboism* would mean the expulsion of millions of members of other ethnic groups who have settled there since the 1920s and who have legally purchased land since the 1950s). With increasing frequency, Mr ole Ntimama and other Kalenjin and Massai KANU politicians referred to Kikuyus and others as "aliens" and "foreigners" in the Rift Valley as opposed to "natives" or "original inhabitants". Critics however, including opposition MPs and twelve Roman Catholic bishops, blamed the government for the tribal conflicts. The international human rights organisation Africa Watch claimed that the ethnic violence had been deliberately exploited by President Moi and his associates in order to undermine the move towards political pluralism. The organisation estimated that 1,500 people had been killed and 300,000 displaced since the clashes began. [21][65]

5.32 Human Rights Watch / Africa Watch concluded that the Moi government had benefited economically and politically from the violence. The government has been able to generate continued Kalenjin support and has destabilised areas where the political opposition would have been able to garner considerable political support. The report also claimed that the ethnic violence was gradually transforming the Rift Valley Province into a Kalenjin land-owning area. This has significant political implications as the Rift Valley Province is Kenya's most fertile area and is allocated the largest number of seats in Parliament. [21]

5.33 In 1994 violent clashes involving several ethnic groups occurred, albeit less frequently than in 1993. Massais forcibly evicted Kikuyus from Enosupukia in the Narok district of the Rift Valley. Kikuyu farms were attacked, villagers killed and property confiscated. The displaced Kikuyus sought refuge in camps in Maela. On several occasions Government officials made inciting statements which targeted particular ethnic groups and exacerbated ethnic tensions. Security zone regulations continued to control access to the affected areas. In early 1994 however, the authorities had allowed NGOs

working under the UN Development Program (UNDP), the Displaced Peoples Program and diplomatic observers access to the zones, and media representatives were permitted to accompany some officials who visited the areas. UNDP's Rogge report, published in September 1994, noted that the Government had made an effort to reduce tensions and to resettle those displaced. In October 1994 President Moi instructed the Rift Valley local administration to resettle displaced persons resident in the camps in Maela. However, local officials proved incapable or unwilling to carry this out, relocating only 200 families to unproductive land, where no resettlement assistance was provided. On 24 December 1994 officials dismantled the Maela camps, without first informing the UNDP, leaving the residents to fend for themselves. Both Amnesty International and Africa Watch stated that the Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and Other parts of Kenya (September 1992) and the NCKK report "The Cursed Arrow" (April 1992), proved the involvement of high-ranking government officials in the 1991 to 1994 clashes. In October 1998, the Justice and Peace Commission announced that only eighty-eight families displaced during the 1992-93 tribal clashes would be settled in Molo and Lare as the second phase of the UNDP began. [1][15][23b][32p]

5.34 January 1995 saw a number of incidents of ethnic violence. Kipsigi tribes people attacked a displaced persons camp in Thessalia; on 11 January 1995, 10 people were killed in clashes in Longonot, and on 12 January an NCKK camp in Eldoret was raided by Administrative Policemen (AP's) who moved 65 families on. The former residents of the Maela camps also reported harassment by AP's who visited them during the night. They also alleged relief support was prevented from reaching those affected. Many of the displaced remained in the area throughout the year. The remainder of 1995 was conspicuously free of ethnic clashes anywhere in the country; however, 70,000 of the estimated 250,000 originally displaced were still in need of assistance. A number of relief agencies and church organisations were able to work with the displaced without encountering Government interference. [6][14][19][23b]

5.35 Whilst the behaviour of some KANU politicians contributed to the serious problems of 1992-93, the Kenyan Government itself, did not condone the clashes and had no wish to see them perpetuated. The security zones created to restore order were eventually lifted in March 1995 with no resumption of fighting. There have occasionally since, been a number of isolated incidents of inter-communal violence. In November 1995 Luo and Nubian youths clashed in the Kibera slum district of Nairobi, while in February 1996 there were reported clashes between Luo and Kisii tribes' people. Locals reported that the attack was triggered by the murder of a Kisii, which prompted a revenge attack on the Luo community. President Moi repeatedly condemned inter-tribal violence and has told Kenya's ethnic communities that they should live together in harmony. [19][22][23b][26]

5.36 On 13 August 1997, heavily armed attackers killed six policemen and seven civilians in an attack on Likoni police station. There was no immediate evidence of any directly political motive although pre-election tensions were high (see paragraphs 5.376 & 5.39). A major security operation was launched to find the attackers. The coast was affected by further civil disturbances which by September 1997 had left nearly 100 people dead and many thousands displaced (see paragraph 5.66). [30e][46]

5.37 On 21 August 1997 a Kenyan High Court charged 62 suspects with robbery and violence in connection with the Likoni raid while the authorities' security operation to counter the violence resulted in at least 410 arrests. Among those arrested were a number of key local KANU activists, supporting allegations that local KANU factions were somehow involved in the attacks. The attacks were directed at members of non-indigenous "up country" tribes who were considered to be pro-opposition. Thirteen police officers were killed in two attacks in September 1997 allegedly by ethnic Somali bandits, in the Garissa district, North Eastern Province. [30c][30d][30f][32n]

5.38 An Amnesty International article published in November 1997 claimed that the December 1997 Presidential and Parliamentary elections would be a sham unless the Kenyan Government stopped intimidating its opponents or using violence to disrupt

political rallies. Human rights violations had already occurred in the run-up to the elections: pro-democracy rallies were violently disrupted and at least nine people killed and hundreds injured. There were reports of intimidation and torture by police. On Thursday 18 December 1997 following ethnic clashes, President Moi declared the Trans Mara area of south-west Kenya a security zone. He also outlawed campaigning by non-residents of the area. The election campaign closed on Sunday 28 December 1997 with reports of three murders in the south-west, breaking a national pattern of relative peace on the eve of the polls on 29 December 1997. Hours after police commissioner, Duncan Wachira said his force had been deployed across the country to prevent violence, local police in Kisii said ethnic clashes linked to the elections had claimed more victims. A full Judicial Commission of Inquiry looked into the ethnic clashes in Kenya in 1992 and again in 1998. See section 5.41. [30y][30z][32cw][67]

Recent Ethnic Violence

5.39 Renewed violence occurred in January and February 1998 mainly in the Laikipia and Nakuru district of the Rift Valley Province. Violence initially broke out in Laikipia district and then spread to Njoro. Armed groups of Kalenjin attacked ethnic Kikuyu residents in night raids, raping and hacking with machetes, or killing with firearms, before looting and burning homes. In retaliation, members of the Kikuyu community attacked and virtually wiped out a Kalenjin community at Naishe (Lare) slaughtering men, women, and children. Calm was eventually restored to the area. A seven man team was dispatched to Laikipia district on a fact finding mission to establish the cause of the violence. They reported that the violence was attributed to "loud and provocative utterances by political personalities which ignited the massacres". Cattle theft and land ownership was also identified as grievances. There were also reports of killings in western Kenya in the Homa Bay and border districts. The clashes, predominantly between the Kikuyu and Kalenjin tribespeople, resulted in the deaths of approximately 120 people. Thousands of people fled the area and took refuge in Nyeri. The Government condemned the violence and took steps to curb the clashes and a curfew between the hours of 9pm and 6am was imposed in Nakuru's urban districts on 5 February 1998, which lasted until 4 March 1998. Police arrested 64 suspects, some of whom appeared in court faced with charges relating to violence. The Government launched an enquiry into the troubles and began to resettle some of the displaced. A number of politicians were interrogated in connection with the clashes. MPs from the various communities within western Kenya established committees to identify the root causes of the clashes. [10][12][17][33e][34d][34e][48b]

5.40 The Commissioner of Police, Duncan Wachira, released a report into the violence in March 1998. Amnesty International also published a report concerning the violence in June 1998 entitled "Kenya: Political violence spirals". The report stated that the violence in the aftermath of the December 1997 elections, followed a similar pattern to the violence that occurred in the run up to the 1992 elections. The difference between the two being that the most recent violence occurred after the elections and for the first time the Kikuyu community retaliated in an organised fashion. Amnesty criticised the Government for failing to provide sufficient security in the area affected, which they stated "implied" complicity. They also urged the Kenyan Government to investigate all extrajudicial killings since December 1997. As in the case of the ethnic violence in the Rift Valley in 1991-93 and on the coast in August 1997, there were credible charges of involvement by local politicians belonging to both KANU and the opposition in the January 1998 clashes. There was no compelling evidence to support charges that the Government itself instigated the violence; however, the Government response to the clashes was slow, inefficient and insufficient once they had started. [10][17][32a][34e]

5.41 In April 1998 Parliament passed an opposition motion to establish a truth and reconciliation commission to investigate the ethnic clashes. On 1 July 1998 President Moi appointed a Judicial Commission of Inquiry to look into the tribal clashes between 1992 and 1998. He named a Ghanaian born Kenyan Appeals Court Judge, Justice

Akilano Molade Akiwumi, as the Commission's chairman. The appointment of the Commission was received with scepticism in certain quarters, however, on 14 July 1998 the three appointed judges were sworn in. The Commission was welcomed by the NCKK. The Commission was held in public and heard evidence from all quarters, including accusations against senior politicians. Details of the inquiries' hearings were published verbatim in the press. The Commission was given the freedom to list down people who in the course of the public hearings were found to have been behind the clashes. Key churches and NGO's claimed that a number of witnesses were prevented from testifying, especially after, half way through the investigation, the Government replaced the Commission's aggressive prosecutor John Nyagah Gacivih with the more pro-government Deputy Attorney General, Bernard Chunga. Following this change the Commission were also less vigorous in calling witnesses to testify about the role of government officials in instigating and allowing ethnic violence. The Akiwumi commission was due to present its findings by the end of 1998 but continued to hear evidence throughout 1999 finally winding up on 11 June 1999. According to their terms of reference, the Commission was required at the conclusion of its work, to make recommendations on individuals who ought to be prosecuted in connection with the clashes. The Commission submitted its report to President Moi in August 1999, since then the Government has neither released the report nor announced taking any formal action on its findings. On 9 March 2000 the High Court directed that the Attorney General be served with an application involving a suit in which the Law Society of Kenya required the government to release the findings of the Akiwumi Commission. The government had not released the report by the end of 2000. [2][12][32c][32f][32m][32n][32bd][32cs]

5.42 In February 1999 twelve people were killed, among them seven policemen, in a fierce gun battle with armed bandits in the Dujis area of North Eastern province. The bandits attacked a passenger bus killing several people including a police inspector. Some policemen were killed when a vehicle belonging to OXFAM, which they were escorting, was also attacked by the bandits. Eight people were also killed in fresh ethnic clashes, which erupted in the western part of Kenya in Narok, Rift Valley province. The four-day skirmishes erupted between the Maasai and Kipsigi (a sub-ethnic group of the Kalenjin's). On 16-17 October 1999, 2 people were killed and others were seriously injured in a series of clashes that followed the distribution of leaflets warning upcountry people to leave the Coast Province. A gang of 20-30 men who reportedly called themselves Kaya Bombo attacked people in Mishomoroni, Mugongeni, Kisimani and Mwandoni. The authorities moved quickly to reassure residents that the attack was not a repeat of the violence that engulfed the Likoni area prior to the 1997 elections. Mombasa police reported 54 arrests in a crackdown that immediately followed the raids. A district official denied that the raids were tribal or politically motivated. In late October 1999, four people were charged with violent robbery following a renewed spate of violence in the coastal town of Kisauni. [32ch][32ci][35d]

5.43 In January 2000 President Moi announced that additional security forces would be deployed to patrol major roads in Laikipia (Rift Valley Province) and in Nyandaura to try and find a solution to rising crime in those areas. The initiative was designed to stop a resurgence of ethnic fighting in an area where 110 people had died during the previous year at the hands of marauding thugs. Moi's announcement shortly followed official opposition leader Mwai Kibaki's accusation that the government had failed to protect its citizens since it was told about the gang more than a year previously. Mr Kibaki claimed that only Kikuyus had been targeted. On 27 January 2000 a three-day mediation meeting of leaders from different ethnic communities was held in an attempt to resolve conflict in the region. Also, at the end of January 2000 an operation commenced to ensure that herdsmen who had moved into Laikipia with their livestock from neighbouring districts had left. This initiative was also designed to reduce ethnic tension after the herdsmen from Isiolo and Samburu moved into Laikipia with thousands of their cattle due to the drought. A report on 2 June 2000, said that the situation in Laikipia had become extremely grave with herdsmen driving their animals to large tracts of pasture, where there was still grass, that belonged to specific individuals. In the report four politicians, Juja's Stephen Ndicho, Kabete's Paul Muite, Sotok's Anthony Kimetto and Cabinet Minister Shariff Nassir, were accused of equating this situation with the conflagration in

Zimbabwe over land and thus inciting landless people to invade other people's lands, especially those belonging to whites. In a separate report, on the same day, President Moi made a plea to Kenyans not to move their stock onto anyone else's farm and singled out Stephen Ndicho for condemnation, saying his plea to Kenyans to copy Zimbabwe-style invasions by war veterans was politics of hatred and division. [32ac][32an][33d][43e][43f]

Cattle Rustling Related Violence

5.44 Attacks and revenge counter-attacks, continued between Pokots and Marakwets, Pokots and Turkanas, Turkanas and Samburus, Luos and Kisiis, Boranas and Somalis and among various other Somali clans. During 2000 these attacks resulted in an average of 75 to 100 deaths per month. Many factors contributed to these conflicts, including the proliferation of guns, the commercialism of traditional cattle-rustling, the weakening of state authority, the emergence of local militia leaders, shrinking economic prospects for affected groups, a regional drought and the inability or unwillingness of the security forces to stem the violence. In April 2000, four hundred armed men attacked a Somali clan in Isiolo District, between 20 to 40 people were reportedly killed. Twenty-seven people were killed, in April 2000, when 500 Pokot raiders attacked a Turkana village near Baragoi. There were reportedly 23 people killed during the fighting. In June 2000, Pokot gangsters raided a Marakwet village leaving 10 people dead and several others reportedly missing following the fighting. During the week of 27 June 2000, five people were killed when disputes resurfaced over the ownership of a plot of land along the common border between Gucha and Migori districts in the Western Province. Riots broke out in a suburb of Nairobi between Muslims and slum dwellers fighting over land rights. There were up to 4 people reported to have been injured. A number of shops were set on fire as well as a hotel, a mosque and two churches. In March 2001, 40 people were killed in clashes between cattle herders from Pokot and Marakwet districts. The raid by the Pokot group lasted 3 hours and also left people wounded, houses burnt down and livestock stolen. [2][49f][49g]

5.45 Fresh clashes erupted at Nyangusu market along the Gucha-Trans Mara border at the end of July 2001 leaving three people dead and injuring 20 others. The fighting broke out when Massai youths, accompanied by administration police officers crossed the common boundary and stormed Nyangusu boarding school claiming to be searching for eight heads of cattle allegedly stolen the previous day. The weekend of 11 August 2001 saw two people killed and eight others seriously injured when Massai and Kisii youths clashed again along the Trans Mara and Gucha districts border. Following the killings many residents living along the border condemned the government for withdrawing a GSU (General Service Unit) contingent from Kiango market which they claim heightened the clashes. In September 2001 there were also clashes between the Pokomo people and the Wardey people over land. Thirty bodies of the people killed were found dumped in the River Tana in the east of the country. Since the start of 2001 over 100 people were estimated to have died despite government's attempts to mediate between both sides. [29b][32dm][63c]

Kenyan Asians

5.46 The Asian community comprises between 0.5% and 1% of the population and includes second and third generation Asians with full citizenship as well as a smaller body of recent immigrants. There continues to be tensions between Asian Kenyans and black Kenyans, who see the formers' affluence and seeming reluctance to assimilate African culture and employ black Kenyans, particularly in managerial positions, as a problem. The involvement of some Asians in corrupt activities with government officials has further fuelled popular resentment. Politicians, both opposition and KANU, from time to time appeal to the majority prejudices by attacking Asian Kenyans, accusing them of exploiting and usurping the natural inheritance of African Kenyans. Change Mbitiru, Democratic Party MP from Laikipia West, called Asians "the greatest economic enemies" of the country. In early September 2000, he called for "Kenyans" to isolate "Asians" unless the government acted to constrain them. The MP reportedly said that President

Moi should consider expelling Asians "or allow the Kenyan people to force them to leave through mass action". On 2 June 2000 President Moi appointed Africa's first woman judge of Asian origin. [2][43d]

5.47 There have been reports of the Asian community being threatened or coming under attack by groups of African Kenyans; however, President Moi has made it clear that threats to any individual community were unacceptable, and that the police would take action to protect all and maintain the law. On closer inspection very few of the attacks turned out to be politically motivated and were regarded as acts of common criminality. Such crimes have become common occurrences and Asians, who are commonly believed to keep money and valuables in their homes, are popular targets. However, such burglaries are by no means restricted to Asians or Asian households, nor is there any evidence that the Asian community is at any greater risk than other ethnic communities who are perceived to be well off (including Europeans and black Africans themselves). There is one Asian Member of Parliament. [2][23a][23g][48a]

Ethnic Somalis

5.48 The Kenyan authorities have targeted Kenya's indigenous ethnic Somalis as the only ethnic group required to carry an additional form of ID to prove their citizenship. The continued presence of large numbers of Somali refugees in Kenya (approximately 80% of Kenya's refugee population) has further exacerbated the problems faced by Kenyan Somalis. However, there were, prior to the 1997 elections, 14 Somali MPs and Somalis are also represented in the Cabinet. Since June 1999, seven people were killed during fighting between members of the Abduwak and Auliyen clans of the Somali ethnic group just west of Garissa. In August 1999 fighting between the same two clans reportedly marred county council elections in Garissa County, some deaths were reported following clashes. Worsening gun violence between the clans led to a partial curfew being imposed in Garissa from 13-20 December 1999. During the curfew the General Service Unit of the police force arrested several people violators. When announcing the lifting of the curfew, the Provincial Commissioner said it had achieved its intended goal of restoring peace. In January 2000, four people were killed in central division of Isiolo District after fighting erupted between Degodia and Ajuran (Somali) clans. The District MP, Mr John Chege confirmed that 2 people were killed on 16 January 2000 while others were shot dead on 18 January 2000. He appealed to clan elders to urgently convene a peace meeting to resolve the problem. [2][20][23d][30r][33i][35g]

The Safina Party

5.49 In May 1995 several opposition activists including Gitobu Imanyara, a former Secretary-General of FORD-Kenya, and Paul Muite MP, an influential human rights lawyer, announced the formation of a new political grouping, Safina (the Swahili term for 'Noah's Ark'). Dr Richard Leakey was appointed as the group's Secretary General. Safina's primary aims were to combat corruption, human rights abuse and introduce an electoral system of proportional representation. In June 1995 Safina submitted a formal application for registration. The official response to this new grouping was hostile. Following constitutional reforms in September 1997 Safina were finally registered on 26 November 1997, a month later than several other political parties obtained their registrations. Prior to November 1997, Safina had no branch offices or ordinary mass membership in Kenya, with its leadership stating that these would come after registration. However, it was not an illegal organisation, nor had it been refused registration. It was rather left in legislative limbo - essentially for political reasons. [1][23c][30h]

5.50 Prior to registration, Safina had a functioning secretariat, which focused its attention on research and policy issues. On occasions, people described as "Safina activists" were arrested. However, such individuals were not necessarily known to the group's leadership, and there was no evidence to suggest that anyone was arrested or detained solely on the grounds of being in Safina. There have been instances of people being arrested in the context of other political activities e.g. participating in unlicensed

meetings, which the police from time to time break up, claiming allegiance to the group. Safina's leadership at this time consisted of a small number of prominent lawyers, three serving MP's and a prominent human rights activist. Whilst these individuals experienced varying degrees of harassment by the authorities they remained public figures whose views and political activities were widely known to the newspaper-reading public in Kenya. Safina's leadership never claimed that they, or their ordinary supporters, were being persecuted, harmed or detained. [1][23c][30h]

5.51 Safina gained 6 seats in the 1997 elections, including one, which was allocated by the Electoral Commission. Richard Leakey was nominated as the MP to take up the allocated seat, but he resigned and later became head of the Civil Service. Dr Leakey resigned from this post in March 2001. His appointment in 1999 as Head of the Civil Service after years of opposition to President Moi, was seen as a sign to international donors that Kenya was serious about cracking down on corruption. (see paragraph 4.10). [1][23e][63b]

Islamic Party of Kenya (IPK)

5.52 In the run up to the 1992 elections political parties which were religiously or ethnically based were not allowed to register, so preventing the registration of the Islamic Party of Kenya (IPK). Among the reasons given for the Attorney General's decision to refuse the party registration was that non-discrimination was one of the basic principles of the Kenyan constitution. It was argued that the IPK did not represent a cross section of Kenyan opinion, and that the party's ideology was based on a religious platform, which by its very nature is discriminatory. In response to this decision overzealous supporters of the IPK were involved in serious civil disturbances and periodic rioting. [18]

5.53 The IPK's more militant supporters were also affected by the presence of Sheikh Khalid Balala, the IPK's spiritual leader. His fiery rhetoric played on the Muslim community's sense of being a politically and economically "disadvantaged" grouping. Balala's clashes with the authorities, over treason charges, and a "fatwa" he decreed in 1993 against a KANU leader in Mombasa, elevated his position within the IPK. The IPK politically aligned itself with the FORD-Kenya party in the general elections and helped it to win two parliamentary seats in Mombasa. In December 1993 Professor Mzee, an avowed IPK sympathiser, was elected in the Kisauni parliamentary seat in Mombasa. [18]

5.54 Towards the end of 1993 clashes frequently occurred between IPK supporters and members of a rival Muslim faction the United Muslims of Africa (UMA). This was largely internecine squabbling at a local political level; however, it was alleged that the UMA had heavy government backing. The UMA was virtually dissolved by February 1994. There was no evidence that this wrangling among Muslim groups, was sponsored by the government, neither was there evidence of illegal activity against Muslim activists by the authorities. Those involved in unlawful activities or violence ran the risk of arrest for criminal behaviour. There were reports that the police were sometimes heavy handed in dealing with demonstrations by Muslim activists, but that was also true of all their dealings with public order problems. There were cases of harassment and ill-treatment of IPK activists but the decrease in popularity of the organisation since 1997 meant that there is no evidence that IPK supporters or activists, draw much attention or are intimidated today. No IPK activists, brought before the courts for public order offences, were treated any differently from other people facing similar criminal charges. In the wake of the terrorist bombing of the US Embassy in Nairobi (see paragraph 5.70) several non-governmental organisations (NGOs), including five Muslim NGOs, were deregistered by the Government, which prompted mass demonstrations by the Muslim community. [18][23f][24d][32i][32o]

5.55 In December 1994 the Kenyan authorities effectively stripped Balala of his Kenyan citizenship, when Kenyan Embassy officials in Bonn rejected his application for a passport extension. His absence from Kenya removed the leadership spark he provided which attracted many young disgruntled Muslims to the IPK movement. Balala remained

stranded in Germany until July 1997 when the authorities granted him permission to return to Kenya. The Attorney General Amos Wako cited appeals from Balala's relatives and the Muslim community as the reason why they reversed their decision. Since returning to Kenya, on 12 July 1997, Balala has been free to speak to the press, address his supporters and move unmolested around Mombasa, having been granted a licence to hold a pro-reform meeting on 26 July 1997. He was arrested just prior to the 1997 elections, for inciting people not to vote, and again sometime in June 1998 on further charges of incitement, at which time he was remanded in custody for 10 weeks in Manyani Prison before being released on 21 August 1998. In the aftermath of the Nairobi bombings and the subsequent US air strikes, Sheikh Balala asked the US to exercise caution. Despite the 1997 legal reforms and subsequent registration of several political parties, the Government refused to reverse its 1994 decision to deny registration to the IPK on the grounds of the organisations involvement in violent confrontations with police during the pre-election riots in 1992 (see paragraph 5.51 - 5.53). [1][2][23f][30b][30g][32i]

MWAKENYA

5.56 In March 1986, it was revealed that several Kenyans had been detained under the provisions of the Public Security Act. During the ensuing 12 months, a conspiracy known as "Mwakenya" became a focal point of Kenyan politics. By early 1987 more than 100 people had been detained in connection with Mwakenya, some of them receiving lengthy prison sentences. Although the government may have over-reacted in its anxieties about Mwakenya, the movement none the less represented genuine undercurrents of discontent. Members of Mwakenya were at one time at risk of persecution. There is no evidence that it is operative in Kenya today. Individuals formerly associated with Mwakenya are now involved in mainstream politics. [24a][24b][24e]

February Eighteenth Movement/February Eighteenth Resistance Army (FEM/FERA)

5.57 During late 1994 to mid 1995 FERA was considered to be a major threat. On 3 February 1995 the Kenyan Government issued a statement accusing FEM/FERA of recruiting disaffected Kenyan youths and giving them military training to mount operations in Kenya including cattle rustling, arson, bank robberies and attacks on businessmen and the police. They alleged the movement was based in neighbouring Uganda and led by a Brigadier John Odongo. The scare over FEM/FERA activity in Western Province lead the Kenyan authorities to charge a number of people with suspected membership of FEM. Charges against a number of defendants were later dropped, four were convicted and sentenced to between five and six years. A number of the FEM suspects later reported that they had experienced maltreatment, including torture, and had only signed confessions under duress. Membership of FEM/FERA has since receded. John Odongo and FERA Chairman Patrick Wangamati went into exile in Ghana. On 6 October 1997, Wangamati returned to Kenya. He was detained, held incommunicado and interrogated on his return, and was pardoned in December 1997. He announced publicly that FERA had been officially dissolved. Whilst there was a time when members and people associated with FERA were in considerable danger of persecution in Kenya, there is no evidence that this is still the case. [1][7][8][11a][24c][24e][24k][25][33b]

V.C HUMAN RIGHTS - Other Issues

5.34 In the Amnesty reports mentioned below, (sources 7, 8 and 82), Amnesty International detailed the following examples of torture reported to them by persons who cited maltreatment by the security forces. Death threats, beatings on different parts of the body, burns, adopting uncomfortable postures for prolonged periods of time, sexual abuse and humiliation of both men and women, electric shocks and forced exercise. Women had been raped. Complaints were also received of being held in a flooded cell filled with two inches of water for lengthy periods. In extreme cases the pulling out of

fingernails and toenails and near-asphyxiation were also cited. An Amnesty International report released in June 2001 stated they had compelling evidence that many acts of torture committed by the police were not investigated. Investigations which do take place are inadequate, poorly conducted and lengthy. The most basic documentary evidence needed to substantiate claims that torture had been committed by the police, such as the Medical Examination Report (P3 Form) is not widely accessible to victims of torture. P3 Forms are only located at police stations as they are used by the police as part of their investigation. Western Kenya Human Rights Watch, a Kenya human rights organisation, told Amnesty International, "to get a form you have to bribe the police. This form is meant to be free, but they usually sell them for 100Ksh." In cases where abuses have been committed by the police themselves, women have feared trying to obtain a form, especially if the abuse took place at the station where they had to apply. [7][8][54][31]

5.35 The Government does not permit consistent independent monitoring of prison conditions. In general it does not permit domestic NGOs to visit prisons; however, some independent NGOs work with the Government in evaluating torture cases and performing autopsies on deceased prisoners. The Standing Committee on Human Rights (SCHR) have the authority to inspect prison facilities on demand at any time. The SCHR inspected several prisons during 2001 and found very poor conditions. In March 2000, the United Nations Special Rapporteur for Torture, Nigel Rodley, released a report on his visits to several prisons in 1999. Rodley noted the problems of limited access by observers, poor sanitation and health care, and overcrowding. The Special Rapporteur noted that the failure to grant him access to Kamiti Prison in Nairobi, the largest and most important prison in Kenya remains a matter of concern. In July 2001 Amnesty International said that out of the 17 recommendations made following the UN Special Rapporteur's visit in 1999, the government of Kenya had only implemented five, most of which fell under two bills awaiting debate in Parliament. The report stated that the government still "appeared to be condoning torture" and it criticised the statement made two years ago by Major Marsden Madoka who urged Kenyans to "forget" about allegations of widespread acts of torture committed by the security forces. The Amnesty International report "Ending the Cycle of Impunity" also questioned the commitment of Nairobi to ending police torture. [2][32ch][54][37]

5.36 In a report issued on 25 August 2000 in the Daily Nation newspaper of Kenya, an American Catholic priest, Father Kaiser, was found dead after having been shot in the head. He was a human rights activist and had served as a missionary in Kenya for 36 years. He was an outspoken critic of the government and its human rights record. It was reported on 27 August 2000 that the Priest was carrying, on him at the time of his murder, documents linking two cabinet ministers to tribal clashes in the Rift Valley. Father Kaiser had been a vocal critic of the tribal clashes that rocked the Rift Valley Province prior to the 1992 and 1997 general elections and which mainly targeted the Kikuyu community to evict them. In October 2000, United States Congressmen in the 435-member House of Representatives condemned what they called the assassination of Father Kaiser. They have also called for a private investigation into the deaths of five other clerics. [32bw][43c][57a][60]

5.37 Mystery surrounded the deaths of the clerics with their killers still unknown. A news report on 19 December 2000 stated that the United States Department of State was working closely with the Federal Bureau of Investigators to conduct an independent investigation into the death of Father Kaiser. On 19 April 2001 the FBI released a report into Fr Kaiser's death giving the verdict as suicide following years of suffering depression-related illnesses. Many journalists wanted to know from Attorney General Amos Wako whether the report was final. Mr Wako then urged anyone with "fresh evidence" on Fr Kaiser's death to present it to his office. Following this, 26 Bishops demanded a public inquest into the American Priest's death saying that the FBI report had raised many questions. In August 2001, reacting to this the US Department of Justice refused to review the FBI's finding that Fr Kaiser had committed suicide. The FBI's finding created an uproar among Kenya's clergy and human rights community, who were convinced he was murdered. US Senator Paul Wellstone called for a new inquiry that took into account findings of the US Embassy's own investigation. There was a

memorial Mass held at the spot where Fr Kaiser's body was found to commemorate the first anniversary of his death. [32ct][32cr][32cl][32ci][34j][43b][43a][71b]

5.38 NGOs and some opposition parties maintain comprehensive files on human rights abuses. These organisations remain extremely active, produce regular reports on the human rights situation and also organise activities to publicise their causes. The KHRC produces a "Quarterly Repression Report". A number of attorneys represent the poor and human rights defendants without compensation, although they can meet only a small percentage of the need, and are concentrated largely in urban areas. The Government regularly criticised, intimidated and threatened to disrupt NGOs. During 2001, President Moi kept up a verbal offensive against NGOs, characterising them as enemies of the state. In March 2001, President Moi warned Kenyans to be wary of NGOs "pretending to fight for human rights," accusing "con men who have formed NGOs calling themselves human rights activists," of wanting to "destabilise the country" and to "cause confusion through foreign-funded seminars." [2][71b]

5.39 In July 1996, the Government established a Standing Committee on Human Rights to investigate alleged humanitarian abuses by the Kenyan authorities. However, the committee showed no vigour in stepping up pressure for police reform. It condemned torture and recommended that police officers receive compulsory human rights training. In June 2001, the committee published its findings that prison wardens had murdered six death-row inmates who had died the previous year. As a result the chair of the Standing Committee was charged by a judge with contempt of court for being in breach of judicial rules that prevent comment on a pending case. A draft bill to strengthen the independence of the Standing Committee, pending since the previous year, had not been considered by parliament as of November 2001. [1][2][71b]

5.40 In October 1998, 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. The Government has recognised that certain laws, which violate human rights, are bad and began to review them. Many Kenyans have questioned the Government's commitment to human rights reform. Nevertheless the Government has stated its commitment to upholding its national and international obligations on torture and has confirmed its policy on taking action against those who abuse the law. In February 1999, the KHRC called for the police to go beyond admitting responsibility for violating people's human rights and undertake to compensate the victims, following the shooting of Getrude Andi in the leg during a police operation in Mandizini. [2][9][32ag]

5.41 In March 2000, it was reported that the first ever criminal and civil proceedings against President Moi of Kenya were likely to be filed in British and Belgium courts during that summer. KHRC and London-based Kenya Movement for Democracy and Justice (KMDJ), Amnesty International, and Redress were working together to seek redress on behalf of Kenyan victims of ethnic clashes and police torture. The responsibility of KHRC was to collect evidence and materials in respect of mass killings, destruction of property, displacement and widespread torture of individuals by the Kenyan police. [40]

PART I

- i) Previous Ethnic Clashes
- ii) Recent Ethnic Violence
- iii) Cattle Rustling Related Violence
- iv) The Safina Party
- v Islamic Party of Kenya (IPK)

vi) MWAKENYA

PART II

vii) February Eighteenth Movement/February Eighteenth Resistance Army (FEM/FERA)

viii) Mob violence

ix) Civil unrest

x) National Security

xi) **Health Issues** to stop South Africa from doing the same. In April 2001, the Health Minister Professor Sam Ongeru drafted a bill to legalise the import of cheap generic HIV/AIDS drugs. [32da][32db][39f][42a][47b][49d][49c][57c]

i) Previous Ethnic Clashes

5.42 Ethnic clashes first broke out in October 1991 in Nandi District on the border of Rift Valley, Nyanza and Western Provinces, and continued throughout 1992. According to Human Rights Watch, two years of violence in the Rift Valley had by 1993 forced 300,000 people to flee their homes. The Government's policy with regard to the return of the remaining displaced people was been ambiguous. Senior government officials openly expressed reluctance to allow their return to their former homes, and Parliament voted in November 2000 against a proposal for resettlement. President Moi made a statement in November 1999 that those remaining displaced in the Rift Valley should return and that "maximum security" would be ensured, but local human rights observers questioned the commitment behind this statement. Some opposition parties accused the government of covertly inciting the violence as a means of undermining the multi-party system reforms. By mid-January 1992 the ethnic clashes were so widespread that the Roman Catholic Bishops issued a pastoral letter, condemning the incidents and castigating the government's failure to take action. Certain officials said the bishops were abusing their authority, and had issued inflammatory statements inciting violence. Speculation continued as to whether the violence was a spontaneous response to the political upheaval or instigated by the government to prove its prediction that ethnic violence would be the result of a change to multi-partyism. In April 1992 the NCKK published a report entitled "The Cursed Arrow: Organised Violence Against Democracy in Kenya" that linked the violence to high-ranking government officials. In May 1992, an official Parliamentary Select Committee was set up to investigate the violence, which released a 238 page report in September 1992. The report verified that the attacks had been politically motivated. The most damning indictment of direct government involvement in the clashes came from the report. The report verified that the attacks were politically motivated and had been orchestrated by Kalenjin and Massai individuals close to the President, including Vice-President George Saitoti and MPs Ezekiel Barngetuny and Nicholas Biwott. The Kiliku Report, as it became known, supported the widely held view that government administrators abetted the violence. The Committee found that numerous Kalenjin government officials and security officers had contributed to the violence. The Committee unanimously agreed that the provincial administration and security forces, by often refusing to assist clash victims and releasing attackers who had been arrested, did not react to the situation with the required urgency. Further clashes occurred in 1993 in the Rift Valley and on the borders between lands occupied by the Maasai, Kikuyu and Kalenjin tribes. Foreign observers who toured the affected area in mid 1993 accused the Government of failing to contain the violence. On 3 September

1993, the Government announced the establishment of security zones in the worst hit areas around Molo, Londiani and Burnt Forest. Human rights groups and opposition parties complained that these regulations gave too much power to the security forces. However, at the end of 1993 there were no reports that this new authority had been grossly abused. [1][14][19][21][22][66][75]

5.43 Tribal clashes which occurred in the first half of 1993, described by church organisations as the most serious since independence, were most acute in the Rift Valley and on the borders of the land occupied by the Massai and the Kikuyu tribes. In May, during serious riots and clashes with the police in Nakuru, the capital of the Rift Valley province, a number of prominent opposition MPs were arrested. The rapid escalation in violence prompted a group of opposition MPs to call on the UN to intervene. Kalenjin leaders from the Rift Valley meanwhile, whilst themselves allegedly conniving in the dispossession of Kikuyu farms, warned the Kikuyu not to create conflict. Foreign observers who toured the Rift Valley in mid-1993 accused the government of failing to contain the fighting and of pursuing a policy of 'ethnic cleansing'. President Moi sealed off part of the Rift Valley in September 1993, ostensibly to prevent further hostilities, although the opposition claimed that his real aim was to suppress criticism of the government. In October 1993 some 500 Massai fighters killed a number of Kikuyu who had taken refuge in churches near Nanok. Church sources accused government troops of involvement in the violence. At the end of October 1993, after three attacks on police stations in different parts of the country, President Moi accused his opponents of fomenting a civil war and gave the police wide-ranging powers to respond to the spiralling violence. Although most of the raids were by Kikuyu, one raid on a police base near Nairobi was carried out by Massai. Five prominent Kikuyu, who were arrested in connection with the other raids included the human rights activist Kiogi Wa Wamwere who had been released earlier in 1993 following his arrest on charges of treason. [65]

5.44 William ole Ntimama, the minister of local government, openly supported the Massai in their conflict with the Kikuyu and became increasingly active both as a champion of his own Massai people and as a defender of the government position. Mr ole Ntimama himself a Massai, argued that with the introduction of multi-party system, the survival of the smaller ethnic groups has been threatened and that "*majimboism*" (federal government or regional autonomy) was "the only way out to safeguard the interests of smaller tribes and check colonisation and oppression experienced" in the Rift Valley at that time. (If implemented, *majimboism* would mean the expulsion of millions of members of other ethnic groups who have settled there since the 1920s and who have legally purchased land since the 1950s). With increasing frequency, Mr ole Ntimama and other Kalenjin and Massai KANU politicians referred to Kikuyus and others as "aliens" and "foreigners" in the Rift Valley as opposed to "natives" or "original inhabitants". Critics however, including opposition MPs and twelve Roman Catholic bishops, blamed the government for the tribal conflicts. The international human rights organisation Africa Watch claimed that the ethnic violence had been deliberately exploited by President Moi and his associates in order to undermine the move towards political pluralism. The organisation estimated that 1,500 people had been killed and 300,000 displaced since the clashes began. [21][65]

5.45 Human Rights Watch / Africa Watch concluded that the Moi government had benefited economically and politically from the violence. The government has been able to generate continued Kalenjin support and has destabilised areas where the political opposition would have been able to garner considerable political support. The report also claimed that the ethnic violence was gradually transforming the Rift Valley Province into a Kalenjin land-owning area. This has significant political implications as the Rift Valley Province is Kenya's most fertile area and is allocated the largest number of seats in Parliament. [21]

5.46 In 1994 violent clashes involving several ethnic groups occurred, albeit less frequently than in 1993. Massais forcibly evicted Kikuyus from Enosupukia in the Narok district of the Rift Valley. Kikuyu farms were attacked, villagers killed and property confiscated. The displaced Kikuyus sought refuge in camps in Maela. On several

occasions Government officials made inciting statements which targeted particular ethnic groups and exacerbated ethnic tensions. Security zone regulations continued to control access to the affected areas. In early 1994 however, the authorities had allowed NGOs working under the UN Development Program (UNDP), the Displaced Peoples Program and diplomatic observers access to the zones, and media representatives were permitted to accompany some officials who visited the areas. UNDP's Rogge report, published in September 1994, noted that the Government had made an effort to reduce tensions and to resettle those displaced. In October 1994 President Moi instructed the Rift Valley local administration to resettle displaced persons resident in the camps in Maela. However, local officials proved incapable or unwilling to carry this out, relocating only 200 families to unproductive land, where no resettlement assistance was provided. On 24 December 1994 officials dismantled the Maela camps, without first informing the UNDP, leaving the residents to fend for themselves. Both Amnesty International and Africa Watch stated that the Report of the Parliamentary Select Committee to investigate Ethnic Clashes in Western and Other parts of Kenya (September 1992) and the NCKK report "The Cursed Arrow" (April 1992), proved the involvement of high-ranking government officials in the 1991 to 1994 clashes. In October 1998, the Justice and Peace Commission announced that only eighty-eight families displaced during the 1992-93 tribal clashes would be settled in Molo and Lare as the second phase of the UNDP began. [1][15][23b][32p]

5.47 January 1995 saw a number of incidents of ethnic violence. Kipsigi tribes people attacked a displaced persons camp in Thessalia; on 11 January 1995, 10 people were killed in clashes in Longonot, and on 12 January an NCKK camp in Eldoret was raided by Administrative Policemen (AP's) who moved 65 families on. The former residents of the Maela camps also reported harassment by AP's who visited them during the night. They also alleged relief support was prevented from reaching those affected. Many of the displaced remained in the area throughout the year. The remainder of 1995 was conspicuously free of ethnic clashes anywhere in the country; however, 70,000 of the estimated 250,000 originally displaced were still in need of assistance. A number of relief agencies and church organisations were able to work with the displaced without encountering Government interference. [6][14][19][23b]

5.48 Whilst the behaviour of some KANU politicians contributed to the serious problems of 1992-93, the Kenyan Government itself, did not condone the clashes and had no wish to see them perpetuated. The security zones created to restore order were eventually lifted in March 1995 with no resumption of fighting. There have occasionally since, been a number of isolated incidents of inter-communal violence. In November 1995 Luo and Nubian youths clashed in the Kibera slum district of Nairobi, while in February 1996 there were reported clashes between Luo and Kisii tribes' people. Locals reported that the attack was triggered by the murder of a Kisii, which prompted a revenge attack on the Luo community. President Moi repeatedly condemned inter-tribal violence and has told Kenya's ethnic communities that they should live together in harmony. [19][22][23b][26]

5.49 On 13 August 1997, heavily armed attackers killed six policemen and seven civilians in an attack on Likoni police station. There was no immediate evidence of any directly political motive although pre-election tensions were high. A major security operation was launched to find the attackers. The coast was affected by further civil disturbances, which by September 1997 had left nearly 100 people dead and many thousands displaced. [30e][46]

5.50 On 21 August 1997 a Kenyan High Court charged 62 suspects with robbery and violence in connection with the Likoni raid while the authorities' security operation to counter the violence resulted in at least 410 arrests. Among those arrested were a number of key local KANU activists, supporting allegations that local KANU factions were somehow involved in the attacks. The attacks were directed at members of non-indigenous "up country" tribes who were considered to be pro-opposition. Thirteen police officers were killed in two attacks in September 1997 allegedly by ethnic Somali bandits, in the Garissa district, North Eastern Province. [30c][30d][30f][32n]

5.51 An Amnesty International article published in November 1997 claimed that the December 1997 Presidential and Parliamentary elections would be a sham unless the Kenyan Government stopped intimidating its opponents or using violence to disrupt political rallies. Human rights violations had already occurred in the run-up to the elections: pro-democracy rallies were violently disrupted and at least nine people killed and hundreds injured. There were reports of intimidation and torture by police. On Thursday 18 December 1997 following ethnic clashes, President Moi declared the Trans Mara area of southwest Kenya a security zone. He also outlawed campaigning by non-residents of the area. The election campaign closed on Sunday 28 December 1997 with reports of three murders in the southwest, breaking a national pattern of relative peace on the eve of the polls on 29 December 1997. Hours after police commissioner, Duncan Wachira said his force had been deployed across the country to prevent violence, local police in Kisii said ethnic clashes linked to the elections had claimed more victims. A full Judicial Commission of Inquiry looked into the ethnic clashes in Kenya in 1992 and again in 1998. [30k][30j][32cw][67]

ii) Recent Ethnic Violence

5.52 Renewed violence occurred in January and February 1998 mainly in the Laikipia and Nakuru district of the Rift Valley Province. Violence initially broke out in Laikipia district and then spread to Njoro. Armed groups of Kalenjin attacked ethnic Kikuyu residents in night raids, raping and hacking with machetes, or killing with firearms, before looting and burning homes. In retaliation, members of the Kikuyu community attacked and virtually wiped out a Kalenjin community at Naishe (Lare) slaughtering men, women, and children. Calm was eventually restored to the area. A seven man team was dispatched to Laikipia district on a fact finding mission to establish the cause of the violence. They reported that the violence was attributed to "loud and provocative utterances by political personalities, which ignited the massacres". Cattle theft and land ownership was also identified as grievances. There were also reports of killings in western Kenya in the Homa Bay and border districts. The clashes, predominantly between the Kikuyu and Kalenjin tribespeople, resulted in the deaths of approximately 120 people. Thousands of people fled the area and took refuge in Nyeri. The Government condemned the violence and took steps to curb the clashes and a curfew between the hours of 9pm and 6am was imposed in Nakuru's urban districts on 5 February 1998, which lasted until 4 March 1998. Police arrested 64 suspects, some of whom appeared in court faced with charges relating to violence. The Government launched an enquiry into the troubles and began to resettle some of the displaced. A number of politicians were interrogated in connection with the clashes. MPs from the various communities within western Kenya established committees to identify the root causes of the clashes. [10][12][17][33e][34d][34e]

5.53 The Commissioner of Police, Duncan Wachira, released a report into the violence in March 1998. Amnesty International also published a report concerning the violence in June 1998 entitled "Kenya: Political violence spirals". The report stated that the violence in the aftermath of the December 1997 elections, followed a similar pattern to the violence that occurred in the run up to the 1992 elections. The difference between the two being that the most recent violence occurred after the elections and for the first time the Kikuyu community retaliated in an organised fashion. Amnesty criticised the Government for failing to provide sufficient security in the area affected, which they stated "implied" complicity. They also urged the Kenyan Government to investigate all extrajudicial killings since December 1997. As in the case of the ethnic violence in the Rift Valley in 1991-93 and on the coast in August 1997, there were credible charges of involvement by local politicians belonging to both KANU and the opposition in the January 1998 clashes. There was no compelling evidence to support charges that the Government itself instigated the violence; however, the Government response to the clashes was slow, inefficient and insufficient once they had started. [10][17][32a][34e]

5.54 In April 1998 Parliament passed an opposition motion to establish a truth and reconciliation commission to investigate the ethnic clashes. On 1 July 1998 President Moi appointed a Judicial Commission of Inquiry to look into the tribal clashes between 1992 and 1998. He named a Ghanaian born Kenyan Appeals Court Judge, Justice Akilano Molade Akiwumi, as the Commission's chairman. The appointment of the Commission was received with scepticism in certain quarters, however, on 14 July 1998 the three appointed judges were sworn in. The Commission was welcomed by the NCKK. The Commission was held in public and heard evidence from all quarters, including accusations against senior politicians. Details of the inquiries' hearings were published verbatim in the press. The Commission was given the freedom to list down people who in the course of the public hearings were found to have been behind the clashes. Key churches and NGOs claimed that a number of witnesses were prevented from testifying, especially after, half way through the investigation, the Government replaced the Commission's aggressive prosecutor John Nyagah Gacivih with the more pro-government Deputy Attorney General, Bernard Chunga. Following this change the Commission were also less vigorous in calling witnesses to testify about the role of government officials in instigating and allowing ethnic violence. The Akiwumi Commission was due to present its findings by the end of 1998 but continued to hear evidence throughout 1999 finally winding up on 11 June 1999. According to their terms of reference, the Commission was required at the conclusion of its work, to make recommendations on individuals who ought to be prosecuted in connection with the clashes. The Commission submitted its report to President Moi in August 1999, since then the Government has neither released the report nor announced taking any formal action on its findings. On 9 March 2000 the High Court directed that the Attorney General be served with an application involving a suit in which the Law Society of Kenya required the government to release the findings of the Akiwumi Commission. The Government had not released the report or announced that it was taking any formal action on its findings by the end of 2001. In February 2002, a request by the Commissioner of Assize Joyce Khaminwa for the Commission officials to be summoned in order to present their proceedings to the High court was turned down. [2][12][32c][32f][32m][32n][32bd][32cs][32ap]

5.55 In January 2000 President Moi announced that additional security forces would be deployed to patrol major roads in Laikipia (Rift Valley Province) and in Nyandaura to try and find a solution to rising crime in those areas. The initiative was designed to stop a resurgence of ethnic fighting in an area where 110 people had died during the previous year at the hands of marauding thugs. Moi's announcement shortly followed official opposition leader Mwai Kibaki's accusation that the government had failed to protect its citizens since it was told about the gang more than a year previously. Mr Kibaki claimed that only Kikuyus had been targeted. On 27 January 2000 a three-day mediation meeting of leaders from different ethnic communities was held in an attempt to resolve conflict in the region. Also, at the end of January 2000 an operation commenced to ensure that herdsmen who had moved into Laikipia with their livestock from neighbouring districts had left. This initiative was also designed to reduce ethnic tension after the herdsmen from Isiolo and Samburu moved into Laikipia with thousands of their cattle due to the drought. [32ac][32an][33d]

5.56 A report on 2 June 2000, said that the situation in Laikipia had become extremely grave with herdsman driving their animals to large tracts of pasture, where there was still grass, that belonged to specific individuals. In the report four politicians, Juja's Stephen Ndicho, Kabete's Paul Muite, Sotok's Anthony Kimetto and Cabinet Minister Shariff Nassir, were accused of equating this situation with the conflagration in Zimbabwe over land and thus inciting landless people to invade other people's lands, especially those belonging to whites. In a separate report, on the same day, President Moi made a plea to Kenyans not to move their stock onto anyone else's farm and singled out Stephen Ndicho for condemnation, saying his plea to Kenyans to copy Zimbabwe-style invasions by war veterans was politics of hatred and division. Riots broke out in a suburb of Nairobi between Muslims and slum dwellers fighting over land rights. There were up to 4 people reported to have been injured. A number of shops were set on fire as well as a hotel, a

mosque and two churches. In February 2002, scores of villagers fled their homes because there was a new outbreak of fighting along the Gucha-Trans Mara border. The flare-up between Maasai and Kisii communities broke out after the killing of two people the previous week. [43e][43f][49g][32aq]

5.57 Clashes between the Orma (cattle herders) and Pokomo (farmers) communities in Tana River District in Coastal Province claimed many lives. Twenty schools were closed after 13 persons were killed in two weeks of fighting between the communities in March 2001. In mid-July 2001, five people were reportedly killed in fighting after Pokomo rivals stoned two Orma men to death. In October 2001, four people were killed and 100 houses set ablaze, at Shirikisho Village, as fighting continued between farmers and pastoralists in the Tana River District. Ten herders were arrested in connection with the fighting. Police are yet to arrest a businessman accused of importing illegal firearms from a neighbouring district. The Shirikisho Party secretary-general, Mr Omara Abae Kalasinga questioned how the village was burned yet it is only a stones-throw away from the local police station. Later in October Kenyan police and security forces began an operation to recover illegal firearms in Tana River District. The chief local police said the operation would ensure the two communities were deprived of firearms and would also aim to arrest people suspected of involvement in the earlier attack. However, in November clashes between Pokomos and Orma were again sparked off by a land dispute causing 200 people to flee their homes. Heavily armed police were sent to the district to restore calm but they failed to make any arrests. In January 2002, fresh clashes broke out again between Pokomos and Orma, in Tana River District, which left five people dead and seriously injuring two others. Security in the area had been increased and a permanent detachment of the paramilitary General Service Unit (GSU) had been permanently stationed at the nearby Wenje Division. The area police Commander said that since the guns were taken away there have been some bandit attacks. [2][32ar][47e][57b][47f]

iii) Cattle Rustling Related Violence

5.58 Attacks and revenge counter-attacks, continued between Pokots and Marakwets, Pokots and Turkanas, Turkanas and Samburus, Luos and Kisiis, Boranas and Somalis and among various other Somali clans. During 2001 these attacks resulted in an average of 50 to 75 deaths per month. Many factors contributed to these conflicts, including the proliferation of guns, the commercialism of traditional cattle-rustling, the weakening of state authority, the emergence of local militia leaders, shrinking economic prospects for affected groups, a regional drought and the inability or unwillingness of the security forces to stem the violence. [2]

5.59 In June 2000, Pokot gangsters raided a Marakwet village leaving 10 people dead and several others reportedly missing following the fighting. During the week of 27 June 2000, five people were killed when disputes resurfaced over the ownership of a plot of land along the common border between Gucha and Migori districts in the Western Province. In March 2001, 40 people were killed in clashes between cattle herders from Pokot and Marakwet districts. The raid by the Pokot group lasted 3 hours and also left people wounded, houses burnt down and livestock stolen. In February 2002, more than 100 families were left homeless when the Provincial Administration destroyed houses at a village in Marakwet District. The victims lost cash and goods worth thousands of shillings to the squad comprising administration police and forest rangers. Marakwet District Commissioner said the evictions followed a directive from the Rift Valley Provincial Commissioner for the squatters to vacate. [49f][32av]

5.60 Fresh clashes erupted at Nyangusu market along the Gucha-Trans Mara border at the end of July 2001 leaving three people dead and injuring 20 others. The fighting broke out when Massai youths, accompanied by administration police officers crossed the common boundary and stormed Nyangusu boarding school claiming to be searching for eight heads of cattle allegedly stolen the previous day. The weekend of 11 August 2001 saw two people killed and eight others seriously injured when Massai and Kisii youths

clashed again along the Trans Mara and Gucha districts border. Following the killings many residents living along the border condemned the government for withdrawing a GSU (General Service Unit) contingent from Kiango market which they claim heightened the clashes. In September 2001 there were also clashes between the Pokomo people and the Wardey people over land. Thirty bodies of the people killed were found dumped in the River Tana in the east of the country. Since the start of 2001 over 100 people were estimated to have died despite government's attempts to mediate between both sides. [29b][32d][63c]

iv) The Safina Party

5.61 In May 1995 several opposition activists including Gitobu Imanyara, a former Secretary-General of FORD-Kenya, and Paul Muite MP, an influential human rights lawyer, announced the formation of a new political grouping, Safina (the Swahili term for 'Noah's Ark'). Dr Richard Leakey was appointed as the group's Secretary General. Safina's primary aims were to combat corruption, human rights abuse and introduce an electoral system of proportional representation. In June 1995 Safina submitted a formal application for registration. The official response to this new grouping was hostile. Following constitutional reforms in September 1997 Safina were finally registered on 26 November 1997, a month later than several other political parties obtained their registrations. Prior to November 1997, Safina had no branch offices or ordinary mass membership in Kenya, with its leadership stating that these would come after registration. However, it was not an illegal organisation, nor had it been refused registration. It was rather left in legislative limbo - essentially for political reasons. [1][23c][30h]

5.62 Prior to registration, Safina had a functioning secretariat, which focused its attention on research and policy issues. On occasions, people described as "Safina activists" were arrested. However, such individuals were not necessarily known to the group's leadership, and there was no evidence to suggest that anyone was arrested or detained solely on the grounds of being in Safina. There have been instances of people being arrested in the context of other political activities e.g. participating in unlicensed meetings, which the police from time to time break up, claiming allegiance to the group. Safina's leadership at this time consisted of a small number of prominent lawyers, three serving MP's and a prominent human rights activist. Whilst these individuals experienced varying degrees of harassment by the authorities they remained public figures whose views and political activities were widely known to the newspaper-reading public in Kenya. Safina's leadership never claimed that they, or their ordinary supporters, were being persecuted, harmed or detained. [1][23c][30h]

5.63 Safina gained 6 seats in the 1997 elections, including one, which was allocated by the Electoral Commission. Richard Leakey was nominated as the MP to take up the allocated seat, but he resigned and later became head of the Civil Service. Dr Leakey resigned from this post in March 2001. His appointment in 1999 as Head of the Civil Service after years of opposition to President Moi, was seen as a sign to international donors that Kenya was serious about cracking down on corruption. [1][23e][63b]

v Islamic Party of Kenya (IPK)

5.64 In the run up to the 1992 elections political parties which were religiously or ethnically based were not allowed to register, so preventing the registration of the Islamic Party of Kenya (IPK). Among the reasons given for the Attorney General's decision to refuse the party registration was that non-discrimination was one of the basic principles of the Kenyan constitution. It was argued that the IPK did not represent a cross section of Kenyan opinion, and that the party's ideology was based on a religious platform, which

by its very nature is discriminatory. In response to this decision overzealous supporters of the IPK were involved in serious civil disturbances and periodic rioting. [18]

5.65 The IPK's more militant supporters were also affected by the presence of Sheikh Khalid Balala, the IPK's spiritual leader. His fiery rhetoric played on the Muslim community's sense of being a politically and economically "disadvantaged" grouping. Balala's clashes with the authorities, over treason charges, and a "fatwa" he decreed in 1993 against a KANU leader in Mombasa, elevated his position within the IPK. The IPK politically aligned itself with the FORD-Kenya party in the general elections and helped it to win two parliamentary seats in Mombasa. In December 1993 Professor Mzee, an avowed IPK sympathiser, was elected in the Kisauni parliamentary seat in Mombasa. [18]

5.66 Towards the end of 1993 clashes frequently occurred between IPK supporters and members of a rival Muslim faction the United Muslims of Africa (UMA). This was largely internecine squabbling at a local political level; however, it was alleged that the UMA had heavy government backing. The UMA was virtually dissolved by February 1994. There was no evidence that this wrangling among Muslim groups, was sponsored by the government, neither was there evidence of illegal activity against Muslim activists by the authorities. Those involved in unlawful activities or violence ran the risk of arrest for criminal behaviour. There were reports that the police were sometimes heavy handed in dealing with demonstrations by Muslim activists, but that was also true of all their dealings with public order problems. There were cases of harassment and ill-treatment of IPK activists but the decrease in popularity of the organisation since 1997 meant that there is no evidence that IPK supporters or activists, draw much attention or are intimidated today. No IPK activists, brought before the courts for public order offences, were treated any differently from other people facing similar criminal charges. In the wake of the terrorist bombing of the US Embassy in Nairobi several non-governmental organisations (NGOs), including five Muslim NGOs, were deregistered by the Government, which prompted mass demonstrations by the Muslim community. [18][23f][24d][32i][32o]

5.67 In December 1994 the Kenyan authorities effectively stripped Balala of his Kenyan citizenship, when Kenyan Embassy officials in Bonn rejected his application for a passport extension. His absence from Kenya removed the leadership spark he provided which attracted many young disgruntled Muslims to the IPK movement. Balala remained stranded in Germany until July 1997 when the authorities granted him permission to return to Kenya. The Attorney General Amos Wako cited appeals from Balala's relatives and the Muslim community as the reason why they reversed their decision. Since returning to Kenya, on 12 July 1997, Balala has been free to speak to the press, address his supporters and move unmolested around Mombasa, having been granted a licence to hold a pro-reform meeting on 26 July 1997. He was arrested just prior to the 1997 elections, for inciting people not to vote, and again sometime in June 1998 on further charges of incitement, at which time he was remanded in custody for 10 weeks in Manyani Prison before being released on 21 August 1998. In the aftermath of the Nairobi bombings and the subsequent US air strikes, Sheikh Balala asked the US to exercise caution. Despite the 1997 legal reforms and subsequent registration of several political parties, the Government refused to reverse its 1994 decision to deny registration to the IPK on the grounds of the organisations involvement in violent confrontations with police during the pre-election riots in 1992. [1][2][23f][30b][30g][32i]

vi) MWAKENYA

5.68 In March 1986, it was revealed that several Kenyans had been detained under security provisions, and that others were to face charges of publishing seditious documents. During the ensuing 12 months a 'conspiracy' known as Mwakenya (a Swahili acronym for the Union of Nationalists to Liberate Kenya), became the focal point of Kenyan politics. Although President Moi alleged that Mwakenya comprised the same

'tribalistic elite' that had fostered the 1982 attempted coup. It became apparent that the movement embraced a wide spectrum of opposition to the Moi presidency. Most threatening for the Government was the fact that Mwakenya apparently confined to no particular region. There is no evidence that it is operative in Kenya today. Individuals formerly associated with Mwakenya are now involved in mainstream politics. [1][24e]

vii) February Eighteenth Movement/February Eighteenth Resistance Army (FEM/FERA)

5.69 During late 1994 to mid 1995 FERA was considered to be a major threat. On 3 February 1995 the Kenyan Government issued a statement accusing FEM/FERA of recruiting disaffected Kenyan youths and giving them military training to mount operations in Kenya including cattle rustling, arson, bank robberies and attacks on businessmen and the police. They alleged the movement was based in neighbouring Uganda and led by a Brigadier John Odongo. The scare over FEM/FERA activity in Western Province lead the Kenyan authorities to charge a number of people with suspected membership of FEM. Charges against a number of defendants were later dropped; four were convicted and sentenced to between five and six years. A number of the FEM suspects later reported that they had experienced maltreatment, including torture, and had only signed confessions under duress. Membership of FEM/FERA has since receded. John Odongo and FERA Chairman Patrick Wangamati went into exile in Ghana. On 6 October 1997, Wangamati returned to Kenya. He was detained, held incommunicado and interrogated on his return, and was pardoned in December 1997. He announced publicly that FERA had been officially dissolved. Whilst there was a time when members and people associated with FERA were in considerable danger of persecution in Kenya, there is no evidence that this is still the case. [1][7][8][11a][24c][24e][24a][25][33b]

viii) Mob violence

5.70 Mob violence continued at high levels during 2001, which observers believe may have been associated with the continuing high crime rate. According to the Government and the KHRC, 56 persons were killed in mob violence during 2001. Human rights observers attribute mob violence to a lack of public confidence in the police and the judicial process. The general majority of mob violence victims, who died by lynching, burning or beating were persons suspected of criminal activities, including robbery, cattle rustling and membership of terror gangs. In early May 2001, in the Kericho District of the Rift Valley Province, a mob attacked a suspected murderer and set fire to many houses in revenge for the killing of a local businessman. In February 2002, three armed gangsters, who shot dead a woman, were lynched. [2][32bg][32bh]

ix) Civil unrest

5.71 A report on 27 February 2000, stated that large areas of the Mount Kenya forest reserve had already been marked out as farmland as a 28-day excision notice issued by the Government expired on 26 February 2000. The Government plans to turn the 168,000 acres comprising 10% of total forest reserves in Kenya into settlements. The move has sparked countrywide condemnation, with the Parliamentary Environment Committee vowing to ensure that the planned excision was rescinded. On 6 September 2000 fire broke out at Gikomba open-air market in Nairobi's eastern Kamukunji estate. This triggered protests among vendors who said that they suspected sabotage. At least two people were killed as the rioting broke out. The rioters tried to storm the Nairobi City Council headquarters. There were accusations that the local authorities were selling the

market to developers, who might have hired arsonists to torch it to force the vendors out. The fire burnt down the whole market. This fire was the second at a major clothes market in eight days. Freemark clothes market in Nairobi burned down on 28 August 2000 and the traders there also said the fire was started deliberately. [30o][32cx][32cy]

5.72 At the end of January 2001, police detained more than 200 people after violent clashes erupted in the city centre of Nairobi. The riot followed a demonstration by more than 1000 street traders against the demolition of their market stalls by the city council earlier in the week. The violence continued for a second day when police fired live bullets and threw teargas canisters at the hawkers. About 150 suspects were arrested. In September 2001, armed hawkers allegedly ambushed Nairobi city Council askaris (guards) leaving one dead and two others in a critical condition. The Central Police Station had been ordered to remove hawkers on the same day. On 2 February 2002, two people were killed and scores injured in Nyeri as the relocation of hawkers and market traders turned ugly. Angry traders engaged police officers and council askaris in running battles, which lasted the whole day. On 14 February 2002, more than 200 traders clashed with riot police as they protested at the demolition of their kiosks. Central Kenya MPs condemned the Government following the demonstrations. They described the current demolition of kiosks as criminal and asked the Government to stop the exercise. Three hawkers were arrested following a noon confrontation with youths looting from their kiosks. The hawkers were seized after their colleagues stoned youths hired to demolish the kiosks. [32dh][49e][64][44d][32bj][32bk]

x) National Security

5.73 In August 1998 a bomb placed next to the United States' (US) embassy exploded in central Nairobi killing 253 people and wounding more than 5,000. Two men were later arrested and charged in the US with murder. Six Muslim NGOs were deregistered in September 1998 with the government citing security concerns in the wake of the bombing. A further 11 were threatened with deregistration. In October 1998 the High Court suspended deregistration of 5 of the NGOs pending appeal. In December 1998, the NGO Co-ordination Board said it was in the process of reviewing the cases of all the NGOs, which were issued with notices of intended deregistration. The board said it was satisfied that two NGOs, namely the International Islamic Relief Organisation and Ibrahim bin Abdulaziz Al-Ibrahim Foundation, could continue with their operations. [11b][12][17][33h]

5.74 In July 1999 the Government put the Kenyan army on combat-ready alert following escalating insecurity along the country's borders with its Horn of Africa neighbours. The insecurity posed by remnants of the militia from Somalia and other neighbouring countries could not be taken for granted and a state of preparedness was needed to resist cross border incursions by hostile groups a State Minister announced on 4 July 1999. On 5 July 1999 and again on 22 August 1999, the Government closed the border with Somalia. Nighttime sweeps in urban areas were subsequently intensified in an effort to stem the influx of weapons, illegal goods and persons. Although the border remained officially closed at the end of 1999 many applicants for refugee status continued to enter the country from Somalia. In February 2000 security forces were placed on high alert after threats from Somali Patriotic Movement that they would attack Kenyan border settlements in search of Auliyahan militia. The Provincial Commissioner denied that Kenya was harbouring any Somali militia. [2][32r][39b]

xi) Health Issues

5.75 About 1.9 million Kenyans are infected with HIV; of them 91,000 are children. Each day around 500 Kenyans die of AIDS, 80% of whom are between the ages of 15 and 49.

In Nairobi, an estimated one in four workers is infected with HIV. At the end of 1997, Kenya's adult HIV prevalence rate was 11.64%; it is now about 14%. At least 49% of HIV-infected adults are women. Medecins Sans Frontieres (MSF) has been working with AIDS patients all over Kenya with programs based on reducing HIV transmission, home-based care for AIDS patients and work with local groups to develop income-generating activities. Teams train health workers and organise comprehensive care in patients' homes (in the Nairobi slum areas of Dandora and Kibera), Mbagathi Hospital and several health centres. MSF offers psychological support and social assistance, which sometimes means paying rent or school fees for family members of those with AIDS. At the end of November 2000 a representative of the German drug company Boeringer Ingelheim announced that they would be able to provide an anti-HIV drug free of charge to pregnant women for 5 years. [39e][73][61]

5.76 At the end of November 2000, an HIV/AIDS syllabus and curriculum was launched in Kenyan schools to be introduced in 2001. In December 2000 the Kenyan Health Ministry set up a task force to regulate the prices of essential drugs so as to ensure access of basic medicines to people. The Kenyan Minister of Medical Service said that the high prices of the drugs were partly attributed to the high importer or producer prices. In September 2000, the British government announced that it would disburse 30bn shillings (US\$350 million) to help fight HIV/AIDS in Kenya. In January 2001, the American government allocated 1.6bn shillings for management of HIV/AIDS epidemic in Kenya. In December 2000, the World Bank announced that Kenya was to benefit from a 4bn shilling credit "to provide quality and effective care to the most vulnerable population". In February 2001, in what could become an important test for international law, an orphanage for HIV-positive children in Kenya announced that it would order AIDS drugs from Cipla, an Indian drug manufacturer supplying medication at an affordable rate. On 6 March 2001, The Kenyan Health Minister Sam Ongeru said that the appropriate legislation would be put to parliament. The move was likely to infuriate international pharmaceutical companies who are already fighting a legal battle to stop South Africa from doing the same. In April 2001, the Health Minister Professor Sam Ongeru drafted a bill to legalise the import of cheap generic HIV/AIDS drugs. [32da][32db][39f][42a][47b][49d][49c][57c]

ANNEX A

Chronology of Events

- 1895 Kenya declared a British protectorate.
- 1902 White settlement encouraged in the central highlands.
- 1907 Legislative council established comprising mainly of European settlers.
- 1914 The 1,000 European landholders meet with significant African armed resistance.
- 1920 African political activity begins to organise particularly amongst the Kikuyu in Nairobi, and the Luo.
- 1925 Local native councils introduced.
- 1940s White settler farmers achieve considerable prosperity.
- 1944 The Kenya African Union (KAU), an African nationalist organisation formed, demanding access to white-owned land.
- 1947 Jomo Kenyatta becomes President of KAU.

of 31.1 million shillings (see paragraph 4.11). Mr Muite linked the court case with his role in trying to unravel the Goldenberg case. On 28 July 1999 84 MP's, including 14 from KANU filed a motion of no confidence in the government over the case citing the fact that high-ranking government officials have been implicated in the scandal. The MP's called for the removal of President Moi for his alleged involvement. On 8 August 1999, Kwanza MP George Kapten (FORD-Kenya) was arrested by CID officers at his home in connection with an interview carried in the 'Finance Magazine' in which he implicated President Moi in the scandal.

In September 1999 some legal experts expressed concern that the appointment of Bernard Chunga as Chief Justice and Uniter Kidullah as Director of Public Prosecutions would cause confusion. Chunga had led the prosecution in the Goldenberg case while Kidullah was the chief magistrate. At a hearing of a constitutional reference application related to the Goldenberg cases in October 1999 Mr Pattni sought to have one of the judges disqualify himself. In November 1999 Mr Kapten was again arrested, this time along with Njehu Gatabiki MP, and charged with subversion after stating that President Moi was a prime suspect in the Goldenberg case. The two MP's who were released on a bond of 100,000 shillings said that they wanted President Moi summoned as a defence witness. George Kapten subsequently died at his home on 25 December 1999.

In February 2000 Chief Justice, Bernard Chunga, said that he wanted to see a "speedy resolution" to the Goldenberg case. He said he would set a date "as soon as practicable" for an appeal, lodged by Pattni in the court of appeal, contesting the inclusion of one of the judges in the constitutional reference hearing. Chunga said that he would then appoint a fresh three-judge bench to handle the constitutional matter that seeks to quash the 13.5 billion shillings, 5.8 billion shillings, 322 million shillings and 16 million shillings theft cases against Pattni and his firm, Goldenberg International. The World Bank and International Monetary Fund (IMF) have been pressing for the prosecution and imprisonment of all those involved in the affair.

The initial hearing took place in London on 15 January 2001 when procedural issues were discussed, with the arbitration panel deciding to hold sessions on 5th and 6th July 2001 in The Hague. The hearing will remain behind closed doors since the Kenyan Government is unlikely to consent to an open forum. The case is expected to highlight the Sh68 billion Goldenberg scandal and the way in which it has been handled by the Kenyan courts. Mr Ali, the Duty Free owner, was thrown out of Kenya in July 2000, in the middle of a tussle between himself and Mr Kamlesh Pattni over the ownership of the Duty Free complex. He was deported a few days after he publicised documents that appeared to link the President with the Goldenberg affair. The documents released by Mr Ali suggested that President Moi and Mr Kulei were aware of the Goldenberg transactions.

[2][29a][30m][30p][32ae][32ao][32as][32bn][32bp][32br][32bs][32bu][32cb] [32cf]
[32dc]

[32dd][33f][34h][34q][34k][34i][38][39a][45]

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