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Kenya

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Kenya is a republic with a population of approximately 34 million and is dominated by a strong presidency. The President is both the chief of state and head of government. In 2002 citizens elected Mwai Kibaki of the opposition National Rainbow Coalition (NARC) as the country's third president. Kibaki succeeded Daniel Arap Moi, who led the former ruling party, the Kenya African National Union (KANU), and who served as president from 1978 to 2002. During the 2002 general elections, KANU which had controlled both the presidency and the parliament continuously since 1963, lost its parliamentary majority to NARC, a coalition of more than a dozen political parties. Observers concluded that the elections reflected the popular will and were free and fair. While civilian authorities generally maintained effective control of the security forces, there were some instances in which the security forces acted independently of government authority.

The government in many areas respected the human rights of its citizens or attempted to institute reforms to address deficiencies. However, serious problems remained, particularly with regard to abuses by the police service. The following human rights problems were reported:

- unlawful killings by police
- police beatings and torture of detainees
- impunity
- harsh and life-threatening prison conditions
- arbitrary arrest and detention
- use of excessive force
- prolonged pretrial detention
- executive interference in the judiciary
- restrictions on freedom of speech, the press, and assembly
- government corruption
- abuse of and discrimination against women
- female genital mutilation (FGM)
- child prostitution and labor
- trafficking of persons
- vigilante justice and interethnic violence
- lack of enforcement of workers' rights

On November 21, the government held its first national referendum for a proposed constitution. The citizens accepted the referendum result--57 percent opposed. Election observers did not witness any serious incidents of intimidation or violence, and stated the referendum process was peaceful and professional. In addition the government consolidated and extended some of the human rights reforms it had taken the previous two years. For the third straight year, there were no politically motivated arrests or disappearances, and prison visits by human rights groups increased.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed politically motivated killings during the year; however, security forces did commit arbitrary or unlawful killings. On March 15 a special committee of parliament prepared a report, issued on May 12, implicating a sitting minister, a prominent Nairobi businessman, and several government officials in the 1990 murder of the Foreign Minister Robert Ouko. The committee did not present its findings to parliament by year's end.

The Independent Medico Legal Unit (IMLU), a leading human rights nongovernmental organization (NGO), reported that police officers killed 196 persons as of June (compared with 47 in 2004). The IMLU concluded that all 196 of these

deaths were unlawful. Thirty of these occurred while the deceased were in police custody and showed evidence of torture--compared with 40 in 2004 (see section 1.c.).

There were reports of summary police executions. On March 15, several witnesses reported that Nairobi police officers dragged three robbery suspects out of their car, forced them to lie down on their stomachs, and then shot them to death. There were no arrests or charges against the police by year's end.

On March 21, the minister of internal security issued a "shoot-to-kill" order against anyone found in possession of an illegal firearm; later that month, the minister explained that he meant for officers only to defend themselves if fired upon.

Police shot to death 5 reportedly unarmed men in separate incidents: in Nairobi (May 14), Mombasa (May 28), and Central Province (May 29 and 30). Nine police officers were detained for questioning in two of the shootings; some were released, some trials were ongoing, and at least one officer remained under arrest at year's end.

In June the Parliamentary Committee on National Security summoned the commissioner of police to explain why the police had recently killed so many individuals. No reports were published by year's end.

Law enforcement officials maintained that security forces usually were justified in their use of deadly force because of the heavily armed, violent criminals they often encountered. Police claimed that criminals' frequent use of sophisticated weapons had increased the risks faced by police in performing their duties.

There were no developments in the March 2004 murder trial against six prison guards accused of killing six prisoners in the central part of the country in 2000. But there were three civil suits pending against the state at year's end.

There were no developments in the following 2004 cases: the February police shooting of Purity Mburu; the February police killing of a secondary school student in Kisii; the May police beating to death of a man with mental disabilities in Mwingi District; and the July summary execution of seven persons in Kisii.

There were fewer reports that persons died while in police custody or shortly after. On June 8, a court charged a number of wardens in the 2000 case of seven death row inmates in King'ong'o prison who had died in suspicious circumstances. Prison authorities claimed they fell from a 24-foot fence while trying to escape, but a medical report indicated that the men were probably beaten to death because their injuries were inconsistent with a fall. There were no convictions by year's end.

The investigation into the September 2004 killing of five prisoners at Meru G.K. Prison was ongoing at year's end.

There were no developments in the November 2004 medical report that concluded an inmate in Naivasha maximum security prison was beaten to death before being hanged to give the impression of a suicide.

On January 24, five police officers accused of torturing to death Paul Kimani Wambiru in 2002 were acquitted of all charges after spending two years in pretrial detention. An autopsy on the victim established that Kimani had died from trauma resulting from a beating, but the prosecution failed to link the five officers to Kimani's death.

On January 10, a Nairobi court acquitted six police officers on trial for torturing three suspects accused of the 2003 killing of Crispin Odhiambo Mbai, the chairman of the Devolution Committee of the National Legal Conference. On April 7, the three suspects were themselves acquitted of Mbai's murder.

On December 31, the Kenya Ports Authority District Investigation Officer, Hassan Ahmed Abdillahi, was killed. Abdillahi was involved in the investigation of governmental corruption linked to international narcotics and other contraband trafficking through the port. The investigation of his killing had just begun at year's end.

During the year, police at times used excessive force to disperse demonstrations and strikes, which resulted in deaths (see section 2.b.).

There were numerous instances of mob violence and vigilante justice. The great majority of victims killed by mobs were suspected of criminal activities, including robbery, killings, cattle rustling, and membership in terror gangs. The government rarely made arrests or prosecuted the perpetrators of these acts.

On January 10, a mob in Nairobi stoned to death a man they caught sodomizing a minor; another mob killed a man caught stealing a mobile phone and about \$50 (3,650 shillings) in cash.

On April 5, villagers in the Kiambu District killed a 17-year-old boy and set his body on fire after the boy was caught stealing household goods.

On April 25, a mob beat to death a man in Meru District who allegedly had sodomized a 13-year-old boy.

On June 20, residents of Kisumu stoned to death a gang member who had attempted to steal a two-month-old baby.

On August 12, a mob in Molo killed a man who had locked his parents inside a grass-thatched house and set it on

fire.

Human rights observers attributed mob violence to a lack of public confidence in police and the judicial process. The social acceptability of mob violence also sometimes provided cover for personal vengeance and the settling of land disputes.

Mob violence against individuals suspected of witchcraft was a problem, particularly in Kisii, Luo Nyanza, and Western Province. Human rights NGOs noted a reluctance to report such cases due to fear of retribution.

The *Mungiki*, a banned cultural and political movement and criminal protection racket based in part on Kikuyi traditions, was less organized and was implicated in fewer violent crimes than in the past due to a police crackdown. On February 10 and March 1, a total of 37 *Mungiki* members were released for lack of evidence in their murder charges.

On May 9, the high court acquitted for lack of evidence 11 *Mungiki* members who had been arrested in 2004 on various charges including the killings of a police officer and *Mungiki* defectors.

By year's end police arrested approximately 24 suspected *Mungiki* members in connection with an upsurge in transportation sector crimes.

Interethnic violence continued to cause numerous deaths (see section 5).

b. Disappearance

There were no reports of politically motivated disappearances.

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

The law prohibits such practices and the government took steps to eliminate prisoner abuse. There were documented instances of police using physical violence and torture during interrogations and as punishment of both pretrial detainees and convicted prisoners.

Detainees frequently claimed that they had been tortured or abused, making it difficult to separate real from fabricated incidents. But human rights organizations, churches, and the press highlighted and criticized numerous cases of torture and several cases of indiscriminate police beatings. The IMLU received 397 cases alleging torture at the hands of security officers, an increase from the 304 allegations IMLU received in 2004. According to the IMLU, a common form of torture was *falanga*, the beating of the feet and joints while the feet and hands were handcuffed and the victim was suspended upside down. Another method included placing a metallic drum over the victim's head and shooting at the drum.

The IMLU reported that cases of police torture resulted in death (see section 1.a.). Since the police themselves were responsible for investigating and prosecuting most crimes, reports from IMLU and other human rights organizations that provided evidence of torture by security forces were routinely ignored.

In February Salim Elijah Masinde, an inmate in Kamiti Prison told IMLU he had been severely beaten while in custody since 1988. A doctor's examination revealed that he had been abused. An IMLU investigation was ongoing at year's end and Masinde remains in prison.

There were no developments in the May 2004 case of Margaret Muthoni Murage who miscarried after being detained.

There were no developments in the June 2004 case of David Ndegwa Kimemia who suffered a broken leg while in custody. On May 4, Ndegwa was acquitted of abusing a local chief due to lack of evidence.

Police occasionally used excessive force, which resulted in deaths and injuries, to disperse demonstrations and strikes (see section 2.b.).

Police occasionally abused street children (see section 5).

There were some allegations of rape by security forces. On June 15, citizens complained that soldiers raped women as they were evicting the women from illegal settlements in the Mau forest earlier in the month. No investigations had occurred by year's end.

Acts of violence, including rape, banditry, and shootings, occurred frequently near refugee camps (see section 2.d.).

Prison and Detention Center Conditions

Prison conditions continued to be harsh and life threatening, although the government made some improvements in prison conditions. Most prisons, especially the men's facilities, continued to be severely overcrowded. In September 93 prisons housed 50 thousand inmates, a decrease from 2004, but still more than three times their intended capacity of 16 thousand. Overcrowding in some prisons was more severe; Meru prison had three times as many inmates as its intended capacity. To decrease congestion, the government began sentencing petty offenders to community service,

imposing fines rather than confinement, and offering probation, but the implementation of this program was too slow and weak to effectively address overcrowding. Prison overcrowding was also due to a backlog of cases in the judicial system (see section 1.d.).

Reforms begun in 2003 improved conditions in some prisons. All women's prisons, and some men's prisons, opened or expanded health clinics during the year. Some facilities received expanded access to academic classes, enabling a number of inmates to sit for national exams, or vocational training, such as carpentry or tailoring. Charitable associations organized occasional medical clinics for inmates.

Prisoners generally received three meals per day, but portions were inadequate, and prisoners were sometimes given half rations as punishment. Water shortages continued to be a problem.

Civil society organizations began visiting prisons in 2003, and these visits revealed harsh conditions as well as allegations by prisoners of inhumane treatment and torture. Such treatment, perpetrated by police, prison guards, and inmates at times resulted in deaths (see section 1.d.).

Prison personnel said that rapes of both male and female inmates, primarily by fellow inmates, continued to be a problem. There was an increasing incidence of HIV/AIDS, although statistics were difficult to obtain since there were no voluntary counseling or testing services in most prisons. Hundreds of prisoners died in prisons from infectious diseases caused by overcrowding and inadequate medical treatment. According to government statistics, 536 prisoners died in 2002, primarily as a result of pulmonary tuberculosis, gastroenteritis, pneumonia, and malaria. Dysentery, anemia, malaria, heart attack, typhoid fever, and HIV/AIDS also were common causes of death among prisoners.

Prisoners sometimes were kept in solitary confinement far longer than the maximum 90 days allowed by law. Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who visited prisoners faced numerous bureaucratic and physical obstacles, each requiring a bribe.

In August 2004 the *People Daily* reported that prison officers at Thika Prison routinely released prisoners and colluded with them to commit crimes. The newspaper added that torture, illegal sales of hard drugs, and sexual abuse were routine in the prison. There were no investigations of the prison during the year.

In September 2004, 3 prison guards at Naivasha prison went on trial for helping 28 pretrial detainees accused of capital offenses escape from that prison; the escapees were later captured. The trial was ongoing at year's end.

There were no separate facilities for minors in pretrial detention. As a result, teenage detainees were routinely confined with adult detainees. On August 31, pretrial detainees in Embu prison petitioned the government to separate young boys from their adult counterparts, citing allegations of sodomy in the cells. There was no further information on the petition by year's end.

Minors were sometimes confined with adult prisoners. A February 5 media report noted that high court judges touring King'ong'o maximum security prison discovered several minors, one only 15-years-old, serving long sentences among adult prisoners. The judges ordered the prison to provide information on the minors' conviction and jailing in order to conduct a review. There was no further information on the review by year's end.

A total of 369 children under the age of four accompanied their mothers in the country's 14 prisons for women.

The Kenyan National Commission for Human Rights (KNCHR), as well as the International Committee of the Red Cross (ICRC), had the authority to inspect prison facilities on demand at any time, but the government did not permit consistent independent monitoring of prison conditions. The KNCHR conducted four visits, and the IMLU conducted six visits. There were no ICRC visits during the year. Although media coverage of prisons increased compared to last year, media members were selectively allowed visits.

d. Arbitrary Arrest or Detention

The law prohibits arrest or detention absent a court order unless there is reasonable suspicion of a suspect having committed, or being about to commit, a criminal offense under the law; however, police occasionally arrested and detained citizens arbitrarily.

Role of the Police and Security Apparatus

There was a large internal security apparatus that included the police's Criminal Investigation Department (CID), the National Security Intelligence Service (NSIS), the National Police, the Administration Police, and the paramilitary General Services Unit. The CID investigates criminal activity, and the NSIS collects intelligence and monitors persons considered subversive. These security forces are under the authority of the Ministry of State for Provincial Administration and National Security in the Office of the President. There was a public perception that police often were involved or complicit in criminal activity.

According to the *Kenya Bribery Index 2005*, the police service remained the most corrupt agency in the government. Although the number of extortions by police decreased dramatically from 2003 to 2004, the average bribe amount

increased from approximately \$9 (657 shillings) in 2003 to \$125 (9125 shillings) in 2004.

Police, in conjunction with prosecutors, resorted to unexplained illegal confinements, extortion, torture, and highly questionable and fabricated charges as a cover-up for malpractice.

Impunity was a problem. Officers were only occasionally arrested and prosecuted for corruption or for using excessive force. Following the December 19 Kenya Anti Corruption Commission (KACC) report, nearly 200 officers were suspended pending investigation for corruption (see section 3). Authorities sometimes attributed the absence of an investigation into corruption or an unlawful killing to the failure of citizens to file official complaints. However, the required complaint form was available only at police stations, and there was considerable public skepticism of a process that assigned the investigation of police abuse to the police themselves.

During the year the government took some steps to curb abuses of authority by police. The government arrested and charged some police officers for various offenses, including corruption, although the government did not provide details on how many of these indicted police officers were tried, acquitted, convicted, or imprisoned. To reduce incentives for corruption, the government provided the police with a 115 percent increase in salaries.

Arrest and Detention

Individuals may be apprehended on suspicion since police may make arrests without a warrant. By law, detainees must be brought before a court within 24 hours in non-capital offenses and within 14 days in capital cases; the penal code specifically excludes weekends and holidays from this 14-day period. Those who are charged may be released on bail with a bond or other assurance of the suspect's return, but many indigent pretrial detainees could not afford bail.

Although the law provides families and attorneys access to pretrial detainees, security forces rarely allowed access in practice (see section 1.c.).

The law does not stipulate the period within which the trial of a charged suspect must begin. Police from the arresting location are responsible for serving court summons and for picking up detainees from the prison each time the courts hear their cases. Police often failed to show up or lacked the means to transport the detainees, who then were forced to await the next hearing of their case.

Arbitrary arrest was a problem. Police often arrested citizens with the sole purpose of extorting bribes.

On July 21, civil society groups claimed that police arbitrarily arrested persons demonstrating against the parliament (see section 2.b.).

On September 30, police arrested two members of parliament (MPs) for violently disrupting a pro-draft law meeting on September 28. The two initially presented themselves before a magistrate and were released on bail for charges of incitement and assault in connection with the incident. Upon leaving the magistrate's office, they were re-arrested on different charges. While in custody, the MPs were moved to various police stations, and their whereabouts were unknown. On October 3, both were charged with "malicious damage of property" and released on bail. There were no further developments by year's end as the owners of the damaged property never pressed charges.

Lengthy pretrial detention continued to be a serious problem. The government reported that approximately 40 percent of the prison population consisted of pretrial detainees. The government claimed the average time spent by suspects in pretrial detention on capital charges was approximately 16 months; however, many detainees spent more than 3 years in prison before their trials were completed. Very few could afford attorneys. The government acknowledged cases in which persons were held in pretrial detention for several years. The backlog of judicial cases filled the prisons with 20,612 pretrial detainees, constituting more than 40 percent of the total prison population.

On September 8, a judge dropped charges and ordered the release from prison of Joseph Kamau Njoroge, who had been in pretrial custody for 22 years on charges of killing his 9-year-old son. However, Wanjiku Kamandere, who has served 17 years in pretrial detention, remained in custody at year's end.

Amnesty

On December 5, the government announced the early release of 6,060 prisoners in certain categories to ease prison congestion.

e. Denial of Fair Public Trial

Although the law provides for an independent judiciary, the executive branch often influenced the judiciary. According to a December 31 article in *The Standard*, the executive branch at times openly defied court orders during the year.

The president has extensive powers over appointments, including those of the attorney general, the chief justice, and appeal and high court judges. The president also can dismiss judges and the attorney general upon the recommendation of a special tribunal appointed by the president. Although judges have life tenure (except for the very few foreign judges hired by contract), the president has extensive authority over transfers.

Reforms begun in 2003 reduced corruption in the judiciary to some extent. In March, the chief justice formed a committee to probe complaints against the judiciary. By year's end, the committee's findings were not publicized. By year's end, only one out of eight judicial corruption cases had been heard; the judge was cleared.

The government significantly reduced the use of the legal system to harass government critics; however, the attorney general on several occasions used his legal power to discontinue proceedings in private prosecution cases, including one against him. On December 15, the chief justice called for a probe into the Attorney General's Office. According to a media report, this was the fourth time he had done so during the year.

The court system consists of a court of appeals, a high court, and two levels of magistrate courts, where most criminal and civil cases originated. The chief justice is a member of both the court of appeals and the high court. All judges in the court of appeals and the high court are appointed by the president upon recommendation of the Judicial Service Commission. Magistrates are hired by the Judicial Service Commission. Criminal law trials are conducted by magistrate courts, while the high court and court of appeals hear appeals. Civil cases may be heard by any of the courts, depending on the nature of the case.

Trial Procedures

Civilians are tried publicly, although some testimony may be given in closed session. The law provides for a presumption of innocence, and defendants have the right to attend their trial, to confront witnesses, and to present witnesses and evidence. Civilians also can appeal a verdict to the high court and ultimately to the Court of Appeals. Judges hear all cases. In treason and murder cases, the deputy registrar of the High Court can appoint three assessors to sit with the high court judge. The assessors are taken from all walks of life and receive a sitting allowance for the case. Although the assessors render verdicts, their judgments are not binding. Lawyers can object to the appointments of specific assessors.

Defendants do not have the right to government-provided legal counsel except in capital cases. For lesser charges free legal aid rarely was available, and then only in Nairobi and other major cities where some human rights organizations, notably the Federation of Women Lawyers (FIDA), assured that it was provided. As a result, poor persons may be convicted for lack of an adequate defense. Defense lawyers do not always have access to government-held evidence in advance of a trial. The government may plead the State Security Secrets Law as a basis for withholding evidence, and local officials sometimes classified documents to hide the guilt of government officials. Court fees for filing and hearing cases were high for ordinary citizens. The daily rate of at least \$28 (2,040 shillings) for arguing a civil case before a judge was beyond the reach of most citizens.

The law provides for Islamic courts that use Shari'a (Islamic law) and states that the "jurisdiction of a Kadhi's court shall extend to the determination of questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings in which all the parties profess the Muslim religion." There are no other traditional courts in the country. The national courts used the law of an ethnic group as a guide in civil matters as long as it did not conflict with statutory law. This occurred most often in cases that involved marriage, death, and inheritance issues and in which there was an original contract founded in traditional law. Citizens may choose between national and traditional law when they enter into marriage or other contracts; however, thereafter the courts determine which kind of law governs the enforcement of the contract. Some women's organizations sought to eliminate traditional law, arguing that it was biased in favor of men (see section 5).

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.

Political Prisoners

There were no reports of political prisoners. On March 11, the government released from detention Charles Wanyonyi Wamoto, who was the last of the 29 persons convicted and imprisoned for plotting a coup in 1982.

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

The law prohibits such actions, except "to promote public benefit"; however, authorities sometimes infringed on citizens' privacy rights. The Police Act permits police to enter a home forcibly if the time required to obtain a search warrant would "prejudice" the investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants to apprehend suspected criminals or to seize property believed stolen. The police and intelligence service continued to professionalize, modernize, and limit actions that could qualify as interference.

In June after nearly 18 months of planning, security guards from the Narok County Council and the administration police evicted approximately 10,200 squatters living illegally on protected lands near and in the Mau Forest. There were reports that security forces raped some of the evictees (see section 1.c.). Although some evictees had title deeds, the government claimed that the deeds were issued years ago as political patronage tools, in violation of the law. The government claimed it would work on a resettlement plan which had not been implemented by year's end.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, but the government sometimes restricted these rights in practice. There were reports that security forces harassed, beat, or arrested members of the media during the year. Journalists practiced self-censorship.

The government occasionally interpreted existing laws to restrict freedom of expression. The legal prohibition of debates on issues under court consideration and a parliamentary ruling against debates on certain aspects of presidential conduct limited the scope of deliberation on a number of political issues. On April 13, security forces briefly detained MP Reuben Ndolo for singing a song in public that was interpreted as insulting to President Kibaki and First Lady Lucy Kibaki.

In general, the media remained independent. The mainstream print media included four daily newspapers that reported on national politics: *The Nation*, an independent daily that has long published articles generally critical of government policies; *The Standard*, which previously reflected KANU party views, but became more independent after the 2002 elections; *The People Daily*, owned by an opposition politician and highly critical of the government; and *The Kenya Times*, which generally reflected KANU party views. There also were numerous independent tabloid periodicals which appeared irregularly and were highly critical of the government. Reporting in these tabloids ranged from revealing insider reports to unsubstantiated rumor mongering.

The government-owned Kenya Broadcasting Corporation (KBC), the country's oldest broadcaster, was the only station with a national network of broadcast and cable television, AM and FM radio, and short-wave broadcasts. Although KBC coverage became increasingly more balanced, its monopoly on national broadcasting continued to limit the ability of opposition leaders and other critics of the government to communicate with the electorate outside the capital. Stations owned by other media companies, including 12 radio stations, operated primarily along the country's central corridor and more densely populated adjacent regions.

Kenya Television Network, owned by KANU supporters, aired news programs with more balanced political coverage than KBC, and remained the leading private television broadcaster. Stellavision, which was also owned by KANU supporters, rebroadcasted SKY TV and BBC world news. Other television stations operating in Nairobi were Nation-TV, associated with the Nation Media group, and Family, a Christian-oriented broadcaster. Citizen TV and Citizen Radio broadcast pro-government news and information programs. Nation Media Group and KBC hosted Kenya's first broadcast debates in the run-up to the legal referendum. These debates were well-organized and allowed to proceed without interference or manipulation.

The international media remained free to operate; 120 international correspondents worked in the country, and approximately 100 media organizations reported out of Nairobi. On June 21, the government granted a license to Radio France International (RFI) to operate an FM radio station in Nairobi; RFI had previously operated only in Mombasa. There were three international FM broadcasters in Nairobi: RFI, Voice of America, and the BBC.

Journalists continued to be susceptible to harassment, intimidation, and arrest. On January 8, *The Standard* published a story implicating the Internal Security Minister Christopher Murungaru in questionable land deals. On January 11, Minister Murungaru ordered police to detain and question a *Standard* editor and several days later a *Standard* journalist. Following protests by several civil society organizations as well as the KNCHR, the officials released the editor within hours. On January 20, the journalist was released after his criminal libel charges were dropped.

On January 20, the police in Nyanza Province threatened a *People Daily* journalist for filing negative articles about them. On the same day, the government freed the *Kenya Confidential* editor who had been detained after a November 2004 article alleged that the head of the Kenyan Civil Service, Francis Muthaura, was involved in a government motor vehicle racket.

On April 4, a court acquitted *East African Standard* journalist David Makali on charges that he stole a police tape containing the confession of suspects in the killing of Crispin Odhiambo Mbai in 2003 (see section 1.a.).

On May 2, First Lady Lucy Kibaki forcibly entered *The Nation* media house to protest negative press coverage of her activities several days earlier. During her visit she assaulted a television journalist and damaged his camera. On May 19, although the journalist filed suit against First Lady Kibaki, the attorney general dismissed the case. The journalist filed an appeal which had not been heard by year's end. On May 17, Mrs. Kibaki filed a formal complaint against *The Nation* and *The Standard* with reference to their reports on her activities.

On September 27, police arrested a *Kenya Times* writer and editor for publishing an opinion piece that officials considered inflammatory for suggesting a coup in the country was possible and would be a desirable development. The journalists were released on bail the following day, and there was no hearing by year's end.

On November 16, the government ordered the Kalenjin language radio station KASS FM to cease broadcasting, citing complaints that the station had incited listeners to violence in connection with the November 21 referendum. On

November 18, following public criticism, the government allowed KASS FM to resume operations provided it complied with regulations requiring recordings of all broadcasts and agreed to submit recordings of past programming.

There were no developments in the September 2004 ransacking of the offices of *The Weekly Citizen* and *The Independent*.

The Media Bill requires publishers to purchase a bond of \$12,800 (1 million shillings) before printing any publication and to deposit copies of their newspapers and books with a registrar within 2 weeks of publication. The law makes it a crime to sell or distribute publications not deposited or bonded, under penalty of a fine of \$256 (21 thousand shillings) or 6 months' imprisonment. Some members of the media were concerned that the government would use this law, as well as the Books and Newspapers Act and the Official Secrets Act, to stifle freedom of expression; however, the law generally was not enforced.

The regulatory framework for broadcast media continued to allow abuse and manipulation in the issuance, withholding, and revoking of broadcast permits and frequencies. Although the government revised regulations and procedures in 2004 to streamline and regularize cumbersome licensing procedures, three MPs from North Eastern Province accused the government on April 19 of denying broadcasting station frequencies to the province, thus denying the residents the same information received in other areas.

There were no developments in the 2004 court case between the government and the East African Television Network (EATN). The government continued to block EATN broadcasts.

Individual journalists practiced self-censorship due to either pressure or bribes from government officials and other influential persons to avoid reporting on issues that could harm the interests of these persons or expose their alleged wrongdoings. There also were credible reports that journalists accepted payments to report certain stories, some of which were fabricated.

There were reports of an increased use of criminal libel laws by individuals closely associated with government officials to intimidate journalists and publications. In January the KNCHR issued a statement protesting the use of libel cases against journalists.

Sedition was not grounds for censorship of publications; however, the Prohibited Publications Review Board reviewed publication bans. A number of publications remained banned, including such works as *The Quotations of Chairman Mao Zedong* and Salman Rushdie's *Satanic Verses*.

There were no government restrictions on the Internet or academic freedom.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

Although the law provides for freedom of assembly, the government occasionally restricted this right in practice. Organizers must notify the local police in advance of planned public meetings, and authorities may cancel such gatherings only if there are simultaneous meetings previously scheduled for the same venue or if there are specific security threats. Authorities sometimes disrupted public demonstrations and meetings, often characterizing them as "illegal" gatherings, even when the police had been informed in advance. There were a number of incidents during which security forces used force at political rallies connected to the November 21 legal referendum.

The police occasionally used excessive force to disperse demonstrations. Some MPs and civil society organizations accused the police of harassment and arbitrary arrests during several July demonstrations against parliament's attempts to amend the draft of a new law. Civil society groups stated that 60 persons were arrested arbitrarily, but police stated the 60 were looters.

On October 29, during a pro-draft law rally in Kisumu, 40 persons were injured and 4 died as a result of clashes between security personnel and opponents of the draft law. KNCHR concluded from its investigation that the police used excessive force: forceful entry into homes; beating of persons and children; and the use of live bullets against nonviolent individuals who had already stopped protesting.

On November 11, at a rally against the draft law in Likoni, four persons died when police disrupted the rally for being held without permission.

On November 19, rival rallies, for and against the draft law, were held in public venues within two kilometers of each other. Police did not attempt to place restrictions on either event, and they successfully managed both activities through public information, careful control of traffic flows, and deploying high numbers of personnel.

On November 27, on the grounds of national security, the government banned victory rallies of the Orange Democratic Movement (ODM), the group opposed to the new draft law. The ODM had planned to hold nationwide rallies to thank supporters for defeating the November 21 legal referendum but cancelled them due to fear that a police confrontation would lead to violence.

No action was taken against security forces that used excessive force to disperse demonstrations in 2004 or 2003. On December 10, following the October and November referendum related violence, the police commissioner reportedly directed law enforcement to exercise greater caution regarding the use of live ammunition.

Freedom of Association

The law provides for freedom of association, and the government generally respected this right in practice. The Societies Act requires that every association be registered or exempted from registration by the Registrar of Societies. Approximately 40 political parties were registered. The only party denied registration was the Islamic Party of Kenya (IPK); however, the IPK had not resubmitted an application to register since NARC came to power in 2002.

The *Mungiki*, whom the Moi government outlawed in 2002, remained banned. In previous years the *Mungiki* espoused political views and cultural practices that were controversial in mainstream society; many of its members engaged in criminal activities and harassed and intimidated residents in areas where the group was active. The number of *Mungiki* members was unknown, but the group had a significant following among the unemployed and other marginalized segments of society. Other groups that remained banned included the *Kamjesh*, *Chinnololo*, *Sanina Youth*, *Baghdad Boys*, *Jehila Embakai*, *Jeshi la Mzee*, *Nmachuma*, and the *Taliban*.

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice. There was considerable tolerance among religious groups; however, some Muslims believed they were treated as second-class citizens in a predominantly Christian country. In a 2004 human rights poll only 7 percent of citizens listed freedom of worship as a problem; however, in the heavily Muslim Coast Province 31 percent deemed it a problem.

The government required religious organizations to register with the Registrar of Societies. The government allowed traditional indigenous religious organizations to register, although many chose not to do so. Religious organizations generally received equal treatment from the government; however, some small splinter groups found it difficult to register due to their inability to define their status as more than an offshoot of a larger religious organization.

According to Muslim leaders, authorities rigorously scrutinized the identification cards of persons with Muslim surnames, especially ethnic Somalis, and sometimes required additional documentation of citizenship, such as birth certificates of parents and even grandparents. The government stated that the heightened scrutiny was an attempt to deter illegal immigration rather than to discriminate against ethnic Somalis or their religious affiliation.

A long-standing debate over whether special Islamic courts should be recognized in the country's law continued to create tensions between Muslim and Christian groups. During the year leading Muslim groups opposed the new draft law since it granted widows the right to inherit land and property from their deceased husbands (see section 5).

Witchcraft was illegal, but still widely practiced. On March 25, a couple in Kakamega District was arrested for possessing traditional charms and subsequently released on bond. At year's end, they awaited trial.

On December 21, two people appeared in court for allegedly murdering in early November two family members whom they suspected of practicing witchcraft.

There were no further developments in the May 2004 case in which police arrested a Nigerian pastor, a prominent doctor, and six other members of Winners Chapel International in the Western Province town of Kitale and charged them with torturing a church member. Local newspapers alleged that the man was tortured to force him to give up his child as a human sacrifice.

Societal Abuses and Discrimination

There were no reports of societal violence, harassment, or discrimination against members of religious groups. The Jewish community constituted less than 1 percent of the population, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the 2005 [International Religious Freedom Report](#).

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

The law provides for these rights, and the government generally respected them in practice.

Police routinely stopped vehicles and checked vehicle safety and driver documents on roads throughout the country. Police often committed extortion at such checkpoints. Ethnic Somalis were required to provide additional identification (see section 2.c.).

Civil servants and MPs must obtain government permission for international travel, which generally was granted.

The law prohibits forced exile, and the government did not use it in practice. However, John Githongo, who resigned as the government's highest anti-corruption official (see section 3), remained in self-imposed exile outside of the

country, reportedly due to fear for his safety.

Internally Displaced Persons (IDPs)

An unknown proportion of the several thousand persons displaced by ethnic clashes from the 1990s to the present have not returned to their homes due to fear of renewed violence. The government provided assistance to IDPs, and coordinated support services with NGOs, particularly the Kenya Red Cross.

Protection of Refugees

The law does not provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has not established a legal system for providing protection to refugees. In practice the government generally provided protection against *refoulement*, the return of persons to a country where they feared persecution. The government also voluntarily hosted approximately 240 thousand refugees in cooperation with the UN High Commissioner for Refugees (UNHCR), and recognizes UNHCR refugee status determinations. However, during the year approximately four refugees were deported, one without verification of his refugee status. In July approximately 17 thousand Somalis fled temporarily to El Wak in the northeast, escaping an outbreak of clan violence in Gedo, Somalia; they were not granted refugee status.

The government did not accept refugees for resettlement in country. The government worked closely with the UNHCR and other humanitarian organizations in assisting refugees.

The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention and its 1967 protocol and provided it to approximately 240 thousand persons during the year.

The government required that all refugees reside at designated UNHCR camps, most of which were located near the Somali and Sudanese borders, unless granted permission to live elsewhere in the country. Such permission was given primarily to attend higher education institutions, undergo medical treatment, or avoid security threats at the camps.

Security at refugee camps remained a problem, particularly at the Kakuma camp where rape was among the most frequently reported crimes, some perpetrated by members of the local community. Somali bandits who crossed over the border perpetrated the majority of the rapes. Rapes also occurred when women and girls left the camps to herd goats and collect water or firewood. Security forces and police committed a small number of the rapes.

According to the UNHCR, the incidence of rape in 2 camps (sheltering 240 thousand Somali refugees) had declined from 94 in 2000 to 19 in 2004. There were five rapes and four attempted rapes reported in Kakuma. At some camps, such as Dadaab, refugees formed committees to combat such abuse with some success although women and children remained vulnerable to rape, abuse, and exploitation.

To further reduce incidences of sexual abuse in these camps, 15 relief agencies began implementing the provisions of a November 2004 document, entitled *The Kenya Code of Conduct for Humanitarian Workers in the Kenya Refugee Program*.

Acts of violence, including banditry and shootings, occurred frequently near the camps. Refugees were mistreated and abused by citizens and by residents of different refugee camps because of ethnic and religious differences. Inter-clan violence occasionally erupted among rival Somali clans at the camps; Somali refugees who married non-Muslims or openly espoused religions other than Islam were subject to abuse.

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

The law provides citizens the right to change their government through free and fair multiparty elections, and citizens exercised this right through periodic, free, and fair elections held on basis of universal suffrage.

Elections and Political Participation

Since independence in 1963 KANU had continuously controlled both the presidency and the national legislature. The 2002 elections were the country's third multiparty elections for presidential, parliamentary, and civic seats. Five presidential candidates contested the elections, with the main contestants being KANU candidate Uhuru Kenyatta and NARC candidate Mwai Kibaki. NARC was a coalition of more than a dozen political parties, including former members of KANU, who formed a united front to contest the December general elections. Kibaki won 61.9 percent of the vote, and international observers determined the elections were peaceful, free, and fair.

In 2002 elections 210 members of the 222-member National Assembly were elected and 12 were appointed. As in previous years two by-elections held during the year did not change the representation of the political parties in the national legislature, although observers concluded that the by-elections were marred by voter intimidation and bribery.

In March 2004 the Constitution of Kenya Review Commission completed work on drafting of a new constitution. In August parliament voted for a number of important amendments to the draft, which was submitted to the citizens on

November 21 in the country's first ever nationwide referendum. Approximately 3.5 million citizens (57 percent of the population) voted against the draft constitution. There were no serious incidents of intimidation or violence.

On November 23, President Kibaki dismissed his entire cabinet, citing the need to make it more cohesive and better able to serve the citizens. On November 24, he suspended the return of parliament, noting his legal authority to do so. On December 7, the president announced a reconstituted cabinet which excluded a number of former ministers who had opposed him during the legal referendum. The parliament had not reconvened by year's end.

In June 2004 KANU and the Liberal Democratic Party (LDP) filed lawsuits alleging that the president violated the law by naming ministers without the parties' consent. During the year the LDP withdrew its lawsuit; KANU's lawsuit was pending at year's end.

There were fewer reports of criminal youth gangs. During the September through November legal referendum debate, groups of youth sometimes assembled to disrupt rallies for or against the draft law. Violence was mostly confined to stone throwing, but two rallies resulted in eight deaths. There were no arrests in the case by year's end.

In March 2004 a gang of youths attacked Cabinet Minister Raila Odinga and LDP Secretary General Joseph Kamotho in Coast Province. The two politicians accused their nominal allies within the government of hiring the youths to attack them. Although a report of the incident was made to police, there was no subsequent action taken.

In April 2004 assailants in Kisumu stoned the vehicle of Orié Rogo Manduli who was the KANU candidate in a by-election for the National Assembly.

There were 15 women in the 222-seat parliament, and 8 female ministers and assistant ministers in the new 83-member cabinet.

There were 189 members of the country's 5 largest ethnic groups in the 222-seat parliament. There were 18 minority ministers and assistant ministers in the expanded cabinet.

Government Corruption and Transparency

Incidents of government corruption and frequent press reports fueled a widespread public perception that large-scale corruption at the highest levels of government and in parliament continued, and the problem had worsened from last year.

Throughout the year several high-ranking government officials publicly charged (without naming names) that a number of their colleagues were involved in high-level corruption. On February 7, Permanent Secretary for Governance and Ethics John Githongo (popularly known as the anti-corruption czar), abruptly resigned while on an official overseas trip. In December, President Kibaki eliminated the position of the Permanent Secretary for Ethics and Governance during restructuring of the cabinet.

The government created the KACC in 2003 and appointed a chairman and other staff in 2004. On December 15, the KACC reported that there was corruption in a police recruitment program which operated December 5-13 throughout the country. On December 16, the government cancelled all of the appointments made during the recruitment process. The police commissioner suspended approximately 100 officers for taking bribes.

In 2003 the government enacted the Anti-Corruption and Economic Crimes Act, which sets rules for transparency and accountability, and the Public Officer Ethics Act, which requires high government officials and their spouses to declare their wealth (although not publicly). On October 28, the government also enacted the Public Procurement and Disposal Act.

Despite these laws and institutions, no ministers or assistant ministers were arrested or suspended from office by year's end. On May 23, the KNCHR published a report accusing the government of lacking the will to combat corruption.

Although the law does not provide for it, access to government information, particularly through the Internet, improved during the year.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were usually cooperative and responsive to their queries. However, there were some reports that government officials intimidated and threatened to disrupt NGO activities, and that less-established NGOs (particularly those in rural areas) were subjected to interference from provincial administrators and security forces.

Approximately 15 domestic organizations actively advocated for human rights in the country; 14 were independent of the government. Several NGOs maintained comprehensive files on human rights abuses. A number of attorneys represented the indigent and human rights advocates without compensation, although they could handle only a small percentage of those who needed assistance and were concentrated chiefly in Nairobi and other large cities. The government allowed human rights organizations to witness autopsies of persons who died in police custody. Some local human rights NGOs complained that the Attorney General's Office and other government offices sometimes were not responsive to their inquiries.

The Institute for Education in Democracy and other NGOs monitored the referendum in cooperation with the Electoral Commission and diplomatic missions.

The Kenya Human Rights Commission (KHRC), a leading human rights NGO, produced the *Quarterly Human Rights Report* that cataloged the human rights situation in the country, as well as special reports on pressing human rights problems. In April and May, several peaceful assemblies organized by the KHRC were violently disrupted in spite of the KHRC having informed the police in advance as required by the Public Order Act. Several staff members were arrested and charged with participating in unlawful assemblies. The cases were pending at year's end.

The KNCHR has the status of an appeals court and can issue summons, order the release of prisoners, and require compensation for human rights abuses. The KNCHR was able to perform its duties without overt government interference, but complained in its 2004 annual report that it had not been provided adequate funding and had difficulty obtaining information from some government offices.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination on the basis of a person's "race, tribe, place of origin or residence or other local connection, political opinions, color, or creed"; however, government authorities did not enforce effectively many of these provisions. There was also evidence that some government officials at least tolerated and, in some instances, instigated ethnic violence.

Women

Although all forms of violence against women are prohibited, domestic violence against women was a serious and widespread problem. The penal code does not specify domestic violence, but treats domestic violence as an assault. Police generally would not investigate in cases of domestic violence. The August 2004 Kenya Demographic and Health Survey revealed that more than half of women had experienced domestic violence after the age of 15 years. Wife beating was prevalent and largely condoned by much of society.

The law carries penalties of up to life imprisonment for rape, although actual sentences usually were no more than 10 years. The rate of prosecution remained low because of cultural inhibitions against publicly discussing sex, fear of retribution, disinclination of police to intervene in domestic disputes, and unavailability of doctors who otherwise might provide the necessary evidence for conviction. Moreover, traditional culture permitted a husband to discipline his wife by physical means. There was no law specifically prohibiting spousal rape.

According to December 29 police statistics, there were 2,853 rapes nationwide during the year, compared with 2,908 reported in 2004. Available statistics underreported the problem since social mores discouraged women from going outside their families or ethnic groups to report sexual abuse.

The law prohibits FGM; but it remained widespread, particularly in rural areas. According to the government's August 2004 Demographic and Health Survey, 32 percent of women had undergone FGM. In September 2004, an international conference on FGM in Nairobi reported that, of the country's 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana) did not practice FGM. According to the NGO Maendeleo Ya Wanawake (Development of Women), the percentage of girls undergoing the procedure was 80 to 90 percent in some districts of Eastern, Nyanza, and Rift Valley Provinces.

FGM usually was performed at an early age. Some churches and NGOs provided shelter to girls fleeing their homes to avoid the practice, but community elders and some politicians frequently interfered with attempts to stop the practice.

In December there were a number of arrests of individuals accused of applying forced FGM. On December 23, four parents were arrested along with a man who performed the FGM. In mid-December a woman in Nyandarua District plead guilty in court for subjecting four girls to FGM. During the same month the Kuria district commissioner called for police to arrest parents who forced their daughters to undergo the procedure.

In April, 17 girls in Marakwet District fled to avoid FGM and were given shelter in Eldoret by the NGO Centre for Human Rights and Democracy. On April 20, police forcibly removed the girls from the shelter and returned them to their villages.

In July a district officer in West Pokot District attempted to stop the Pokot community from performing FGM on 70 girls, but a local politician used his influence to thwart the initiative.

On December 18, rescuers hid 140 girls in a school in Meru North District and planned to engage them in an alternative rite ceremony, while another 330 completed a "no cut" initiation rite in Marakwet District.

Various communities have instituted "no cut" initiation rites for girls as an alternative to FGM. According to The Family Planning Association of Kenya, its "no cut" program called Ntanira na Kithomo (initiate me through education) contributed to a 13 percent decline in the prevalence of FGM in Meru North District.

Prostitution is illegal but was a problem perpetuated by poverty. On May 18, Immigration Minister Linah Kilimo accompanied a police raid on a nightclub where illegal immigrants were allegedly forced to work as prostitutes. A number of the illegal immigrants were subsequently repatriated. Despite the high profile of the incident, it did not prompt specific government action against prostitution.

Sexual harassment is not prohibited by law. However, sexual harassment leading to assault may be prosecuted under the penal code. Sexual harassment in export processing zones (EPZs) was a problem (see section 6.e.).

The law provides equal rights to men and women and specifically prohibits discrimination on grounds of gender; however, women experienced a wide range of discriminatory practices, limiting their political and economic rights and relegating them to second-class citizenship. For example, the law allows only males to transmit citizenship automatically to their wives and children.

Women continued to face both legal and de facto discrimination in other areas. On March 15, the government reported that some men in the Maasai community were "hiring" wives to appear before the Land Control Board to sell family land without the knowledge of their actual wives. In July the Council of Elders in the Orma community ordered that the wives of 60 men be returned to their birth families because the husbands had defected from the political party favored by the elders.

The Law of Succession, which governs inheritance rights, provides for equal consideration of male and female children but terminates the inheritance rights of widows if they remarry. Moreover a widow cannot be the sole administrator of her husband's estate unless she has her children's consent. The law also allows the Ministry of Justice to exempt certain communities from the law in deference to tradition, which provides for equal distribution of a man's property only among his sons.

Wife inheritance, in which a man inherits the widow of his brother or other close relative, was commonly practiced in certain communities. In May the chairman of the Council of Elders in the Luo community rebuffed attempts by women's rights groups to stop the practice among the Luos, arguing that wife inheritance was a noble tradition that kept widows from falling into poverty. Although poor and uneducated women were more likely to be inherited or suffer from property and inheritance discrimination, prominent and educated women sometimes were victims. Following the death of Vice President Michael Wamalwa in 2003, male members of his family laid claim unsuccessfully both to his property and to his widow. Forced marriages were also common.

Women made up approximately 75 percent of the agricultural work force and were active in urban small businesses. Nonetheless the average monthly income of women was approximately two-thirds that of men, and women held only 6 percent of land titles. Under traditional law, in many ethnic groups women can not own land. Women had difficulty moving into nontraditional fields, were promoted more slowly than men, and were more likely to be laid off than men. Societal discrimination was most apparent in rural areas. Women constituted 70 percent of the country's illiterate population.

On February 17, the government created a gender office in the Ministry of Trade and Industry. There is a gender department in the Ministry of Gender, Sports, Culture, and Social Services.

Children

The government was generally committed to the rights and welfare of children and there was legislation and developed policies to promote education and protect children's rights. The government lacked the resources to implement its policies fully.

According to the government's 2005 *Economic Survey* data, the government's Free Universal Primary Education Program, which began in 2003, raised primary school enrollment from 7.2 million in 2003 to 7.4 million in 2004. The 2003 figure constituted about 78 percent of the primary school age group. The 2004 figure represented 81.1 percent of the primary school age group. Some NGOs, however, claimed that there were still one million children not attending school. A December 21 newspaper article reported that the government fired 24 local officials for not ensuring that all children of the appropriate age were attending classes under the free primary education program.

Most citizens welcomed tuition-free education; however, the program also resulted in overcrowded classes due to insufficient teachers and an inadequate budget. To enhance access to free primary education, the government supported nonformal education schools to cater especially to children in urban slums. About 79 percent of enrolled children completed the 8-year primary school education cycle. The school drop-out rate declined from 5 percent in 1999 to 2 percent in 2004. The law mandates compulsory schooling for all children through grade 12, but fewer than

half of primary school graduates went on to secondary school. During the year the gross enrollment rate for the secondary school age population was 22.2 percent. In 2004, 86 percent of secondary school students completed the four-year secondary cycle.

Although the number of boys and girls in school approximately was equal at the primary level, boys substantially outnumbered girls in higher education. Rural families were more reluctant to invest in educating girls than in educating boys, especially at the higher levels. According to FIDA, 8 thousand to 13 thousand girls drop out of school each year due to pregnancy.

Corporal punishment of students is banned but occasionally occurred in practice during the year. There was no further information on the March 2004 incident in which police in Naivasha arrested two teachers for caning several children, seriously injuring one of them.

Child rape and molestation continued to be serious problems. In March 2004 *The People Daily* reported that 38 percent of children under 18 were sexually abused. Newspapers contained frequent reports of molestation or rape of children by schoolteachers, police, clergy, and others. A July report entitled *The Defilement Index* prepared by the Chamber of Justice and the NGOs Care Kenya and Cradle indicated that incestuous defilement accounted for approximately 75 percent of abuse against young girls in urban areas. The report showed that 6 out of 10 persons working with abused children agreed that the most vulnerable girls were those in nursery to class 4 (1 to 10 years old).

Legally a man is not considered to have raped a girl under age 14 if he has sexual intercourse with her against her will; instead, he commits the lesser offense of defilement. The penalty for the felony of rape can be life imprisonment, while the penalty for defilement is usually far less. *The Defilement Index* criticized the courts for declaring inconsistent sentences to sex offenders. Since the abolition of the law on minimum sentences, sentencing is discretionary.

In September a magistrate in Tharaka District sentenced a man to 14 years for defiling a 4-year-old girl, calling the sentence a deterrent against such attacks. According to a September 14 media report, a man was sentenced to seven years for raping a seven-year-old girl and infecting her with HIV in April 2004.

On December 15, a man was sentenced to seven years with hard labor for raping a mentally handicapped young girl.

Certain ethnic groups commonly practiced FGM on young girls, particularly in rural areas (see section 5, Women).

Newspapers frequently highlighted the problem of child marriages. There were no reliable statistics on the extent of child marriage, but public perception indicated that it was very common and traditional practice among certain ethnic groups. The Marriage Act forbids marriage under the age of 16, but the Mohammedan Marriage and Divorce Act allows Muslim girls to marry at puberty.

On July 21, a man was sentenced to 18 months in prison for consenting to the marriage of his 9-year-old daughter to a 45-year-old man.

On December 21, the Trans Mara district commissioner (DC) disallowed the marriage of four minor girls, who were also saved from forced FGM. The girls told the DC that they were not ready for marriage. The DC reportedly stated that he would not condone early marriage.

Trafficking in children was a problem, as was child prostitution. Child prostitution has grown considerably due both to economic contraction and to the increase in the number of children orphaned because of the spread of HIV/AIDS (see Section 5, Trafficking). According to the International Labor Organization (ILO), approximately 30 thousand girls under the age of 19 years were engaged in prostitution in the country.

Approximately 1.9 million children were still engaged in child labor (see section 6.d.).

Economic displacement and the spread of HIV/AIDS continued to affect the problem of homeless street children. In 2002 the *East African Standard* reported an estimated 250 thousand children living on the streets in urban areas (primarily Nairobi, Mombasa, Kisumu, and Nakuru); this figure was a conservative estimate. These children often were involved in theft, drug trafficking, assault, trespassing, and property damage. Street children faced harassment as well as physical and sexual abuse from police and within the juvenile justice system.

The government provided programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and shelter for girls abused by their employers. In 2003 the government provided an employment program for orphans and abandoned youth that included training and subsidized employment, but its effectiveness was limited. By November 231 of 300 street children in the National Youth Service had graduated from vocational courses.

Trafficking in Persons

The law does not explicitly prohibit trafficking in persons, and there were reports that persons were trafficked to, from, and within the country. Internal trafficking was also a problem. Various laws can be used to prosecute trafficking-related offenses. The penal code prohibits detaining females against their will for the purposes of

prostitution as well as child labor, the transportation of children for sale, and the commercial sexual exploitation of children. Fines are limited and jail time was rarely enforced.

The Anti-Human Trafficking Unit of the Police Service (KPS) has primary responsibility for combating trafficking. The Criminal Intelligence Unit of the KPS, the Ministry of Labor, and the Ministry of Home Affairs are also involved in curbing human trafficking.

Victims were trafficked from South and East Asian countries and the Middle East and transited in the country to European destinations for sexual exploitation. Asian nationals, principally Indians, Bangladeshis, and Nepalese, were trafficked into the country and coerced into bonded labor in the construction and garment industries.

In August 2004 the police charged several persons with participating in an international child trafficking ring involving the abduction and foreign sale of infants and young children. In July the accused faced additional charges related to child theft and were awaiting trial at year's end.

Government assistance to NGOs to combat human trafficking was minimal due to resource constraints.

Persons with Disabilities

The Persons With Disabilities Act prohibits discrimination against persons with disabilities in employment, education, access to health care, or in the provision of other state services, and the government effectively enforced its provisions during the year. The government continued its efforts, begun in 2004, to equip public buildings with wheelchair ramps, lifts, and sanitary facilities.

National/Racial/Ethnic Minorities

The country's population was divided into more than 40 ethnic groups, among which there were frequent allegations of discrimination and occasional violence. Unofficial results of the 1999 census indicated that the Kikuyu constituted 21 percent of the population, the Luhya 16 percent, the Kalenjin 12 percent, the Luo 11 percent, and the Kamba 10 percent of the population. The Kikuyu and the closely related Kamba, Meru, and Embu groups made up more than one-third of the country's population; members of these groups dominated much of private commerce and industry.

In private business and in the public sector, members of virtually all ethnic groups commonly discriminated in favor of other members of the same group. Neighborhoods in large cities tended to be segregated ethnically, although interethnic marriage has become fairly common in urban areas. Political disputes tended to correlate with ethnic differences.

Clashes also broke out between various ethnic groups and clans. In January approximately 30 persons died in fighting between the Kikuyu and the Maasai in Maai Mahiu. The fighting was sparked when Maasai warriors destroyed a pipe diverting water from a river to a Kikuyu farm due to fear that this diversion would dry up their pastoral grazing grounds.

In January there were renewed clashes in Trans-Nzoia, Rift Valley Province, over land disputes between the Pokot and non-Pokots.

On July 12, a group of Borana men attacked a Gabra village near Marsabit and killed approximately 80 persons over accusations of cattle rustling. Over the next 48 hours revenge attacks and counter attacks raised the death toll to nearly 100 in the area. Four local MPs, one Gabra, and three Borana accused each other of inciting the violence.

Many factors contributed to interethnic conflicts, including the proliferation of guns, the commercialization of traditional cattle rustling, the development of a modern warrior/bandit culture (distinct from the traditional culture), irresponsible local political leadership, shrinking economic prospects for affected groups, a regional drought, and the inability or unwillingness of security forces to stem the violence.

Members of the Nubian community, most of whom were Muslim, claimed that the government discriminated against them by trying to eliminate their ethnic identity. They also claimed that despite living in the country for generations, they were frequently denied identity cards, work permits, passports, and the right to own land because they could not prove that their grandparents or great-grandparents were citizens. They claimed these measures hampered their access to education and employment opportunities, resulting in the impoverishment of their community, which numbered approximately 200 thousand. In June 2004 the Nubian Community petitioned the high court for redress of grievances related to their rights as citizens; the high court did not render judgment by year's end.

Other Societal Abuses and Discrimination

There was societal discrimination against homosexuals and persons with HIV/AIDS. A lingering stigma toward persons with HIV/AIDS made it difficult for many families to admit that their members were HIV positive. The government worked in cooperation with international donors on programs of HIV/AIDS prevention and treatment.

Section 6 Worker Rights

a. The Right of Association

The law provides that all workers, even those in the EPZs, are free to join unions of their choice, and workers exercised this right in practice. The Police Act prohibits members of the national police force from joining unions. Some unions complained that government labor officials hindered efforts to establish unions in factories where at least 80 percent of workers indicated a desire for union membership and representation. The unions alleged that the officials refused to approve applications by continually finding minor technicalities in the applications.

There were 42 unions representing approximately 600 thousand workers, approximately one-third of the country's formal-sector work force. All but 5 of these unions, representing approximately 300 thousand workers, were affiliated with the 1 approved national federation--the Central Organization of Trade Unions (COTU). The two largest non-COTU unions were the 240 thousand member Kenya National Union of Teachers and the Union of Kenya Civil Servants, with 70,588 registered members.

The law prohibits employers from intimidating workers; however, some antiunion discrimination still existed, specifically in the EPZs in Mombasa. Employees wrongfully dismissed for union activities were able to take their cases to the industrial court, a body of up to five judges appointed by the president, and many were awarded damages in the form of back pay. Reinstatement was not a common remedy; more often aggrieved workers found alternative employment in the lengthy period prior to the hearing of their cases. The government voiced its support for union freedom but did not protect it fully.

b. The Right to Organize and Bargain Collectively

While not having the force of law, the Industrial Relations Charter, executed by the government, COTU, and the Federation of Kenya Employers, gives workers the right to engage in legitimate trade union organizational activities, and the government protected these rights in practice. Both the Trade Disputes Act and the charter authorize collective bargaining between unions and employers, and wages and conditions of employment were established in negotiations between unions and management. The government permits wage increases of up to 100 percent and renegotiation of collective agreements; however, the law allows employers in ailing industries to dismiss workers regardless of the provisions of their collective bargaining agreements. Collective bargaining agreements must be registered with the industrial court to ensure adherence to these guidelines.

The law, with some restrictions, permits workers to strike, and workers exercised this right in practice. Workers must submit a letter to the Ministry of Labor and wait 21 days before a strike can occur. Members of the military services, police, prison guards, and the National Youth Service are prohibited from striking. Other civil servants can strike following the 21-day notice period (28 days for essential service workers, such as water, health, education, or air traffic control). During this interim period, the minister may mediate the dispute, nominate an arbitrator, or refer the matter to the industrial court for binding arbitration. Once a dispute is referred to mediation, fact-finding, or arbitration, any subsequent strike is illegal.

In reaction to a civil servants strike on June 2, the Directorate of Personnel Management and the Department of the Registrar-General exercised an option under the union's law and ordered it to hold a special election to replace the national chairman and three of his officials because they retired before completing their five-year terms. In addition the government refused to release union dues collected from members in May until after the special election. The union claimed the government did not follow regulations in firing many of the strikers. The union held the special election in November and the government, in the run-up to the November 21 referendum, announced it would reinstate all the fired civil servants. The reinstatements were made by year's end.

With the exception of the Factories Act, all labor laws apply in the EPZs (see section 6.e.); however, the EPZ Authority and the government granted many exemptions to applicable laws. For example the government waived a provision of the law that prevents women from working in industrial activities at night. There were reports that persons lost their jobs in EPZs because of their refusal to work on Saturdays. Union leaders claimed that a number of textile and garment firms in EPZs employing about three thousand workers have refused to sign collective bargaining agreements.

c. Prohibition of Forced or Compulsory Labor

The law proscribes slavery, servitude, and forced and bonded labor, including by children; however, there were reports that such practices occurred (see sections 5 and 6.d.). Under the Chiefs' Authority Act a local authority can require persons to perform community services in an emergency; there was no attempt to use the law during the year.

d. Prohibition of Child Labor and Minimum Age for Employment

The employment in industry of children under the age of 16 is illegal, but the law does not apply to the agricultural sector, where approximately 70 percent of the labor force was employed, or to children serving as apprentices under the terms of the Industrial Training Act. Child labor was a problem, particularly in the informal sector. The Children's

Act of 2001 prohibits all forms of child labor that are exploitative, hazardous, or would prevent children under age 16 from attending school.

The Ministry of Labor and Human Resources Development officers nominally enforced the minimum age statute, and the government worked closely with COTU and the ILO's International Program for the Elimination of Child Labor to eliminate child labor. The government's Free Universal Primary Education Program resulted in the return to school in 2003 of approximately one million children who formerly were working; more than one million children were believed still to be working.

Children often worked as domestic servants in private homes, and during the year there were reports of abuse of children serving as domestic employees. Children worked primarily in the informal sector, mostly in family businesses and usually assisted parents on family plots. A significant number of children worked in family units on tea, coffee, sugar, and rice plantations. Deteriorating economic conditions and the effects of the HIV/AIDS pandemic gave rise to more child labor in the informal sector, which was difficult to monitor and control. In addition a large number of underage children were active in the sex industry (see section 5). In view of the high levels of adult unemployment and underemployment, the employment of children in the formal industrial wage sector in violation of the Employment Act was less common.

The law establishes definitions of child labor, and in June 2004 the government prepared a National Plan of Action to Eliminate the Worst Forms of Child Labor; it was not implemented by year's end. A practical guide to labor inspection was developed, and the government trained labor inspectors and occupational health and safety officers to report on child labor.

Many NGOs also were active in child labor issues and assisted in the return to school of child laborers. Unlike in previous years there were no reports that children, especially in the rural areas, were loaned out as workers to pay off family debts.

For several years the government has implemented 73 action programs on the elimination of child labor with 25 partner agencies. These programs removed 50 thousand children, half of them girls, from child labor. The partners placed the children in schools, vocational training institutions and apprenticeships, and supported income generating activities for 10 thousand parents. Partners also provided support to schools to initiate income generating activities to help keep children from poor families in school. In 2003 The Federation of Kenyan Employers distributed an employers' code of conduct on child labor issues and guidelines on combating child labor in the agricultural sector.

e. Acceptable Conditions of Work

The legal minimum wage for blue-collar workers in the wage sector has 12 separate scales, varying by location, age, and skill level; in many industries, the minimum wage equaled the maximum wage. On May 1, the government increased the minimum wage for workers in both urban and rural areas: the lowest minimum wage in large urban areas was approximately \$60 (4,638 shillings) per month and approximately \$55 (4,279 shillings) per month in rural areas. The minimum wage did not provide a decent standard of living for a worker and family. Most workers relied on second jobs, subsistence farming, informal sector opportunities, or the extended family for additional support.

Workers covered by a collective bargaining agreement generally received a better wage and benefit package than other workers. For instance the average covered worker received \$100 (8,170 shillings) per month in addition to a housing and transport allowance, which often constituted 25 to 50 percent of a worker's compensation package.

The law limits the normal workweek to 52 hours, although nighttime employees may be employed for up to 60 hours per week. Some categories of workers had a shorter workweek. As is the case with respect to minimum wage limitations, the law specifically excludes agricultural workers. An employee in the nonagricultural sector is entitled to one rest day per week and there are provisions for 21 days of annual leave and sick leave. The law also provides that the total hours worked (regular time plus overtime) in any two-week period not exceed 120 hours (144 hours for night workers). The Ministry of Labor and Human Resources Development was responsible for enforcing these regulations; however, violations were reported during the year. Workers in some enterprises, especially in the EPZs, claimed that employers forced them to work extra hours without overtime pay to meet targets. In addition, the employers did not provide nighttime transport.

The law sets forth detailed environmental, health, and safety standards, but the law was not always followed in practice. Fines generally were too low to serve as a deterrent to unsafe practices. EPZs are excluded from these legal provisions (see section 6.b.). The Ministry of Labor's Directorate of Occupational Health and Safety Services (DOHSS) has the authority to inspect factories and work sites, but lacked statutory authority to inspect factories in the EPZs. Labor unions and NGOs continued to criticize health and safety conditions in the EPZs and around the country. The unions highlighted problems of sexual harassment in the EPZs. In March 2004 the Tailors and Textile Workers Union filed a complaint with the Ministry of Labor on behalf of 15 women from the EPZs who reportedly were fired because they were pregnant, but in July 2004 the factory closed down and no action was taken against the employers.

DOHSS health and safety inspectors may issue notices against employers for practices or activities that involved a

risk of serious personal injury. Such notices can be appealed to the factories appeals court, a body of four members, one of whom must be a high court judge. The law stipulates that factories employing at least 20 persons have a health and safety committee with representation from workers; however, according to the government, fewer than half of the very largest factories had instituted health and safety committees. Workers can refuse to remain in hazardous conditions, but many were reluctant to risk losing their jobs because of the high unemployment level.



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