



## Kenya

### Country Reports on Human Rights Practices - [2003](#)

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Kenya is a republic dominated by a strong presidency. In December 2002, Mwai Kibaki of the opposition National Rainbow Coalition (NARC) was elected as the country's third president; Kibaki succeeded former President Daniel Arap Moi, who led the former ruling Kenya African National Union (KANU) and served as President since 1978. During the December 2002 general elections, KANU, which had controlled both the Presidency and the Parliament continuously since 1963, lost its majority in parliament to NARC, a coalition of more than a dozen political parties, including former members of KANU. Observers concluded that the elections broadly reflected the popular will and were free and fair. The judiciary suffered from corruption and was subject to executive branch influence; however, the Government took significant steps during the year to combat corruption.

In addition to the armed forces, there is a large internal security apparatus that includes 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 (GSU), which detail 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 considered subversive. 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. Members of the security forces, especially the police, continued to commit numerous, serious human rights abuses.

The economy is market-based, and the large agricultural sector employed more than 70 percent of the country's population of approximately 30.8 million. Estimates of the unemployment rate ranged from the official 35 percent to more than 50 percent. Although many sectors continued to be dominated by state-owned monopolies, the nonagricultural economy included large privately-owned light manufacturing, commercial, and financial sectors. Tea was the largest source of foreign exchange earnings. Following the Government's adoption of two anti-corruption measures during the year, major financial institutions, which had suspended assistance in previous years, began to provide assistance. Annual per capita gross domestic product for 2002 was officially reported as \$237, with approximately 57 percent of the population living at or below the poverty level on less than \$1 per day. The spread of HIV/AIDS, estimated to have infected approximately 14 percent of the population between the ages of 14 and 49, had increasingly adverse effects on the country's wage-earners, including teachers and other professionals. A weakened infrastructure--unreliable power and telecommunication systems and roads in disrepair--exacerbated economic problems and disinvestment. Continued concerns over personal security and political wrangling following the transition to the new Government also fueled disinvestment.

The Government's human rights record remained poor; although there were some improvements in a few areas, serious problems remained. Violence marred some of the by-elections held during the year. Security forces, particularly the police, continued to commit unlawful killings, torture and beat detainees, use excessive force, rape, and otherwise abuse persons. Prison conditions remained life threatening. Police harassed and arbitrarily arrested and detained persons, including journalists and civil society leaders; however, unlike in the previous year, there were no reports that security forces arrested political activists. The Government arrested and prosecuted a number of police officers for abuses; however, most police who committed abuses were neither investigated nor punished. Lengthy pretrial detention was a problem. The authorities infringed on citizens' privacy rights. The Government restricted freedom of speech, press, assembly, and association. Police disrupted public meetings and forcibly dispersed demonstrators and protesters. Members of the Government publicly criticized nongovernmental organizations (NGOs) and harassed and arrested their members. Violence and discrimination against women and abuse of children remained serious problems. Female genital mutilation (FGM) remained widespread, child prostitution remained a problem, and the spread of HIV/AIDS has orphaned many children. There was some discrimination against persons with disabilities. Interethnic tensions, often spurred by political and economic competition, continued and resulted in numerous violent conflicts and some deaths. The Government continued to

limit some worker rights. Child labor remained a problem, and there were instances of forced child labor. Trafficking of persons was a problem. Violence by mobs also resulted in many deaths.

## 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 political killings; however, security forces, especially members of the police, the GSU, and the CID, committed a number of unlawful killings during the year. In its 2002 report, the Standing Committee on Human Rights (SCHR), the governmental body charged with addressing human rights issues, noted the "widespread use of lethal, excessive, and unnecessary force on civilians by police." During the year, police killed 117 suspected criminals, and another 11 suspects and detainees died while in police custody, according to government figures. According to the Independent Medico Legal Unit (IMLU), a human rights NGO, 45 persons died from torture in police custody during the year. The Kenya Human Rights Commission (KHRC), a leading human rights NGO, reported in 2002 that it had documented more than 1,000 cases of unlawful killings in the last decade.

Law enforcement officials maintained that security forces were justified in their use of deadly force because of the heavily armed, violent criminals they often encountered; in 2002, 22 police officers were killed in the line of duty. Police claimed that the increased use of sophisticated weapons by criminals had increased the risks faced by police in performing their duties. However, in responding to continuing high levels of crime, some police used excessive and deadly force, sometimes without apparent provocation. The Government generally failed to take appropriate action against members of the security forces accused of unlawful or arbitrary killings.

Numerous persons died while in, or shortly after being in, police custody. For example, in June, Simon Njuguna Kaboi, who had been in police custody, was found handcuffed and dead in a river. A pathologist at Moi Teaching and Referral Hospital concluded that Kaboi had sustained multiple head injuries caused by a blunt object and that he may have been unconscious before falling or being pushed into the river. Police countered that Kaboi had fallen into the river while attempting to escape, a claim disputed by witnesses and family members; an investigation was ongoing at year's end. In August, Alice Mwetu died 1 day after being released from jail, where she had been held for 2 days. Her family alleged that a detective working with the NSIS had assaulted Mwetu and used his influence to have her arrested. An investigation begun in October was ongoing at year's end.

During the year, police used excessive force to disperse demonstrations and strikes, which resulted in deaths (see Sections 2.b. and 6.b.).

Police committed numerous other unlawful killings during the year. For example, on March 20, police officers in Ruiru reportedly beat and drowned Nixon Wanjala, a worker on a flower farm. The unregistered Floricultural Employees Union called on the authorities to arrest and prosecute the officers.

In June, police beat and subsequently shot to death execution-style William Guto and Thomas Osiago, who were awaiting medical treatment for Guto at the Kisii District Hospital. Police claimed that the two men, who were later found at the hospital mortuary, were criminals. No one had been charged in the killings by year's end.

Unlike in previous years, there were no reports of the unlawful killing by police of Mungiki.

During the year, the Government took some steps to curb such abuses; however, impunity remained a problem, particularly in the police force (see Section 1.d.).

The five police officers who tortured to death Paul Kimani Wambiru in 2002 were in custody awaiting trial at year's end.

There were no developments in the following 2002 killings by security forces: The February torturing to death of Councilor Amos Korichir; the killing by police of Jacob Odero Ogolla; and the numerous killings by police of bystanders.

The investigation into two Administration Police officers accused of the March 2001 killing of Francis Kiraha Kibugi was completed and they were charged with murder; however, it was unknown whether a trial had begun by year's

end.

A police officer was charged for the March 2001 accidental killing of Geoffrey Ngoima Mbugua.

The case against the three police charged in the 2001 killing of a university student still was pending at year's end.

On September 14, unidentified gunmen killed Crispin Odhiambo Mbai, the chairman of the Devolution Committee of the National Constitutional Conference; three suspects were arrested. An investigation was being conducted into the case at year's end.

In October, the bodies of Sheikh Ibrahim Ali, a delegate to the Somali peace talks in Kenya, and two other Somalian citizens were discovered dead from gunshot wounds in Nairobi; local authorities were conducting an investigation at year's end to determine whether the killings were politically motivated.

The Mungiki, a small, often violent cultural and political movement based in part on Kikuyu ethnic traditions, were responsible for numerous attacks and killings during the year. For example, on January 5, Mungiki members hacked to death 10 residents of Nakuru. Former KANU M.P. David Manyara, who allegedly harbored members of the Mungiki, was charged with murder for his involvement in the incident; his trial was ongoing at year's end. Nakuru residents who survived claimed they were targeted for supporting NARC in the 2002 elections.

Mob violence continued at high levels during the year, which observers believed may have been associated with a continuing high crime rate. During the year, there was widespread media coverage of mob violence in Nyanza province, where suspected sorcerers, cattle rustlers, and thieves were targeted. According to the Government, 95 persons were killed in mob violence during the year. The KHRC reported that it has documented 719 deaths from mob violence during the last 6 years. Human rights observers attributed mob violence to a lack of public confidence in the police and the judicial process. The great majority of victims killed by mobs were suspected of criminal activities, including robbery, cattle rustling, and membership in terror gangs. Most perpetrators of mob violence went unpunished. In addition, the social acceptability of mob violence also provided cover for apparent personal vengeance and settling land disputes under the guise of "mob justice."

On January 28, a mob in Riamachoki near the Kisii/Trans Mara border killed an Administration police officer following a raid by area residents on the Olmilili Administration Police outpost. A CID investigation was ongoing at year's end.

On June 10, a farmer and some of his neighbors in Mwea beat to death 13-year-old Michael Wangara Ndichu on suspicion that the boy was stealing tomatoes from his farm. The farmer was arrested, and an investigation was being conducted at year's end.

On June 14, a mob in Bonchari, Bokeire sub-location, captured a teenager and his father, Abisinia Angeso, whom they accused of being a cattle rustler. After severely beating Angeso, the mob threatened his son with death if he did not sever his father's head; the son complied. Other residents in the area fled their homes in fear of being targeted by the mob. Three people, including a local chief, a former municipal councilor, and a former journalist were arrested on charges of murder and were awaiting trial at year's end.

No arrests were made in any of the 2002 and 2001 cases of mob killings.

Unlike in previous years, there were no reports that mobs killed members of their communities on suspicion that they practiced witchcraft.

Interethnic violence continued to cause numerous deaths (see Section 5). Some of these disputes spilled over into the country from neighboring countries (see Section 2.d.).

#### b. Disappearance

There were no reports of politically motivated disappearances.

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

The Constitution prohibits such practices; however, security forces continued to use torture and physical violence

during interrogation and to punish both pretrial detainees and convicted prisoners. Although authorities periodically issued directives against the use of torture by police, the problem persisted and remained a serious problem. The Government did not provide information on the number of cases of torture that occurred during the year.

Human rights organizations, churches, and the press highlighted and criticized numerous cases of torture and several cases of indiscriminate beatings of groups of persons by police during the year. Common methods of torture practiced by police included hanging persons upside down for long periods, genital mutilation, electric shocks, and deprivation of air by submersion of the head in water. The IMLU recorded 230 allegations of police torture of suspects during the year, of which 70 percent allegedly occurred in police stations before suspects were charged; 45 persons reportedly died from torture while in police custody (see Section 1.a.). The IMLU claimed to have substantiated approximately 50 percent of these allegations. In June, the NGO People Against Torture (PAT) reported 60 cases of torture since January, 10 of which resulted in death. PAT named the Flying Squad Police Unit as one of the worst perpetrators, and cited Karura and Ngong forests and the Kasarani estate in Nairobi as torture sites. However, detainees routinely claimed that they had been tortured, making it difficult to separate real from fabricated incidents.

In February, the Government opened to the public the infamous Nyayo House Torture Chambers in Nairobi, where the previous government tortured political dissidents and activists. The gesture was seen as a positive step by the Government toward addressing the problem of torture and other human rights abuses.

In March, police allegedly robbed, tortured, and killed Maithya Kivuli, a teacher at Mutwaathi Primary School. Kivuli, who, according to a relative, had been stripped naked and confined to a tiny room infested with ants, was found unconscious the following morning. The case was under investigation at year's end.

Caning continued to be used as punishment in cases such as rape (see Section 5).

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

Police harassed and beat some journalists during the year (see Section 2.a.).

Unlike in previous years, there were no reports that police used excessive force against the Mungiki, a banned vigilante group that engaged in violent incidents during the year that resulted in numerous deaths (see Section 1.a.).

According to organizations that work with street children, police also beat and abused street children (see Section 5).

During the year, the Government investigated some allegations of police use of excessive force and torture, and prosecuted several police officers; some officers were charged, convicted, and sentenced for killings (see Section 1.d.).

An inquest remained pending at year's end into the 2002 injuring of Arwings Odera, a freelance journalist who in 2001 had published a series of articles alleging corruption in government-backed projects. Odera, who fled the country in 2001, returned during the year and resumed working as a journalist for the Kenya Times and People Daily.

Acts of violence, including rape, banditry, and shootings, occurred frequently near refugee camps (see Sections 2.d. and 5).

There continued to be reports of violence between pro-government and opposition supporters (see Section 2.b.).

Prison conditions were harsh and life threatening. Prisoners were subjected to severe overcrowding, deficient health care, and unsanitary conditions, and received inadequate water, diet, and bedding. Police and prison guards subjected prisoners to torture and inhuman treatment. Rape of both male and female inmates, primarily by fellow inmates, was a serious problem, as was the increasing incidence of HIV/AIDS. Disease in prisons was widespread, and the death rate was high. Prisoners sometimes were kept in solitary confinement far longer than the maximum 90 days allowed by law. Prisoners and detainees frequently were denied the right to contact relatives or lawyers. Family members visiting prisoners faced numerous bureaucratic and physical obstacles, each requiring a bribe.

In its comprehensive 2002 investigation of the country's prison system, the SCHR, the only domestic human rights

body allowed such access at that time, reported that torture, cruel, inhuman, and degrading treatment were prevalent in prisons. The SCHR documented numerous cases of human rights abuses alleged by inmates during its investigations, including the application of electrical shocks to genitalia, subjecting inmates to artificial light from a 150-watt bulb continuously for up to 24 hours, and female inmates being stripped and placed in solitary confinement in a flooded cell for up to a week. Press reports continued to highlight the substandard prison conditions.

According to Vice President Moody Awori, the country's 89 prison facilities had a capacity for 15,000 prisoners, but held more than 40,000 during the year. For example, Kericho Prison, which was built in 1945 for approximately 62 inmates, held 569 inmates at year's end; its cells, which were designed for 12 prisoners, held 97 to 127 prisoners. The SCHR reported that in 2002 it encountered major overcrowding at all of the juvenile detention centers it investigated and found that one in particular, the Nairobi Juvenile Remand Home, held more than 4 times its capacity of 100 detainees. The courts partly were responsible for overcrowding, as the backlog of cases in the judicial system continued to fill the prison detention cells (see Section 1.d.).

Prisoners generally received three meals per day; however, portions were inadequate, and the diet consisted almost entirely of ugali (maize meal), beans, and occasionally cabbages or kale, according to the 2002 SCHR report. Prisoners were sometimes given half rations as punishment. The SCHR also found water shortages to be a problem in some prisons, particularly at the Kakemaga prison where they have not had running water for the last 5 years. In May, Caroline Akoth Othithi, a prisoner in Langata Women's Prison, testified before the Chief Magistrate at the Kibera court that prisoners were being served raw and contaminated food, and that some inmates had died from diarrhea. The Chief Magistrate subsequently summoned the head of prisons to appear in court to respond to these claims.

During the year, the Government took steps to ease prison overcrowding. The Government increased its contribution for the Community Service Order (CSO), a program to alleviate prison overcrowding by allowing petty offenders to perform community service--such as building bridges, schools, and hospitals--as an alternative to incarceration. More than 67,000 prisoners were serving sentences under the program in 2002. However, magistrates still were not fully utilizing CSO as an alternative to custodial sentences for petty offenders, and there were delays in releasing petty offenders already committed to the CSO program. For example, 208 of the inmates committed to the CSO program in Kakamega still were being held in prison at year's end because they had not received the requisite release letter from the Probation Department. During the year, President Kibaki freed 11,628 prisoners; most of those released were first-time offenders with a record of good conduct or prisoners in ill health.

Men, women, and children officially were kept in separate cells, and there were no reports that men and women were placed in the same cells. Women sometimes lacked access to sanitary napkins and often had one change of clothes, leaving them naked during the washing of their laundry. Young teenagers frequently were kept in cells with adults in overcrowded prisons and detention centers. Youth detention centers were understaffed, overcrowded, and inmates had minimal social and exercise time. Some young inmates remained in the centers for years, as their cases awaited resolution. Juvenile detainees were subjected to corporal punishment, which has been banned in the school system. According to the SCHR's 2002 special report on the state of juvenile detention centers, a majority of juveniles in pretrial detention were actually children who had been arrested from the streets as victims of neglect or children in need of care and discipline."

Nearly all prisoners serving more than 6 months in prison worked in prison industries and farms. Men worked in printing services, car repair, tailoring, metal work, and leather and upholstery work. Women were taught sewing, knitting, dressmaking, rug making, basket weaving, jewelry making, and other crafts. The Government reported that prisoners could earn approximately \$0.62 (48 Kenyan shillings) per year or 20 cents (0.2 shillings) per item produced. Prisoners can, with permission, work beyond the 8-hour day to produce goods, from which they earn two-thirds of the profits. Prisons were unable to invest the estimated annual profits of \$826,600 (62 million Kenyan shillings) in the prisons because income generated was sent directly to the Government Consolidated Fund. Some observers alleged that prison officials used the free prison labor for personal profit, and prisoners have complained of being overworked; however, many inmates left prison with a valid trade certificate.

Hundreds of prisoners died due to life-threatening prison conditions, including inadequate food and 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.

The Government did not permit consistent independent monitoring of prison conditions. However, the governmental SCHR and Kenya National Commission on Human Rights (KNCHR), as well as the International

Committee of the Red Cross had the authority to inspect prison facilities on demand at any time. The Government occasionally granted permission to domestic NGOs to visit prisons; however, obtaining such permissions was difficult. Some independent NGOs worked with the Government in evaluating torture cases and performing autopsies on deceased prisoners. On one occasion during the year, the Government allowed access to the media and permitted the use of television cameras.

#### d. Arbitrary Arrest, Detention, or Exile

The Constitution prohibits such practices; however, police frequently arrested and detained citizens arbitrarily.

Police corruption was systematic and widespread. A July survey conducted by The Public Service Integrity Program found that the police force was viewed as the most corrupt entity within the society of the country. In May, the SCHR reported that police arrested petty offenders over the weekend "probably with the sole purpose of extorting bribes" and that police in conjunction with prosecutors resorted to "unexplained illegal confinements, extortion, torture, and the preferring of highly questionable and fabricated non-bailable charges" as a cover-up for malpractice. Police often held such detainees for lengthy periods without trial.

Impunity was a serious problem. In its May report, the SCHR noted the "systematic cover-up or attempted cover-up in cases involving allegations of torture, excessive use of force or extrajudicial shooting." Officers were rarely prosecuted for using excessive force. Investigations by SCHR of numerous cases alleging torture revealed that "there was a code of silence under which officers failed to report brutality, destroyed evidence, or threatened witnesses in an effort to cover-up abuses, contributing to a climate of impunity." Public officials at times made pronouncements calling on security forces to discharge their duties responsibly and to use restraint; however, such pronouncements had little effect on police behavior.

The authorities sometimes attributed the absence of an investigation into an alleged unlawful killing to the failure of citizens to file official complaints. However, the form required for filing complaints was available only at police stations, which often lacked the forms or were not forthcoming in providing them. There also 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 police corruption. The Government arrested and charged several police officers for various offenses, including murder, assault causing bodily harm, and corruption; however, the Government did not provide details on how many of these indicted police officers were tried, acquitted, convicted, or imprisoned. There also were some internal police investigations into the many killings of civilians by members of the security forces and some prosecutions; however, few were effective. To reduce inducements for corruption, in July, President Kibaki announced a 115 percent increase in police salaries, effective January 2004 and pledged to improve the living and working conditions of police. The starting salary for a police officer was \$61 (4,654 Kenyan shillings) a month.

The International Federation of Women Lawyers (FIDA) has trained more than 500 police officers about gender issues. The organization, as part of its ongoing police sensitization project, also had developed a curriculum on dealing with gender-based violence.

The Constitution provides that persons arrested or detained be brought before a court within 24 hours in noncapital offenses and within 14 days in capital cases. The Penal Code specifically excludes weekends and holidays from this 14-day period. The law does not stipulate the period within which the trial of a charged suspect must begin. Indicted suspects often were held for months or years before being brought to court. Police from the arresting location were responsible for serving court summons and for picking up detainees from the prison each time the courts heard 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.

The law provides that families and attorneys of persons arrested and charged are allowed access to them, although this right often was not honored (see Section 1.c.). Family members and attorneys may visit prisoners only at the discretion of the authorities, and this privilege often was denied. For those who were charged, it often was possible to be released on bail with a bond or other assurance of the suspect's return.

The police continued to conduct massive searches ("sweeps") for illegal immigrants, criminals, and firearms; citizens frequently accused police officers of soliciting bribes or falsely arresting individuals to extract bribes during such searches (see Section 1.f.). In August and September, police conducted several sweeps in the coastal cities and reportedly arrested 830 persons in Mombasa, 120 in Kilifi, and 83 in Lamu for illegal immigration or conducting business without a license. Community members criticized the manner in which the sweeps were conducted; an

Imam charged that women and children were being arrested as they sat on their verandas during the sweeps.

During the year, police arrested some journalists and NGO members (see Sections 2.a. and 4).

Student protests and riots continued during the year and resulted in some arrests (see Section 2.b.).

Unlike in the previous year, there were no reports that the Government arrested opposition politicians for allegedly participating in illegal gatherings; however, an IMLU employee and 30 other persons were arrested for illegal assembly during the year (see Section 2.b.).

Unlike in previous years, there were no reports of the arbitrary arrest of members of the Mungiki; however, police arrested numerous criminal suspects who were members of the group.

During the year, most of the 511 illegal aliens detained during the June 2002 sweeps in Nairobi's Eastleigh area, home to a large Somali community, were released; the status of the remaining aliens was unknown at year's end.

Charges of inciting coffee farmers remained pending against James Orengo, who was arrested on questionable charges more than eight times between 1997 and 2001.

Pretrial detention remained a serious problem. In its 2002 report, the SCHR highlighted numerous cases of lengthy delays in the prosecution of cases against inmates held in pretrial detention, adding that pretrial detainees constituted "a large percentage of the prison population thereby overstressing the limited resources available to prisons." The Government reported that approximately 33 percent of the prison population were pretrial detainees; in its May report, the SCHR reported that 60 percent of the total prison population was made up of pretrial detainees. In a March news report, Commissioner of Prisons Abraham Kamakil claimed that the average time spent by suspects in pretrial detention on capital charges was approximately 16 months. Many detainees spend more than 3 years in prison before their trials were completed, often because they cannot afford even the lowest bail. Very few can afford attorneys. The Government has acknowledged cases in which persons have been held in pretrial detention for several years.

In March, the media reported that Joseph Kamau Njoroge had served 18 years in prison awaiting the outcome of his trial and that Wanjiku Kamandere had served 17 years in prison on pretrial detention; both men remained in custody at year's end.

During the year, Margaret Wanjiku Mugo and her five children, who had remained in detention since 2000 for the alleged killing of their husband and father, were acquitted of all charges and released.

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, in practice the judiciary often was corrupt and subject to strong influence from the executive branch. 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 who were hired by contract), the President has extensive authority over transfers.

During the year, the Government took steps to curb widespread judicial corruption. Two anti-corruption bills were passed: The Anti-Corruption and Economic Crimes Bill, which sets rules for transparency and accountability; and the Public Officer Ethics Bill, which requires high government officials and their spouses to declare their wealth. The Government established an anti-corruption authority to investigate and prosecute cases of corruption, and appointed an anti-corruption czar. Former Chief Justice Bernard Chunga and High Court Judge Samuel Oguk, both implicated for corruption and incompetence, retired. Chief Justice Evans Gicheru established internal committees to implement judicial reform. In its September 30 report, the Integrity and Anti-Corruption Committee, headed by High Court Judge Aaron Ringera, cited credible evidence of corruption against 5 of 9 Appeal Court judges and proof of graft and misconduct against 18 of 36 High Court Judges and 82 of 254 magistrates; 38 magistrates were suspended (although most resumed work during the year to alleviate the caseload backlog), and 40 others were transferred. The Government maintained that all those accused, whose names were withheld pending investigation, would be subject to prosecution; however, no legal charges were filed against any of the judges who were suspended or transferred by year's end.

The court system consisted of a Court of Appeals, a High Court, and two levels of magistrate courts, where most criminal and civil cases originated. The Chief Justice was a member of both the Court of Appeals and the High Court, thus undercutting the principle of judicial review. Military personnel were tried by military courts-martial, and verdicts may be appealed through military court channels. The Chief Justice appointed attorneys for military personnel on a case-by-case basis.

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 received 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. As a result, poor persons may be convicted for lack of an adequate defense. Although defendants have access to an attorney in advance of trial, defense lawyers do not always have access to government-held evidence. The Government can plead the State Security Secrets Clause 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 \$25 (2,000 Kenyan shillings) for arguing a civil case before a judge was beyond the reach of most citizens.

The country has Islamic courts that resolve disputes, adjudicate inheritance questions and marital issues, and handle other civil matters where all parties are Muslim and accept the court's jurisdiction. The Constitution provides for these courts, and states that "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 were no other customary or traditional courts in the country. However, the national courts used the customary law of an ethnic group as a guide in civil matters so long as it did not conflict with statutory law. This was done most often in cases that involved marriage, death, and inheritance issues and in which there was an original contract founded in customary law. For example, if a couple married under national law, then their divorce was adjudicated under national law, but if they married under customary law, then their divorce was adjudicated under customary law. Citizens may choose between national and customary 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 customary law because they felt it was biased in favor of men (see Section 5).

Critics of the Government--politicians, journalists, lawyers, and students--have been harassed through abuse of the legal process. There were 48 M.P.s, student leaders, or human rights activists who still had one or more court cases pending during the year (see Section 2.a.). Several cases involving opposition M.P.s, many of whom became members of the Government after the 2002 NARC election victory, have been pending for years, with the courts repeatedly postponing the hearings, thereby requiring the M.P.s to appear periodically in court or risk fines or imprisonment.

The Attorney General's constitutional power to discontinue proceedings in private prosecution cases was a problem. Arguing that citizens must first notify his office before initiating private prosecution, Attorney General Amos Wako used this authority during the year to terminate a case against M.P. Anthony Ndilinge.

There were no reports of political prisoners. However, some NGOs alleged that police arrested and jailed political and human rights activists on spurious charges to curb their activities. In 2002, human rights activists Nicodemus Mutuki and Alois Mwaiwa Muia were acquitted of murder charges following mob violence that left one person dead; however, an appeal to the acquittal was filed and remained pending.

During the year, the Government released the remaining five members of the February 18 Movement (FEM) and its military wing, the February 18 Revolutionary Army (FERA); the five were arrested in 1995 along with hundreds of other suspected members on charges of attempting to overthrow the Government. The Government charged that FEM and FERA were part of a guerrilla movement led by a citizen in exile in Uganda, a charge the Ugandan government denied.

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



The Constitution prohibits such practices; however, authorities sometimes infringed on citizens' privacy rights. Although the Constitution provides that "no person shall be subjected to the search of his person or his property or the entry by others on his premises," it permits searches without warrants "to promote the public benefit." The Police Act permits police to enter a home forcibly if the time required to obtain a search warrant would "prejudice" their investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants to apprehend suspected criminals or to seize property believed to be stolen. Citizens frequently accused police officers of soliciting bribes during searches or of falsely arresting individuals to extract bribes.

The police continued to conduct massive sweeps for illegal immigrants and firearms in residential neighborhoods of major cities (see Section 1.d.). Residents complained that police who entered homes on the pretense of searching for weapons often asked for radio, television, and video receipts and permits, then demanded bribes to refrain from confiscating those items in the absence of such documents.

Unlike in the previous year, there were no reports that police conducted sweeps of street families and children. Most of the approximately 100 street persons arrested during a 2002 sweep were released during the year; the others were charged with petty offenses. No further information was available.

Security forces monitored closely the activities of dissidents, following or otherwise harassing them. They employed various means of surveillance, including a network of informants to monitor the activities of opposition politicians and human rights advocates. Some opposition leaders, students, journalists, and others continued to report that the Government subjected them to surveillance and telephone wiretaps.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press; however, the Government sometimes restricted these rights. Security forces harassed, beat, and arrested members of the media during the year; however there were fewer such reports than in previous years. The regulatory framework for broadcast media allowed abuse and manipulation in the issuance, withholding, and revoking of broadcast permits and frequencies. Police sometimes dispersed demonstrators to prevent criticism of the Government, and journalists covering such events often were present during the dispersal (see Section 2.b.). In spite of these pressures, the press, civic organizations, and opposition parties continued to present their views to the public, particularly in the print media. Journalists practiced self-censorship.

The Government broadly interpreted existing laws to restrict freedom of expression. Both the Constitutional prohibition of debates on issues under consideration by the courts and the ruling by the Speaker of the House against parliamentary debate of certain aspects of Presidential conduct limited the scope of deliberation on a number of political issues.

During the year, the three police officers fired in 2002 for reportedly holding a private political discussion were reinstated in the police department.

Charges against M.P. David Manyara, who was arrested in April 2001 and charged with "incitement" after a speech he gave at an opposition rally, were pending at year's end; Manyara was arrested on separate charges during the year (see Section 1.a.).

In general, the print media remained candid and independent. The mainstream print media included four daily newspapers that reported on national politics: The independent Nation, which published articles generally critical of government policies; the East African Standard, which previously reflected KANU party views, but was more independent during the year; the People Daily, which was owned by an opposition politician and was highly critical of the Government; and the Kenya Times, which generally reflected KANU party views. There also were numerous independent tabloid or "gutter" periodicals, which appeared irregularly and were highly critical of the Government. Reporting in these tabloids ranged from revealing insider reports to unsubstantiated rumormongering.

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. KBC generally did not criticize the Government; however, since the August arrival of its new managing director, KBC coverage was somewhat more balanced. KBC's monopoly on national broadcasting continued to severely

limit the ability of opposition leaders and other critics of the Government to communicate with the electorate outside the capital. Stations operated by other media companies, including 12 radio stations, operated primarily in Nairobi and its outlying areas.

Kenya Television Network (KTN), which was owned by KANU supporters, aired news programs with more balanced political coverage than KBC; it broadcast in Nairobi, Mombasa, and Nakuru. Stellavision, which also was owned by KANU supporters, rebroadcast SKY TV and British Broadcasting Corporation (BBC) world news in Kisumu, Mombasa, and Nairobi. Other TV stations in operation in Nairobi were Nation-TV, associated with the Nation newspaper group, and Family, a Christian-oriented broadcaster. Citizen TV and Citizen Radio broadcast generally objective news programs. Family TV and Radio broadcast in the Nairobi metropolitan area; Nation Television also broadcast in Mombasa, providing independent media coverage.

During the year, the print media, which has been relatively independent for decades, continued to expand. The Government also continued its efforts to loosen 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 lived. In January, the Government repossessed several dormant frequencies from various companies, including 60 from the national broadcaster KBC, to redistribute such frequencies. Some radio and television stations also began operating in markets outside of Nairobi during the year. For example, the Nation was granted radio frequencies to broadcast in Mombasa, Nakuru, Timboroa, and Nyeri, and programming by the Catholic Church radio station, which began broadcasting in Nairobi, reached areas beyond the city into Murang'a, Naivasha, Machakos, Makueni, Kajiado, and parts of Nyeri, Isinya, and OI Donyo Sabuk.

Representatives of the international media remained free to operate; 120 international correspondents worked in the country, and approximately 100 media organizations reported out of Nairobi without official interference.

Security forces harassed, beat, and arrested members of the media during the year; however, there were fewer such reports than in previous years. Police dispersed demonstrators to prevent criticism of the Government, and journalists covering such events often were present during the dispersal (see Section 2.b.). The Government also used selective prosecution of journalists under a colonial-era section of the Penal Code that criminalizes the publication of information likely to cause fear or alarm.

On March 9, GSU officers reportedly assaulted BBC and Daily Nation reporters, who were covering a peaceful protest in Turkana, and seized their equipment (see Section 2.b.). The journalists reported the incident to police; however, apart from the transfer of one GSU officer, no action had been taken by year's end.

On September 29, police arrested East African Standard journalists Tom Mshindi, David Makali, and Kwamchetsi Makokha for publishing an article about the confession of suspects in the killing of University of Nairobi professor Crispin Mbai (see Section 1.a.); the three journalists were charged with violating a Penal Code section which precludes the publishing of "any false statement, rumor or report which is likely to cause fear and alarm to the public or disturb the peace." Police subsequently interrogated the journalists to determine the source of their report on Mbai's killing, which some observers believed was politically motivated. Several M.P.s criticized the arrests, which the Kenya Union of Journalists charged were an effort by the Government to intimidate the press. Mshindi and Makokha were released the day of their arrest. Makali, who was charged with stealing public property--a cassette containing the transcript of a police interrogation--was eventually released.

No action was taken against supporters of the now defunct National Development Party, who in March 2002 beat Nation journalist Odhiambo Orlale with clubs, or in the September 2002 beating of a television crew by persons attending a political rally organized by the opposition "Rainbow Alliance."

There were no developments in the investigation of the April 2002 beating in Nairobi of People Daily photographer Collins Kweyu by city council guards.

In May 2002, Parliament passed a controversial bill regulating the media. Under the act, commonly known as the "Media Bill," publishers were required to purchase a bond of \$12,800 (one million Kenyan shillings) before printing any publication and to deposit copies of their newspapers and books with a registrar within 2 weeks of publication. The bond amount was a 100-fold increase over the previous bond amount of \$128 (10,000 Kenyan shillings). The law makes it a crime to sell or distribute publications not deposited or bonded, under penalty of a fine of \$256 (20,000 Kenyan shillings) or 6 months' imprisonment. Some members of the media were concerned that the Government would use this law, the Books and Newspapers Act, and the Official Secrets Act to stifle freedom of expression.

The regulatory framework for broadcast media allowed abuse and manipulation in the issuance, withholding, and revoking of broadcast permits and frequencies. The Government, through the Communication Commission of Kenya (CCK), continued to delay action on a number of radio and television license applications on the grounds that it was reorganizing and regularizing its licensing procedures. The CCK regulated frequency allocations, while the Ministry of Transport and Communications issued licenses. The Ministry has licensed 33 organizations (6 of which were KBC companies) to broadcast, and the CCK has allocated frequencies to a total of 9 television and 18 radio stations, although some were not broadcasting at year's end. During the year, the Government granted Nation Media a nationwide broadcasting license; in 1999, Nation Media had sued the Government for permission to broadcast radio and television nationwide. In 2001, the Government announced that it would not issue any more licenses to broadcast in Nairobi until new policies were in place. According to the Ministry, there were 120 applications for Radio/TV licenses pending at the end of 2001.

Some stations with previously issued licenses began broadcasting during the year. In July, the Catholic Church began broadcasting by radio and television in Nairobi; however, it continued to seek frequencies in Mombasa, Nyeri, and Kisumu. Private organizations that have been issued frequencies to broadcast but had not yet done so included the Pentecostal Church, Pete Aviation, and Maritime Media Services. Despite licensing the East African Television Network (EATN) to broadcast, the Government continued to block EATN from using the frequencies over a dispute and the case was pending in the courts at year's end.

In 2001, the CCK closed the offices of Citizen broadcasts and confiscated its equipment, allegedly for unpaid licensing fees and improper use of communications equipment. During the year, CCK returned the equipment to Royal Media, the parent company of Citizen Radio and Television.

During the year, public officials used libel laws to attack publications directly critical of actions by government officials. M.P. Nicholas Biwott sued KTN for reporting that he was implicated in the 1990 murder of Foreign Minister Robert Ouko, and Statehouse Comptroller Matere Keriri sued the Kenya Times for reporting that he had engaged in a fight with a member of the presidential escort. Printers and distributors were equally responsible with publishers and authors for libelous content in publications and books. Further interpretation of libel laws and related legislation also has made retail stores equally liable should the material in question be found libelous.

Former President Moi's 2001 libel suit against a former U.S. Ambassador, who wrote a book that alleged Moi was involved in the 1991 murder of Foreign Minister Robert Ouko, still was pending in court at year's end.

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. Some editors and journalists reportedly practiced self-censorship because of government pressure or bribes; there also were credible reports that journalists accepted payments to report or withhold certain stories, some of which were fabricated.

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." Unlike in the previous year, there were no reports that plays were banned.

The Government did not restrict access to the Internet. There were approximately 20 domestic Internet service providers (ISPs) that generally were privately owned. Although liberalization of Internet communications continued, Internet access in the country continued to be limited by the parastatal Telkom, which has a monopoly on satellite uplinks. All ISPs were required to use the communications parastatal to connect to the Internet. There were no reports of Telkom interfering with the content of Internet transmissions.

The Government and school administrators on occasion limited academic freedom; however, the Government took steps during the year to limit such interference. Most post-secondary students attended government-run institutions, partly because of their lower fees. During the year, President Kibaki ceded the role of chancellor of all state universities and appointed chancellors for each of the country's six public universities. A number of student activists have been expelled from universities in previous years because of political activities; however, most of these students had been readmitted by year's end. Students claimed that the Government interfered in student elections to ensure sympathetic student leaders. In March, some members of the Students Organization of Nairobi University (SONU) protested the outcome of their group's elections, charging that university administrators rigged the polls; the elections were SONU's first in 2 years since the former Government banned the group.

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

The Constitution provides for freedom of assembly; however, the Government 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; however, authorities continued to disrupt public demonstrations and meetings about which the police had been informed in advance, often characterizing them as "illegal" gatherings.

On March 13, security forces arrested an IMLU employee and 30 other persons for holding an illegal assembly and inciting violence; the group had provided local police with advance notice of their meeting.

During the year, police used excessive force to disperse demonstrations. For example, on March 9, GSU officers violently dispersed a demonstration in Turkana to protest insecurity along the Kitale-Sudan road; one person was killed, and another was injured. The GSU also assaulted two journalists covering the demonstration (see Section 2.a.). No action had been taken against the responsible GSU officers by year's end.

In May, police in Thika shot a man in the arm while they attempted to quell a riot following a meeting of the Samuru Gituto Farmers Cooperative Society. The injured man demanded the arrest and arraignment of the officer; an investigation was ongoing at year's end.

On September 15, police mounted roadblocks and fired tear gas into 3 buses carrying approximately 300 university students, who were traveling to a demonstration to protest the September 14 killing of Crispin Odhiambo Mbai (see Section 1.a.). Police reportedly whipped the students as they fled the buses to escape the gas.

Police also used excessive force to disperse strikes during the year, which resulted in one death (see Section 6.b.).

The investigation into the February 2002 violent dispersal of a demonstration organized by the Center for Human Rights and Civic Education in Mwingi District was ongoing at year's end. No action was taken against security forces responsible for the violent dispersal of numerous other demonstrations in 2002 and 2001.

Police prevented some political and civil society activities from occurring during the year. For example, on March 29, police barred teachers in Kiambu from convening a meeting to call a strike over the Government's failure to implement the salary raise it had promised.

In July, police prevented Gideon Moi, an M.P. and the son of the former President, from holding a rally for his constituents. The Government claimed its action had been taken for Moi's safety.

Violent incidents continued between pro-government supporters and opposition supporters during the year, mainly during by-elections; political parties reportedly used gangs of young followers to harass other parties and to prevent them from holding meetings or events.

No action was taken against the armed youth who attacked Ford People officials attempting to assemble in April 2002.

The Government continued to use the Societies Act to restrict freedom of association. The act requires that every association be registered or exempted from registration by the Registrar of Societies. Approximately 40 political parties were registered; however, the Government continued to refuse to reverse its 1994 denial of registration of the Islamic Party of Kenya (IPK), which has not resubmitted an application to register since NARC came to power in 2002.

The Mungiki, who were banned along with a number of other vigilante groups in 2002, remained banned. Mungiki espoused political views and cultural practices that were controversial to mainstream society; however, many observers characterized the Mungiki as a vigilante group or gang because of the criminal activities of some of its members as well as their reported harassment and intimidation of residents in areas where the group was active (see Section 1.a.). 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 Constitution provides for freedom of religion, and the Government generally respected this right in practice; however, while groups generally were allowed to worship freely, the Government at times interfered with other activities by religious groups.

The Government required religious organizations to register with the Registrar of Societies, which reported to the Office of the Attorney General. 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 have found it difficult to register due to their inability to define their status as more than an offshoot of a larger religious organization. The Government has not granted registration to the Tent of the Living God, a small Kikuyu religious group banned during the single party-era; however, membership in the Tent of the Living God has diminished greatly.

Unlike in the previous year, there were no reports that civil servants who were Seventh-Day Adventists were suspended from their jobs for refusing to perform official duties on a Saturday or that students were suspended for refusing to take tests on Saturdays.

Practicing witchcraft reportedly was a criminal offense under colonial-era laws; however, persons generally were prosecuted for this offense only in conjunction with some other offense, such as murder. Unlike in previous years, there were no reports that police arrested persons for practicing witchcraft. Witchcraft traditionally has been a common explanation for diseases for which the causes were unknown. The practice of witchcraft was understood widely to encompass attempts to harm others not only by magic, but also by conventional means such as poisons. Although many traditional indigenous religions included or accommodated belief in the efficacy of witchcraft, they generally approved of harmful witchcraft only for defensive or retaliatory purposes and purported to offer protection against it.

Muslim leaders continued to charge that the Government was hostile toward Muslims. In April, the National Constitutional Conference convened to draft a new constitution and to consider a draft constitutional provision that would expand the jurisdiction of the Kadhis' courts. Several thousand Muslims demonstrated peacefully across the country to demand that the Kadhis' courts be enshrined by the new constitution; however, the proposal to expand the jurisdiction and role of the Kadhis' courts in the constitution faced stiff opposition, particularly from Christian clerics, who charged that Muslims would be given preferential treatment if Kadhis' courts were incorporated into a new constitution. The debate on the issue, which highlighted latent religious animosities between the country's Muslims and Christians, was ongoing at year's end.

Muslims continued to complain that non-Muslims received better treatment when requesting citizenship documents. According to Muslim leaders, government authorities scrutinized more rigorously the identification cards of persons with Muslim surnames and required them to present additional documentation of their citizenship, such as birth certificates of parents and, sometimes, grandparents. The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only group whose members were required to carry an additional form of identification to prove citizenship. Ethnic Somalis must produce upon demand their local identification card and a second identification card verifying screening; both cards were required to apply for a passport. This heightened scrutiny appeared to be due to an attempt to deter illegal immigration, rather than due to the religious affiliation of ethnic Somalis. In 2002, former President Moi announced that the Government had stopped screening ethnic Somalis and that the Government instead would rely on local elders and leaders to determine the citizenship of ethnic Somalis. However, it was unclear whether this policy was being enforced.

Wanjiru Nduhiu, the leader of an unregistered Kikuyu group, charged in 2002 with urging her followers to renounce Christianity and revert to traditional beliefs and practices such as FGM, remained in custody awaiting trial at year's end; during the year, the charges against her were reduced to "incitement."

During the year, the African Independent Pentecostal Church of Africa (AIPCA) continued repossessing its schools that had been seized by the British colonial government.

There generally was a great deal of tolerance among religious groups; however, there were a few instances of violence between Christian and Muslim groups, and Muslims continued to perceive themselves treated as second-class citizens in a predominantly Christian country.

On June 13, Muslims in Bura Division of Tana River District reportedly burned down five churches after an Islamic preacher was arrested and briefly interrogated by police. The cleric had converted to Islam from Christianity and had reportedly angered the Christians in the area with his teachings against Christianity; he was released from police custody at the request of an M.P. Reverend Simon Mgumba of the Pentecostal Evangelism Fellowship of

Africa, one of the churches that was burned, said his congregation was diminishing after the incident, due to fears of additional attacks. Reconciliation efforts between the communities were underway at year's end.

There were several disputes over land ownership and institutional conflicts between rival religious factions during the year; some resulted in violence.

On March 16, Joseph Okech was killed in a fight during Sunday services between two factions of St. Stephen's Church in Dandora, Nairobi. The conflict reportedly came about as a result of a leadership struggle. However, church leaders contended that non-church members were actually responsible for the incident, which remained under investigation at year's end.

On May 11, rival factions of the African Independent Pentecostal Church of Africa in Nyeri clashed violently, and several worshippers were injured. The two factions were aligned to two feuding archbishops.

The 2002 land use dispute between Egerton University and the Africa Inland Church (AIC) had not been resolved by year's end.

For years Muslims and Christians have held an open debate over their respective places in society. Each group claimed to have a larger number of adherents than was plausible, and some Muslim groups believed that the Government and business communities deliberately impeded development in predominantly Muslim areas. Some Muslim leaders claimed that discrimination against Muslims has resulted in a greater incidence of poverty among Muslims than among other religious groups; however, there was no statistical evidence to support this claim.

For a more detailed discussion, see the [2003 International Religious Freedom Report](#).

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

By law citizens may travel freely within the country, and there were no reported violations of this right. However, police routinely stopped vehicles and checked vehicle safety and driver documents on roads throughout the country. Police often demanded bribes at such checkpoints. Ethnic Somalis must produce upon demand their local identification card and a second identification card verifying screening; both cards were required to apply for a passport (see Section 2.c.).

The Government did not restrict foreign travel or emigration; however, the law requires a woman to obtain her husband's or father's permission to obtain a passport. In practice, adult women often were able to circumvent this restriction by claiming to be unmarried. Civil servants and M.P.s must get government permission for international travel, which generally was granted routinely.

The majority of the estimated 400,000 persons displaced or forced to relocate during the early 1990s because of ethnic violence were believed to have returned to their homes or moved elsewhere; however, some still were waiting to return home at year's end. Many of the rural residents displaced by the violent ethnic clashes in Rift Valley between 1991 and 1993 still have not returned to their homes and remain displaced in urban areas. Some of the several thousand persons displaced by ethnic clashes since then also have not returned to their homes due to fear of renewed violence (see Section 5).

The law does not provide for the granting of asylum or refugee status to persons who meet the definition in the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol; however, in practice, the Government provided protection against refoulement and granted refugee status or asylum. The Government cooperated with the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees. The UNHCR granted refugee status to Somali refugees at the Dadaab camps and to Sudanese refugees arriving at the Kakuma camp. A UNHCR eligibility committee in Nairobi performed a similar function for individuals of other nationalities. The Government also provided temporary protection to certain individuals who fall outside of the definition of the 1951 U.N. Convention Related to the Status of Refugees or its 1967 Protocol. The Government provided temporary protection to the approximately 200,000 refugees registered by UNHCR who lived in official UNHCR camps. An undetermined number of refugees lived outside the camps in cities and rural areas. Somalis accounted for approximately 64 percent of the total refugee population, followed by large numbers of Sudanese and smaller numbers of other nationalities from across the region.

The Government required that all refugees reside at designated camps, most of which were located near the Somali and Sudanese borders, unless granted permission to live elsewhere in the country, primarily to attend

higher education institutions, undergo medical treatment, or avoid security threats at the camps. However, many refugees lived illegally outside the camps, especially in Nairobi.

Incidents of rape of women and girls in refugee camps continued to occur (see Section 5). Many rapes occurred when women and girls collected firewood and building materials outside the camps; however, reported rapes declined during the year.

Acts of violence, including banditry and shootings, occurred frequently near the camps. Refugees have been mistreated and abused by citizens and by residents of different refugee camps because of ethnic and religious differences. Interclan violence frequently erupted among rival Somali clans at the camps (see Section 5); family members also may subject Somali refugees who marry non-Muslims to abuse.

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

The Constitution provides citizens with the right to change their government through free and fair multiparty elections; this right was realized fully only in December 2002, when citizens chose a new president through an election for the first time since former President Moi came to power in 1978. The December 2002 multi-party general elections were the country's third for presidential, parliamentary, and civic seats. Five presidential candidates contested the elections, but the main contestants were KANU candidate Uhuru Kenyatta and NARC candidate Mwai Kibaki, a former Vice-President and Minister of Finance in former President Moi's government. NARC was a coalition of more than a dozen political parties, including former members of KANU who defected, that formed a united front to contest the December general elections. Since independence in 1963, KANU had continuously controlled both the presidency and the national legislature. President Kibaki won 61.9 percent of the vote in the election, which was largely peaceful and determined by international observers to reflect the will of the people. In the December 2002 elections for the 222-member National Assembly, 210 seats were filled by election and 12 seats filled by nomination. By year's end, the NARC coalition held 132 seats (7 nominated); KANU held 68 seats (4 nominated); Ford-P held 15 seats (1 nominated); Safina, Ford-A, and Sisi held 2 seats each; and Shiriksho held 1 seat. Observers concluded that the elections broadly reflected the popular will and were free and fair.

During the year, five parliamentary seats were left vacant because of the death of their holders; NARC candidates won elections for all vacated seats. President Kibaki named M.P. Moody Awori to replace Vice President Michael Wamalwa, who died during the year; Awori was also the Minister for Home Affairs.

During 2002, there were active political campaigns throughout the year, some of which were marred by violence. The former Government used physical beatings, arbitrary arrest, and prosecution to harass and intimidate opposition M.P.s, and political violence and intimidation, often with ethnic undertones, increased during the run up to the elections; however, the level of election-related violence was substantially less than in the previous two general elections. The freedoms of assembly and of speech often were restricted as opposition leaders complained their activities were being targeted and their views were not being covered sufficiently by KBC. The Government's domination of domestic broadcast media, especially outside major urban centers, continued to restrict the ability of opposition politicians to communicate with citizens (see Section 2.a.). Police or organized youth gangs disrupted or forced the cancellation of a number of opposition meetings and rallies during the campaign, and politicians and public servants routinely warned political rivals against campaigning in their areas.

At the local level, President Kibaki increased funding for provincial and district governments. However, like President Moi, he continued to exercise tight control over local administrations. The President appoints both the powerful provincial and district commissioners as well as numerous district and village officials. Elected local councils exist, but the central Government continued to restrict their functions. Although rural and municipal councils are authorized by law to provide a wide range of health, education, and infrastructure services, in practice, their functions were limited to partial oversight of schools, secondary and tertiary roads, markets, and natural resources such as forests. Most councils lacked sufficient financial autonomy and revenues to adequately perform even these limited functions.

At the national level, the Constitution authorizes the President to dissolve the legislature and prohibits debate on issues under consideration by the courts (see Section 2.a.). M.P.s were entitled to introduce legislation, but in practice it generally was the Attorney General who did so. President Kibaki exercised considerably less influence over the legislative agenda than did former President Moi. The National Assembly had the power to hire its own staff and to vote its own budget. In 2000 the National Assembly passed implementing legislation to establish the Parliamentary Service Commission, which fully exercised its power to hire staff and establish a budget in 2002.

During the year, the Constitution of Kenya Review Commission (CKRC) continued its review of proposed language in the country's new constitution; however, the Government suspended the second of its two sessions held during

the year. Several NGOs continued to conduct civic education programs on the constitutional reform process.

Although there were no legal restrictions, traditional attitudes circumscribed the role of women in politics; however, the December 2002 elections increased the number of women in politics. At year's end, there were 15 female M.P.s, (7 elected and 8 nominated) in the 222-seat National Assembly, 3 female ministers, and 3 female assistant ministers. In February, Alice M.W. Kagunda was appointed Senior Deputy Commissioner of Police, making her the first woman in the country's history to hold the position.

The 5 largest ethnic groups represented 70 percent of the population and held 167 of the 222 National Assembly seats. The remaining 37 ethnic groups represented 30 percent of the population and held 55 seats; 4 of the 25 ministers and 6 of the 27 assistant ministers were from the smaller ethnic groups.

#### 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 somewhat cooperative and responsive to their views; 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 NGOs actively advocated for human rights in the country. 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 some autopsies of persons who died in police custody. The Attorney General's Office generally responded in detail to foreign embassies' human rights inquiries. Some local human rights NGOs complained that the Attorney General's office and other government offices often were not responsive to their inquiries; however, there were fewer such complaints than during the previous government.

During the year, members of the Government publicly criticized NGOs, accused them of incompetence and fraud, and called for increased government regulation of such groups. Unlike in previous years, the Government did not use the governmental NGO Coordination Board to put pressure on the nongovernmental National NGO Council. All district governments monitored NGOs within their districts with a view to ensuring that NGOs either advance government-approved objectives or cease to operate; however, NGOs did not report an increase in government monitoring during the year.

On December 31, security forces arrested an IMLU employee who visited a police station to ask about a case; the employee, who was released the following day, was accused of creating a disturbance. On March 13, security forces also arrested an IMLU employee and 30 other persons for holding an illegal assembly and inciting violence (see Section 2.b.).

Some civil society activities were disrupted during the year (see Section 2.b.); however, unlike in the previous year, there were no reports that police raided local NGOs, seized their documents, or interrogated members of their staffs.

The KHRC produced its "Quarterly Human Rights Report" that cataloged the human rights situation in the country, as well as special reports on pressing human rights problems. The Institute for Education in Democracy and other NGOs monitored elections in cooperation with the Electoral Commission and diplomatic missions.

In July, the KNCHR was established to succeed the SCHR; the move was a result of 2002 legislation drafted by the Attorney General and the SCHR with the help of NGOs and civil society. The responsibilities of the KNCHR, which was created by an Act of Parliament, were the same as those held by the SCHR, which was created by presidential decree--including investigating complaints of abuse, informing and educating citizens on human rights issues, and advising the Government on compensation for victims of abuse. Unlike the SCHR, which was filled mostly with staff on secondment from the Government, the KNCHR's nine commissioners were recruited mainly from human rights and other civil society organizations. As such, the KNCHR was more independent of executive control and better funded.

#### Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status



The Constitution prohibits discrimination on the basis of a person's "race, tribe, place of origin or residence or other local connection, political opinions, color, or creed;" however, government authorities did not enforce effectively many of these provisions. There was credible evidence that some government officials at least have tolerated and in some instances instigated ethnic violence on a smaller scale. The SCHR stated in its 2002 general report that "many undisputed reports indicate that leaders and senior public servants have continued to mismanage their freedom of expression by making inflammatory and inciting statements with far reaching consequences." The report also noted that "incitement has played and continues to play a very significant role in the genesis, escalation and recurrence of ethnic conflicts."

## Women

Domestic violence against women was a serious and widespread problem. Press accounts of such violence, sometimes resulting in the death of women, were reported frequently. According to the Government, there were 951 rape cases between January and May, an increase from the same period in 2002, when 784 rape cases were reported. The Police Department attributed the upsurge to increased reporting by rape victims; however, available statistics probably underreported the problem since social mores discouraged women from going outside their families or ethnic groups to report sexual abuse. In August, FIDA reported an increase in rape and defilement cases during the year, particularly in rural areas, and noted that rape cases alone had tripled from the previous year. According to a study by The Center for Human Rights and Democracy in Eldoret, 60 percent of rape cases in the North Rift region were not reported because women feared unfair treatment by police. A 2001 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 in 2001. The study noted that the abused women rarely reported the violations, because they believed perpetrators would not be punished, and no protective or remedial action would be taken. Although the validity of these two studies was unproven, the basic figures supported other published figures as well as numerous press accounts and anecdotal evidence. Police typically viewed violence against women as a family matter, not a crime.

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, wife beating was prevalent and largely condoned by much of society. Traditional culture permitted a man to discipline his wife by physical means and was ambivalent about the seriousness of spousal rape. There was no law specifically prohibiting spousal rape.

In September, Robinson Githae, the Assistant Minister for Justice and Constitutional Affairs, criticized the increasing demand by courts for DNA tests in rape cases. Githae, who noted that the country's only DNA testing center (the Kenya Medical Research Institute) required 3 to 6 months to complete a single test, charged that requiring such tests was tantamount to giving "licenses to rapists to rape our women."

There continued to be incidents of rape of refugee Somali women at the Dadaab refugee camps (see Section 2.d.). According to the UNHCR, refugee women reported 70 rapes during the first 11 months of 2001, compared with 82 rapes in 2000.

The law prohibits FGM, also referred to as "female genital cutting," for girls under 18 and forced FGM on girls or women of any age; however, FGM was practiced by certain ethnic groups and remained widespread, particularly in rural areas. According to a 2001 report by the Government and UNICEF, 38 percent of women nationwide have undergone FGM; however, according to the women's rights organization Maendeleo Ya Wanawake ("Development of Women" in Swahili), the percentage of girls undergoing the procedure was as high as 80 to 90 percent in some districts of Eastern, Nyanza, and Rift Valley provinces. FGM usually was performed at an early age. The press reported severe injuries to several girls from the practice of FGM. On September 3, the Daily Nation reported that a mother in Meru North District was reportedly forced by her in-laws to circumcise herself in order to save her marriage when her husband left her for not being circumcised. Former President Moi issued two presidential decrees banning FGM, and the Government prohibited government-controlled hospitals and clinics from practicing it.

Various communities have instituted "no cut" initiation rites for girls as an alternative to FGM. The Family Planning Association of Kenya (FPAK) established such a rite called Ntanira na Kithomo (initiate me through education) in Nyambene in Meru; some Marakwet and Maasai communities also have instituted similar rites of passage. According to the FPAK, its program contributed to a 13 percent decline in the prevalence of FGM in Meru North District. However, in 2002, girls sought refuge at the Centre for Human Rights and Democracy (CHRD) in Eldoret

to escape undergoing FGM. They were among a group of 350 girls who had participated in an alternative rite of passage in 2001 and were being threatened by family members with FGM. CHRDR secured a court injunction against the girls' parents preventing them from forcing the girls to undergo FGM.

Prostitution is illegal; however, it was a problem and was perpetuated by poverty. Prostitution has contributed to the spread of HIV/AIDS, which affected approximately 13 percent of the population. In June 2002, the U.N. Program on HIV/AIDS (UNAIDS) reported that 30 percent of pregnant women in Embu District in Eastern Province were HIV-positive, making it the area with the highest rate of infection in the country.

Trafficking in women was a problem (see Section 6.f.).

Sexual harassment in Export Processing Zones (EPZs) was a problem (see Section 6.e.).

Women experienced a wide range of discriminatory practices, limiting their political and economic rights and relegating them to second-class citizenship. The Constitution provides equal rights to men and women and specifically prohibits discrimination on grounds of gender; however, constitutional provisions allow only males to transmit automatically citizenship to their children. The Government has not passed enabling legislation to implement international conventions on women's rights. In 2002, 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 were debated but were pending at year's end.

Women continued to face both legal and de facto discrimination in other areas. For example, a married woman legally was required to obtain the consent of her husband before obtaining a national identity card or a passport (see Section 2.d.).

The Law of Succession, which governs inheritance rights, provides for equal consideration of male and female children; however, in practice most inheritance problems did not come before the courts. Women often were excluded from inheritance settlements, particularly if married, or given smaller shares than male claimants. Moreover, a widow cannot be the sole administrator of her husband's estate unless she has her children's consent. Most customary law disadvantages women, particularly in property rights and inheritance. For example, under the customary law of most ethnic groups, a woman cannot inherit land and must live on the land as a guest of males who were relatives by blood or marriage. Wife inheritance was practiced in some communities, which restricted a woman's right to choose her mate and placed her at risk of contracting a sexually transmitted disease such as HIV/AIDS.

Women made up approximately 75 percent of the agricultural work force and have become active in urban small businesses. Nonetheless, the average monthly income of women was approximately two-thirds that of men, and women held only six percent of land titles. Women had difficulty moving into nontraditional fields, were promoted more slowly than men, and were laid off more. Societal discrimination was most apparent in rural areas.

A growing number of women's organizations were active in the field of women's rights, including FIDA, the National Council of Women of Kenya, the National Commission on the Status of Women, the Education Center for Women in Democracy, and the League of Kenyan Women Voters. The Women's Political Caucus continued to lobby over matters of concern to women and to increase the influence of women on government policy.

## Children

Until January when the Government instituted tuition-free primary education, students paid both tuition and other costs, which placed a heavy burden on most families. The Government's Free Universal Primary Education Program that began in January raised school enrollment from 5.9 million to over 7 million, and most persons welcomed tuition-free education; however, the policy also resulted in overcrowded classes because of increased enrollment, insufficient teachers, and inadequate budget. In January, the Government introduced a new syllabus that incorporated human rights, citizenship, and good governance for students in Standard One, Standard Five and Form One.

Although the law mandates compulsory schooling for all children through grade 12, there was a very high dropout rate, in part because of previously large educational expenses and the practice of children working to help support their families. There also was a shortage of schools. According to a 2001 media report, approximately 8,000 girls dropped out of school each year due to pregnancy, and an estimated 4 million children between 6 and 14 years of age did not attend school. Levels of education for boys and girls differed widely. Although the number of boys and

girls in school roughly 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. Seventy percent of illiterate persons in the country were female.

Corporal punishment of students was formally banned in 2001; however, it did not cease completely in practice. A teacher who beat a 13-year-old student to death at Nyamarambe Primary School, Kehancha Division in 2002 for failing a math test was not located by year's end.

The health care system for school children, which once provided periodic medical checkups and free milk, was defunct. In 2001, Parliament passed the Children's Bill, which has provisions to ensure children's welfare and provide them with basic rights; however, many of its provisions were not implemented by year's end.

Child rape and molestation continued. There were repeated reports of molestation or rape of children by schoolteachers, mostly in rural areas, and there were frequent press reports of rapes of young girls by middle-aged or older rapists. For example, in February, a police constable was arrested for the defilement of a 14-year-old girl; the constable was awaiting trial at year's end. Legally, a man does not "rape" a girl under age 14 if he has sexual intercourse with her against her will; he commits the lesser offense of "defilement." The penalty for the felony of rape can be life imprisonment, while the penalty for defilement was up to 5 years' imprisonment; the law does not stipulate a minimum sentence for rape. Men convicted of rape normally received prison sentences of between 5 and 20 years, plus several strokes of the cane. Child marriages were a problem, and the issue frequently was highlighted in newspapers.

FGM was practiced commonly on young girls by certain ethnic groups, particularly in rural areas (see Section 5, Women).

Child prostitution was a major problem in Nairobi and Mombasa, often connected with the tourist trade. Child prostitution has grown considerably due both to economic contraction and to the increase in the number of children orphaned because of the spread of HIV/AIDS. According to the International Labor Organization (ILO), approximately 30,000 girls under the age of 19 years were engaged in prostitution in the country.

Child labor was a problem (see Section 6.d.).

Economic displacement and the spread of HIV/AIDS continued to affect the problem of homeless street children. The number of Nairobi's street children was more than 60,000 in 2000, an estimated 20 percent increase from 1999. In 2002, the East African Standard reported on the growing problem of "street families," where entire nuclear families were living on the street due to a failing economy. The Standard also reported that there were an estimated 250,000 children living on the streets in urban areas--primarily Nairobi, Mombasa, Kisumu and Nakuru--a figure that it said 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 the police and within the juvenile justice system. They were held in extremely harsh conditions in crowded police station cells, often without toilets or bedding, with little food, and inadequate supplies. They often were incarcerated with adults and frequently beaten by police (see Section 1.c.).

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.

#### Persons with Disabilities

Government policies do not discriminate against persons with disabilities in employment, education, or in the provision of other state services; however, persons with disabilities frequently were denied drivers' licenses. There were no mandated provisions of accessibility for persons with disabilities to public buildings or transportation. KTN broadcast some news programs in sign language.

A 2001 report by the African Medical Research Foundation of Kenya (AMREF) found a high prevalence of rape of persons with disabilities.

#### National/Racial/Ethnic Minorities

The country's population was divided into more than 40 ethnic groups, among which there were frequent and credible allegations of discrimination, as well as frequent interethnic violence. In general, each ethnic group had a

distinct primary language and was concentrated in a distinct region; however, the languages of some groups were very similar to the languages of related ethnic groups. In private business and in the public sector, members of virtually all ethnic groups commonly discriminated in favor of other members of the same group when able to do so. Neighborhoods in large cities tended to be segregated ethnically, although interethnic marriage has become fairly common in urban areas. Political cleavages tended to correlate with ethnic cleavages.

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.

Ethnic-regional differences continued to pose obstacles to political and economic liberalization. Members of former President Moi's Kalenjin ethnic group (a coalition of nine small ethnic groups) and other traditionally pastoral Nilotic ethnic groups were represented disproportionately and held key positions in the previous Government, the former ruling KANU party, the GSU, and the Presidential Escort. Many members of these groups appeared to believe that economic and political liberalization would likely harm their groups and favor other groups. The Kikuyu and the closely related Kamba, Meru, and Embu groups make up more than one-third of the country's population; members of these groups dominated much of private commerce and industry and have tended to support opposition parties. The Kikuyu, the largest, best-educated, and most prosperous ethnic group, dominated the country under its first president, Jomo Kenyatta, a Kikuyu. The Kikuyu remained the largest in population and the strongest economically because of their culture's emphasis on entrepreneurship; however, the Kikuyu were less dominant than in previous years.

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

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 of the country. These measures, they claimed, hampered their access to education and employment opportunities, resulting in the impoverishment of their community, which numbered about 200,000 in the country.

In 2002, under judicial pressure, the Government released the "Akiwumi Report" on ethnic clashes between 1991 and 1998. The report indicted public officials from petty policemen to senior officials and cited political factors as the primary cause of ethnic violence that resulted in more than 1,000 deaths during the 1990s, disrupted two general elections, and displaced hundreds of thousands of persons. The report detailed a pattern of local authorities failing to act on warnings of impending violence, failing to intervene to stop violence while it was occurring, and failing to pursue known perpetrators. It also accused senior officials of giving inflammatory speeches in volatile areas and in some cases, financing persons responsible for violence. The Attorney General claimed that the report was biased, and some opposition leaders claimed it had been changed to obscure the role of the State House; however, the report largely was recognized as a significant document.

Attacks and revenge counterattacks continued between ethnic groups throughout the country, resulting in an average of 50 to 75 deaths per month. Significant conflict occurred between ethnic Pokots and Marakwets, between Pokots and Turkanas, between Turkanas and Samburus, between Maasais and Kisiis, between Orma and Pokomos, between Boranas and Somalis, and among various Somali clans. Many factors contributed to interethnic conflicts, including the proliferation of guns, the commercialization of traditional cattle rustling, the weakening of state authority, the emergence of local militia leaders, 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.

On January 17, raiders attacked a homestead in Molo, killing one man, injuring several others, and torching 30 homes; the raiders escaped with a number of cattle, sheep, and goats. Although the raid lasted throughout the night, police reportedly did not respond until morning.

It was unknown whether any action was taken against the perpetrators of numerous ethnic attacks involving Kissi, Maasai, Turkanas, Pokot, Boranas, Samburu, Orma, Pokomo, and other ethnic groups in 2002 and 2001.

The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only group whose members were required to carry an additional form of identification to prove that they were citizens. The continued presence

of and at times criminal activities by Somali refugees have exacerbated the problems faced by citizens of Somali ethnicity (see Sections 2.c. and 2.d.).

There was widespread resentment among citizens of African ethnicity toward Asians living in the country. The Asian community constituted between 0.5 and 1 percent of the total population and consisted of second and third generation Asians with full citizenship and a smaller body of recent immigrants. Many persons of African descent resented 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 saw Asians as taking jobs and commercial opportunities away from Africans. The involvement of some Asians in corrupt activities along with government officials further fueled popular resentment. Politicians, both opposition and ruling party, from time to time appealed to majority prejudices by attacking Asian citizens, accusing them of exploiting and usurping the natural inheritance of African citizens.

## Section 6 Worker Rights

### a. The Right of Association

The law provides that all workers 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. Workers employed in EPZ firms no longer faced dismissal if they joined unions (see Section 6.b.).

The law provides that as few as seven workers may establish a union if the objectives of the union do not contravene the law and no union was representing the employees already. Unions must apply to and be granted registration by the Government. The Government also may deregister a union, but the Registrar of Trade Unions must give the union 60 days to challenge the deregistration notice. An appeal of the Registrar's final decision may be brought before the High Court. In May, the University Academic Staff Union was registered after a 10-year battle.

There were 42 unions representing approximately 600,000 workers, approximately one-third of the country's formal-sector work force. All but 5 of these unions, representing approximately 300,000 workers, were affiliated with the one approved national federation--the Central Organization of Trade Unions (COTU). The largest non-COTU union was the 240,000-member Kenya National Union of Teachers (KNUT).

Frances Atwoli, the leader of the Agriculture and Plantation Workers Union and Secretary General of COTU pledged to end corruption within the union. In 2001, Atwoli removed the provisions in COTU's constitution that grant seats on COTU's board to government and ruling party officials and reasserted COTU's leadership role on behalf of workers; however, most union activity took place at the shop steward level and not at the industrial level where most labor-related decisions were made.

A tripartite Task Force on Labor Law Reform was revising the labor law to ensure that it incorporates the ILO core labor standards and is consistent with the African Growth and Opportunity Act.

The law prohibits employers from intimidating workers but some anti-union discrimination still exists. Employees wrongfully dismissed for union activities can take their cases to the Industrial Court, and many have been awarded damages in the form of back pay--reinstatement was not a common remedy. More often aggrieved workers have found alternative employment in the lengthy period prior to the hearing of their cases.

The COTU was affiliated internationally with both the Organization of African Trade Union Unity and the International Confederation of Free Trade Unions. Many of its affiliates were linked to international trade secretariats.

### 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. Both the Trade Disputes Act and the charter authorize collective bargaining between unions and employers. 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.

In 2001, the Union of Kenyan Civil Servants (UKCS), banned in 1980, was reregistered and in 2002, national UKCS officials, the majority of whom were civil service retirees, were elected to 5-year terms. The UKCS has the right to negotiate the terms and conditions of civil service employment, and it submitted a collective bargaining agreement to the Government during the year. Approximately 40,000 civil servants have joined the UKCS, which conducted awareness seminars and recruitment drives throughout the year. During the year, the UKCS filed suit against the Government to reclaim assets the former government repossessed when the UKCS was banned.

Following a series of strikes from February through March, EPZ workers were permitted to join a union. During the year, the Tailors and Textile Union began organizing workers in the EPZ for the first time and raised membership from 5,000 to 30,000. The TTWU also negotiated a collective bargaining agreement for more than 10,000 employees in 9 factories of the Athi River EPZ.

The law permits workers to strike with some restrictions. The workers must submit a letter to the Minister of Labor and then 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, like their private sector counterparts, 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 21-day period, the Minister may mediate the dispute, nominate an arbitrator, or refer the matter to the Industrial Court, a body of up to five judges appointed by the President, for binding arbitration. Once a dispute is referred to mediation, fact-finding, or arbitration, any subsequent strike is illegal. Moreover, the act gives the Minister of Labor broad discretionary power to determine the legality of any strike.

During the year, the Minister of Labor declared strikes by EPZ workers illegal; however, he subsequently allowed them to join a union. In 1997, the KNUT called a nationwide strike, which the Government quickly settled with promises of pay increases of more than 200 percent spread over more than 5 years. The Government's failure to implement the second of the promised pay hikes resulted in a 1998 KNUT strike, which the Government declared illegal. Negotiations and strikes continued on and off (particularly around election time) for years with no payments ever being made, but with new promises to pay over 10 years. However, on May 1, President Kibaki ordered a re-negotiation to shorten the payment timeframe, and on July 1, the Government made the first payment, with the remainder to be spread over 6 years, rather than 10.

During the first 5 months of the year, there were 111 strikes, primarily in the EPZs; some of the strikers used violence to keep other workers off the job. Police sometimes used excessive force to disperse strikes. For example, during an April 2 demonstration in Namanga by taxi operators, anti-riot police reportedly shot and killed a demonstrator. Unlike in the previous year, there were no reports that the Government fired or replaced striking workers.

With the exception of the Factories Act, all labor laws, including the right to organize and bargain collectively, 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. Until a series of strikes by EPZ workers during the year, such workers faced dismissal if they joined unions.

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

The Constitution proscribes slavery, servitude, and forced and bonded labor, including by children; however, there were reports that such practices occurred (see Section 6.d.). Under the Chiefs' Authority Act, a local authority can require persons to perform community services in an emergency. The ILO Committee of Experts has found that these and other provisions of the law contravene ILO Conventions 29 and 105 concerning forced labor. The law remains in effect; however, there was no attempt to use the law during the year. Some observers alleged that prison officials used free prison labor for personal profit (see Section 1.c.).

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

Child labor was a problem. The employment in industry of children under the age of 16 is illegal; however, 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. Ministry of Labor and Human Resources Development officers nominally enforced the minimum age statute, and the Government worked closely with the COTU and the ILO's International Program for the Elimination of Child Labor to eliminate child labor.

During the year, the Government initiated its Free Universal Primary Education Program, which has resulted in the return to school of approximately 750,000 children who formerly were working; more than 1 million children were believed to still be working. The Central Bureau of Statistics estimated in 2001 that approximately 18 percent of working children had no formal education. The problem has received considerable media attention for several years.

Children often worked as domestic servants in private homes, and during the year, there were reports of abuse of children serving as domestic employees. There were many instances of children working in the informal sector, mostly in family businesses. Children usually assisted parents on family plots rather than seek employment on their own. A significant number of workers on tea, coffee, sugar, and rice plantations were children, who usually worked in family units. However, deteriorating economic conditions and the effects of the HIV/AIDS pandemic have given rise to more child labor in the informal sector, which is difficult to monitor and control. In addition, a large number of underage children were active in the sex industry (see Section 5) and in the salt harvesting industry along the coast. 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 Child Labor Division in the Ministry of Labor and Human Resources Development was established and the Children's Act enacted to combat the worst forms of child labor. The Division assisted in completing the National Child Labor Policy Paper and domestication of ILO Convention 182. The labor inspection report has been revised to include child labor, a practical guide to labor inspection was developed, and 104 labor inspectors and 65 occupational health and safety officers have been trained in the detection and reporting of child labor. More than 8,000 children working in commercial services, agriculture, domestic service, building and construction, and forestry sectors have been taken out of employment and sent to school; approximately 2,000 of the 4,300 children found to be working in hazardous conditions had been removed from hazardous work. Many NGOs also were active in this area and assisted in the return to school of child laborers. During the year, there were reports, especially in rural areas, that children were loaned out as workers to pay off family debts.

#### 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; however, in many industries the minimum wage equaled the maximum wage. On May 1, President Kibaki announced a 12 percent increase in the minimum wage for workers in urban areas and a 50 percent increase for workers in rural areas; the inflation rate was 10 percent. These increases were implemented immediately. The lowest minimum wage was \$47 (3,251 Kenyan shillings) per month in the largest urban areas and \$39 (2,930 Kenyan shillings) in rural areas. The minimum wage was insufficient to 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 those not covered. For instance, the average covered worker received \$97 (7,303 Kenyan 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 have a shorter workweek. As was the case with respect to minimum wage limitations, the law specifically excludes agricultural workers. An employee in the nonagricultural sector was entitled to 1 rest day per week. There also were 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 2-week period for night workers not exceed 120 hours (144 hours for night workers). The Ministry of Labor and Human Resources Development was responsible for enforcing these regulations, and there were few reports of violations. Workers in some enterprises claimed that employers forced them to work extra hours without overtime pay.

The Factories Act sets forth detailed health and safety standards; however, a 1991 decree by the Minister of Finance excludes EPZs from the Act's 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; however, the DOHSS lacked statutory authority to inspect factories in the EPZs. The Permanent Secretaries for Labor and Finance have begun the revocation process for the 1991 decree. The increased attention on workers' rights in the EPZs was also adding pressure for change. Labor and NGOs continued to criticize health and safety conditions in the EPZs and around the country. For example, during the year, the unions have highlighted problems of sexual harassment in the EPZs since a large majority of the workers there are women. In addition, NGOs continued to highlight problems in the cut flower farming sector. During the year, the KHRC sponsored a national "Flower Week" to call attention to problems on flower farms, including the use of hazardous pesticides and fertilizers without

adequate protection, low wages, and casualization (hiring long term "seasonal workers" without providing any benefits or job security). The Kenya Flower Council, established in 2002, a joint group of employers, KHRC, and the Ministry of Labor, has developed a code of ethics to deal with these alleged violations of workers rights. The DOHSS has opened an office in Naivasha, where the majority of flower farms are located, to ensure compliance with occupational health and safety regulations.

The 65 DOHSS health and safety inspectors may issue notices enjoining employers from 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 DOHSS hired additional inspectors, to include medical doctors. The law stipulates that factories that employ at least 20 persons have a health and safety committee with representation from workers. However, according to the Government, less than half of even the very largest factories had instituted health and safety committees. Workers were not forced by law to remain in hazardous conditions; however, many would be reluctant to remove themselves because of the high unemployment problem and the resulting risk of loss of their job.

Foreign workers, both legal and illegal, were covered by the same legislation and work rules as citizens.

#### f. Trafficking in Persons

The law does not specifically prohibit trafficking in persons, and there were reports that persons were trafficked to, from, or within the country, particularly women and children. However, traffickers could be prosecuted under laws that prohibit child labor, the transportation of children for sale and the commercial exploitation of children, and the detention of females against their will for the purposes of prostitution. To date, none of these laws has been used to prosecute traffickers.

Women were trafficked to Lebanon and other Middle Eastern countries for labor, and children were often trafficked to Uganda to work. Women from Eastern Europe and Asia were trafficked through the country to western countries. Child prostitution was a major problem (see Section 5).

In previous years, there were unconfirmed reports that citizens were trafficked to Saudi Arabia under the guise of employment opportunities, and that South Asians were trafficked into the country to work in sweatshops. During the year, traffickers lured citizens to the Middle East under fraudulent work programs that resulted in indentured servitude, document confiscation, and inhumane labor conditions.

The Government did not have any programs that specifically targeted trafficking. Several NGOs provided services that could benefit persons who were victims of trafficking.