KENYA ASSESSMENT

April 2000

Country Information and Policy Unit

I. SCOPE OF DOCUMENT

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

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

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

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

1.5 The assessment will be placed on the Internet, http://www.homeoffice.gov.uk/ind/cipu1.htm. An electronic copy of the assessment has been made available to the following organisations:

Amnesty International UK
Immigration Advisory Service
Immigration Appellate Authority
Immigration Law Practitioners' Association
Joint Council for the Welfare of Immigrants
JUSTICE
Medical Foundation for the care of Victims of Torture
Refugee Council
Refugee Legal Centre
UN High Commissioner for Refugees

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II. GEOGRAPHY.

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

2.2. Kenya is made up of over forty different ethnic groups ranging in size from a few hundred to more than a million members. At mid-1996 the population was officially estimated at 31,806,000 however, provisional results of the 1999 population census put the population at 28.7 million. On a linguistic and cultural basis, the people have been divided into four broad groups; Bantu, Nilotic, Nilo-Hamitic (Paranilotic) and Cushitic. Persian and Arab influence in the coastal area is reflected in the Islamic culture. About 15% of the population live in urban areas, mostly in Nairobi and Mombasa. The towns also contain the majority of the non-African minorities which, according to figures from the 1989 census, were made up of approximately 89,185 Asians, 34,560 Europeans, and 41,595 Arabs. Both Kiswahili and English are used on a daily basis and Kikuyu and Luo are widely understood. The Luo and Luhya were the traditional inhabitants of the Lake Victoria basin. The Luhya consists of sixteen groups, and, like the Kalenjin, which consists of a number of distinct Nilotic ethnic groups that share the same linguistic and cultural traditions, the term Luhya is a creation of the colonial period. Most Kalenjin are semi-nomadic pastoralists and traditionally did not practice agriculture. The Kikuyu, of the Bantu-language group, are Kenya's largest ethnic group. Most of the population hold traditional African beliefs, although there are significant numbers of African Christians **(see paragraphs 5.56 - 5.58)**. **[1][26][81]**

The Economy

2.3. Agriculture is the main occupation and source of income of the majority of the people. In 1997 the agricultural sector (including forestry and fishing) contributed 25% of the gross domestic product. The large agricultural sector provides food for local consumption. The tourism was second to tea as the largest single source of foreign exchange. About 70% of the working population made their living on the land in 1999, with more than one half of total agricultural output being subsistence production. The manufacturing and service sectors are substantially more important than would normally be expected in a country of Kenya's income level. **[1][2]**

2.4. At the end of March 1999 Kenya's domestic debt stood at 151,800 million Kenyan shillings. The money borrowed is needed to pay public servants. Some progress has been made in solving some of Kenya's economic problems. Tight monetary policies have helped control inflation, productivity levels have improved, government expenditure has been restrained. The privatisation of unprofitable state owned companies have taken place with more planned. Challenges to the countries economic improvement remain, such as corruption, the need for strict monetary control of government expenditure and the country's neglected infra- structure. Pressure on the land, over population, unemployment and the lack of alternative employment for the growing number of landless remain serious long-term difficulties. Following the suspension of International Monetary Fund (IMF) loans in August 1997, the government published the Statute Law Miscellaneous Bill, which proposed the establishment of an anti-corruption

authority. Civic unrest in mid-1997 and rains outside the usual seasonal patterns attributed to El Nino threatened both the tourism industry and foreign investment. The tourism authorities promised urgent action and the EU is to provide financial support to help promote the industry. Both bank workers and teachers came out on strike during 1998 over worsening conditions, but the government remained firm on their position. In May 1999 the Kenyan government waived the visa requirement for tourists from some European and American countries to boost the tourism industry, which the Kenya Tourist Board announced was paying dividends. **[1][45][62][94][205][208]**

2.5. In November 1998, a report was released by the Kenyan Minister of Planning and National Development which stated that thirteen million Kenyans were living in abject poverty and cannot afford the basic necessities of life. In June 1999, the Kenya Times stated that threats of political violence, hostile media campaigns and growing opposition hostility against the government all contributed to the worsening economic situation in the country. On 22 June 1999 eight MPs from northern Kenya asked the government to declare a state of emergency in the area due to the prolonged drought and magnitude of human suffering. The group called for the immediate airlifting of medical, relief food and other emergency supplies. In July 1999 the IMF spelt out its main condition for a multi-billion shilling loan to Kenya. The conditions were to clean up on corruption, improvements in economic management and speeding up the privatisation of key parastatals. The then Finance Minister, Francis Masakhalia, announced the conditions to parliament, on 15 July 1999. **[137][142][207][220]**

2.6 In January 2000 an IMF mission made a two-week visit to Kenya in January 2000. Talks centred on Kenya's balance of payments position, monetary policy and governance. Student leaders addressing a rally on 29 January 2000 warned the IMF to resume aid at its peril (see paragraph 4.26). On 3 February 2000 representatives of the Stakeholders Support Group which is opposed to the resumption of aid to Kenya met the IMF team. In a press statement the group said that the government did not deserve aid because it has made "political survival rather than economic recovery and poverty reduction it's priority". In March 2000 eight World Bank executives made a two-day visit to assess progress made by the government over the Bretton Woods Institutions conditions for resumption of aid. On 28 March 2000 it was announced that a team of World Bank officials were expected to return in early April 2000 with a view to finalising a programme on aid resumption. The bank's country director, Harold Wackman, said that aid resumption would resume by mid year if all parties maintained the progress achieved during the previous eight months. **[101][103][165][181][250]**

Famine

2.7 In February 2000 Kenya sent out an international appeal for 5.56bn shillings to combat famine. The request, made by the Head of the Public Service, is contained in a report to donor organisations and foreign governments outlining the emergency facing most parts of the country. The worst hit provinces include Eastern, North Eastern, Coast, Rift Valley, and parts of Central. Insecurity in the border area between Turkana and Somalia is partly blamed for the famine as this has rendered good grazing areas inaccessible. **[158]**

III. HISTORY.

3.1. Kenya was formerly a British colony (inland) and protectorate (coastal area). Subsequent white settlement met with significant armed resistance by 1914 and by the early 1920s some

African political activity had begun to be organised. By the 1940s the white settler farmers achieved considerable prosperity. However, their African counter-parts were subjected to increasing government controls and soaring price inflation, causing a mood of simmering discontent amongst the African population. **[1]**

3.2. The first significant African nationalist organisation was the Kenya African Union (KAU) formed in 1944, and supported mainly by the Kikuyu. In 1947 Jomo Kenyatta, a Kikuyu, became KAU's President. During 1952 a campaign of terrorism against white settlers was launched by the Mau Mau, a predominantly Kikuyu militant secret society, and a state of emergency was declared by the British authorities in October 1952. KAU was banned in 1953, and Kenyatta was imprisoned for his alleged involvement in Mau Mau activities. All political activity was proscribed until 1955; nevertheless during this period, two Luo political activists, Tom Mboya and Oginga Odinga came to prominence. The state of emergency was rescinded in January 1960, after which Kenyatta was released during 1961. General elections were held in May 1963 and Kenya was granted internal self-government in June, before becoming independent within the Commonwealth on 12 December 1963. It became a republic exactly one year later. Kenyatta, then leader of the Kenya African National Union (KANU), was appointed Prime Minister in June 1963 and became the country's first President in December 1964. **[1][26]**

3.3. By 1965 a clear division had emerged between the conservative wing of KANU under Tom Mboya and the more radical group around Oginga Odinga, leading to Kenyatta removing Odinga from his party post in March 1966. Odinga left KANU to form a new opposition party, the Kenya People's Union (KPU). In December 1966 Kenya's two parliamentary chambers were merged to form a unicameral National Assembly. By 1969 there were growing factional divisions within all levels of KANU and signs of dissatisfaction amongst politicians of the trend towards an economically and tribally divided country. In July 1969, Tom Mboya, a cabinet minister and Secretary General of KANU was assassinated, sparking civil unrest and leading to the banning of the KPU. Political discontent was heightened in March 1975 when the outspoken and popular politician J.M. Kariuki was also assassinated. **[1][25]**

3.4. On the death of Kenyatta in August 1978 the presidency passed to Daniel Arap Moi, who began a programme to purge Kenya's corrupt bureaucracy and in December all political prisoners were released. In June 1982 the National Assembly officially declared Kenya a one-party state. A series of political detentions and increasing press censorship were followed by an attempted coup in August 1982, the aftermath of which resulted in a great number of deaths. The official death toll was given as 159, but unofficial sources asserted that the true total was much higher. During 1986, an unofficial group known as "Mwakenya" emerged in opposition to Moi's presidency **(see also paragraph 5.48)**. In August 1986 KANU approved an open 'queue-voting' system. This was to replace the secret ballot in the preliminary stages of a general election, but it faced strong opposition from church leaders on the grounds that it would discourage voting by church ministers, civil servants and others whose political impartiality was necessary for their work. Constitutional amendments adopted in December 1986 increased the power of the President and reduced the independence of the judiciary. **[1][25]**

3.5. International criticism of Moi's government was intensified during 1987 amid further allegations of human rights abuses in Kenya. In October and November 1987, civil unrest flourished but in spite of this, President Moi was returned unopposed in March 1988 for a third term of office. Potential candidates who were unpopular with Moi's government, such as Oginga Odinga, were excluded from seeking election. In July 1988, the President increased his power

over the judiciary, allowing him to dismiss judges at will and increase certain periods of detention. In June 1989, in the face of growing international criticism over human rights abuses, President Moi released all political prisoners who were being detained without trial and granted an amnesty to dissidents in exile. **[1]**

3.6. During February 1990 the Minister of Foreign Affairs and International Co-operation, Dr Robert Ouko, died in suspicious circumstances, which led to anti-government riots amid allegations that the Government had been involved in his death. As a consequence all demonstrations were banned, and the British police were invited to investigate Ouko's death. The result of the investigation prompted a judicial enquiry into the affair. May 1990, saw the formation of a broad alliance of intellectuals, lawyers and church leaders under the leadership of the former cabinet minister Kenneth Matiba, which sought to pressurise the Government into legalising political opposition. This prompted Moi to order the arrest of Matiba and several other prominent members in July 1990. Serious rioting ensued in Nairobi and its environs, which resulted in the deaths of more than 20 people and the arrest of more than 1,000 others. In November 1990, Amnesty International made allegations of human rights abuses on prisoners detained since July. By the end of December 1990, despite the abolition of the "queue voting" system, Moi still rejected popular demands for the introduction of multi-party politics. **[1][25][26][54]**

3.7. In August 1991 six opposition leaders, including Oginga Odinga, formed a new political movement, the Forum for the Restoration of Democracy (FORD), which was outlawed by the Government, but continued to operate. In September 1991, the judicial enquiry into the death of Dr Ouko **(see paragraph 3.6)** concluded that he had been murdered. As a consequence, the Minister of Industry, Nicholas Biwott, was dismissed in November 1991, amid strong suspicions that he had been implicated in the assassination. A suspect was eventually charged with murder but acquitted in 1994. November 1991 also saw several members of FORD arrested prior to the start of a pro-democracy rally in Nairobi (banned by the government), which prompted international condemnation of the Kenyan authorities. Aid to Kenya, by international donors, was suspended indefinitely, pending the acceleration of economic and political reforms, and the improvement in Kenya's human rights record. In the face of international pressure, a KANU conference, chaired by Moi, resolved to permit the introduction of a multi-party political system, in December 1991. Several new political parties registered from the beginning of 1992. **[1][19][25][26][54]**

3.8. The first part of 1992 saw an outbreak of tribal clashes in the western part of Kenya, on the borders of Rift Valley, Nyanza and Western Provinces **(see paragraph 5.26)**. In March 1992 the Government banned all political rallies, purportedly in order to suppress the unrest, and restrictions were placed on the press. The Government lifted the ban after a two-day general strike in April organised by FORD. Following a split in the organisation of FORD in August 1992 the opposing factions registered as separate parties in October 1992. FORD-Asili, led by Matiba, and FORD-Kenya, led by Odinga. The first multi-party presidential and legislative elections took place in December 1992. Moi was elected to a fourth term of office as President winning 36.35% of the votes. Votes were cast predominately in accordance with ethnic affiliations. The opposition alleged gross electoral irregularities. However, in January 1993 a Commonwealth monitoring group, whilst accusing the Government of corruption, intimidation and incompetence, stated the outcome of the elections "reflected the will of the people". **[1][26]**

3.9. During 1993 several opponents of the Government were arrested for participating in an illegal demonstration. During May and June 1993 the spiritual leader of the banned radical-fundamentalist Islamic Party of Kenya (IPK), Sheikh Balala, was detained on three separate occasions and charged with sedition, which led to serious rioting by IPK members in September 1993 **(see paragraphs 5.24 - 5.33)**. Two people were killed during the violence. Tribal clashes continued, which were most acute in the Rift Valley, prompting allegations that the Government was covertly inciting ethnic violence to discredit political pluralism. The provision of international aid was resumed in November 1993 in response to the Government's progress in implementing reforms. **[1][19]**

3.10. During 1994, disagreement and disunity was commonplace throughout the opposition parties. Factionalism within the groups continued to undermine efforts to present a cohesive challenge to Moi and KANU. During the year the Government refused to recognise several trade unions. Many of the workers involved in the protest strikes that subsequently took place were dismissed. However, in May 1995 leading opposition activists formed a new political party, Safina, under the chairmanship of Mutari Kigano, a lawyer specialising in human rights. Dr Richard Leakey, a prominent white Kenyan, was appointed Safina's Secretary-General. The Moi administration however rejected Safina's application for official registration in October 1997, having left its registration in limbo since 1995 **(see paragraphs 5.41 - 5.43)**. Further condemnation of Kenya's human rights record continued. In response a human rights committee was inaugurated in July 1996 to investigate alleged abuses by the authorities. During July and September 1996 President Moi announced, and subsequently reiterated, that constitutional reforms, advocated by foreign donors and opposition groups, would not be considered prior to the next legislative and presidential elections in late 1997. During 1996/1997, a large number of opposition MPs formally associated themselves with the National Convention Executive Council (NCEC), a group of NGOs, church leaders and politicians campaigning for constitutional reform. **[1][2][20][173]**

3.11 In April 1997, the NCEC held a conference after which a list of demands for constitutional and legislative reforms were published, with threats of mass civil action if the demands were not met in time for the elections. Countrywide protests concerning the reforms were organised by the NCEC on 7 July 1997, resulting in excessive force being used by the police to disperse the crowds. Approximately 16 people were killed and many more injured, which resulted in international condemnation of the authorities. As a conciliatory move in August 1997, two draft Bills were published in an attempt to reform repressive pieces of legislation. **[1][9][22]**

3.12 Further violence erupted in the coastal region of Mombasa during August 1997, which resulted in the deaths of approximately 67 people, widespread destruction of property and the arrest of some 450 people. Many thousands of people were also displaced. Several opposition party politicians and prominent KANU members were amongst those arrested. Allegations were made that the violence was initiated in order to gain a political advantage in the run up to the elections **(see paragraphs 5.33 - 5.35)****. [22][56]**

3.13 On 7 November 1997, Parliament and President Moi approved important reform Bills, one of which removed the principal legislation used to harass the opposition. The Public Order Act was reformed to allow political meetings without requiring a licence, provisions for detention without trial were repealed and sedition laws were replaced. The Constitution was changed to allow for a coalition government and a law passed to establish a Constitutional Review

Commission. Violent outbursts continued, however, in the run-up to the elections. Following passage of the 1997 reforms, the Government acted on pending and long overdue political party registration applications, increasing the number of registered political parties from 12 to 27 by the time of the elections in December 1997. **[2][22][159][183][200][237]**

The December 1997, Presidential and Parliamentary Elections.

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

3.15

PRESIDENTIAL RESULTS		
Daniel Arap Moi	2,445,801	40.64%
Mwai Kibaki	1,895,527	31.49%
Raila Odinga	665,725	11.06%
Michael Wamalwa	505,542	8.40%
Charity Ngilu	469,807	7.81%
Martin J. Shikuku	36,302	0.60%

NATIONAL ASSEMBLY COMPOSITION	
KANU	113
Democratic Party (DP)	41
National Development Party (NDP)	22
FORD-Kenya	18
Social Democratic Party (SDP)	16
Safina	6
FORD-People	3
FORD-Asili	1
Kenya Social Congress	1
Shirikisho	1

The above table refers to the composition of the National Assembly immediately following the 1997 elections and includes the 12 nominated members appointed by the **president (see paragraph 4.2)**. **[1][41]**

3.16 In January 1998, Democratic Party leader, Mwai Kibaki lodged a petition in the High Court challenging the validity of the December 1997 elections, and the election of President Moi. In July 1999 the High Court dismissed Mr Kibaki's petition on the grounds that he had failed to comply with a legal requirement to serve a copy of the petition on the President personally, despite acknowledging the factual accuracy of Mr Kibaki's claim that presidential security had consistently denied him access to President Moi. In December 1999 the Court of Appeal upheld the High Court's decision on the same grounds. The 1997 elections were overseen by a group of

local organisations and international observers. The observers concluded that whilst the elections were imperfect, the vote broadly reflected the popular will. Three NGOs, the Institute for Education in Democracy, the Catholic Justice and Peace Commission and the National Council of Churches of Kenya (NCCK) launched a 260 page report on the 1997 elections. They blamed maladministration for the low turnout in certain parts of the country. **[2][22][79]**

IV INSTRUMENTS OF THE STATE.

A. Political system.

4.1. Kenya was a one-party state between 1969 and December 1991, when the Constitution was amended to legalise a multi-party political system. Political parties, organisations and associations are required to register under the Societies Act or be exempted from registering by the Registrar of Societies**.** 30 political parties are currently registered; the Government has however denied registration to a number of parties since 1992. Two political parties are currently awaiting registration, The United Democratic Movement and Saba Saba Asili; the latter has been waiting since 1997. Two organisations are currently banned, the February Eighteenth Resistance Army (FERA) **(see paragraph 5.45)** and the Islamic Party of Kenya (IPK) **(see paragraphs 5.44 - 5.47)**. While parties remain unregistered they are prohibited from participating in the political process. **[1][2][141][237]**

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

Current political situation.

4.3 In February 1999 President Moi reiterated his commitment to fight against corruption and stressed that those involved in corruption or condoning it would be prosecuted. In 1998, the National Development Party (NDP) began co-operating with KANU as a way of opening channels of constructive dialogue and to assist in finding solutions to national problems. Divisions emerged within the NDP over its new found co-operation with KANU leading to the resignation of the NDP's deputy leader Professor Geoffrey Ole Maloiy. Calls for NDP MPs to abandon their co-operation were rejected. In April 1999 NDP leader, Raila Odinga stated that the NDP had no plans to merge with KANU and reiterated that the NDP's co-operation with KANU was for the sake of constitutional reforms. **[112][175][179]**

4.4 During 1998 the arrest of top Treasury officials by the Kenya Anti-Corruption Authority (KACA) sparked a dispute between the then Director of the KACA, John Harun Mwau and Finance Minister, Simeon Nyachae. Charges against the officials were dropped pending an investigation and Mwau was suspended. Following an enquiry into his performance he was dismissed from office. **[43][44][64][85][201]**

4.5 In January 1999 a by-election took place in Makueni constituency (Eastern Province) following the death of the SDP MP who previously held the seat. The counting of votes was interrupted when the SDP disputed ballot boxes from 10 polling stations. The vote counting was marked by incidents of violence leaving two MPs beaten and in need of hospital treatment. KANU eventually won the seat. One of the MPs battered by the police said he would institute legal proceedings to seek redress. **[65][153][184]**

4.6 In January 1999 NDP leader, Raila Odinga, said that the party's planned leadership code of conduct bill, to be introduced in Parliament during 1999, is meant to bar corrupt people from being elected to public positions. Odinga said he did not expect any opposition against the bill. . The beginning of 1999 also saw the defection of a number of politicians to KANU. SDP MP Samuel Kiminza, and two SDP councillors defected to the ruling party on 5 February 1999, together with a FORD-K councillor. Following a Cabinet reshuffle on 18 February 1999, Simeon Nyachae the former Finance Minister resigned after being appointed to the post of Minister of Industrial Development. **[96][170][195]**

4.7 In April 1999, President Moi re-appointed George Saitoti as the country's Vice-President. Saitoti had previously served as Vice-President under Moi for nine years until the 1997 elections. The post of Vice-President had been vacant since the December 1997 elections. Professor Saitoti retains his post as Minister for Planning and National Development. On 6 April 1999 the High court suspended the entire Anti-Corruption Authority Board (KACA) including the recently appointed Director, Justice Aaron Ringera following an application by the suspended KACA board director, John Harun Mwau. Later on in April 1999, the Vice-President faced a Motion of no confidence in Parliament brought by Mbita MP, Otieno Kajwang. One of the main reasons behind the motion is Mr Kajwang's belief that Professor Saitoti cannot hold the office because he has not been cleared of his alleged involvement in the Goldenberg scandal **(see Annex D)**. The no-confidence motion failed in June 1999. On 19 July 1999 businessman Nassir Ibrahim Ali linked President Moi, Vice-President George Saitoti and Mr Joshua Kulei with the Goldenberg scandal. He claimed to be in possession of a letter signed by the President, which implicated him in the affair. The Attorney-General directed the Commissioner of Police to investigate the letter, meanwhile Mr Ali was deported to Dubai. On 28 July 1999 several MPs filed a motion of no confidence in the government. **[68][118][145][148][172][191][202][209]**

4.8 On 24 April 1999, Kenyan police fired in the air as running battles broke out between youths loyal to rival opposition leaders at a rally. Gangs supporting James Orengo (FORD-Kenya) and Raila Odinga (National Development Party) clashed at the start of a fundraising rally. The fighting started as Orengo supporters attempted to stop the fundraising rally by Odinga in Ugunja in western Kenya. On 26 April 1999, KANU increased its narrow majority in Parliament by winning two by-elections in seats previously held by opposition parties. KANU scored uncomfortable victories in the Tigania and Mumtomo constituencies in rural eastern Kenya, although polling was marred by opposition parties claims of vote buying and violence in which one opposition leader, Charity Ngilu of the Social Democratic Party, was injured. **[69][70][120]**

4.9 In June 1999 the Registrar of Societies decided not to register the United Democratic Movement (UDM) led by KANU MP's, Cyrus Jirongo and Kipruto Arap Kirwa. This prompted the party to appeal to the High Court to order its immediate registration. On 9 June 1999 former Ford-Kenya officials launched a new party called the People's Power Movement. Its interim

chairman is Mr Audi Ogada. It has not yet been registered. **[134][140][141]**

4.10 In June 1999, police raided the Attorney-General's Chambers and the Immigration Department in a crackdown on corrupt civil servants. They arrested 30 government officials and seized an unknown amount of money and volumes of documents. The move came four days after President Moi announced his Recovery Strategy. On 23 July 1999 President Moi appointed Dr Richard Leakey as head of the Civil Service. This was part of a big shake up at the top of the Civil Service, which also saw several top jobs going to the private sector. Dr Leakey and his team were given a mandate by the President to change the culture of corruption and inefficiency in the public service. The appointments were welcomed by Kenya's business and opposition leaders, as well as by international donors. The new head of the Civil Service said he had the full backing of the President. **[75][76][206][231]**

4.11 In July 1999 six councillors and two other people appeared in court charged with the murder of Githurai Councillor Charles Maina Njuguna in Ruiru in June 1999. The suspects included the Mayor and his deputy. The accused were remanded at the Kamiti Maximum Security Prison. In July 1999 Safina MP Paul Muite was arrested and charged with the theft of Sh31 million from a land-buying company in 1992. He was quick to claim that the charges were fabricated and was freed on a bond of Sh4 million. Muite linked the court case to his role in trying to unravel the Goldenberg case **(see Annex D)**. On 12 July 1999 Thirteen opposition MP's from the NDP said that they would oppose a planned no-confidence motion against President Moi, stating it was tribally motivated. On 17 July 1999 MP James Orengo (Ford-K) and two of his aides were arrested when they visited Kisumu Police station and demanded the release of more than 300 touts arrested in an earlier swoop. Mr Orengo and his team were detained when they stormed the police station. Amongst those held with the MP was the chairman of the unregistered People's Power Movement **(see paragraph 4.9)**. Mr Orengo was later moved to another police station to defuse tension. **[74][139][214][215][221]**

4.12 On 5 September 1999 the ruling party won both the Nithi and Saikago by-elections, in the latter KANU achieved a majority of just over 2,000 over the Democratic Party. The following day President Moi reshuffled his cabinet, and reduced the number of government ministries from 27 to 15, however the size of the cabinet was not reduced and not one minister lost his place. The reorganisation saw several ministries merged including Education with Science and Technology. The regional and East African Co-operation Ministry was scrapped. The head of the Civil Service welcomed the reductions. However, the reshuffle, which had been expected to result in far greater changes, was widely criticised in other quarters. Opposition MP's claimed that the pairing of ministers would lead to confusion and effect the economy. Even the Governments partners in the NDP were lukewarm about the changes, with General Secretary Charles Maranga saying that the president had his priorities upside down. The cabinet reshuffle was quickly followed by an announcement of government plans to retrench some 60,000 state employees as part of its Civil Service cut back programme. It was announced that trimming of the government's 225,916 workforce would commence in October 1999. **[234][239]**

4.13 At a press conference on 28 October 1999 NDP MP Peter Oloo Aringo claimed that President Moi's support for party leader, Raila Odinga, was abetting intimidation within the party ranks. Mr Aringo, who was accompanied by fellow MP Dr Shem Ochuodho, alleged that the president had ruined the party by lending Mr Odinga police and provincial administration support which the NDP boss used to intimidate party members, thus promoting a culture of

violence. The NDP leadership responded angrily to the two MP's criticism and threatened them both with expulsion. On 31 October 1999 Safina secretary-general Mwandawiro Mgangha resigned. Although party officials linked his departure to financial difficulties, observers believe it was inevitable following the departure of Richard Leakey and allegations that implicated party leader, Paul Muite, in the Goldenberg case **(see paragraph 4.11)****. [102][104][105]**

4.14 On 11 November 1999 the Kenyan Parliament voted to cut presidential powers for the first time when members supported a historical constitutional amendment by 185-0. The amendment carried gave parliament the power to appoint it's own Clerk of the House. The President previously appointed the powerful Clerk, a post that involves managing everything from the assembly's agenda to its budget. This had effectively given the President control over parliament. The result represented a humiliating set back for Moi who had been vocal in his opposition of the Bill. **[233]**

4.15 On 25 December 1999 Ford Kenya MP George Kapten died at his home in Kitale. Mr Kapten, MP for Kwanza, had been charged in September 1999 with defamation of a public official, and in November with subversion following comments regarding the Goldenberg scandal (see Annex D). Some opposition MP's expressed suspicion of foul play in the death of Mr Kapten and, following a post-mortem examination his family commissioned three independent tests to establish the cause of death. On 10 March 2000 11 opposition MP's called for a select committee to investigate the death of the Mr Kapten. This followed an announcement by the Kapten family that there were contradictions in the independent pathologist's reports. However, the two pathologists' who issued the reports denied the family's claims. **[2][187][88][130]**

4.16 On 16 January 2000 President Moi announced that a bill, seeking to bar sitting MP's from forming new political parties, would soon be tabled for debate in parliament. On 30 January 2000 Cabinet Minister Kipkalia Kones broke down in tears during a rally claiming his life was in danger after his supporters had fought with those of an assistant minister. He said that there was a plan to kill him and revealed that youths had stoned him three times at Siongiroi and attacked his official car. **[82]**

4.17 During February 2000 the Kenya Ports Authority (KPA) Chairman, Jonathan Mturi came under considerable verbal attack. Following changes of some senior personnel in January 2000 Mturi's critics, among them some 30 MP's, accused him of trying to eliminate managers not from the Coast Province. They accused Mturi of tribalism and called for him to be sacked. The head of the Civil Service defended the KPA Chairman, he said that the changes, which comprised of dismissals, retirement and transfers, were part of reforms to enhance efficiency. Coastal leaders have also pledged their support for Mturi. KANU Chief Whip, Sammy Leshore and his deputy Mohammed Shidiye were shot and left for dead on the evening of 21 February 2000. The attack occurred shortly after the vehicle in which the two MP's were travelling was involved in a collision. The gang stole 17,000 shillings from the pair who were later taken to hospital by a passing motorist. The incident led to renewed calls for a Bill to allow all MP's to carry guns, a similar motion debated in 1998 was lost. Also in February 2000 the Head of the Civil Service reaffirmed that the "Recovery Team" enjoyed the full backing of senior members of the government. He announced that public service salaries would be raised in the new financial year to attract and retain competent people. **[121][128][129][162][185]**

4.18 On 18 March 2000 three top NDP officials, including Secretary-General Charles Maranga, resigned. The three accused the party of having lost its original vision. In a quick response the NDP termed the resignations as "good riddance". The NDP said the three MP's had absconded their duties during the past 5 months and were, instead, working for rival parties. **[253]**

The Constitutional Review process

4.19 Since 1996 a broad coalition of NGO's and religious organisations has mobilised public opinion in support of a reform of the constitution to reduce the power of the presidency. In 1997 the National Assembly enacted the Constitution of Kenya Review Act. In August 1998, the terms of reference for a Constitutional Review Body were finally agreed. These provided for a body with two functions; the first to examine federal and unitary systems of government and recommend the best one; and second to make recommendations to improve the electoral system. Within this framework, it was agreed that the body would be charged with examining the systems of government to look at the composition and functions of the organs of state and to look at adequate checks and balances, and accountability. Provision was made for Constitutional Review Commission, National and District Fora for consultation. The Constitution of Kenya Review Commission Act 1998 was enacted in December 1998. This provided for the establishment of a 25-member commission within 30 days. Under the terms of the act the commission was to derive its members from political parties, 13 members; religious organisations, 3; the women's political caucus, 5; and the civil society, 4. The Act also stipulated that a person who has held office as a judge, an appellant judge or a lecturer in law for the past 15 years would chair the commission and that the Attorney General would serve as an ex-officio commissioner. **[2][13][168]**

4.20 Early in January 1999 the National Convention Executive Council (NCEC) stated it would set up a "people's constitutional review forum" to parallel the Review Commission. Members of the convention, which included opposition politicians and religious leaders, cast doubt on the Commission's ability to independently spearhead the reform process. Also in January 1999, 26 non-parliamentary political parties demanded more representation in the Constitutional Review Commission. In February 1999, with the review body still not set up, talks reached a sticking point over the nominees for the Constitutional Review Commission. In 1998 when the Constitutional Review Commission was set up KANU and opposition party leaders had agreed that KANU would have 5 seats and the combined opposition would have 8. However, KANU were now insisting on a majority of seats to reflect its majority in Parliament. Four of the appointing authorities to the Review Commission threatened to sue the Attorney General over the failure to reach agreement of the nominees. On 21 February 1999 the Catholic Archbishop of Nairobi publicly accused President Moi of deliberately derailing the constitutional review process. **[2][98][113]][186]**

4.21 In May 1999 President Moi proposed that the constitutional reform process be transferred to the KANU dominated National Assembly. Under this plan, Moi stated that at least two credible lawyers should be hired to draw up a new draft constitution to be tabled in Parliament for debate and adoption, arguing that the 4.5 billion Shillings set aside for the review process should instead be used to alleviate poverty. President Moi's statement met with angry reactions from a cross-section of civil leadership and the people. The NCEC stated it was clear that the President and KANU did not favour a democratic process, and a comprehensive reform of the constitution would make it impossible for KANU to rig elections. In June 1999 opposition MP James Orengo

called for mass action to block President Moi's plan to refer the stalled constitutional review process back to Parliament. Upon being faced with mass protests President Moi then suggested his plan was not final but was aimed at finding a solution to the stalemate. On Budget Day (10 June 1999) scores of people were injured when riot police, accompanied by hired groups of KANU youth, tried to stop a peaceful demonstration headed for Parliament to protest at the President's plan. Witnesses saw police beat dozens of protesters including Presbyterian clergyman Timothy Njoya. One of the men photographed beating Rev. Njoya was arrested on 15 June 1999. **[2][71][146][218]**

4.22 On 7 July 1999 police fired tear gas and rubber bullets at dozens of demonstrators seeking constitutional reform who were trying to block highways leading into Nairobi. The protests coincided with Saba Saba day (seventh of the seventh), a date upon which, since 1990, various opposition groups have come together to press the KANU government for greater constitutional reform. The same day about 10,000 Kenyans converged on the Kamukunji Stadium in Nairobi for an opposition rally calling for a new constitution. Addressing the gathering, legislators, led by James Orengo (Ford-K) called for a national strike. There were no signs of policemen during the rally. **[73][138][214][215]**

4.23 Although demands by religious leaders and NGO's to restart the constitutional review process mounted during the second half of 1999, Moi continued to insist that only the National Assembly was competent to review the Constitution. The constitutional review process therefore remained stalled at the end of the year, however on 15 December 1999 the National Assembly created a Parliamentary Select Committee to review the existing Act and help form a commission. This development, achieved with the support of the NDP, put KANU in the driving seat for the Constitutional review. The debate, which ultimately led to the establishment of a 27-member committee, was punctuated with drama and confusion. A number of opposition members boycotted the debate and instead attended a meeting called by religious leaders to discuss the review (see paragraph 4.24). As a consequence of most of the opposition's departure, the motion to establish a Parliamentary Select Committee, moved by NDP leader, was carried unanimously by the 112 MP's present. The motion carried specified which MP's would sit on the committee; the list comprised of 14 KANU and 13 opposition MP's and provided for the participation of representatives from all political parties with seats in the National Assembly. The following day a furious row ensued in parliament during which a number of the nominated MP's made it clear that they refused to serve on the contentious committee. MP's from DP, SDP, Safina, Ford People, and a section of Ford Kenya joined a chorus of protests leading to the speaker announcing that no MP would be forced to serve on the committee against their wishes. The House Business Committee was left with the power to fill vacancies without further endorsement of the National Assembly. Raila Odinga was then nominated as chairman of the Parliamentary Select Committee. **[2][131][243]**

4.24 Also on 15-16 December 1999 a meeting organised by religious leaders of all faiths took place at Ufungamano House in Nairobi. Its purpose was to work out how they will review the constitution. Delegates attending, including NGO's and opposition MP's, mandated the religious leaders to steer the process of establishing a people driven review, parallel to the Parliamentary one. **[2][244]**

4.25 Between 14 and 16 January 2000 there was violence on the streets of Nairobi as rival gangs in the constitutional debate battled it out. Scores of people were injured and both university and

private property was destroyed during daylong battles between students and hired thugs. One group was allied to the Parliamentary Select Committee, the other claimed to support Ford-K MP James Orengo. On 13 January 2000 Mr Orengo and fellow opposition MP Shem Ochuodho were attacked by four youths as they left the Professional Centre in Nairobi, police at the scene reportedly failed to intervene. The following day the same thugs, who were later identified as NDP activists, beat up an insurance clerk and innocent passer by outside parliament. On 18 January 2000 Mr Orengo was arrested and charged with inciting public violence, a charge relating that related to a statement he had made on 10 January 2000. The four youths alleged to have attacked him were set free the same day after recording statements. A section of political and religious leaders condemned the arrest and prosecution of Mr Orengo terming the move as "selective application of justice, which amounts to sanctioning violence by the state". Mr Orengo's arrest had followed a presidential directive to the Commissioner of Police to crack down on those who instigated the violence. A lawyer, Mirugi Kariuki criticised Moi's directives; he said that under the Constitution and Police Act, the Commissioner of Police was supposed to operate without taking directives from any powers or authority. The lawyer added that it was obvious from Moi's statements that he wanted Mr Orengo arrested and not his assailents. Meanwhile, opposition MP Njeru Kathangu claimed that Moi's directive was targeted at those opposed to the Parliamentary Select Committee. **[246][247][248][249]**

4.26 On 29 January 2000 a young people's lobby vowed to disrupt proceedings of the Parliamentary Select Committee that is reviewing the constitution. During a highly charged rally at the Kamukunji Grounds in Nairobi the young people and their leaders said they would go for a people-driven review. Student speakers threatened violence against any member of the committee in the city and revenge attacks against NDP aligned youths. The meeting witnessed the creation of Muungano wa Vijana Wazalendo (MVUWA), a youth movement which comprising of students, Mungiki members, hawkers, touts and jua kali artisans. The movement called for a revolt "for the youth to free themselves from the hatred spearheaded by our leaders" The following day outspoken Cabinet Minister Shariff Nassir warned that the students would live to regret any attempt to stop the committee from doing its work. Also in January 2000 the Federation of Women Lawyers announced that they would not submit their views to the Parliamentary Select Committee. Explaining the federation's stand, chairperson Ms Martha Koome said that the committee "was set up unilaterally and illegally". **[135][149][250]**

4.27 On 26 February several people were injured when riot police tear gassed and clubbed a mammoth crowd which had turned up for a meeting organised by MVUWA in Thika. A MVUWA official later claimed that the government was panicking at the prospect of youth forming an alliance to address national issues. He said that the government had been given until 1 May 2000 to accept a people-driven constitutional review process or face non-violent civil action. **[156]**

The Judiciary

4.28 The Constitution provides for an independent judiciary; however, in practice the judiciary is subject to executive branch influence. The Kenya Court system consists of a Court of Appeal, a High Court, and two levels of Magistrates' Courts, where most criminal and civil cases originate. The Chief Justice is a member of both the High Court and the Court of Appeals; this undercuts the principle of judicial review. Judges hear all cases as there is no jury system; however, in treason and murder cases, the deputy registrar of the high court can appoint three assessors to sit

with the judge. Although assessors, who are taken from all walks of life, render a verdict, their judgement is not binding. The President has extensive powers over appointments, including the Chief Justice, the Attorney General, and Appeal and High Court judges. Although judges have life tenure (except the very few foreign judges who are hired by contract), the President has extensive powers over transfers. Customary law is used as a guide in civil cases affecting people of the same ethnic group so long as this does not conflict with statutory law. On a number of occasions the Attorney General has used his constitutional power to terminate cases against government officials. In April 1999 magistrates and judicial officials conceded that red tape, inefficiency, and corruption bogged down the justice system, leaving anxious litigants in anguish and torment. The Attorney General's Chambers were particularly criticised for delays in the judicial system and the enormous backlog of cases in the courts. **[2][116]**

4.29 Military personnel are tried by military court-martial, the Chief Justice appoints attorneys for military personnel on a case by-case basis. In November 1999 the High Court suspended the court martial of an army major accused of theft on the grounds that the army denied him his chosen attorney, opposition MP James Orengo. In response the army contended that the constitutional right to representation by counsel of one's choice did not extend to members of the armed forces. **[2]**

4.30 In June 1999 Nairobi Chief Magistrate, Uniter Kidullah ruled that student leader Solomon Murili set himself ablaze in February 1997. The ruling brought heavy criticism from a cross section of Kenyans who accused the judiciary of legalising torture, and helping to keep cases of torture covered up. There have been occasions where judges have acted to assert judicial independence. In March 1999 a High Court judge, Mr Justice Andrew Hayanga, censured the Attorney Generals' office for the delay in disposing of murder cases in Mombasa. He said the delays amounted to erosion of the administration of justice. In July 1998 a High Court judge overturned a government order closing four tabloid publications on the grounds they were not registered. In June 1999 a judge who acquitted a defendant of murder charges criticised the Attorney General's office for not presenting any evidence, creating unwarranted delays, and making unjustified requests for adjournments. In the past judges who ruled against the Government were sometimes punished with transfer or non-renewal of contacts. During 1999 no retaliatory action was reported. In September 1999 Bernard Chunga was appointed as the new Chief Justice and Uniter Kidullah as the new Director of Public Prosecutions. **[2][13][136][155][204]**

4.31 Defendants do not have the right to government-provided legal counsel, except in capital cases. For lesser charges, free legal aid is not usually available outside of Nairobi. As a result poor persons may be convicted for a lack of an articulate defence. Although defendants have access to an attorney in advance of trial, defence lawyers do not always have access to government-held evidence, as the Government can plead the State Security Secrets Clause as a basis for withholding evidence. Court fees for filing and hearing cases are high for ordinary citizens; the daily rate of at least 2,000 Shillings (about $25) is beyond the reach of most Kenyans. Lengthy pre-trial detention is a problem. **[2]**

4.32 Critics of the Government such as politicians, journalists, lawyers, and students have been harassed through abuse of the legal process. In a 1997 study of the judiciary, the International Bar Association found "a persistent and deliberate misuse of the legal system for the purpose of harassing opponents and critics of the Government." During 1999 the authorities continued to

arrest opposition MP's and student leaders. A number of MP's, student leaders', and human rights activists have one or more court cases pending, in some cases for months or even years. The US State Department did however report that journalist, Tony Gachoka, was the only political prisoner in Kenya during 1999 **(see paragraph 5.54)**. **[2]**

4.33 In April 1999, a seminar on the criminal justice system to place in Nyeri. At its conclusion the seminar recommended the immediate start of legislative reforms to bring Kenyan establishments, practices and procedures in tandem with international standards to which Kenya is a signatory and to outlaw the inhuman regime of discipline and punishment of suspects. The seminar recommended that strict compliance with the Prisoners Act and Regulations would radically change the outlook of Kenya's prisons. One recommendation was that time spent on remand should also be taken into account when determining the length of sentence for people convicted. The three-day seminar was organised by the judiciary, Public Law Institute and United Nations Development Programme. Participants came from the judiciary, PLI, Attorney-General's Chambers, police, prisons, probation and children's department, the provincial administration and the Law Society of Kenya. In July 1999 it was announced that the government would amend the Evidence Act to ensure that only confessions made before a trial magistrate would be admissible in court. Allegations of forced confessions through beating and torture are common in Kenya. **[114][219]**

The death penalty.

4.34 Kenya still retains the death penalty although no executions have been carried out since 1988. The death penalty is mandatory for murder, treason, robbery with violence or attempted robbery with violence and for administration of an unlawful oath to commit a capital offence. By law the death penalty may not be imposed on anyone under 18 at the time of the offence, a pregnant woman or an insane person. During 1998 168 people were sentenced to death and more than 900 people were under sentence of death by the end of the year. Many prisoners on death row have died as a result of the appalling prison conditions. Defendants charged with murder or treason are tried in the High Court and if convicted have a right of appeal to the Court of Appeal. Defendants charged with robbery or attempted robbery with violence are tried in the Magistrates Court and if convicted have the right to appeal to the High Court and then the Court of Appeal. The cases of prisoners sentenced to death, once the appeals process has been exhausted are automatically passed to the President under section 27 of the Constitution, which provides for the Prerogative of Mercy. The President also has the right to pardon or commute the sentence of any person convicted of any offence, under the Presidential Prerogative of Mercy. **[9][12]**

Security forces.

4.35 The Kenyan security forces are comprised of the armed forces and various sections of the police force. Military service is voluntary. The sections that make up the police force are, the Special Branch, the Criminal Investigation Department (CID), the new National Security Intelligence Service **(see paragraph 4.41)**, the National Police Force, the Police Reserve, the Administrative Police, the General Service Unit, and the Stock Theft Unit. Other security organs in Kenya are the Home Guards and the City Commissions 'Askaris' or Council Security Guards. **[2][25][169]**

4.36 The Special Branch, formed in the colonial era, deals with matters of intelligence and state

security, but has since had its role enhanced to deal with presidential security. The CID primarily investigates non-political crimes but have a mandate to investigate political crimes as well, which are monopolised by the Special Branch. The Police Reserve assists regular police officers in their duties. They are not required to be full time, and most are recruited from the civil service. They are only employed during emergency periods such as riots, demonstrations and national events. Special Police Officers are similar to the Police Reserve and are appointed to deal with specific missions. The Administrative Police are supposed to be distinguishable from the regular police and are involved in land evictions, demonstration and riot control, housing evictions and border patrols. Some officers serve in government institutions as gate keepers or reception watchers and at district level they guard administration figures. The General Service Unit is the paramilitary wing of the police force. They are mobilised whenever the Government feels a situation is volatile. **[25]**

4.37 There are several other units and branches within the police force such as the Stock Theft Unit and the Anti-Poaching Unit as well as the Prosecutions Branch, the Traffic branch, the Dog Section and the Mounted Branch. The Home Guards are a colonial legacy and are used only in areas that have a nomadic community. City Commission 'Askaris' are employed in Nairobi as council security guards and they enforce the city commission's by-laws. **[25]**

4.38 All branches of the security forces have been used to undermine and abuse human rights in Kenya. There have been reports of ill treatment, torture and deaths in custody as a result of torture. The authorities at the highest levels have repeatedly publicly condemned torture and ill treatment. In May 1996 the Kenyan authorities published a 40 page dossier entitled " The Way It Is " defending its human rights record but conceding that there were areas in which it would be possible to effect further improvements. Amnesty International have recognised that there has been an increase in the number of police officers who have been prosecuted for human rights violations, particularly where the victim died. However, reports of ill treatment continue and previous allegations of torture appear either not to have been investigated or the investigations have been inadequate. In April 1998 Cabinet Minister Maalim Mohammed threatened to resign unless the Government launched an inquiry into allegations of police torture during an operation against bandits in his North Eastern province constituency. He was supported by 5 KANU MPs and 2 opposition members. As a result three senior inspectors were sent to Garissa to interview those involved. The provincial police officer, Jeremiah Matagaro, did not deny the allegations of torture but said they were exaggerated. Forty-six MP's drawn from KANU and the opposition met in Nairobi in May 1998 in the aftermath of rallies in Kitale. They insisted the police officers who had violently disrupted a peaceful meeting on 9 May 1998 had contravened the Public Order Act. They called for the prosecution of two senior police officials for criminal behaviour. **[2][7][8][9][25][188][227]**

4.39 The Attorney General Amos Wako announced in September 1998 that his office had prepared a document for training police officers on respect for human rights. In December 1998 the Assistant Commissioner of Police, Mr Stephen Kimenchu admitted, at a workshop organised by the Kenya Human Rights Commission and the Catholic Justice and Peace Commission, that the police tortured suspects on the orders of powerful politicians. He went on to say that police also carried out unlawful arrests, smashed political rallies and meted out inhuman treatment to people they had detained all to please the same politicians. In the frank admission, which stunned participants at the workshop, he also gave an unconditional apology on behalf of the police to all Kenyans who had been mistreated by security personnel. He also called on

Parliament to amend the Police Act to ensure those working for the force had adequate protection and independence and are free from interference. Two days later the Police Commissioners Office withdrew Kimenchu's apology. **[2][152][182]**

4.40 In February 1999 three opposition MPs and several other people were injured in a clash with anti-riot police at a farmers' meeting in Eldoret. The police alleged that the organisers had not obtained a licence for the meeting. In August 1999, the Police Commissioner, Philemon Abong'o urged all police officers to improve their image by acting professionally and compassionately when dealing with the public. His speech was read out at the closing ceremony of a three-month management course for police officers. Mr Abong'o also advised police to be courteous and respect human rights, cultural and religious diversity. The courses are aimed at making improvements in the police's service to the public. **[151][189]**

4.41 January 1999 saw the creation of the National Security Intelligence Service under the stewardship of retired Brigadier Wilson Boinett. The new service replaced the Directorate of Security Intelligence which was associated with brutality, torture and outright abuse of human rights. It was a dreaded institution, occasionally misused by politicians to settle political scores. A report on Kenyan TV suggested that the civilian National Security Intelligence Service would offer a better-trained and thoroughly professional service. Its remit is confined to gathering intelligence and informing the government of any threats to security. Torture will not be condoned in the service and any officer accused of malpractice will be punished. In August 1999 a special crime prevention police unit was launched to curb the influx and trafficking of illegal arms in the wake of an increasing number of carjackings at gunpoint. **[169][211]**

4.42 The Kenyan authorities have made it clear that mechanisms exist, under the present law to lodge complaints against members of the police. It is also possible to bring a private civil case against the police, but it is too costly for the majority of people. It has been acknowledged that there is a propensity within the police for them to protect their own, but cases against individual members of the police have succeeded. There are various human rights bodies and lawyers active in Kenya who are willing to support an individual complaint against the police, but, Amnesty International report that the current complaints procedure is fraught with difficulties and fails to protect the victims of violations. **[2][9][39]**

4.43 During 1998 government critics were detained, ill-treated and harassed. Amnesty International state that among these were human rights activists, pro-democracy campaigners and journalists. All were released after a short time but some were charged with criminal offences. The Government arrested and prosecuted a number of police officers for abuses; most police who perpetrated abuses were neither investigated nor punished. **[12]**

4.44 The record of the security forces did not improve during 1999. The US State Department reported an increase in extra judicial killings and continued incidents of torture, rape, use of excessive force and other abuse of persons. According to government figures police killed 63 suspected criminals and a further 151 suspects/detainees died in police custody between January 1999 and October 1999. However, the non-governmental Kenyan Human Rights Commission (KHRC) reported that police killed 187 persons between January 1999 and September 1999 compared to 164 persons during the corresponding period of 1998 **(see paragraph 5.3)**. The Government arrested and prosecuted a number of police officers for abuses, however most police who perpetrated abuses were neither investigated or punished. There is also considerable public

scepticism of a process that assigns the investigation of police abuse to the police themselves. **[2]**

4.45 Despite constitutional protections, police continued to arrest and detain citizens arbitrarily. During 1999 there were incidents of police harassment and detentions of opposition MP's, Journalists, Religious Leaders and others critical of the government. 1998 has seen a significant decline in Government disruptions of public meetings, however, this improvement was not sustained during 1999. The authorities repeatedly disrupted public demonstrations about which the organisers had duly informed the police in advance. The Human Rights Watch report for 1999 referred to an increasing reliance on of state sponsored gangs to break up meetings of government critics. Both ruling and opposition parties have created their own civilian security groups. One of the most notorious is the Jeshi la Mzee, an offshoot of the KANU youth wing. Jeshi la Mzee were reported to have been involved alongside police in the violent disruption of a peaceful demonstration on 10 June 1999 (see paragraph 4.21). On 20 June 1999 police violently dispersed a political rally in Machakos Town seriously injuring several people, among them MP Mutua Katuku who broke his arm. **[2][134][51]**

4.46 Residents from the villages of Balessa and El Hadi in the far north credibly accused security forces, both army and police, of beating and torturing them on 22-23 May 1999, during an operation to flush out OLF insurgents who crossed from Ethiopia. A group of five people, including a priest and two nurses, who visited the villages on 23 May 2000, documented and photographed the six most seriously injured victims. Some of this evidence was published in a Nairobi newspaper together with letters of protest from village leaders. Although a military team dispatched to investigate the incident found no evidence to substantiate the claims, the army's rules of engagement for joint security operations reportedly permitted the use of non-lethal force, including beatings, to obtain non-combatants information required to achieve operational objectives. **[2]**

4.47 In March 2000 it was announced that more police officers were being moved into Nairobi to curb the deteriorating security in the city. During the previous month two KANU MP's were seriously injured in a shooting **(see paragraph 4.17)** whilst four police officers were killed in the city. During the same month the Head of the Civil Service announced that a detachment of the Kenya Army would be used to curb insecurity in the country. The new military wing is to be retrained and re-equipped in order that it may oversee patrolling of poorly policed borders. **[132][213]**

V. HUMAN RIGHTS.

Introduction

5.1 The Constitution of Kenya states that "no one shall be subject to torture or degrading punishment or other treatment". However, for several years the focus of human rights reporting on Kenya has highlighted the enormity of the country's human rights agenda. Amnesty International have reported the Government's failure to halt the widespread ill treatment of detainees. In their reports "Kenya: Torture, compounded by denial of medical care" (December 1995) and " Kenya: Detention, torture and health professionals " (January 1997) they noted that men and women of all ages could be victims of physical maltreatment for political or common-law offences. Amnesty state that torture, compounded by the denial or restriction of access to medical treatment, is routinely used to extract confessions. Well-known political prisoners have

been harassed and ill-treated, and defendants can be held beyond the legal time limits, which is then rarely challenged by the courts. **[2][7][8]**

5.2 In February 1997 Kenya became a signatory to the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which, in their above named report of January 1997, Amnesty stated would go a long way towards proving the Kenyan Government's commitment to abolish torture. **[1][8]**

5.3 According to the 1999 US Department of State Report (issued February 2000), the Kenya Human Rights Commission (KHRC) reported 24 torture related deaths between January 1999 and September 1999. The Independent Medico-Legal Unit (IMLU) which observes and performs post-mortems on suspected victims of torture, recorded 39 cases of death from "internal haemorrhage due to external trauma" (i.e. torture) of individuals in police custody during the first 8 months of 1999. In addition there were numerous allegations of police use of excessive force and torture, KHRC recorded 323 cases of police brutality between January and September 1999. However detainees routinely claimed they had been tortured, making it difficult to separate real and fabricated events. **[2]**

B. HUMAN RIGHTS: General Assessment.

5.4 In the above cited Amnesty reports **(see paragraph 5.1)**, Amnesty International detail the following examples of torture reported to them by persons who cite maltreatment by the security forces. Death threats, beatings on different parts of the body, burns, adopting uncomfortable postures for prolonged periods of time, sexual abuse and humiliation of both men and women, electric shocks and forced exercise. Women have been raped. Complaints were also received of being held in a flooded cell filled with two inches of water for lengthy periods. In extreme cases the pulling out of fingernails and toenails and near-asphyxiation were also cited. **[7][8]**

5.5 The Government has produced detailed responses to damaging reports on human rights in Kenya. It has not interfered with visits made by international human rights activists and allowed human rights organisations to witness the autopsies of several people who had died in suspicious circumstances whilst in police custody. During September and October 1999 the Government generally facilitated a 10-day finding visit by the UN Special Rapporteur on Torture; however officials at Kamiti Maximum Security Prison denied him access. During 1999 the Attorney General's Office responded in detail to foreign embassies' human rights enquiries. There was one report of a politically motivated disappearance in 1998. This involved George Matata, a student protest leader at Moi University in Nairobi who reportedly disappeared on 20 October 1999. This resulted in student riots and temporary closure of the university. Matata reappeared after a few days claiming he had been abducted and tortured by Eldoret police; however, no evidence in support of his allegation was reported (see Annex B). **[2][9][27]**

5.6 The number of organisations engaged in monitoring human rights in Kenya is growing. These include NGO's such as the Catholic Justice and Peace Commission, the Centre for Governance and Development, the IMLU, the Kenya Antirape Organisation, the Legal Advice Centre (LAC), the Protestant National Council of Churches of Kenya, People Against Torture, Release Political Prisoners and the independent Kenyan Human Rights Commission (KHRC). An array of legal organisations, including the International Commission of Jurists-Kenya, the International Federation of Women Lawyers (FIDA)-Kenya, the Law Society of Kenya and the

Public Law Institute, are also concerned with human rights. NGOs and some opposition parties maintain comprehensive files on human rights abuses. These organisations remain extremely active, produce regular reports on the human rights situation and also organise activities to publicise their causes. The KHRC produces a "Quarterly Repression Report". A number of attorneys represent the poor and human rights defendants without compensation, although they can meet only a small percentage of the need, and are concentrated largely in urban areas. The Government regularly criticised, intimidated and threatened to disrupt NGO's. In March 1999 President Moi publicly stated that NGO's were trying to destabilise the country by channelling foreign funds to anti-government student and labour organisations and using the money to organise seditious mass protests. In April 1999 the Office of the President instructed all district governments to monitor NGO's within their districts with a view to ensuring that they either advance government policy or cease to operate. However, NGO's did not subsequently report an increase in government monitoring. **[2][22]**

5.7 In July 1996 the Government established a Standing Committee on Human Rights to investigate alleged humanitarian abuses by the Kenyan authorities. However, the committee is subordinate to the Office of the President, and it has only received sufficient funds to fill 8 of its 27 authorised staff positions. Since its inception, the Committee has maintained a low profile and kept its distance from most major problems. In October 1999 the Committee requested that the National Assembly enact legislation giving the Committee greater autonomy and independence; no such legislation was enacted by the end of 1999. In May 1999 a Trade Union witness to the Standing Committee on Human Rights expressed the view that that the government was the leading violator of human rights in Kenya. **[1][2][126]**

5.8 In October 1998, Parliament passed a resolution to create an Ombudsman's office that would be charged with addressing complaints about inefficiency, corruption, nepotism, and abuse of power by public servants. The Government has recognised that certain laws, which violate human rights, are bad, and began to review them. Many Kenyans have questioned the Government's commitment to human rights reform. Nevertheless the Government has stated its commitment to upholding its national and international obligations on torture and has confirmed its policy on taking action against those who abuse the law. In February 1999 the KHRC called for the police to go beyond admitting responsibility for violating people's human rights and undertake to compensate the victims, following the shooting Getrude Andi in the leg during a police operation in Mandizini **[2][9][110]**

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

they are responding to suggestions to set up an independent unit. A group of senior officers visited the United Kingdom in early 1999 to look at the British Police Complaints Authority and there are recommendations that a similar authority be started in Kenya. The police also stated they were introducing a human rights training programme. **[229]**

5.10 In March 2000 it was reported that the first ever criminal and civil proceedings against President Moi of Kenya are likely to be filed in the British and Belgium courts in the summer. KHRC and London based Kenya Movement for Democracy and Justice (KMDJ), Amnesty International, and Redress are working together to seek redress on behalf of Kenyan victims of ethnic clashes and police torture. The responsibility of KHRC in this process is to collect evidence and materials in respect of mass killings, destruction of property, displacement and widespread torture of individuals by the Kenyan police. **[212]**

Prison conditions.

5.11 Prison conditions are extremely harsh and often life threatening, with severe overcrowding, inadequate water, poor diet, substandard bedding and deficiencies in health care. Prisons do not have resident doctors, only one prison has a doctor permanently assigned. There have been incidents where medical treatment of prisoners has been blocked. During the first nine months of 1999, the Government reported that 196 prisoners had died in jail, this compared with 536 deaths throughout 1998 and 631 in 1997. Anaemia, dysentery, heart attack, malaria, typhoid fever, tuberculosis and AIDS were the main causes of death. Officially men, women and children are segregated, however there are cases where they have shared the same cells. Rape of both male and female inmates, primarily by fellow prisoners, is a serious problem and increasing incidence of AIDS. Prisoners report that they are frequently denied the right to contact relatives or lawyers. The Government does not permit independent monitoring of prisons. In 1998 Community Service Order Act was passed by Parliament. This provides for those convicted and sentenced to less than three years imprisonment to do community service rather than serve a custodial sentence, thus potentially reducing the prison population. By the end of 1999 the Government had failed to implement the act. **[2][8][9][12]**

5.12 In May 1999, three senior police detectives began an investigation into the death of an inmate at Kibos Annex Prison. It was alleged that Charles Ariga, who was a convict serving 18 months for possession of bhang was tortured to death by warders. In July 1999 Safina called for an immediate solution to the mess in prisons countrywide. The Safina secretary-general was reacting to an investigative article in the Nation on 17 July 1999, which revealed overcrowding, and torture in Kenya's 78 prisons. In January 2000 former prisoners at the Kodiaga Prison (in Kisumu, western Kenya) claimed warders were infecting inmates with AIDS. They claimed convicts suspected of being HIV positive were whipped until they bled and that the same whips would then be used on others who were also left with open wounds. A total of 17 former detainees made the allegations at the Kisumu office of Kenyan newspaper, the Daily Nation. They showed scars and wounds which they claimed were inflicted by the warders. **[115][124][144]**

C. HUMAN RIGHTS: Specific Groups.

Women.

5.13 According to the Government, 1,329 cases of rape were reported to the police during the first 9 months of 1999, this compared to 903 cases throughout 1998. These statistics probably underreport the number of incidents as many women would be unlikely to go outside their families or ethnic groups to report sexual abuse. Violence against women is a serious and widespread problem. The law carries penalties of up to life imprisonment for rape although actual sentences are usually no more than 10 years. However, the rate of prosecution remains low because of cultural inhibitions against discussing sex, fear of retribution, the disinclination of police to intervene in domestic problems and the lack of doctors able to provide the necessary evidence for conviction. There is no law specifically prohibiting spousal rape. **[2]**

5.14 Wife beating is prevalent and largely condoned by much of society. Traditional culture permits a man to discipline his wife by physical means and is ambivalent about the seriousness of spousal rape. The World Health Organisation found that 42% of women in Kenya were regularly beaten by their husbands. Anne Muragu of the Kenya branch of Fida, the Federation of Women Lawyers, believes the true figure to be closer to 70%. The Coalition on Violence against Women (COVAO) are trying to break the silence surrounding domestic violence and bring violence out of the home and into the public eye. COVAW has done much to publicise the case of Betty Kavata whose husband, a policeman, hit her about the head with a brick whilst drunk in July 1998. Betty Kavata died on 25 December 1998, never gaining consciousness. After months of petitioning, the husband, Felix Thiwa, was eventually suspended from his job on half pay in November 1998. He was arrested and charged with murder a month later. In another case in 1998 a Maasai woman, whose tribe still live in accordance with customary law**,** successfully brought criminal proceedings against her husband who had beaten her for 13 years. He was found guilty of assault by the court. In December 1999 a 29-member task force set up to review laws relating to women in Kenya recommended tough new measures to address the issue of domestic violence. Among proposals contained in a report presented to the Attorney General was a bill that would expel violent men from their matrimonial home. A draft bill seeking the immediate establishment of a Council for Gender Development was also submitted. If passed by parliament the council would work towards ending gender bias in the country. There would also be a legal wing to represent in court women whose marriages are threatened by domestic violence. **[2][50][97][203]**

5.15 The Constitution was amended in 1997 to include discrimination based on gender. There are a number of women's rights and welfare organisations present in Kenya. The most well known of these, Maendeleo Ya Wanawake, was established as a non-political NGO during the colonial era, but is now aligned closely with KANU. A growing number of organisations are concerned with women's rights, including the FIDA, the National Council of Women of Kenya, the National Commission on the Status of Women, the Education Centre for Women in Democracy and the Kenyan League of Women Voters. On 5 October 1998, President Moi officially opened the 29th biennial convention of the International Federation of Women Lawyers in Nairobi. He stated that the government were committed to protecting women and other vulnerable groups**.** Women are seriously under-represented at decision making levels in the Government. The National Assembly elected in December 1997 included eight female MPs. In 1997 The Women's Political Caucus was formed and has since lobbied the Government over issues of concern to women and to increase the influence of women on Government policy **(see paragraph 4.19)****. [2][166]**

5.16 In May 1999 the Kenyan Parliament passed a motion that seeks the establishment of a commission for gender equality in the country. The commission is to promote respect for, protection, development and attainment of gender equality. The motion was moved by NDP leader Raila Odinga, who called on the government to come up with a policy to deal with the rising cases of violence against women. In May 1999 an Appeal Court Judge, Richard Kwach, stated that the constitutional provision which stops Kenyan women from automatically bestowing citizenship on a non-Kenyan husband was not discriminatory. The judge was speaking during a Federation of Kenya Women Lawyers public debate focusing on women's rights to equal citizenship and marital property. **[125] [198]**

5.17 In July 1999 it was estimated that 95% of commercial sex workers in the heart of Nairobi's Red Light District were HIV-positive. Desperate women sell their bodies for as little as 20 shillings (the equivalent of about US$ 0.30 when reported). For 500 shillings some women agree to a client's request not to wear a condom. Most of the women did not learn about safe sex until it was too late. Following intensive education efforts by NGOs the majority of sex workers now claim to practice safe sex but most ordinary Kenyans do not. In August 1999 the new Permanent Secretary in the Ministry of Health called for the legalisation of abortion in a bid to prevent the rising numbers of abortion related deaths. **[230][232]**

Female Genital Mutilation

5.18 Female Genital Mutilation (FGM), which is widely condemned by international health experts as damaging to both physical and psychological health, is practised by at least half of Kenya's 42 ethnic groups and remains widespread, particularly in rural areas. It is usually performed at an early age and health officials estimate that roughly 50% of females' nation-wide have undergone the procedure. Maendeleo Ya Wanawake, puts the percentage in some districts of the Eastern, Nyanza and Rift Valley provinces, as high as 80% to 90%. President Moi has issued two presidential decrees banning FGM, and the Government prohibits government-controlled hospitals and clinics from practising it; however no law in Kenya bans FGM. In January 1999, Kisii women launched an aggressive campaign to eradicate FGM by going into the rural villages to offer an alternative way to the traditional "passage of age" for girls. The approach initiated by the Julkei International Women and Youth Affairs, an NGO, is an alternative rite known as Ogosemia Gwekiare or circumcision through words. The alternative to FGM has received significant support from more than 200 women and men participants. In the Mt. Kenya districts, especially southern Meru, this alternative rite has spared more than 1,100 girls from FGM by July 1999. **[2][99][193]**

Children.

5.19 The system of free education in place during the early years of Kenya's independence has given way to a "cost-sharing" system in which students pay both tuition fees and other costs. These are a heavy burden to most families. Although the law mandates that schooling be available for all up to grade 12, there is a very high drop out rate due to the high cost of educational expenses. There are an estimated 4 million children between the ages of 6 and 14 who are out of school. A second reason why universal schooling does not occur is the shortage of schools, in September 1999 the Head of the Public Service announced plans to reduce the

number of teachers. The health care system for school children, which once provided medical check-ups and free milk, is now defunct. In September 1999 Human Rights Watch released a report on corporal punishment in Kenya, this cited widespread caning and abuse of children by teachers. According to September press reports, teachers at Mobamba Secondary School in Kisii so severely beat a boy that he died of internal injuries. **[2][239]**

5.20 Economic displacement and the spread of AIDS continue to fuel the problem of homeless street children. The number of Nairobi's street children now exceeds 50,000 and the Government estimates that their numbers grow by 10% per year. There are also street children in other urban areas such as Kisumu and Mombasa. These children are involved in theft, drug trafficking, assaults, trespassing and property damage. The children face innumerable hardships and danger on a daily basis. They face harassment and abuse from the police and within the juvenile justice system for no reason other than the fact they are street children. On the street they are subject to frequent beatings by police as well as monetary extortion and sexual abuse. They are also subject to frequent arrest simply because they are homeless and vagrancy is a criminal offence in Kenya. (Vagrancy Act, Chapter 58 of the Laws of Kenya). The police conduct several roundup operations of street children. There are some shelters for street children and NGOs and human rights activists who work with the children. NGOs have assisted street children in filing preliminary complaints with the police about police misconduct. In January 1999 two jurists said that the Kenya Constitution was vague regarding children's rights. They claim it fails to give a standard definition of a child. Whilst addressing a child workshop Mr Muthoga, the Chairman of Africa Network for the Prevention and Protection against Child Abuse and Neglect, Kenya chapter, said children's rights were threatened by lack of food, water, shelter and medical care. He called on child rights activists to ensure that the constitutional review commission **(see paragraphs 4.19 - 4.27)** was fully sensitised on the rights of a child. **[2][21][100]**

5.21 The problem of child rape and molestation is growing rapidly. There are frequent press reports of rape of young girls, with rapists often middle-aged or older. Legally a man does not rape a girl under the age of 14 if he has sexual intercourse with her against her will; he commits a lesser offence of defilement, which carries a penalty of five years imprisonment. Men convicted of rape normally receive prison sentences of between 5 and 20 years, plus several strokes of the cane. Child prostitution is a major problem in Nairobi and Mombasa, often connected with the tourist trade. In February 1999, the Minister for Education and Human Resource Development announced that more than 3 million children under the age of six have no access to early childhood care. He stated that Kenya has 23,344 early childhood care and development centres with an enrolment of 1.064,125 children and a teaching force of 36,201, but the participation rate was only 35%. Real progress has been hindered by poverty, which has affected participation in many development programmes including basic education. The Minister also announced that infant mortality has increased by 20% in the last five years. More than 90,000 children were among the 1.5 million Kenyans living with the Aids virus. During 1999 there were reports of ritual murders associated with aspects of traditional indigenous religions. The victims were generally teenaged children who were reportedly killed and had parts of their bodies removed for use in traditional rituals by persons seeking renewed youth or health. **[2][109]**

5.22 It is estimated that there are over 3-million child workers in Kenya who are under 16 years and do not attend school. Child labour in Kenya is encouraged by a number of factors including

abject poverty and peer pressure. The employment act of 1976 makes the employment of children in industry illegal. The act does not apply to the agricultural sector where 70% of the labour force is employed, or to children serving as apprentices. Forced or bonded labour by children is illegal; however, there are some instances where it occurs. Children often work as domestic servants in private homes. Kiambu district in Central Province is notorious for its child labour practices as its lush flower, coffee and tea plantations attract armies of child labourers. To tackle the problem, a unit within the Ministry of Labour charged with the task of determining priority areas where action against child labour should be taken, is now in operation. The unit co-ordinates funding and all activities of government departments and NGOs involved in child labour programmes. It receives technical and financial assistance from the International Labour Organisation. The unit's chief stated that it is currently working on a national policy framework and has put into place legislation towards the total elimination of child labour in Kenya. **[2][197]**

Homosexuality

5.23 In common with a number of other African leaders President Moi has verbally attacked homosexuals and lesbians on various occasions. Sections 162 to 165 of the Penal Code outlaw homosexual behaviour and attempted homosexual behaviour between men, referring to it as "carnal knowledge against the order of nature". The penalty is 5 - 14 years' imprisonment. Lesbian relations, though not specifically mentioned under the law could, depending upon interpretation, be subscribed under the above reference as this applies equally to women as to men. In practice, The Federation of Women Lawyers (FIDA) advise that whilst men are occasionally prosecuted for homosexual offences, they are not aware of any cases where women have been prosecuted. It is unlikely that action would be taken against a homosexual male unless some other offence was involved. There is fairly strong social pressure against individual instances of homosexuality and lesbianism such as from family members, it is not however much of an issue in the public domain. There is no strong antagonistic feeling towards homosexuals but neither is there is an active gay community to provoke it. Discreet homosexuals are unlikely to face prosecution or persecution. **[52][228] [235][236]**

Minorities and Ethnicity

5.24 The Constitution prohibits discrimination based on race, tribe, place of origin or residence or other local connection, political opinion, colour or creed. The authorities did not effectively enforce all these provisions and there are frequent and credible allegations of discrimination among ethnic groups, as well as sporadic interethnic violence. According to the 1989 Government census, the Kikuyus are the largest ethnic community, comprising 21% of the population. Luhya, Luo, Kamba and Kalenjin (an amalgamation of 9 smaller tribes) follow each with more than 11% of the population. Members of all ethnic groups participate in the political process. The President's party is tribally heterogeneous. Although the President's Cabinet includes members from many ethnic groups, approximately one third of ministers are either Kalenjin or Luhya. At the end of 1999 there were only two ministers from the country's largest ethnic group, the Kikuyu, and none from the third largest ethnic group, the Luo. Both the Kikuyus and the Luo's tend to support opposition parties. The President relies on an inner circle of advisers, drawn largely from his Kalenjin ethnic group. However, in April 1999 President Moi appointed George Saitoti, a Kikuyu, to the long vacant position of vice president **(see paragraph 4.7)****. [2]**

5.25 In October 1999 it was reported that the 5,000-member Ogiek tribe were taking the government to court over precious forestland which they have inhabited for generations. Earlier in the year the Government had served an eviction notice on the tribe, although officials had said that they planned to protect the forests the Ogiek fear that the land will be sold illegally to agricultural developers. In September 1999 the tribe won a restraining order against their eviction, a decision from the courts is now awaited as to whether the forest meets the constitutional definition of a homeland. Such cases can take years to be resolved through Kenya's bureaucratic legal system, meanwhile the government considers the Ogiek trespassers in their traditional home. **[63]**

Previous Ethnic Clashes.

5.26 Ethnic clashes first broke out in October 1991 in Nandi District on the border of Rift Valley, Nyanza and Western Provinces, and continued throughout 1992. Africa Watch estimated that the clashes left at least 1,500 people dead and 300,000 displaced. Some opposition parties accused the government of covertly inciting the violence as a means of undermining the multi-party system reforms. Speculation continued as to whether the violence was a spontaneous response to the political upheaval or instigated by the government to prove its prediction that ethnic violence would be the result of a change to multi-partyism. In April 1992 the NCCK published a report entitled "The Cursed Arrow: Organised Violence Against Democracy in Kenya " that linked the violence to high-ranking government officials. In May 1992 an official Parliamentary Select Committee was set up to investigate the violence, which released a 238 page report in September 1992. The report verified that the attacks had been politically motivated. Further clashes occurred in 1993, in the Rift Valley and on the borders between lands occupied by the Maasai, Kikuyu and Kalenjin tribes. Foreign observers who toured the affected area in mid 1993 accused the Government of failing to contain the violence. On 3 September 1993, the Government announced the establishment of security zones in the worst hit areas around Molo, Londiani and Burnt Forest. Human rights groups and opposition parties complained that these regulations gave too much power to the security forces. However, at the end of 1993 there were no reports that this new authority had been grossly abused. **[1][19][24][26][27]**

5.27 In 1994 violent clashes involving several ethnic groups occurred, albeit less frequently than in 1993. Maasais forcibly evicted Kikuyus from Enosupukia in the Narok district of the Rift Valley. Kikuyu farms were attacked, villagers killed and property confiscated. The displaced Kikuyus sought refuge in camps in Maela. On several occasions Government officials made inciting statements which targeted particular ethnic groups and exacerbated ethnic tensions. Security zone regulations continued to control access to the affected areas. In early 1994, however, the authorities had allowed NGOs working under the UN Development Program (UNDP), the Displaced Peoples Program and diplomatic observers access to the zones, and media representatives were permitted to accompany some officials who visited the areas. UNDP's Rogge report, published in September 1994, noted that the Government had made an effort to reduce tensions and to resettle those displaced. In October 1994 President Moi instructed the Rift Valley local administration to resettle displaced persons resident in the camps in Maela. However, local officials proved incapable or unwilling to carry this out, relocating only 200 families to unproductive land, where no resettlement assistance was provided. On 24 December 1994 officials dismantled the Maela camps, without first informing the UNDP,

leaving the residents to fend for themselves. Both Amnesty International and Africa Watch state that the Report of the Parliamentary Select Committee to investigate Ethnic Clashes in Western and Other parts of Kenya (September 1992) and the NCCK report "The Cursed Arrow" (April 1992), proved the involvement of high-ranking government officials in the 1991 to 1994 clashes. In October 1998, the Justice and Peace Commission announced that eighty-eight families displaced during the 1992-93 tribal clashes would be settled in Molo and Lare as the second phase of the UNDP began. **[1][20][29][93]**

5.28 January 1995 saw a number of incidents of ethnic violence. Kipsigi tribes people attacked a displaced persons camp in Thessalia; on 11 January 1995 10 people were killed in clashes in Longonot, and on 12 January an NCCK camp in Eldoret was raided by Administrative Policemen (AP's) who moved 65 families on. The former residents of the Maela camps also reported harassment by AP's who visited them during the night. They also alleged relief support was prevented from reaching those affected. Many of the displaced remained in the area throughout the year. The remainder of 1995 was conspicuously free of ethnic clashes anywhere in the country; however, 70,000 of the estimated 250,000 originally displaced were still in need of assistance. A number of relief agencies and church organisations were able to work with the displaced without encountering Government interference. **[6][19][24][29]**

5.29 Whilst the behaviour of some KANU politicians contributed to the serious problems of 1992-93, the Kenyan Government, itself, did not condone the clashes and had no wish to see them perpetuated. The security zones created to restore order were eventually lifted in March 1995 with no resumption of fighting. There have occasionally, since, been a number of isolated incidents of inter-communal violence. In November 1995 Luo and Nubian youths clashed in the Kibera slum district of Nairobi, while in February 1996 there were reported clashes between Luo and Kisii tribes' people. Locals reported that the attack was triggered by the murder of a Kisii, which prompted a revenge attack on the Luo community. President Moi has repeatedly condemned inter-tribal violence and has told Kenya's ethnic communities that they should live together in harmony. **[24][27][29][49]**

5.30 On 13 August 1997 heavily armed attackers killed six policemen and seven civilians in an attack on Likoni police station. There was no immediate evidence of any directly political motive although pre-election tensions were high **(see paragraphs 5.31 & 5.32)**. A major security operation was launched to find the attackers. The coast was affected by further civil disturbances which by September 1997 had left nearly 100 people dead, and many thousands displaced **(see paragraph 5.59)****. [58][223]**

5.31 On 21 August 1997 a Kenyan High Court charged 62 suspects with robbery and violence in connection with the Likoni raid, while the authorities' security operation to counter the violence resulted in at least 410 arrests. Among those arrested were a number of key local KANU activists, supporting allegations that local KANU factions were somehow involved in the attacks. The attacks were directed at members of non-indigenous "up country" tribes who were considered to be pro opposition. Thirteen police officers were killed in two attacks in September 1997 allegedly by ethnic Somali bandits, in the Garissa district, North Eastern Province. **[56][57][59][91]**

Recent Ethnic Violence

5.32 Renewed violence occurred in January and February 1998 mainly in the Laikipa and Nakuru district of the Rift Valley Province. Violence initially broke out in Laikipia district and then spread to Njoro. Armed groups of Kalenjin attacked ethnic Kikuyu residents in night raids, raping and hacking with machetes, or killing with firearms, before looting and burning homes. In retaliation, members of the Kikuyu community attacked and virtually wiped out a Kalenjin community at Naishe (Lare) slaughtering men, women, and children. Calm was eventually restored to the area. There were also reports of killings in western Kenya in the Homa Bay and border districts. The clashes, predominantly between the Kikuyu and Kalenjin tribespeople, resulted in the deaths of approximately 120 people **(see paragraphs 5.33 & 5.34)**. Thousands of people fled the area and took refuge in Nyeri. The Government condemned the violence and took steps to curb the clashes and a curfew between the hours of 9pm and 6am was imposed in Nakuru's urban districts on 5 February 1998, which lasted until 4 March 1998. Police arrested 64 suspects, some of whom appeared in court facing charges related to violence. The Government launched an enquiry into the troubles, and began to resettle some of the displaced. A number of politicians were interrogated in connection with the clashes. MPs from the various communities within western Kenya established committees to identify the root causes of the clashes.
[10][13][22][164][176][177][226]

5.33 The Commissioner of Police, Duncan Wachira released a report into the violence in March 1998. Amnesty International also published a report concerning the violence in June 1998 entitled "Kenya: Political violence spirals". They stated that the violence in the aftermath of the December 1997 elections, followed a similar pattern to the violence that occurred in the run up to the 1992 elections. The difference between the two being that the most recent violence occurred after the elections and for the first time the Kikuyu community retaliated in an organised fashion. Amnesty criticised the Government for failing to provide sufficient security in the area affected, which they stated "implies" complicity. They also urged the Kenyan Government to investigate all extra-judicial killings since December 1997. As in the case of the ethnic violence in the Rift Valley in 1991-93 and on the coast in August 1997, there were credible charges of involvement by local politicians belonging to both KANU and the opposition in the January 1998 clashes. There is no compelling evidence to support charges that the Government itself instigated the violence; however, the Government response to the clashes was slow, inefficient and insufficient once they had started. **[10][22][78][177]**

5.34 In April 1998 Parliament passed an opposition motion to establish a truth and reconciliation commission to investigate the ethnic clashes. On 1 July 1998 President Moi appointed a Judicial Commission of Inquiry to look into the tribal clashes between 1992 and 1998. He named a Ghanaian born Kenyan Appeals Court Judge, Justice Akilano Molade Akiwumi, as the commissions' chairman. The appointment of the commission was received with scepticism in certain quarters, however on 14 July the three appointed judges were sworn in. The commission was welcomed by the NCCK. The commission was held in public and heard evidence from all quarters, including accusations against senior politicians. Details of the inquiries' hearings were published verbatim in the press. The commission was given the freedom to list down people who in the course of the public hearings were found to have been behind the clashes**.** Key churches and NGO’s claim that a number of witnesses were prevented from testifying, especially after, half way through the investigation, the Government replaced the Commissions aggressive prosecutor John Nyagah Gacivih with the more pro-government Deputy Attorney General,

Bernard Chunga. Following this change the Commission were also less vigorous in calling witnesses to testify about the role of government officials in instigating and allowing ethnic violence. The Akiwumi commission was due to present its findings by the end of 1998 but continued to hear evidence throughout 1999 finally winding up on 11 June 1999. According to their terms of reference, the commission was required at the conclusion of its work, to make recommendations on individuals who ought to be prosecuted in connection with the clashes. The commission submitted its report to President Moi in August 1999 since when the Government has neither released the report or announced it is taking any formal action on it's findings. On 9 March 2000 the High Court directed that the Attorney General be served with an application involving a suit in which the Law Society of Kenya wants the government compelled to release the findings of the Akiwumi Commission. **[2][13][80][83][90][91][119][133][252]**

5.35 In February 1999 twelve people were killed, among them seven policemen, in a fierce gun battle with armed bandits in the Dujis area of North Eastern province. The bandits attacked a passenger bus killing several people including a police inspector. Some policemen were killed when a vehicle belonging to OXFAM, which they were escorting, was also attacked by the bandits. Eight people were also killed in fresh ethnic clashes, which erupted in the western part of Kenya in Narok, Rift Valley province. The four-day skirmishes erupted between the Maasai and Kipsigi (a sub-ethnic group of the Kalenjin's). On 16-17 October 1999 2 people were killed and others were seriously injured in a series of clashes that followed the distribution of leaflets warning upcountry people to leave the Coast Province. A gang of 20-30 men who reportedly called themselves Kaya Bombo attacked people in Mishomoroni, Mugongeni, Kisimani and Mwandoni. The authorities moved quickly to reassure residents that the attack was not a repeat of the violence that engulfed the Likoni area prior to the 1997 elections. Mombasa police reported 54 arrests in a crackdown that immediately followed the raids. A district official denied that the raids were tribal or politically motivated. In late October 1999 four people were charged with violent robbery following a renewed spate of violence in the coastal town of Kisauni. **[196][241][242]**

5.36 In January 2000 the President Moi announced that additional security forces would be deployed to patrol major roads in Laikipia (Rift Valley Province) and try and find a solution to rising crime there and in Nyandarua. The initiative was designed to stop a resurgence of ethnic fighting in an area where 110 people had died during the previous year at the hands of marauding thugs. Moi's announcement shortly followed official opposition leader, Mwai Kibaki's accusation that the government had failed to protect its citizens since it was told about the gang more than a year previously. Mr Kibaki claimed that only Kikuyu's had been targeted. On 27 January 2000 a three-day mediation meeting of leaders from different ethnic communities was held in an attempt to resolve conflict in the region. Also at the end of January 2000 an operation to ensure that herdsmen from the neighbouring districts commenced. This initiative was also designed to reduce ethnic tension after the herdsmen from Isiolo and Samburu moved in to Laikipia with thousands of their cattle due to the drought. **[106][117][163]**

Cattle Rustling Related Violence

5.37 Attacks and revenge counterattacks, part of a longstanding pattern of cattle rustling, continued between Pokots and Marakwets/Keiyos in Rift Valley Province, Boranas and Somalis in North Eastern Province, Ormas and Somalis in Eastern Province, and Kuria and Luo's in Nyanza resulting in scores of deaths. These incidents sometimes lead to more widespread

incidents of ethnic violence. In June 1999 15 people were killed and seven seriously wounded when hundreds of ethnic Pokots raiders attacked Turkana villages stealing cattle and other animals. In July 1999 more than 2,000 people fled their homes after five-day clashes over cattle grazing in Garissa District, North Eastern Province. During the clashes 12 people were killed and 10 wounded as Borana tribes men tried to drive ethnic Somalis out of their prime grazing land. Many people fled to the town of Benane. Traditional rivalries over grazing land intensified during 1999 after a drought in the area. On 10 October 1999 the government denied claims in a National Council of Churches of Kenya report, that private militia training camps had been set up in districts hit by cattle rustling. On 24 October 1999 10 Marakwet women and children awaiting vaccinations at a medical centre were killed during a cattle raid by Pokots. In December 1999 President Moi directed police to shoot cattle rustlers on sight and ordered communal punishment for communities abetting the practice. He also said that the government would sack chiefs or their assistants who condone cattle rustling in their areas of jurisdiction. In February 2000 an army camp was established on the border of the West Pokot and Marakwet districts in order to assist the existing security forces in the area with their fight against insecurity aggravated by cattle rustling. In addition the District Commissioner announced that the government had organised border meetings to educate residents on the need to maintain peace. **[2][72][77][240][245][251]**

Kenyan Asians

5.38 The Asian community comprises of between 0.5 and 1% of the population and includes second and third generation Asians with full citizenship as well as a smaller body of recent immigrants. There continues to be tensions between Asian Kenyans and black Kenyans, who see the formers' affluence and seeming reluctance to assimilate African culture and employ black Kenyans, particularly in managerial positions, as a problem. The involvement of some Asians in corrupt activities with government officials has further fuelled popular resentment. Politicians, both opposition and KANU, from time to time appeal to the majority prejudices by attacking Asian Kenyans, accusing them of exploiting and usurping the natural inheritance of African Kenyans. In June 1999 Joseph Munyao, secretary general of the Democratic Party, accused Asians of "fleecing" the country and, in a speech which purportedly represented official party policy, warned that their KANU connection would not "last forever". Although President Moi has on occasion formally rejected racist diatribe, at times even he has resorted to racial attacks and slurs. **[2][224][225]**

5.39 There have been reports of the Asian community being threatened or coming under attack by groups of African Kenyans; however, President Moi has made it clear that threats to any individual community were unacceptable, and that the police will take action to protect all and maintain the law. On closer inspection very few of the attacks turned out to be politically motivated and were regarded as acts of common criminality. Such crimes have become common occurrences and Asians, who are commonly believed to keep money and valuables in their homes, are popular targets. However, such burglaries are by no means restricted to Asians or Asian households nor is there any evidence that the Asian community is at any greater risk than other ethnic communities who are perceived to be well off (including Europeans and black Africans themselves). There is one Asian Member of Parliament. **[2][28][34][225]**

Ethnic Somalis.

5.40 The Kenyan authorities have targeted Kenya's indigenous ethnic Somalis as the only ethnic group required to carry an additional form of ID to prove their citizenship. The continued presence of large numbers of Somali refugees in Kenya (approximately 80% of Kenya's refugee population) has further exacerbated the problems faced by Kenyan Somalis. However, there were, prior to the 1997 elections, 14 Somali MPs and Somalis are also represented in the Cabinet. Since June 1999 seven people were killed during fighting between members of the Abduwak and Auliyan clans of the Somali ethnic group just west of Garissa. In August 1999 fighting between the same two clans reportedly marred county council elections in Garissa County, some deaths were reported following clashes. Worsening gun violence between the clans led to a partial curfew being imposed in Garissa from 13-20 December 1999. During the curfew the General Service Unit of the police force arrested several people violators. When announcing the lifting of the curfew, the Provincial Commissioner said it had achieved its intended goals of restoring peace. **[2][25][31][72][199]**

The Safina Party.

5.41 In May 1995 several opposition activists including Gitobu Imanyara, a former Secretary-General of FORD-Kenya, and Paul Muite MP, an influential human rights lawyer, announced the formation of a new political grouping, Safina (the Swahili term for 'Noah's Ark'). Dr Richard Leakey was appointed as the group's Secretary General. Safina's primary aims were to combat corruption, human rights abuse and introduce an electoral system of proportional representation. In June 1995 Safina submitted a formal application for registration. The official response to this new grouping was hostile. Following constitutional reforms in September 1997 Safina were finally registered on 26 November 1997, a month later than several other political parties obtained their registrations. Prior to November 1997, Safina had no branch offices or ordinary mass membership in Kenya, with its leadership stating that these would come after registration. However, it was not an illegal organisation, nor had it been refused registration. It was rather left in legislative limbo - essentially for political reasons. **[1][30][61]**

5.42 Prior to registration, Safina had a functioning secretariat, which focused its attention on research and policy issues. On occasions people described as " Safina activists " were arrested. However, such individuals were not necessarily known to the groups leadership, and there is no evidence to suggest that anyone was arrested or detained solely on the grounds of being in Safina. There have been instances of people being arrested in the context of other political activities e.g. participating in unlicensed meetings, which the police do from time to time break up, and they have then claimed allegiance to the grouping. Safina's leadership at this time consisted of a small number of prominent lawyers, three serving MP's and a prominent human rights activist. Whilst these individuals experienced varying degrees of harassment by the authorities they remained public figures whose views and political activities were widely known to the newspaper-reading public in Kenya. Safina's leadership never claimed that they, or their ordinary supporters, were being persecuted, harmed or detained. **[1][30][61]**

5.43 Safina gained 6 seats in the 1997 elections, including one, which was allocated by the Electoral Commission. Richard Leakey was nominated as the MP to take up the allocated seat, but he has since resigned and is now head of the Civil Service **(see paragraph 4.10)**. **[1][32]**

Islamic Party of Kenya (IPK).

5.44 In the run up to the 1992 elections political parties which were religiously or ethnically based were not allowed to register, so preventing the registration of the Islamic Party of Kenya (IPK). Among the reasons given for the Attorney General's decision to refuse it registration was that non- discrimination was one of the basic principles of the Kenyan constitution. It was argued that the IPK did not represent a cross section of Kenyan opinion, and that the party's ideology was based on a religious platform, which, by its very nature is discriminatory. In response to this decision overzealous supporters of the IPK were involved in serious civil disturbances and periodic rioting. **[23]**

5.45 The IPK's more militant supporters were also affected by the presence of Sheikh Khalid Balala, the IPK's spiritual leader. His fiery rhetoric played on the Muslim community's sense of being a politically and economically " disadvantaged " grouping. Balala's clashes with the authorities, over treason charges, and a " fatwa " he decreed in 1993 against a KANU leader in Mombasa, elevated his position within the IPK. The IPK politically aligned itself with the FORD-Kenya party in the general elections and helped it to win two parliamentary seats in Mombasa. In December 1993 Professor Mzee, an avowed IPK sympathiser, was elected in the Kisauni parliamentary seat in Mombasa. **[23]**

5.46 Towards the end of 1993 clashes frequently occurred between IPK supporters and members of a rival Muslim faction the United Muslims of Africa (UMA). This was largely internecine squabbling at a local political level; however it was alleged that the UMA had heavy government backing. The UMA was virtually dissolved by February 1994. There was no evidence that this, wrangling among Muslim groups, was sponsored by the government, neither was there evidence of illegal activity against Muslim activists by the authorities. Those involved in unlawful activities or violence ran the risk of arrest for criminal behaviour. There have been reports that the police were sometimes heavy handed in dealing with demonstrations by Muslim activists, but that was also true of all their dealings with public order problems. There were cases of harassment and ill-treatment of IPK activists but the decrease in popularity of the organisation since 1997 has meant that their is no evidence that IPK supporters or activists draw much attention or are intimidated today. No IPK activists, brought before the courts for public order offences, were treated any differently from other people facing similar criminal charges. In the wake of the terrorist bombing of the US Embassy in Nairobi **(see paragraph 5.62)** several non-governmental organisations (NGOs), including five Muslim NGOs, were deregistered by the Government, which prompted mass demonstrations by the Muslim community. President Moi stated he would set up a committee to examine Muslim grievances. **[23][33][39][89][92]**

5.47 In December 1994 the Kenyan authorities effectively stripped Balala of his Kenyan citizenship, when Kenyan Embassy officials in Bonn rejected his application for a passport extension. His absence from Kenya removed the leadership spark he provided which attracted many young, disgruntled, Muslims to the IPK movement. Balala remained stranded in Germany until July 1997 when the authorities granted him permission to return to Kenya. The Attorney General Amos Wako cited appeals from Balala's relatives and the Muslim community as the

reason why they reversed their decision. Since returning to Kenya, on 12 July 1997, Balala has been free to speak to the press, address his supporters and move unmolested around Mombasa, having been granted a licence to hold a pro-reform meeting on 26 July 1997. He was arrested just prior to the 1997 elections, for inciting people not to vote, and again sometime in June 1998 on further charges of incitement, at which time he was remanded in custody for 10 weeks in Manyani Prison before being released on 21 August 1998. In the aftermath of the Nairobi bombings and the subsequent US air strikes, Sheikh Balala asked the US to exercise caution. Despite the 1997 legal reforms and subsequent registration of several political parties, the Government refused to reverse it's 1994 decision to deny registration to the IPK on the grounds of the organisations involvement in violent confrontations with police during the pre-election riots in 1992 **(see paragraph 5.44)**. **[1][2][33][55][60][86]**

MWAKENYA

5.48 In March 1986, it was revealed that several Kenyans had been detained under the provisions of the Public Security Act. During the ensuing 12 months, a conspiracy known as "Mwakenya" became a focal point of Kenyan politics. By early 1987 more than 100 people had been detained in connection with Mwakenya, some of them receiving lengthy prison sentences. Although the government may have over-reacted in its anxieties about Mwakenya, the movement none the less represented genuine undercurrents of discontent. Members of Mwakenya were at one time at risk of persecution, There is no evidence that it is operative in Kenya today. Individuals formerly associated with Mwakenya are now involved in mainstream politics. **[36][37][40]**

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

5.49 During late 1994 to mid 1995 FERA was considered to be a major threat. On 3 February 1995 the Kenyan Government issued a statement accusing FEM/FERA of recruiting disaffected Kenyan youths and giving them military training to mount operations in Kenya including cattle rustling, arson, bank robberies and attacks on businessmen and the police. They alleged the movement was based in neighbouring Uganda and led by a Brigadier John Odongo. The scare over FEM/FERA activity in Western Province lead the Kenyan authorities to charge a number of people with suspected membership of FEM. Charges against a number of defendants were later dropped, four were convicted and sentenced to between five and six years. A number of the FEM suspects later reported that they had experienced maltreatment, including torture, and had only signed confessions under duress. Membership of FEM/FERA has since receded. John Odongo and FERA Chairman Patrick Wangamati went into exile in Ghana. On 6 October 1997, Wangamati returned to Kenya. He was detained, held incommunicado and interrogated on his return, and was pardoned in December 1997. He announced publicly that FERA had been officially dissolved. Whilst there was a time when members and people associated with FERA were in considerable danger of persecution in Kenya there is no evidence that this is still the case. **[1][7][8][11][38][40][46][48][161]**

D. HUMAN RIGHTS: - OTHER ISSUES

Freedom of Assembly

5.50 Freedom of Assembly is allowed for in the Constitution; however the Government restricts this right in practice. The Public Order Act, which the government used for many years to control public gatherings, was amended in 1997. The requirement that public meetings be licensed was replaced by the less restrictive requirement that organisers of public meetings inform the police in advance. Under this new formulation government disruption of public meetings declined significantly during 1998, however this improvement was not sustained. During 1999 the authorities repeatedly disrupted public meetings and demonstrations about which the organisers had duly informed the police in advance. **[2]**

5.51 In September 1999 President Moi stated that government officials should deny "permits" to politicians who use public rallies to abuse other leaders. However, officials now only have legal authority to cancel planned public gatherings if there are simultaneous meetings previously scheduled for the same venue, or if there are specific security threats. Some public assemblies that police dispersed were already violent before they disrupted them. However other assemblies disrupted by the police, including some student and political protest demonstrations, were either non-violent or only became violent following police intervention. **[2]**

Freedom of Speech and of the Press

5.52 The Constitution provides for freedom of speech and the press, although the authorities' broad interpretation of colonial-era sedition and libel laws partly limited free expression. These sedition laws, which were used to prevent freedom of expression, were replaced in November 1997. The print media remains candid and independent. There are four daily newspapers that report on national politics. The largest, the Daily Nation, is independent and often publishes articles critical of government policies. There are a large variety of weekly tabloid publications, many of which are highly critical of the Government. Some independent periodicals reported that the business community came under pressure from the Government to refrain from placing advertisements with them. **[2][20]**

5.53 The Government maintains control of the electronic broadcast media, through the Kenya Broadcasting Corporation (KBC), whose stations typically do not criticise the Government. They also neglect to give equal reporting time to opposition activities. During the 1997 election campaign the Electoral Commission directed that KBC accord equal treatment to all political parties but this directive was never implemented fully. In May 1998, after a delay of 7 years, the Government issued a broadcasting licence to the Nation Media Group, the country's largest independent media organisation. The licence was restricted to the Nairobi area and the issuing of broadcasting frequencies was delayed until late 1998. In March 1999 the Nation Media Group received authorisation for radio broadcasts in Nairobi, Mombasa, Kisumu, and Nakuru; radio and television broadcasts were subsequently commenced in Nairobi in October and December respectively. Nation Media Group has sued the Government for permission to broadcast nation-wide. **[2]**

5.54 Despite the previous forms of obstruction, the press and opposition continued to promote their views to the general public. However, a pattern of sporadic government harassment of the print media continues. At the beginning of July 1998 the Government announced that it was banning Finance magazine and the Post on Sunday and the Star weekly newspapers, all three of which were sharply critical of the Government's record. The ban immediately drew a storm of criticism from various quarters including foreign missions. The High Court stayed the

government order pending judicial review and both Finance and the Post on Sunday continued to publishing in 1999 without apparent restraint. However, the post on Sunday was forced to suspend publication in August 1999, following the conviction of its editor Tony Gachoka and the associated fine of about one million Kenyan Shillings (about $ 14,000) imposed on the publication. Gachoka received a 6-month prison sentence for contempt of court, stemming from articles he wrote accusing government officials of corruption. However, following national and international pressure Gachoka was granted a presidential pardon and released from prison on 3 November 1999. **[2][4][13][42]**

5.55 In February 1999 the editor of the "Expression Today" Mr David Makali was kidnapped by a gang and driven to Karura Forest where he was tortured. The kidnappers accused the editor of writing bad reports about certain people. The kidnapping was condemned by the National Council of NGOs and the Kenya Union of Journalists. Almost one week later, assistant minister Fidelis Gumo warned journalists that individuals who write reports tarnishing the names of politicians would be beaten. In July 1999 police raided the offices of Nairobi printing firm Junior Graphics, impounded printing equipment of five publications, 'The Citizen', 'Metropolitan', 'The Weekly Express', 'Concord Weekly' and 'Despatch' and arrested the publisher for attempting to print alarming material. None of the publications were registered. The Concord publisher Paul Kimani subsequently faced charges of publishing without proper licensing. In August 1999 police raided the offices of the Metropoliton, arresting two employees for similar reasons. **[2][111][154][171]**

Freedom of Religion.

5.56 The Constitution provides for freedom of religion and the Government generally respects this right in practice; however, while groups were generally allowed to worship freely, on occasions the Government have interfered with other activities of religious groups. The Government requires all religious organisations to register. Once registered, religious organisations enjoy tax-free status and clergy are not subject to any duty on purchased goods. Some small splinter groups have found registration difficult due to their inability to define their status as more than an offshoot of a larger religious organisation. Religious organisations generally receive equal treatment from the Government. Traditional indigenous religious groups are permitted to register though many choose not to do so. The Government at times disrupted public meetings that religious groups organised or participated in for political reasons. On 10 June 1999 a demonstration arranged be Protestant, Catholic and Muslim organisations was violently disrupted **(see paragraph 4.21)****. [2][3]**

5.57 Most of the population hold traditional African beliefs. There is a sizeable Christian community, while Muslims form a smaller proportion of the population. The Indian community is partly Muslim and partly Hindu. Muslims are found mainly along the coast but the Islamic faith is also established among Africans around Nairobi and among some tribes of the northern districts. East Africa is an important centre for the Bahá'í faith. In March 1999 the Government issued broadcasting licences to religious organisations for the first time. None of the new stations, three Christian and one Muslim had begun broadcasting by the end of 1999. **[1][2]**

5.58 The Mungiki order is an unregistered traditional religious group that rejects the trappings of Western culture. In early 2000 the order, sometimes referred to as the Mungiki youth sect, was

reported to have a membership of 300,000 based in the largely pro-opposition Kikuyu ethnic group. The Government have periodically arrested and briefly detained some Mungiki members. However, on 7 February 1999, 81 members of the order were arrested in Nakuru District and refused bail. The government accused the Mungiki members of requiring adherents to take illegal oaths against the Government, coercing females to undergo the practice of female genital mutilation **(see paragraph 5.18)**, and coercing males to undergo circumcision rights. The 81 arrested were acquitted on 16 March 1999 after the prosecution failed to prove a case against them. There have been reports, denied by Mungiki, of women being grabbed off the streets and forcibly circumcised. During the 1997 elections there were fights between Mungiki members and the youth wing of KANU. Mungiki has grown rapidly since then and Kenyan political observers fear that the next bout of violence could be much worse. Some members of Mungiki also belong to MVUWA; a youth movement formed in January 2000 (see paragraph 4.27). Ndura Waruingi, the national co-ordinator of Mungiki is also a member of the MVUWA steering committee. **[2][3][87][127][156][238][250]**

Freedom to Travel/Internal Flight

5.59 The Government does not restrict emigration or foreign travel. Civil servants and MP's must obtain government permission for international travel, which is routinely granted. Kenyans may freely travel within the country. Many of the rural residents in the Rift Valley who were displaced by the ethnic clashes in 1991-1993 remain displaced in urban areas. Some of the several thousand people displaced by the Rift Valley clashes of 1998, and in the Pokot-Marakwet region during 1999, have not returned to their homes for fear of renewed violence. There are Kikuyu communities spread all around Kenya, and Kikuyus, who may have been displaced by ethnic clashes in the Rift Valley are able to freely travel to other parts of Kenya where they could integrate with other Kikuyu communities outside of the Rift Valley. **[2][35]**

Mob violence.

5.60 Incidents of mob violence increased during 1999. According to KHRC, 157 persons were killed in mob violence between January and September 1999, compared with 139 deaths throughout 1998. The Government recorded 183 deaths due to mob violence between January and September 1999. Human rights observers attribute mob violence to a lack of public confidence in the police and judicial process. The majority of victims were persons suspected of criminal activities including robbery, cattle rustling and membership of terror gangs. However, the social acceptability of mob violence also provided cover for personal vengeance under the guise of “mob justice”. Occasionally, mobs killed members of their communities suspected of practising witchcraft. There were 16 such deaths recorded during 1998 but currently no statistics for 1999. The majority of mob violence victims have been killed by lynching, beating or burning. **[2]**

Civil unrest.

5.61 On 8 January 1999 security guards violently broke up a peaceful demonstration against the hand over of public land in Karura Forest. Greenbelt Movement leader Professor Wangari Maathai was beaten as about 20 protesters including MP's and journalists tried to plant seedlings on land cleared for development. Police at the scene did not intervene. The Attorney General,

Amos Wako later apologised to Professor Maathai, and ordered a full investigation into the incident. Students were injured, including several who were hospitalised, during violent confrontations with the police at the forest on 30-31 January 1999. The University in Nairobi was closed, indefinitely, due to the rioting. Fourteen diplomatic missions said they were concerned at what they termed "the abuse of public assets. Three Kenyan opposition MPs were arrested on 2 February 1999 and charged with inciting university students to riot after three days of protests about plans to build a luxury housing estate in the Karura forest on the outskirts of Nairobi. David Mwenje, James Orengo and Njehu Gatabaki were released on bail of 100,000 Kenya Shillings each **[16][17] [107] [194]**

National Security

5.62. In August 1998 a bomb placed next to the United States' (US) embassy exploded in central Nairobi killing 253 people and wounding more than 5,000. Two men were later arrested and charged in the US with murder. Six Muslim NGOs were deregistered in September 1998 with the government citing security concerns in the wake of the bombing. A further 11 were threatened with deregistration. In October 1998 the High Court suspended the deregistration of 5 of the NGOs pending appeal. In December 1998, the NGO Co-ordination Board said it was in the process of reviewing the cases of all the NGOs, which were issued with notices of intended deregistration. The board said it was satisfied that two NGOs, namely the International Islamic Relief Organisation and Ibrahim bin Abdulaziz Al-Ibrahim Foundation, should continue with their operations. **[12][13][22][167]**

5.63 In July 1999 the government put the Kenyan army on combat-ready alert following escalating insecurity along the country's borders with its Horn of Africa neighbours. The insecurity posed by remnants of the militia from Somalia and other neighbouring countries could not be taken for granted and a state of preparedness was needed to resist cross border incursions by hostile groups a State Minister announced on 4 July 1999. On 5 July 1999 and again on 22 August 1999, the Government closed the border with Somalia. Night-time sweeps in urban areas were subsequently intensified in an effort to stem the influx of weapons, illegal goods and persons. Although the border remained officially closed at the end of 1999 many applicants for refugee status continued to enter the country from Somalia. In February 2000 security forces were placed on high alert after threats from Somali Patriotic Movement that they would attack Kenyan border settlements in search of Auliyahan militia. The Provincial Commissioner denied that Kenya was harbouring any Somali militia. **[2][95][210]**

ANNEX A

CHRONOLOGY.

1895 - Kenya declared a British protectorate.

1902 - White settlement encouraged in the central highlands.

1907 - Legislative council established comprising mainly of European settlers.

1914 - The 1,000 European land-holders meet with significant African armed resistance.

1920 - African political activity begins to organise particularly amongst the Kikuyu in Nairobi, and the Luo.

1925 - Local native councils introduced.

1940s - White settler farmers achieve considerable prosperity.

1944 - The Kenya African Union (KAU), an African nationalist organisation formed, demanding access to white-owned land.

1947 - Jomo Kenyatta becomes President of KAU.

1952/6 - Campaign of terrorism conducted by the Mau Mau, a predominantly Kikuyu secret society.

10/52 - A state of emergency declared by the British authorities.

6/53 - Kenyatta imprisoned for alleged involvement in Mau Mau activities, and the KAU is banned. All political activity is suspended until 1955. Despite the ban, two Luo political activists, Tom Mboya and Oginga Odinga come to prominence.

1957 - African members elected to the legislative council on a limited franchise (60% adult African population). Mboya unofficial leader of these members, who refuse government posts and demand a universal adult suffrage.

1/60 - The state of emergency is revoked. A transitional constitution drafted during January and February allowed Africans a large majority in the legislative council and legalised political parties. African members of the council subsequently formed the Kenya African National Union (KANU), with James Gichuru being elected as acting president of the party.

1961 - General election; KANU candidates win a majority of the seats in the legislative council.

8/61 - Kenyatta released from prison and assumes the presidency of KANU.

5/63 - KANU wins a decisive victory in the general election.

6/63 - Internal self-government begins. Kenyatta becomes Prime Minister.

12/12/63 - Kenya becomes independent.

12/12/64 - Kenya declared a republic. Kenyatta becomes President.

1965 - Clear divisions within KANU appear between party's conservative wing, led by Mboya, and the radicals led by Odinga.

4/66 - Odinga resigns as Vice-President.

1966 - Oginga Odinga forms a new party, the Kenya People's Union (KPU), and accuses the government of furthering the interests of a small privileged class. Legislation requiring the 30 KPU members of the House of Representatives to contest by-elections is immediately approved; only nine members re-elected. Security legislation also enacted giving the Government powers of censorship and the right to hold suspects in detention without trial.

12/66 - Kenya's two legislative chambers are amalgamated to form a unicameral national assembly.

1/67 - Daniel Arap Moi becomes Vice-President.

7/69 - Tom Mboya, Minister for Economic Planning, and Secretary-General of KANU, is assassinated by a Kikuyu. Luo demonstrations against Kenyatta follow. The KPU is banned, and Odinga detained.

12/69 -Two-thirds of the KANU members of the National Assembly lose their seats in a general election.

1970s - Kenyatta becomes increasingly reclusive and autocratic.

9/74 - Kenyatta is returned unopposed for a third five-year term.

8/78 - President Kenyatta dies.

10/78 - Daniel Arap Moi, a Kalenjin, takes over the Presidency. A programme is initiated to purge Kenya's corrupt bureaucracy.

12/78 - All political detainees are released.

12/79 - Despite Moi's emphasis on regional representation in his new government, Odinga and four other former KPU members are barred from participating in the general election. Student protests begin, with predominantly Luo participation, prompted by the KPU banning. Relations with the USA strengthen. US forces use Kenyan facilities.

1980 - Moi succeeds in bringing Odinga, and his substantial following, back into KANU. Nevertheless, Odinga continues to attack the US military presence in Kenya, and denounces the Government's economic management.

4/80 - Charles Njonjo resigns as Attorney General.

6/80 - Njonjo elected to the National Assembly, and later becomes Minister of Home and Constitutional Affairs.

Mid 1980 - A de-tribalisation drive commences. Virtually every Kenyan organisation title, which has tribal implications, is renamed.

1981 - Disagreements between Njonjo and Mwai Kibaki, the Vice-President, become unbridgeable; intense factional disputes develop between their supporters.

2/82 - Kibaki wins the power struggle and gains Njonjo's Home Affairs portfolio in a Cabinet reshuffle. Moi appears to become increasingly intolerant of criticism.

5/82 - Odinga and another former MP are expelled from KANU for advocating the formation of another political party.

6/82 - Kenya constitutionally becomes a one-party state.

8/82 - An attempted coup takes place, following a series of political detentions and increased press censorship. Several hundred people are killed.

9/84 - In an attempt to reduce corruption and increase discipline within KANU and the civil service, Moi directs that all civil servants must be members of KANU.

1986/7 - The Government acts to suppress an unofficial left-wing opposition group known as Mwakenya (the Union of Nationalists to Liberate Kenya). By early 1987, more than 100 people, mainly University teachers, students and journalists, have been arrested in connection with the group's activities.

8/86 - KANU approves an open 'queue-voting' system to replace the secret ballot in the preliminary stages of a general election. The new system is opposed by church leaders, civil servants, and others, whose political impartiality is necessary for their work.

12/86 - The National Assembly adopts constitutional amendments that increase the power of the President by transferring control of the civil service to the President's office, and reducing the independence of the judiciary.

6/87 - It is announced that only members of KANU are entitled to vote during the preliminary stages of a general election.

7/87 - Amnesty International publish allegations that Kenyan political detainees are tortured and two have died in custody.

2/88 - Moi is nominated unopposed to serve a third term as President.

3/88 - In an extensive cabinet reshuffle following a general election, Joseph Karanja replaces

Mwai Kibaki as Vice-President.

7/88 - The National assembly adopts constitutional amendments allowing the President to dismiss senior judges at will, and increasing the legal permissible period of detention without trial from 24 hours to 14 days, for persons suspected of committing capital offences. The measures lead to an intensification of criticism of the Government's human rights record.
9/88 - Elections take place for the leadership of KANU.

12/88 - Kenneth Matiba, Minister of Transport and Communications resigns and is expelled from KANU after criticising the conduct of the party elections.

4/89 - The National Assembly unanimously approve a motion of 'no confidence' in Karanja, after allegations that he abused his position as Vice-President to further personal and tribal interests. Karanja denies the allegations but resigns shortly after. Prof. George Saitoti becomes Vice-President.

6/89 - Moi releases all political prisoners held without trial, and offers an amnesty to exiled dissidents. Allegations continue to be made regarding convicted political prisoners given unfair trials.

2/90 - Dr Robert Ouko, Minister of Foreign Affairs and International Co-operation, dies in suspicious circumstances. Allegations that the Moi administration is implicated in his death lead to anti-Government riots in Nairobi and Kisumu. In response, Moi bans all demonstrations and asks the British police to investigate Ouko's death.

5/90 - A broad alliance of intellectuals, lawyers and clergy, under the leadership of Matiba, begin to exert pressure on the Government to legalise political opposition to KANU.

7/90 - Moi orders the arrests of Matiba and other prominent leaders of the alliance. Serious rioting follows in Nairobi and its environs. More than 20 people are killed, and 1,000 arrested.

8/90 - An Anglican bishop, who publicly criticised the Government, dies in a car crash, after threats to his life by members of the Cabinet; the most senior of these, Peter Okondo subsequently resigns as Minister of Labour. The Government orders an inquest into the bishop's death.

9/90 - The British police report their findings to the Kenyan authorities re Ouko's death.

10/90 - Moi orders a judicial inquiry into the affair.

11/90 - Amnesty International report that several hundred rioters remain in prison after the July riots. Allegations of torture are made.

12/90 - KANU abolishes the system of 'queue-voting' after consideration of the findings of a political review committee who had tested public opinion, and resolves to cease expelling party members.

1/91 - KANU agrees to readmit 31 expelled members.

6/91 - Matiba is released from prison, apparently on the grounds of ill health.

7/91 - Four of those detained in the July 1990 riots are found guilty of sedition and each sentenced to 7 years imprisonment. Africa Watch, a human rights organisation, publishes allegations that the Government is permitting the torture of detainees, and exerting undue influence on the judiciary.

8/91 - Six opposition leaders, including Oginga Odinga, form a new political movement, the Forum for the Restoration of Democracy (FORD). The Government immediately outlaws the group, but it continues to operate.

9/91 - The judicial inquiry into the death of Ouko is presented with evidence that he was murdered.

11/91 - Moi dismisses Nicholas Biwott, the Minister of Industry, in response to widespread suspicion that Biwott had been implicated in Ouko's assassination. Shortly after the judicial inquiry is dissolved. Several members of FORD are arrested prior to a planned pro-democracy rally in Nairobi. Protesters at the rally are dispersed by security forces. The Kenyan authorities are condemned internationally for suppressing the demonstration, and most of the detained opposition activists are subsequently released. Creditors suspend aid to Kenya indefinitely pending the acceleration of both economic and political reforms; donors particularly emphasise a desirable improvement in Kenya's human rights record.

12/91 - A special conference of KANU delegates, chaired by Moi, accede to domestic and international pressure for reform, and resolve to permit a multi-party political system. The National Assembly subsequently endorses appropriate amendments to the Constitution. Moi dismisses Peter Oloo Aringo, the Minister of Manpower Development and Employment, after criticism of the Government; Aringo resigns as Chairman of KANU. Later in the month Mwai Kibaki resigns as Minister of Health, in protest of alleged electoral malpractice and the unsatisfactory outcome of the judicial inquiry into Ouko's death. Kibaki immediately founds the Democratic Party (DP), and five other ministers and deputy ministers resign their posts in the following weeks.

1992 - Several new political parties are registered. In first half of year, some 2,000 people are reportedly killed in tribal clashes in western Kenya.

3/92 - The Government bans all political rallies, purportedly in order to suppress the unrest. Restrictions are placed on the press.

4/92 - Following a two-day general strike organised by FORD, the Government ends the ban on political rallies.

Mid/92 - FORD appears weakened by internal divisions.

8/92 - FORD splits into two opposing factions.

10/92 - FORD's two opposing factions register as separate political parties; FORD-Asili, led by

Matiba, and FORD-Kenya, led by Odinga.

29/12/92 - Multi-party Presidential and legislative elections take place. Prior to the elections opposition parties had protested that administrative and legal obstacles had disenfranchised some sectors of the electorate. Moi is elected to a fourth term in office winning 36.35% of vote. 100 of the 188 seats in the National Assembly are won by KANU. Votes are cast predominantly in accordance with ethnic affiliation. Opposition leaders allege gross electoral irregularities.

1993 - Tribal clashes continue in the Western region.

1/93 - A Commonwealth monitoring group, while accusing the Government of corruption, intimidation and incompetence, state the outcome of the elections reflected the will of the people.

2/93 - The authorities impound copies of three anti-Government publications, amid allegations that they contain seditious material.

4/93 - Four opposition members arrested and charged with participating in an illegal demonstration.

5/93 - A general strike is co-ordinated by the Central Organisation of Trade Unions (COTU) who demand wage increases for its members and the dismissal of Saitoti as Vice-President, and Minister of Planning and National Development; although some wage concessions made, the Secretary General of COTU is arrested and charged with inciting industrial unrest. During **May and June** a leader of the banned radical-fundamentalist Islamic Party of Kenya (IPK) is detained on three separate occasions and charged with sedition.

6/93 - FORD-Kenya becomes the largest opposition party in the National Assembly, following the defection of a FORD-Asili representative to KANU.

9/93 - Several hundred supporters of the IPK riot in Mombasa.

10/93 - Tribal clashes escalate significantly.

11/93 - Africa Watch reiterate persistent allegations by the opposition that the Government is covertly inciting ethnic violence in order to discredit the newly-introduced political pluralism. Several people are arrested and charged with co-ordinating the unrest. International donors agree to resume aid in response to the Government's progress in implementing reforms.

1/94 - Oginga Odinga dies and is succeeded as the Chairman of FORD-Kenya by Michael Wamalwa Kijana.

2/94 - A petition by Matiba, to challenge the validity of Moi's 1992 election as President, is rejected by the Court of Appeal.

6/94 - Main opposition groups, excluding FORD-Asili, form a loose coalition, the United National Democratic Alliance (UNDA), in an attempt to gain a tactical advantage over the Government at future elections. UNDA was subsequently divided by disagreements. Disunity is

also evident within both factions of FORD.

Mid/94 - University staff and employees in the public sector strike in protest at the Government's refusal to recognise their respective trade unions, and to grant better conditions of employment. Many strikers are dismissed.

7/94 - A suspect, charged with the murder of Dr Robert Ouko, is acquitted.

11/94 - A FORD-Kenya representative and the National Assembly's one independent member are found guilty of electoral malpractice during the 1992 elections and are retrospectively disqualified.

4/95 - Kenya's Roman Catholic bishops publish a pastoral letter that accuses the Government of eroding the independence of the judiciary, condoning police brutality and endemic corruption.

5/95 - Leading opposition activist's form a new political party, Safina, under the chairmanship of Mutari Kigano, a lawyer specialising in human rights cases. Dr Richard Leakey, a prominent white Kenyan, is appointed Safina's Secretary-General. The authorities reject Safina's application for official registration. Later in the month, Paul Muite and four other Safina members were detained overnight after visiting a site the authorities had declared legal. A legal case against them was subsequently dropped.

8/95 - Police fail to protect Richard Leakey and a group of Safina people who were attacked by KANU supporters whilst on a visit to Nakuru. After official investigations three suspected participants in this attack were arrested and charged in September. A party including Paul Muite are stopped by uniformed personnel when they try to visit Koigi Wa Wamwere in prison.

10/95 - Koigi Wa Wamwere, a founding member of Safina, is found guilty of attempted robbery and sentenced to 4 years imprisonment. Opposition members of the National Assembly denounce the trial.

11/95 - An Opposition Alliance is established with Leakey as its co-ordinator. Factionalism within opposition parties continues to undermine efforts to present a cohesive challenge to Moi and KANU. Raila Odinga, son of Oginga Odinga, claims to have ousted Wamalwa as Chairman of FORD-Kenya. 5 Safina activists are arrested at Nairobi University following non-political student disturbances. The individuals involved (who were not senior members) are charged with incitement and released on bail.

12/95 - Amnesty International allege the security forces are systematically torturing criminal suspects and opposition activists.

95-96 - Several opposition politicians disaffected by internal rivalries defect to KANU. Rivalries also begin to emerge within KANU.

1/96 - The Moi administration provisionally withdraws controversial draft legislation that would severely restrict the freedom of the press. A trip by Leakey to Mombasa to visit the site of a proposed Safina office is disrupted by a rowdy mob of local KANU supporters, who threaten and verbally abuse the Safina party. Two IPK activists, with Safina links, are arrested and

released the following day without charge.

3/96 - President Moi claims that student unrest at Egerton University is caused by Safina, as a part of its wider plan to cause chaos in the country.

4/96 - A party congress of FORD-Kenya tries to reconcile the split factions, but ends in chaos as delegates attack the designated mediator and riot police intervene to restore order.

7/96 - The Government inaugurates a human rights committee to investigate alleged humanitarian abuses by the authorities. Police in Nanyuki arrest Paul Muite and several other members of Safina when they attended a local volleyball contest; the police detain them for 2 hours. During July and September, Moi announces that constitutional reforms would not be considered prior to the next Presidential and legislative elections.

9/96 - Justice Mochoye, a Safina activist is arrested along with 7 other people for holding an unlicensed meeting. At a public rally Moi pardons two self-confessed guerrillas who confessed to having been involved in an attempt to assassinate Moi, and other prominent Kenyans; also to have plotted to free Wamwere from prison. It is widely believed that the allegations have been fabricated in order to discredit the opposition.

10/96 - The independent Kenya Human Rights Commission condemns Kenya's prisons as being the worst in the world.

11/96 - Safina's Chairman Muturi Kigano, and a lawyer, narrowly avoid being assaulted by youths when they go to defend a Safina activist who is appearing at Nyambene courthouse.

12/96 - Raila Odinga is reportedly expelled from FORD-Kenya; he claims to have resigned, and then joins the National Development Party. Wamwere is released on bail in order to seek medical attention abroad. African Rights claim Kenya's judicial system is corrupt.

1/97 - Amnesty International allege the Government has failed to halt widespread torture. Considerable disquiet is provoked after Biwott, a principal suspect in the inquiry into Ouko's death, is re-appointed to the Cabinet.

2/97 - Kenya becomes a signatory to the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment. During a visit to Nyeri, Paul Muite, Kiraitu Murungi and a party of Safina supporters, are set upon by the police. Police deny beating the activists, in a statement issued by the District Commissioner of the Province. Nairobi University students' leader, Solomon Murili, dies in mysterious circumstances. Violent protests occur over his death. Opposition MPs call for an investigation into his death by British police. FORD-Asili MP Stephen Ndichu is jailed for 6 months for causing a disturbance and incitement in 1994.

3/97 - Police arrest approximately 70 people for possession of offensive weapons during the parliamentary by-election, caused by the resignation of Raila Odinga from FORD-Kenya. Odinga retained his seat on behalf of his new party, the National Development Party. The Attorney General announces an inquest into the death of Solomon Murili. 100 people are killed in northern Kenya as fighting intensified between the security forces and bandits from Ethiopia.

4/97 - Opposition leaders and NGOs convene a 4-day symposium on constitutional reform. Students protest at the killing of a 20yr old student by police. KANU criticise Odinga and Matiba for attempts to introduce tribal political parties. In return they accuse the police of brutality after several opposition politicians experience problems. FORD-Asili National Treasurer, Haroun Lempaka, defects to KANU. Koigi Wa Wamwere returns to Kenya to bury his father.

5/97 - 1 person killed and 6 injured, as fighting breaks out at an illegal rally held by the National Convention Executive Council (NCEC). At least 77 people killed during clan violence, involving cattle rustling, in the Rift Valley. Kenya's Electoral Commission (KEC) sets dates for voters registration, and agrees to extend period after calls that 30 days is insufficient. 19 May, voters' registration begins. A new political party, Patriotic Pastoralist Alliance of Kenya, is formed. Security forces break up an illegal opposition rally, protesting for constitutional change. Violent unrest ensues.

6/97 - 4 leading opposition parliamentarians are placed under house arrest for the duration of the President's annual speech in order to curb protests. Moi states there will be no constitutional changes before the elections. The unrest continues. FORD-Asili Chairman, Kenneth Matiba, quits parliament, and the party splits further. Further allegations of human rights abuses by Amnesty International are rejected by the authorities. Opposition MPs disrupt the Budget announcement on 19 June. Blows are exchanged between members and riot police seal off parliament. Police also clash with students demanding constitutional reform. Despite a boycott of the debate, the Budget is passed.

7/97 - The opposition ends its boycott of Parliament. Riots prevail in Nairobi when students clash with police during a protest at the increase in fees. The NCEC call a rally to commemorate Saba Saba, which is declared illegal by the authorities. The rally, on 7 July, erupts into violence and rioting continues for several days, resulting in the deaths of 16 people, and the closure of the two universities in Nairobi. Several people are arrested during the violence. Sheikh Khalid Balala returns to Kenya. The President agrees to a dialogue with the opposition on reforms. Opposition parties are to be granted licences for rallies, which will now only be denied in exceptional circumstances. KANU agree to enact constitutional reforms prior to the elections.

8/97 - A tough anti-corruption Bill is published in wake of the Goldenberg scandal, together with the Statute Law (Repeals and Miscellaneous Act) Bill 1997, which proposes to repeal the Vagrancy Act. Mid-August, serious violence erupts along the coastal area of Mombasa, initiated by an attack on a police station, during which 7 police officers are killed. Approximately 67 people are killed and 450 people arrested, including opposition politicians and two prominent members of KANU.

9/97 - The violence in Mombasa continues. Police are deployed to block an NCEC rally early in the month. An Inter-Party Parliamentary Group Committee agrees on constitutional reforms. Amnesty International launch a campaign to improve Kenya's human rights record. Somali bandits attack Turkana district.

10/97 - Six opposition MPs are arrested in order to stop a pro-reform rally. Teachers strike over pay. 10 new political parties are registered, 3 are rejected. Several Safina members are arrested at a gathering for a pro-reform rally. Skirmishes break out in Nairobi slums leaving one dead. A

Government Minister and four others are charged with fraud. Civil servants receive a pay increase of 10%. Police fire shots and tear-gas to break up an opposition rally towards the end of the month.

23 October, Kenya passes the first reform Bill, The Statute Law (Repeals and Miscellaneous Amendments) Bill. The Bill amends the Public Order Act, National Association act and the Kenya Broadcasting Act. 5 people are killed in clashes over land rights, between the Maasai and the Kisili.

30 October, Parliament passes The Constitution of Kenya Amendment Bill, which will allow for a coalition government and defines Kenya as a multi-party democratic state. President Moi appointed 10 new members to the Electoral commission, amongst whom, were members of the opposition

.

11/97 - Both new reform Bills receive Presidential assent. On 10 November President Moi dissolved Parliament. Two days later the Electoral Commission announce that elections will be held on 29 December 1997. Seven opposition MPs leave FORD-Kenya for other parties. Koiga Wa Wamwere changes from Safina to NDA Kenda. Matiba announces that FORD-Asili will now be known as Saba-Saba Asili. Moi dismisses Amnesty International's allegation regarding intimidation of voters. An investigation is launched by police after Raila Odinga's motorcade is stoned. A new political movement is formed to agitate for genuine reforms, the African National Convention. FORD-Asili MP, Mary Warjiru joins KANU. 12 die in clashes between KANU factions. At end of month nurses strike over pay. On 26 November, the Government allowed Safina to be registered.

12/97 - The Chief Justice quashes Koiga wa Wamwere's 4-year jail sentence. Explosions occur at a primary school when petrol bombs are thrown. 16 are arrested. Tribal clashes occur in western Kenya, the President declares the area a security zone. Police attack Presidential candidate Charity Ngilu's vehicle with tear gas. 29 December 1997, polls open amid chaos. Allegations of irregularities are made by both sides, that voting has been rigged. Voting extends into a second day.

1/1998 - Moi wins elections with 40% of the vote, and is sworn in on 5 January 1998. KANU take 113 seats to the opposition's 109. Safina gain 6 seats. Several opposition MPs are challenging the outcome through the courts. Renewed outbreak of ethnic violence in Rift Valley Province, leaves approximately 100 dead and thousands displaced. Violence is curbed by the end of the month.

22/1/98 - Mwai Kibaki files a petition in the High Court against President Moi and the Electoral Commission.

3/2/98 - Opposition MPs demonstrate at start of the first parliamentary session.

5/2/98 - A curfew is imposed between 9pm and 6am in Nakuru District in order to quell further outbreaks of violence.

28/2/98 - Bank workers began a strike, which ended on 6 March 1998

3/1998 - The KHRC, was amongst three NGOs, threatened with deregistration after the government warned them not to get involved with politics. A number of politicians were interrogated in connection with the ethnic clashes, which occurred at the beginning of the year. The Commissioner of Police released a report into the violence. Running battles took place in Nairobi between police and hawkers. The curfew is lifted in the Rift Valley. The NDP explains its co-operation with the ruling party.

3/3/98 - The Goldenberg trial recommenced.

23/3/98 - Police open fire on rioting students. Nairobi University is closed as a result.

31/3/98 - The Presidential addresses the state opening of Parliament.

4/1998 - The Attorney General announced the members of the Constitutional Review Committee. The committee first met on 7 April 1998**.** Maalim Mohammed threatened to resign unless the government launched an enquiry into police torture. More ethnic fighting broke out in the north-west. Rioting took place in Nairobi following a battle between street children and a private security guard. A guard was stoned to death. A ground breaking economic forum was held in Mombasa attended by KANU MPs and 80 opposition members.

5/1998 - Rallies held in Kitale to discuss the insecurity in the area, were both disrupted. A one month amnesty was announced for the surrender of illegal arms. The government renewed its diplomatic links with Libya.

6/1998 - 8,785 petty offenders were pardoned to mark the Madaraka Day celebrations. FORD-Kenya MP James Orengo threatened to disrupt the announcement of the budget. He lacked support from other opposition MPs and was thrown out of the parliamentary chamber. Amnesty International published a report on the ethnic clashes that occurred in the aftermath of the December 1997 elections. Three NGOs launched a report into the 1997 elections. President Moi announces the setting up of a judicial inquiry into the tribal clashes. Divisions emerge within the NDP with the registration of the party's deputy leader. The SDP threatened to boycott the constitutional review talks in protest at the disruption of the rallies in Kitale.

7/1998 - Kenyan teachers threaten to go on strike over the government's refusal to implement the next phase of their pay deal. The introduction of a controversial education bill is suspended. Several top Treasury officials are arrested by the Director of the Kenya Anti-Corruption Authority (KACA), John Harun Mwau. Less than 24 hours after their arrest the charges were dropped and Mwau and Finance Minister, Simeon Nyachae become embroiled in a verbal exchange. Mwau was later suspended and a tribunal was set up to investigate his performance. Three judges appointed to sit on the judicial inquiry into the ethnic clashes are sworn in. Hundreds of guns and ammunition is surrendered as part of a presidential amnesty. The government bans a magazine and two weekly newspapers, sparking off international criticism. Christians and Muslims joined together at a Peace Convention and adopted a national peace accord. Charles Njonjo returns to the political scene when he is appointed Chairman of the Kenya Wildlife Service Board. A High Court judge overturned the government's order to close four tabloids.

7/8/98 - A terrorist bomb explodes next to the US Embassy in Nairobi, and five minutes later the

US Embassy in Dar Es Salaam, Tanzania is also hit by an explosion. The explosion in Nairobi destroys Ufundi House, next to the Embassy. More than 253 people are killed, including, 12 Americans. Thousands more are injured. An unknown terrorist organisation claims responsibility.

8/1998 - The terms of reference for the Constitutional Review Body are finally agreed. President Clinton vows to track down those responsible for the attacks. Osama Bin Laden, a Saudi born dissident is believed to have been involved. Two suspects arrested in the aftermath of the bombings were extradited to the USA to stand trial. One claimed that the explosives were brought in as part of a relief food consignment. In the wake of the bombings, eleven NGOs were de-registered by the government, sparking protests from the Muslim community. Cabinet Minister Maalim Mohammed threatened to resign unless the Kenyan government launched an inquiry into allegations of police torture. He was supported by 5 KANU MPs and 2 opposition members. America launches missile attacks on Bin Laden's camp in Afghanistan and a chemical factory in Khartoum, allegedly producing an element for use in chemical warfare, and linked to Bin Laden.

9/1998 - The Attorney General proposes the abolition of laws protecting the government and its organs in the administration of justice, and also says police will be trained in human rights. KANU seeks an alliance with the largest opposition party the DP. President Moi appoints Dr Richard Leakey as Director of the Kenya Wildlife Service. His seat is taken over by Josephine Shiyo the first blind MP.

10/1998 - A consultative forum on Kenya's Constitution unanimously adopted a draft bill on law reform. Kenyan teachers came out on strike over their pay award. The strike ended on 20/10/98. Thousands of Muslims take to the streets in protest at the de-registration of five Muslim NGOs after the bombings. Parliament passed a resolution to create an Ombudsman's office to address complaints against public servants.

12/1998 - President Moi said that NDP Chairman, Raila Odinga's co-operation with KANU may propel him to future leadership. The Electoral Commission announced wide-ranging changes being planned to Kenya's electoral system. The Assistant Police Commissioner admits at a human rights workshop that police tortured suspects on the orders of powerful politicians. Human rights groups threaten to sue the Commissioner of police over the death of a suspect in custody. Three police officers are arrested for bribery in Kericho. The Standing Committee on Human Rights issued its first public report. One of the new bills to reform the criminal justice system is passed. The Commission of Enquiry into the ethnic clashes continues to hear evidence and will submit a report by 30 April 1999**.**

1/1999 President Moi announced the members of the advisory board of the KACA. A by-election took place in Makueni constituency following the death of the SDP MP who held the seat. The vote counting was marred by violence leaving two MPs injured. A new party the United Party (UP) was registered and another the United Democratic Movement (UDM) formally applied for registration. The NCEC announced it would set up a parallel review forum. On 25/01/99 the Constitution of Kenya Review Commission Act 1998 came into full operation. Several judges were reshuffled following allegations of bribery against a judge. A new National Security Intelligence Service is established. A new East African passport is due to be issued. Demonstration began over the development of the Karura forest. Violent confrontations with the

police take place over the issue. Two people are killed following clashes between farmers in the Mwea rice irrigation scheme and police.

2/1999 - President Moi reiterated his commitment to fight corruption. On 18/02/99 President Moi reshuffled his cabinet. As a result Finance Minister Simeon Nyachae resigns. Also the Commissioner of Police, Duncan Wachira was replaced as well as the Director of the CID and the Principle Immigration Officer. One SDP MP and two councillors' officials defect to KANU. The constitutional review talks reached a sticking point over nominees for the committee. Several MPs are injured in a clash with anti-riot police at a farmers' meeting in Eldoret. The KHRC called for police to compensate victims of abuse. 12 people are killed in a fierce gun battle in North Eastern Province. The editor of "Expression Today" is kidnapped and tortured by a gang.

3/1999 - A High Court judge censured the Attorney General's office for the delay in disposing of murder cases in Mombasa. Rioting by students occurs over the Karura forest development. Three MPs are arrested for incitement. Police launch a new probe into Kamlesh Pattni, the man at the centre of the Goldenberg scandal.

4/1999 - President Moi re-appoints Professor George Saitoti as the country's Vice President. Fighting broke out between supporters of Raila Odinga (NDP) and James Orengo (Ford-K) at the start of a rally. KANU increased its majority by winning by-elections in Tigania and Mumtomo constituencies in eastern Kenya. A vote of no confidence was made against Prof. Saitoti over allegations of his involvement in the Goldenberg scandal. President Moi is also implicated in the Goldenberg scam along with other top officials. The High Court suspends the entire Kenya Anti-Corruption Authority (KACA) board

5/1999 - Police investigate allegations of torture of an inmate at Kodiaga GK Prison by warders. Parliament passed a motion that seeks the establishment of a commission for gender equality. The pioneering political and business journal, the Weekly Review folds after 24 years in operation. President Moi proposes that the constitutional reform process be transferred to the KANU dominated National Assembly.

6/1999 - Police and protesters clashed outside parliament during protests into the slow pace of constitutional reforms. 27 people were killed in northern Kenya in a series of cattle raids. President Moi suggests that Parliament should review the constitution drawing mixed reactions from opposition leaders and civil society representatives. Demonstrations against his idea were held on Budget Day 10 June 1999. The People's Power Movement is launched. 11 June 1999 The Akiwumi Commission winds up. On 24 June 1999 Nairobi Chief Magistrate Uniter Kidullah ruled that Solomon Murili set himself ablaze. The court throws out Mwai Kibaki's election petition against President Moi. Police arrest 30 corrupt officials at the Registrar of Companies offices and the Immigration Department. Visa requirement is wavered to draw in more tourists. On 30 June 1999 the no confidence motion against the Vice-President fails.

7/1999 - Police fired tear gas and rubber bullets at demonstrators seeking constitutional reforms who were trying to block roads into Nairobi. The Saba Saba day rally at Kamukunji grounds in Nairobi passed off peacefully. Opposition MP Paul Muite was charged with theft but later released on bail. President Moi launches his recovery strategy and appoints Richard Leakey as head of the civil service. James Orengo challenges Moi to clear his name over his alleged

involvement in the Goldenberg affair. 84 MPs including 14 from KANU file a motion of no confidence in the government. MP James Orengo and two of his aides are arrested on 17 July 1999 in Kisumu. The high court dismisses Mwai Kibaki's challenge against the result of the December 1997 elections.

8/1999 - A special crime prevention police unit is launched to curb the influx and trafficking of illegal arms.

9/1999 - KANU win by-elections in Nithi and Saikago. President Moi reshuffles his cabinet. Although he cuts the number of ministries from 27 to 15 all cabinet ministers retain their seats. The Government announces plans to retrench 60,000 state employees as part of its Civil Service cut back programme. Ford Kenya MP, George Kapten, is charged with defamation.

10/1999 - Mwandawiro Mgangha resigns as Safina Secretary-General. Mombasa police make 54 arrests after clashes in Coast Province leave two people dead and several injured.

11/1999 - The national assembly votes unanimously to cut presidential powers and give parliament, not the president, the power to appoint the Clerk of the House. MP George Kapten is charged with subversion following comments about the Goldenberg scandal.

12/1999 - The National Assembly votes to create Parliamentary Select Committee to review the Constitution of Kenya Review Commission Act and help form a commission. NDP leader Raila Odinga is made chairman of the 27-member committee on which KANU has a majority. Opposition MP's mandate religious leaders to lead a people's driven review, to run parallel to the Parliamentary one. Opposition MP George Kapten dies at his home in Kitale, some opposition MP's express suspicion of foul play.

1/2000 - Rival gangs in the constitutional debate clash in Nairobi. Ford-K MP James Orengo is charged with inciting public violence, meanwhile four youths, later identified as NDP activists, who attacked him, a second MP and two civilian's are not prosecuted. A new youth movement, MVUWA, is formed at a rally where young people vow to disrupt the Parliamentary Select Committee's proceedings.

2/2000 - Kenya appeals for international aid to combat famine threatening much of the country. KANU Chief Whip, Sammy Leshore and his deputy are shot and seriously wounded during a robbery after their car is involved in a collision. Several people are injured when riot police attacked a large crowd who had turned up for a MVUWA meeting in Thika.

3/2000 - 11 opposition MP's call for a select committee to investigate the December 1999 death of MP George Kapten. NDP Secretary-General and two other top officials resign accusing the party of having lost its original vision.

ANNEX B

Prominent People Past & Present.

Daniel Arap Moi - (Kalenjin) President of Kenya, 1978 to date. Leader of KANU.

Jomo Kenyatta - (Kikuyu) President of Kenya 1964 - until his death in 1978.

Abdul Majid Cockar - Former Chief Justice until December 1997

Reverend Mutava Musyimi - Sec Gen. National Council of Churches.

Jaramogi Oginga Odinga - (Luo) Former Vice-President and member of KANU during the 1960s before forming the opposition group Kenya People's Union (KPU). In the 1992 elections Odinga led FORD-Kenya. Odinga died in January 1994.

Raila Odinga - (Luo) Leader of National Development Party - Son of Oginga Odinga

Tom Mboya - Former Secretary-General of KANU and Minister for Economic Planning and Development. Assassinated July 1969. His death sparked numerous disturbances.

Kenneth Matiba - (Kikuyu) Leader of FORD-Asili, the party split just prior to the 1997 elections and Matiba renamed his faction Saba-Saba Asili, which has not been registered.

Mwai Kibaki - Former Vice-President and leader of the Democratic Party. **Leader of the opposition in the National Assembly**

Charity Ngilu - Leader of the Social Democratic Party.

Zacchaeus Chesoni - Current Chief Justice, appointed December 1997.

Dr Richard Leakey - Conservationist and Secretary General of Safina. Nominated MP on Safina's allocated seat. In September 1998 was re-appointed as Director of the Kenya Wildlife Service by President Moi, and subsequently resigned his seat in parliament. In July 1999 was appointed as head of the Civil Service/Public Service.

Paul Muite - (Kikuyu) FORD-Kenya MP and prominent member of Safina. Well-known human rights lawyer.

Muturi Kigano - Human rights activist and Chairman of Safina.

George Saitoti - (Maasai) Former Vice President. KANU MP, currently Minister of Planning and National Development. Re-appointed Vice-President in April 1999.

Sheikh Khalid Balala - Spiritual leader of the Islamic Party of Kenya (IPK)

Prof. Onesmus Mutungi - Chairman of the Standing Committee on Human Rights. Lawyer and former Dean of the Law Faculty at Nairobi University.

Prof. Rashid Mzee - FORD-K MP and IPK sympathiser

Amos Wako - Attorney General.

Robert Ouko - Former Minister of Foreign Affairs and International Co-operation. Died in mysterious circumstances February 1990.

Nicholas Biwott - Former Minister of Industry, dismissed from the Cabinet November 1991 amid allegations of his involvement in Ouko's death. Controversially re-appointed to the Cabinet January 1997. Currently the Minister of East African and regional Co-operation.

Charles Mugane Njonjo - (Kikuyu) Former Attorney General and Minister for Home and Constitutional Affairs, who resigned from politics in 1983 following a judicial inquiry into his conduct. Returned to political life in 1998 when appointed Chairman of the Kenya Wildlife Service Board

Simeon Nyachae - Former Finance Minister. Resigned from the government in February 1999 after being moved to the Ministry of Industrial Development.

George Kapten - Political lawyer and Ford Kenya MP who died on 25 December 1999 in what some opposition MP's claimed were suspicious circumstances.

Koigi Wa Wamwere. Founder of the National Democratic and Human Rights Organisation (NDEHURIO). Koigi Wa Wamwere went into exile in 1986 finding refuge in Norway. While abroad he formed an underground party called Kenya Patriotic Front (KPF). After the formation of political parties was partly allowed in 1991 the KPF ceased its clandestine existence and its members joined other parties. Wamwere was arrested by the Kenyan authorities in October 1990, reportedly having been abducted from Uganda. He was charged with sedition but his lengthy trial was abandoned in January 1993 and he was released from detention. Wamwere continued to campaign for human rights and democratisation in Kenya without specifically identifying himself with any of the (now legal) opposition parties. However, the authorities continued to regard him as a dangerous radical, and he was subsequently re-detained on charges relating to a raid on a police station in November 1993. His trial began in Nakuru on 12 April 1994 and concluded in October 1995. International observers concluded that the prosecution did not produce credible evidence tying him to the incident; however, the Chief Magistrate found Wamwere and his two co-accused guilty of robbery, but not armed robbery, and sentenced them to 4 years in prison plus three strokes of the cane. The fourth defendant was acquitted of all charges. Wamwere's defence attorneys established alibis for the defendants and showed that the state had tampered with evidence. Human rights groups both in Kenya and abroad considered the three defendants political prisoners. Wamwere's defence team lodged appeals in December 1995, and he was granted bail in December 1996 on medical grounds, as were his two associates. International observers at his trial concluded that the prosecution had fabricated the evidence against him. Since his release Wamwere has been able to speak to journalists and has had his passport returned so that he could travel abroad to receive medical treatment. In April/May 1997 he returned to Kenya to attend his father's burial ceremony. The Kenyan authorities did not attempt to stop him entering the country nor harass him whilst there. In November 1997 Wamwere announced he was joining the Kenya National Democratic Alliance (KENDA) to run

for the Presidency. In December 1997 the Chief Justice quashed Wamwere's four-year jail sentence and dropped all charges against him and his two co-defendants. **[1][5][9][14][15][60][160][174][178]**

ANNEX C

Annex C

MAIN POLITICAL PARTIES/ ORGANISATIONS

Democratic Party (DP) - Formed 1991. Predominantly Kikuyu. President - Mwai Kibaki.

Forum for the Restoration of Democracy - Asili (FORD-Asili) - Formed 1992. Predominantly Kikuyu. - Chairman - Kenneth Matiba, Sec-General - Martin J. Shikoku. Prior to the elections in 1997, FORD-Asili split further into two parties, FORD-Asili led by Matiba was renamed Saba-Saba Asili, but Matiba was unable to register the party under this name. A second faction FORD-People is led by Kimani wa Nyoike

Forum for the Restoration of Democracy-Kenya (FORD-Kenya) - Formed 1992 - Predominantly Luo support. Chairman - Michael Kijana Wamalwa.

GEMA (Gikuyu [Kikuyu], Embu, Meru Association - a tribal organisation dedicated to keeping political power in Kikuyu hands.

Kenya African National Union (KANU) - Formed 1960. President - Daniel Arap Moi. Chairman - Wilson Ndolo Ayah.

Kenya National Congress (KNC) - Formed 1992

Kenya National Democratic Alliance Party (KENDA) - Formed 1991. Chairman - Mukaru Ng'ang'a

Kenya Social Congress (KSC) - Formed 1992 Chairman - George Moseti Anyona; Sec-Gen. Onesmus Mbali

Labour Party Democracy - Chairman - Mohammed Ibrahim Noor.

National Convention Executive Council (NCEC) - Group of NGOs, church leaders and politicians, campaigning for constitutional reform. Co-Convenor - Prof. Kivutha Kibwana

National Development Party (NDP) - Formed 1994. Leader - Raila Odinga , Chairman - Stephen Omondi Oludhe.

Party for Independent Candidates of Kenya (PICK) - Leader Harun Mwau

People's Union of Justice and New Order - Kisumu; Islamic support. Leader - Wilson Owili

Rural National Democratic Party - Formed 1992; supports farmers interests. Chairman - Sebastian Munene

Safina (`Noah's Ark') - Formed Nairobi 1995; aims to combat corruption and human rights abuses and to introduce proportional representation. Chairman - Mutari Kigano; Sec-Gen.- Dr Richard Leakey. Formally registered by the authorities 26 November 1997

Social Democratic Party (SCP) - Formed 1992. Leader - Charity Ngilu

United Muslims of Africa (UMA) - Formed 1993. Leader - Emmanuel Maitha.

United National Democratic Alliance (UNDA) - Formed 1994; an informal coalition of main opposition parties (excl. FORD-Asili) formed to present an agreed list of candidates at elections.

United Party (UP) - registered January 1999

United Patriotic Party (UPP) - Formed 1995.

Youth Associated with the Restoration of Democracy (YARD) - Chairman - Eliud Ambani Mulama.

NON-REGISTERED PARTIES.

Saba Saba Asili - Split from Ford-Asili just prior to the 1997 elections - Led by Kenneth Matiba. Still not officially registered**.**

Islamic Party of Kenya (IPK) - Formed 1992. Spiritual leader - Sheikh Khalid Balala. Chairman - Omar Mwinyi; Sec-Gen. Abdulrahman Wandati. The previously exiled Sheikh Balala was allowed to return home to Kenya in July 1997. IPK is still a banned organisation.

United Democratic Movement (UDM). Fronted by two KANU MP's, Cyrus Jirongo and Kipruto Arap Kirwa. UDM have launched a court case against the registrar's decision not to register the party in July 1999. President Moi had ordered the registrar to register the party earlier in 1999.

People's Power Movement. Launched 9 June 1999. Interim Chairman Audi Ogada. Interim Organising Secretary: - Daniel Cheruiyot.

People's Alliance for Change in Kenya (PACK). Launched on 19 November 1999 with the aim of writing diverse ethnic groups. Secretary General: - Olang Sana.

ORGANISATIONS.

Release Political Prisoners (RPP) - Pressure group campaigning for the release of political detainees.

Kenya Human Rights Commission - Independent human rights organisation. KHRC produces a quarterly Repression Report cataloguing the human rights situation as well as a steady stream of special reports. It also organises activities to publicise special causes.

February Eighteen Movement (FEM) and armed wing February Eighteen Popular Resistance Army (FERA) - Led by Brig. John Odongo. Subversive organisation based in a neighbouring country. Banned by the Government. Has since been dissolved.

ANNEX D

THE GOLDENBERG AFFAIR.

AUGUST 1999 - US$ = 74.15 Kenya Shillings.

Kamlesh Pattni's exploits started in October 1990 when he wrote to the then Vice-President and Minister for Finance, Prof. George Saitoti, seeking exclusive rights for five years for Pattni's company Goldenberg International, to export gold and diamonds, promising in return to earn Kenya US$60 million annually. Under the export scheme, entrepreneurs were able to claim back a percentage of the value of their exports as compensation. Pattni was accused, however, of claiming on exports of jewellery he never made, making multi-millions for himself. He claimed and received compensation, which he says was approved by Prof. Saitoti.

According to the controller and auditor general's report for 1993, Goldenberg International were allegedly paid around US$ 100 million between 1991 and 1993 as a premium on non-existent gold and diamond exports from the Finance Ministry. Kenya produces little gold and has no diamonds. Pattni's dealings caused the Kenya Central Bank(CBK) to pay out unearned compensation in violation of the Banking Act. In 1993 the government had to appoint a receiver for the bank but much of the illicit money had already been withdrawn. Mr Pattni pledged to settle the difference from his other resources but failed to deliver the money. Instead he purchased the Grand Regency Hotel for US$14 million but this was taken back by the receivers on behalf of the CBK. This led to Pattni's first arrest for theft of Shs2.6 billion from the CBK. He was denied bail and detained for three months at Kamiti prison. On his release he found the Grand Regency had been advertised for sale by the CBK. Mr Pattni then went to the High Court to stop the sale. The legal battle over the hotel has been ongoing ever since.

The Goldenberg case has been pending in court for the past seven years with no resolution in sight. Lawyer and MP Paul Muite has led a campaign to punish those involved in the fraud but Pattni has since accused him of receiving by extortion Sh20 million as the price for his silence. Muite has persistently rejected this claim and the allegations are being investigated by the Law Society of Kenya.

In February 1999, Mr Nassir Ibrahim Ali, head of the World Duty Free Company based in Dubai, swore an affidavit stating that none of the precious stones Goldenberg claimed to have exported went through his Dubai company. According to the affidavit Goldenberg International claimed to have exported gold and diamonds worth 15.3 billion Shillings to the World Duty Free Company in 1992 and 1993. Mr Ali was goaded into going on the offensive after the control of the Kenya Duty Free was wrestled from him.

In March 1999, police launched a new probe on Kamlesh Pattni after confidential state documents were found during a police raid. Following the raid Pattni was charged with obtaining by false pretences and theft of Shs322 million (US$4.97 million) between 1992 and 1993 in a fraud relating to gold and diamond exports. This is in addition to the allegations that his company received money from the Finance Ministry.

In April 1999 a Motion of no confidence in Parliament was brought against the Vice-President,

George Saitoti stating that Professor Saitoti could not hold the office because he had not been cleared of his alleged involvement in the Goldenberg scandal. In June 1999 Professor Saitoti made a personal statement before Parliament denying any connection with the Shs5.8 billion and the additional Shs13.5 billion payments that are the subject of the Goldenberg litigation. Saitoti stated that the payments had been made in 1993, at different times, when he was no longer Minister of Finance (He left the Treasury in January 1993). As for the contentious 15% "special export bonus" granted to Goldenberg in 1990, over and above the normal 20%, Professor Saitoti argued that this had been approved by parliament and had been eventually scrapped in 1992. Mr Musalia Mudavadi who succeeded Prof. Saitoti also defended himself vigorously from blame. He tabled a Legal Notice in Parliament in which he stopped the payments of any compensation on gold and jewellery. However, three payments were made on April 19, June 28 and July 6 of 1993, which was after the publication of his Legal Notice on 15 April 1993. Mr Mudavadi told Parliament that upon discovery of these payments on 21 October 1993 he wrote to the Controller and Auditor-General D.G. Njoroge and then CID Director Noah Arap Too asking them to conduct investigations. The unanswered question is who exactly did authorise the payments. On 30 June 1999 the no confidence motion against Saitoti failed.

The judiciary also came under attack from President Moi in July 1999, when he commented that the courts should hurry up and get to the bottom of the matter and stop going round in circles. According to the Nation newspaper over the years the courts have still not unravelled the Goldenberg scam and have subjected the public to a circus of injunctions, counter-injunctions, case file transfers, and a lot of other hanky-panky. Allegations have been made of bribery. First by Mr Ali, who claimed that Mr Pattni bribed Judge Richard Kuloba with Shs5 million allegedly so that the Duty Free case could be decided in Mr Pattni's favour. Judge Kuloba was cleared of the bribery accusations by Chief Justice Z. Chesoni though the case file was transferred to another Judge. Controversial publisher Tony Gachoka of the Post also made accusations of bribery against Chief Justice Chesoni. Gachoka, who is facing contempt of court charges, appeared before a seven-judge bench of the Court of Appeal in July, where his application to call high-level witnesses, including the President and others named by Mr Ali, was turned down. Mr Pattni accused the Attorney-General of a deliberate campaign to frustrate his defence.

In July 1999, Mr Ali claimed that he had a lot of information on the Goldenberg scandal. Mr Ali claimed that he was in possession of a letter allegedly signed by the President seeking assistance from some Middle East and Far East countries through "his emissaries Joshua Kulei and Kamlesh Pattni". Mr Kulei is President Moi's private secretary. The assistance was to oil KANU's campaigns in the 1992 General Election. Mr Ali claimed he introduced senior government officials from the Middle East and Far East to Mr Kulei and Mr Pattni. Mr Pattni denies he ever met with Mr Ali in Dubai.

The Attorney General stated that the letter could be a forgery and instructed the Commissioner of police to investigate its authenticity. President Moi did not comment personally on the letter. Mr Ali voluntarily surrendered at CID headquarters in order to answer questions as to how he came into possession of the letter. Mr Ali, who is resident in Dubai is a Canadian national. Among the top Government officials, Mr Ali alleged were also involved with the President were confidante Nicholas Biwott; son Gideon Moi; an associate of Gideon's Mr Mukesh Gohil; Chairman of the Co-operative bank Hosea Kipalgat; Minister of Information and Broadcasting Joseph Nyagah; former CID Director Noah Arap Too; Court of Appeals Judge Effie Owuor and Chairman of KenGen Mr Moses Wetangula. Instead of the Shs9 billion originally linked to

Goldenberg, Mr Ali now claims the real figure is Sh68 billion. Several MP's from both KANU and the opposition urged President Moi to clear his name

On 27 July 1999, Nassir Ali was deported to Dubai amid claims from the KHRC that his deportation was part of a government plot to avoid exposing the main protagonists. Mr Ali's wife accused high political personalities and businessman Kamlesh Pattni of plotting to grab the duty free business. Mr Ali and Kamlesh Pattni have been engaged in a fierce dispute over ownership of the Kenyan Duty Free shops in Nairobi and Mombasa. Mr Pattni claims to have brought the shops for Sh15.3 billion in 1991/2, however Mr Ali claims that the documents allegedly used in the deal were forged. Arising from the dispute over the Grand Regency Hotel and the World Duty Free shops are numerous, endless court cases that remain unresolved. There is also a pending criminal case involving former Treasury Permanent Secretary Wilfred Koinange, former deputy CBK Governor Eliphaz Riungu, and former CBK Assistant Chief Dealer Onesmus Wanjihia who, alongside Mr Pattni, are facing charges of stealing Sh5.8 billion from the Paymaster-General.

After deporting Mr Ali the Kenyan police claimed that there was a warrant of arrest from the United Arab Emirates for him on allegations that he issued a worthless cheque for US$500,000. However Mr Ali's lawyer told the press that at no time did the police question or inform Mr Ali of any alleged offences which had been committed outside of Kenya, nor had he been served with any extradition papers as required by Kenyan law.

On 9 July 1999, Chief Justice Chesoni barred news organisations from covering the Goldenberg trial. On 23 July Safina MP and lawyer Paul Muite was charged with the theft of 31.1 million shillings (see paragraph 4.11). Mr Muite linked the court case with his role in trying to unravel the Goldenberg case. On 28 July 1999 84 MP's, including 14 from KANU filed a motion of no confidence in the government over the case citing the fact that high-ranking government officials have been implicated in the scandal. The MP's called for the removal of President Moi for his alleged involvement. On 8 August 1999, Kwanza MP George Kapten (FORD-Kenya) was arrested by CID officers at his home in connection with an interview carried in the 'Finance Magazine' in which he implicated President Moi in the scandal.

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

In February 2000 Chief Justice, Bernard Chunga, said that he wanted to see a "speedy resolution" to the Goldenberg case. He said he would set a date "as soon as practicable" for an appeal, lodged by Pattni in the court of appeal, contesting the inclusion of one of the judges in the constitutional reference hearing. Chunga said that he would then appoint a fresh three-judge bench to handle the constitutional matter that seeks to quash the 13.5 billion shillings, 5.8 billion

shillings, 322 million shillings and 16 million shillings theft cases against Pattni and his firm, Goldenberg International. The World Bank and International Monetary Fund (IMF) have been pressing for the prosecution and imprisonment of all those involved in the affair.

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Annex E

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