Table of Contents

KENYA:
Detention, torture and health professionals

"I am of the opinion that as a rule of thumb where there is any provision in these international instruments relating to human rights where a duty of obligation has been placed on the medical profession or where the medical profession by training and expertise is best fitted to promote the right, it will be a violation of medical ethics for the doctor not to carry out his or her duty or obligation to promote the right so prescribed."
Amos Wako, Attorney General of Kenya.[1]

In December 1995 Amnesty International published a report on torture in Kenya and the problems prisoners had in obtaining medical care and documentation of their injuries[2]. Since then, Amnesty International has obtained further information about the torture, ill-treatment and death in custody of prisoners in Kenya, as well as receiving critical comments from the Kenyan Government on the content of the report.
This paper describes impediments to the effective delivery of health care to prisoners, outlines the possible role of health professionals in protecting human rights in Kenya, presents further evidence of torture in Kenya, and discusses the response of the Kenyan Government to Amnesty International's December 1995 report on torture in Kenya.

Background
Amnesty international has had concerns about torture and other human rights violations in Kenya going back many years. In 1987 Amnesty International published a report entitled *Kenya: Torture, Political Detention and Unfair Trials* (AI Index: AFR 32/17/87). Since then the organization has continued to raise concerns directly with the Government of Kenya as well as publishing numerous reports.
In Amnesty International's December 1995 report detailed evidence was presented of the use of torture in Kenya and the widespread absence of adequate medical care to prisoners and, in particular, those who had been tortured. Evidence was based on numerous testimonies from victims of torture as well as information from medical and legal professionals. In March 1996, shortly before an international donors' meeting was to consider further economic aid to Kenya[3], the Kenyan Diplomatic Mission in Geneva sent a commentary on the Amnesty International report to Amnesty International's International Secretariat in London and to the foreign missions of major aid donors to Kenya. The commentary was critical of Amnesty International's December report, which it accused of presenting only generalizations, of containing factual inaccuracies and of failing to acknowledge improvements in the protection of human rights in Kenya in recent years. These criticisms will be addressed below (see p.14).
At around the same time Amnesty International sent a forensic pathologist to Kenya to observe the autopsy of the remains of Karimi Nduthu, Secretary General of the Release

1Opening address at the Commonwealth Medical Association Seminar and Workshop on Medical Ethics and Human Rights, Mombasa, Kenya 26-29 May 1994.

2*Kenya: Torture, compounded by the denial of medical care.* AI Index: AFR 32/19/95, December 1995.

3This is a meeting of bilateral aid donors to Kenya who usually meet twice a year in Paris, France. They are known as the Paris Club.

Political Prisoners group (RPP), who was murdered in his home on 24 March 1996. Police investigating his murder took away documents and other materials. No one has ever been charged with his murder[4].

In April and September 1996 Amnesty International delegations visited Kenya to investigate the continuing allegations of torture carried out by the various government agencies: the police, members of the youth wing of the ruling Kenyan African National Union (KANU), and security agencies. Despite the Kenyan Government's rejection of Amnesty International's December 1995 report, during these visits Amnesty International received further convincing allegations of torture which are consistent, credible and compatible with other evidence of torture in Kenya. The organization believes that the evidence contained in this report should give rise to a thorough, impartial, and independent inquiry into the use of torture in Kenya and to active steps on the part of the government to ensure that its use is ended. Among the measures which the Kenyan Government could adopt are the Principles for the Medical Investigation of Torture, published by Amnesty International in 1996 (see appendix 3).

Barriers to the effective provision of medical care and documentation

Barriers to the care and protection of the health of prisoners arise in two areas. The first is represented by the *physical conditions* endured by detainees which make ill-health more likely and maintaining good health more difficult among the prison population, and the second is the set of problems relating to *access to doctors* and other health professionals and the provision of medication.

In many police stations, for example, the cells are small and usually overcrowded. Ventilation and access to drinking water is inadequate and opportunities for bathing very restricted or non-existent. Toilet facilities usually comprise a bucket in the corner of the cell. There have been reports of male and female detainees having been kept together and in some police stations male and female areas are not securely separated. In some police stations minors as young as nine have been held with adults and there have been reports of the rape of minors by inmates. The prisoners' diet consists of *uji* (porridge) for breakfast, *ugali* (maize meal and water) and *sukuma wiki* (greens) for lunch and beans for supper. The food is only partially cooked and prepared and served unhygienically. For example, serving bowls are rarely washed between servings, and prisoners often fight each other for food. Vectors of disease such as scabies, mosquitoes and lice are uncontrolled.

In prisons many of the same problems exist with conditions in remand prisons particularly appalling[5]. The absence of adequate medical care in both police stations and prisons is a notable feature. Prisoners are not automatically given access to a doctor or lawyer[6], and

4Amnesty International's observer later informed the organization that a number of standard autopsy examination procedures (as recommended in the *Manual on Effective Prevention and Investigation of Extra-legal Arbitrary and Summary Executions,* UN: New York 1991, pp.24-40), were omitted and that the conduct of the autopsy did not meet adequate standards.

5See *A Death Sentence: Prison Conditions in Kenya*, Kenya Human Rights Commission (KHRC) Report September 1996.

6*Kenya: torture, compounded by the denial of medical care, op. cit., p17*.

attempts by doctors from outside the prison to see prisoners are frequently blocked or delayed.

Medical personnel in prisons are under the authority of the Ministry of Health—not, as with all other prisons personnel, the Ministry of Home Affairs—and this should, in principle, allow for a more positive orientation towards prisoners' health needs. However, very few prisons have a doctor and instead rely on the District Medical Officer, who visits occasionally, and untrained medical orderlies. Access to medication is also a problem for prisoners. Most prison medical units have little or no medicine, as financial resources are very limited. Kamiti Maximum Security Prison has around 3,000 prisoners and an annual budget of approximately 15,000 Kenya shillings (US$270—or 9 cents per prisoner per year). Prisoners referred to the local district or provincial hospital also have difficulties getting medication. Hospitals in Kenya have very limited resources. When medication is not available in the hospital patients have to buy their own medicine and bring it to the hospital on a cost sharing basis. Prisoners are exempt from cost sharing and the hospital is expected to provide them with medication. However, if there are no funds available within the hospital's budget, then prisoners do not get drugs or are given alternative medicines which are not as effective, unless their relatives can buy the necessary medicines. Drugs for tuberculosis which are freely available are reportedly not given to prisoners when they return to prison from hospital and as a result the disease reoccurs. Many doctors informed Amnesty International that more prisoners leave the hospital for the mortuary than return to prison.[7]

At present all prisoners in hospital are chained to their beds at night, but only sensitive cases or those considered a high risk are chained during the day. Prisoners are treated by government doctors who have limited status and authority. Many regularly examine torture victims but few are called to court to give evidence. The P3 form, which is used by a doctor to record an assault, is submitted by complainants, their relatives or lawyers, to the police but is often "lost" and not produced in court. Copies of P3 forms are kept by some doctors, but unless the victims have lawyers, they are rarely notified when the case comes to court. Doctors in private hospitals are often discouraged from acting as witnesses in court.

Rejection of medical evidence

In addition to the denial of access to medical examination, care and documentation, there is the possibility of the court rejecting the medical evidence of torture. Convicted prisoners who wish to have access to their medical records to substantiate their allegation of torture may find that such access is blocked by ministerial resort to Section 131 of the Evidence Act, which allows a minister to refuse to disclose a convicted person's medical record. In other cases magistrates reject medical reports presented in court. An example of the dismissal of medical reports written following alleged torture is that of the case of a former Kenya Army soldier, Peter Nganga Gatoto, who was alleged to have participated with 12 others in acts of robbery with violence and illegal possession of firearms and grenades in

7Following increased concern about the large numbers of deaths in Kenyan prisons as a result of overcrowding and harsh conditions, a task force was set up in 1996 by the government to look into increasing the number of non-custodial sentences.

1994. At a hearing in Nyahururu in February 1996 Magistrate Wanjiru Karanja ruled that, although a medical report supporting allegations of torture was acceptable and confirmed injuries when Peter Nganga Gatoto was examined following a court order, the injuries could not have been sustained by the time he had voluntarily written his statement in the presence of a police inspector. In other words, something happened to the prisoner but it was either not the fault of the police or if it was, it was not relevant to the man's confession. In other cases attempts have been made to mask torture by the police by accusing the local population of having beaten the alleged suspect before arrest; the accused is then said to have been "rescued" by the police.

However, attempts by police to deny their involvement in human rights violations such as deaths in custody do not always succeed. For example, after the death in custody of a man arrested in Murang'a for theft in May 1996, the local police chief suggested that "police only rescued 28-year-old Noah Njuguna Ndung'u from a mob that wanted to lynch him". A post-mortem examination was carried out by the government pathologist and observed by a doctor acting for the family of the deceased, as well as for other interested parties. The two doctors reportedly agreed that the possible cause of death had been blunt trauma to the head and chest causing bleeding in the vital organs. The doctors also drew attention to a number of wound marks on both buttocks thought to have been inflicted by a sharp object. A fellow detainee was quoted as saying that Noah Ndung'u had been beaten with a car jack[8]. The findings appeared to support allegations made by other suspects in the case, who alleged having been beaten by the police and having their buttocks punctured by sharp objects.

Professional bodies and human rights

Amnesty International believes that individual health professionals and professional associations have a significant potential in the protection of human rights. Some professional bodies themselves have acknowledged this role and addressed human rights issues from a health professional standpoint[9].

Several national medical associations have taken initiatives to investigate human rights abuses, to protect doctors under threat and to promote a wider awareness of medical ethics and human rights. However, many have not, and Amnesty International believes that there is both a need and an obligation for more engagement by such associations.

The Kenya Medical Association's (KMA) articles of association appear to rule out a role as a doctors' syndicate or union. Specifically, it cannot act on behalf of members' professional interests in negotiations with government or private employers. Its role in promoting

8 *Daily Nation,* 8 February, 25 May, 30 May, and 31 May 1996.

9 See Amnesty International. *Prescription for Change: Health professionals and the exposure of human rights violations*. AI Index: ACT 75/01/96; Amnesty International. *Ethical Codes and Declarations Relevant to the Health Professions*. AI Index: ACT 75/04/94; World Medical Association. Resolution on Human Rights, 1993; Commonwealth Medical Association, *Medical Ethics and Human Rights*. Report of a Working Group held in London (UK) 20-24 July 1993, including the Guiding Principles of Medical Ethics. Part One, London: CMA, 1993; International Council of Nurses. The Nurse's Role in Safeguarding Human Rights, 1983.

medical ethics, where these could be seen to conflict with government interests, is therefore considerably circumscribed.

The Kenyan Dentists and Kenyan Nurses Associations appear not to have been publicly involved in human rights issues.

Relevant articles of Kenyan law providing for access to medical practitioners

Constitution: Section 74 provides guarantees against "torture or inhuman or degrading treatment"

Prison Rules: Rule 24(I) The medical officer shall examine a prisoner on each of the following occasions -

(a) on the prisoner's admission to prison;

(b) before the prisoner is required to undergo any class of labour of a more strenuous nature than labour that he has been certified to undertake, and shall certify whether the prisoner is to undergo the labour;

(c) before the prisoner undergoes corporal punishment or any other punishment likely to affect his health, and shall certify whether the prisoner is fit to undergo the punishment;

(d) during the course of infliction of corporal punishment; [10]

(e) before the prisoner is discharged from prison;

(f) before a prisoner is transferred to another prison.

Rule 26 states that:

(I)The medical officer shall -

(a) see every prisoner at least once a month; and

(b) see every prisoner held on a capital charge or sentenced to death or in close confinement once every day; and

(c) inspect the prisoners at work from time to time;

(d) at least once every month inspect the whole prison, paying particular attention to the cooking and sanitary equipment in the prison.

Rule 102 states that:

(3) An unconvicted prisoner on remand or awaiting trial shall be allowed to see a registered medical practitioner appointed by himself or his relatives or friends or advocates on any weekday during working hours in the prison, in the sight, but not in the hearing, of the officer in charge or an officer detailed by him.

In 1993 a process was started to establish a Kenyan Medical and Dental Practitioners Union (KMDPU). In March 1994, the leadership of the Union attempted to obtain registration with the Registrar of Trade Unions. After two months of delays, the Union threatened to strike if registration continued to be delayed. On 16 June 1994 doctors in the public sector went on strike leading to dismissals of some doctors and attempts by the Central Organization of Trade Unions of Kenya (COTU) to bring about mediation and, in particular, to reverse the dismissals. Leaders of the KMDPU were threatened with arrest several times during the strike and went into hiding. An Australian journalist, John Lawrence, who wrote an article critical of the government's decision to recruit medical doctors from India and Pakistan to replace Kenyan doctors on strike, was deported. The strike continued until September 1994 when it was called off in the light of lack of progress in negotiations and the inconvenience caused to the public.[11] At the time of writing the KMDPU remains an unofficial organization.

The Kenyan Medical Practitioners and Dentists Board (KMPDB) is the statutory body

10Both this provision and the one which precedes it would arguably place a doctor in an unethical position of assisting or advising a person inflicting a cruel, inhuman or degrading punishment. For discussion see Amnesty International. *Whippings: South Africa*. AI Index: AFR 53/19/90, 1990.

11The strike was not the first by Kenyan doctors. In 1971 doctors in the public sector undertook a strike in support of demands for improved conditions and terms of employment. Doctors returned to work under pressure. Another strike occurred in 1981 for similar reasons.

which regulates professional practice in Kenya. It has 15 members, seven elected and eight, including the chairperson, appointed by the Minister of Health. All members are subject to ministerial authority. The Board was reported in March 1996 to be considering making known to the public cases of misconduct by doctors but, at present, hearings are private[12]. It is not clear whether this might include the cases of doctors collaborating in human rights violations in Kenya. Amnesty International is seeking clarification of the Board's policy on exposure of unethical doctors.

As Amnesty International has argued elsewhere[13], the health professions can play a major role in the protection of human rights through the exposure of torture and other abuses. In Kenya the government places many obstacles in the way of such a role; these are summarised below.

Obstacles used to restrict or prevent doctors from gaining access to patients in prison

- Demand for a court order by the officer in charge [there is no legal requirement for this]
- Unavailability of a prison doctor or medical orderly
- Delay of medical access for hours or even days until a prison doctor is available

Amnesty International believes that both the professional association (the KMA) and the regulatory board (the KMPDB), as well as any other representative professional medical syndicate, can play an important role in promoting and monitoring professional ethics and defending doctors under pressure to collaborate in or acquiesce to human rights violations.

Establishment of government human rights body

On 22 May 1996 the Attorney General, Amos Wako, announced the appointment by the Kenyan President, Daniel arap Moi, of a Standing Committee on Human Rights. The Committee comprises nine members and is chaired by Professor Onesmus Mutungi, a former principal of the University of Nairobi's College of Humanities. The Committee's terms of reference include educating the public on human rights and freedoms, and investigating all claims of violations of human rights and fundamental freedoms guaranteed in the Constitution, with the exception of all matters pending before the courts and any matters concerning relations with any government or international body.

While welcoming the establishment of the Committee, Amnesty International is concerned about the impact of these restrictions, which could prevent it from dealing with many current political cases, its method of reporting—it is not yet clear whether its quarterly reports will be made public—and the resources which will be given to the Committee.

Torture in Kenya 1994-1996

Men and women in Kenya arrested for political or common law offences are at serious risk of torture. The methods of torture used are basic and brutal. They are summarised in table

12 *Daily Nation*, 14 March 1996.

13 *Prescription for Change: Health Professionals and the Exposure of Human Rights Violations*. AI Index: ACT 75/01/96, May 1996.

1.

Table 1: Torture methods in Kenya described to Amnesty International in 1996

Death threats
Burns
Position abuse: maintaining prisoners in tiring postures
Sexual abuse including:
Rape
Tightening of wire tied round testicles
Insertion of objects into the rectum
Pricking of genitals
Threats of rape to self or family
Electric shocks
Confinement in the dark

Beatings
Kicking to sides while laying on back
Beating on soles of feet or legs
Beating all over body
Beating with sharp-edged pole
"Boxing" of ears
Being kept in hole which is progressively filled with water
Exposure to cold
Forced exercise
Prevention of access to toilet

Amnesty International has previously presented graphic photographic and medical evidence of the after-effects of the torture of young men in Nakuru District in 1995. One man had his arm amputated as a result of torture inflicted by tying of the upper arms resulting in ischaemia (reduction of blood supply to tissues) and subsequent gangrene. Others had lost the use of limbs as a result of torture.[14] The evidence gathered during Amnesty International's visits to Kenya in 1996 confirmed earlier patterns and documented the use of a torture centre not previously reported to the organization. All the victims interviewed were men from Western Province accused of support for, or membership of, an alleged opposition guerilla movement, the February Eighteenth Movement (FEM) or the February Eighteenth Resistance Army (FERA)[15]. They all consistently reported having been tortured after arrest with the objective of forcing a confession. The "unknown place" to which many make reference is believed to be the same detention centre in each case although Amnesty International has been unable to identify it. Other information deriving from press reports and other sources continue to corroborate allegations of persistent use of torture in Kenya.

Torture of detainees from Western Province

Those from Western Province who were tortured in connection with alleged membership of the FEM or FERA reported similar experiences. They were taken blindfold by truck to a centre they did not recognise; they were held blindfolded when outside their cells; and torture was carried out in a place some distance from the cells in which they were kept.

Torture took place in different rooms in the detention centre[16]. Detainees were made to strip naked and then subjected to position abuse: adopting uncomfortable postures for a prolonged time (see fig. 1). One former detainee described having objects inserted into his rectum. Another described being tied to a table and having his genitals pricked with pins and then his testicles tied together and pulled. A number of former detainees described being given electric shocks from a wire attached to the wall. Two men each described how he was forced to enter a small hole, approximately 3 feet (1 m) x 5 feet (1.6 m), in one room. The hole was then filled with water and each of the men was kept submerged for what they described as a very long time—the effect was to make them feel they would

14*Kenya: torture, compounded by the denial of medical care, op.cit., p8*.

15February 18 is the anniversary of the execution of Dedan Kimathi, a Mau Mau leader, by the British Government.

16See map, Appendix 1.

drown. Each time they tried to surface they were beaten. After several periods of this form of torture they were returned to their cells.

Some former detainees described being beaten with a long pole with a sharp edge. Some spoke of being forced to hang from door frames while being beaten on the sides of their feet or on their legs (see fig.2). Others described being forced to run, naked, in circles with one finger touching the ground. They were beaten if they stopped (see fig. 3). A number of former detainees said that as a result of their injuries they had blood in their urine or had swollen limbs and experienced difficulty in walking.

The former detainees said that they were held in a block containing 36 rooms in solitary confinement, about 300 metres from the cells where torture took place. From 6am they were taken to the bathroom blindfolded. The blindfold was removed during bathing but replaced on leaving the bathroom. Prisoners were taken blindfolded to the torture cells where they stayed for one to two hours. Those interviewed said that while the torture was being administered, some 12 to 13 people would be in the room: four carrying out the torture and the remainder observing and encouraging. All were dressed in suits.

Medical assistance

A number of those interviewed by Amnesty International said that they had been visited by a doctor who arrived with three officers and appeared to check the fitness of prisoners for further "interrogation". One former detainee told Amnesty International that a doctor said in his presence, "No, let him not be punished, let him rest". As a result, he was not tortured over the following week. During this period, he said, his body was swollen, and he was visited regularly by the doctor. Some ex-detainees said that when they complained of their injuries, a doctor whom they described as a medical officer in white uniform came and gave them paracetamol. No other medical help was made available. Some former detainees told Amnesty International that the doctor saw prisoners every morning to check their health and give them tablets. He did not inquire into the cause of their injuries. Summaries of two of the accounts given to Amnesty International are recounted below.

Case 1

One man was arrested at 3am on 4 February 1995 by five plain clothed and one uniformed officer. They ransacked his home—for guns, they said—and took away documents, including his FORD-Kenya file[17] as well as personal letters and a photograph album. He was taken first to Bungoma police station, then to Kakamega police station, Western Province. After two days there, he was taken to an unknown place about five hours' drive away. He was held for seven days alone without food. He was tortured twice each day by beating, including on the ears. He was accused of organizing and assembling youths to join FERA. About 12 days after his arrest he was transferred to Nairobi police headquarters and then to Kamiti Maximum Security Prison where he was held in a small cubicle with no light or ventilation. He experienced problems with hearing, which diminished with time but did not disappear.

On 23 February 1995 the man was taken back to Kakamega and held in Kakamega prison —along with three other men—and charged with murder, which is a non-bailable offence.

17He is an activist for an opposition political party, Forum for the Restoration of Democracy - Kenya (FORD-Kenya).

Between February and June 1995 a number of other men were also charged with murder. Seven months later, on 25 August 1995, the four men were taken to Kodiaga prison in Kisumu and, at the end of September 1996, to the court in Kakamega where the case against them was dropped. Special Branch police apparently threatened them with further arrest if they did not keep quiet. He told Amnesty International that he had been threatened once more by the police in April 1996.

Case 2

Another man, aged 19, was arrested at home on the night of 11 January 1995 by a policeman whom he knew, aided by eight policemen waiting outside. He was held in Cheskaki police station for a week, then in Kimilili police station, Western Province, for a day, and subsequently transferred to an "unknown place" in a lorry along with about 30 others. The blindfolded prisoners had their arms fixed behind them and were tied in groups of four. According to his testimony, on leaving the lorry he was beaten and taken to a single cell where he remained for the duration of his detention. On the first day he was made to hang from a door and was beaten on the soles of his feet. He was also beaten while sitting on a chair, was made to do exercises, and forced to adopt stressful postures (see figures 1, 2 and 3).

On the following day he was submitted to further torture. Interrogators tied a wire around his testicles and pulled for around three minutes. This was repeated several times after which he was taken back to his cell. He said he was seen by a doctor who gave him two Panadol. He was subsequently submitted to further torture such as "boxing" [beating] of his ears and beating on the body with a wooden pole. On 1 March 1995 he was taken to Kakamega police station where, in addition to an initial charge of membership of FERA, he was also charged with the murder of the mayor of Kakamega.[18] He was held in Kakamega prison, then transferred in May to Kodiaga prison where he was held in an unhygienic cell along with 29 other prisoners, all accused of membership of FEM or FERA. Prisoners complaining of sickness did not have their complaints accepted by warders who appeared to regard them as "pretending". After a Ugandan prisoner, Wilson Mabonga Baraza, aged 22, died in September 1995 the other prisoners were given limited amounts of medication. The charge of murder against this particular prisoner was eventually dropped and he was released on a bond in December 1995.

Amnesty International received similar allegations from more than 20 former prisoners who had been held at the unknown detention centre. About 50 people were reportedly held there between January and September 1995, including a minor and several men over 65 years of age.

Other cases of torture

Torture of both men and women has continued to be reported in other parts of Kenya.[19] In Nakuru District, for example, a chairman of the Kenya Universities Student Organization

18The charge of membership in an illegal organization is bailable. By contrast, murder is a capital crime and bail cannot be obtained.

19See KHRC *Quarterly Repression Report*, January to June 1996.

(KUSO)[20], Suba Churchill Mechack, claimed to have been tortured after being arrested on 16 November 1995 in the compound of Egerton University, Nakuru district. He says that at around midnight on that day he was taken from Molo police station to Menegai police station where, he said,

"I was stripped naked and tortured by three special branch men who accused me of constantly preaching about civil disobedience and recruiting people into FERA (some shadowy guerrilla movement about which very little is known). The three police officers [names given] tried to pull out my toe nails with pliers, hit my knee joints with a hammer, twisted my fingers with an open spanner. At one time [name] inserted a paper pin in between my nail and the flesh of my thumb."

Suba Churchill Mechack said that he was questioned extensively about his alleged relationship with a number of political figures. At midnight on the following day he was returned to Molo police station where he was again interrogated, this time about alleged abusive remarks made against President Moi. He says he was tortured further and then left naked to sleep alone in a cell. At 8pm on 18 November 1995 he was taken to Menegai police station where he was pressured to confess to have enlisted six people into FERA. However he denied that he had recruited the names on a list presented to him and was further tortured. The following evening he was moved to two further police stations, finally being questioned at Nakuru Railway police station by three people including a woman. This time the questions centred on distribution of funds. He was again subjected to further torture upon denying allegations put to him by the police.

Suba Churchill Mechack was released on 22 November 1995 but rearrested two days later on graduation day of the university. He was again questioned about activities to destabilize the government and kept for three days. On being taken before the Chief Magistrate's court, the magistrate ordered that he receive a medical examination at Nakuru General Hospital where he was found to have suffered kidney injuries. He was subsequently released on a bond and then arrested for a third time shortly after making protests about the withdrawal of a loan made to him for academic studies. He was later arrested for a fourth time, charged with forging loan documents and released on a bond of 200,000 Ksh [US$3600].

Amnesty International has no information about what investigations have been conducted into Suba Churchill Mechack's allegations.

Medical reports made available to Amnesty International also document cases of torture during 1996. One former detainee was examined in late January 1996, 17 days after being arrested in Nyeri and taken to Makuyu Police Station. On that evening, he said:

"I was taken to a separate room for interrogations. About eight police officers surrounded me and I was made to sit on the floor. Some had clubs and hoe handles. During the interrogations, I was beaten thoroughly with the clubs and sticks. Most blows landed on my knees, ankles, arms, head and back. I was slapped repeatedly over the ears. The beating was so hard until I started bleeding from the right ankle. They then forced me to lie down prostrate on the floor and some officers stood on my thighs. I screamed in pain but to no avail...."

He was held for two days without food before being taken for medical treatment at Makuyu health centre. Over the following week he was moved to different police stations, returned to the health centre for further treatment, and was further ill-treated by Special Branch

20A non-registered student organization based at Egerton University.

officers. It was when he was remanded to Nakuru Prison that a doctor finally examined him. The medical examination revealed a fractured right fibula as well as extensive soft tissue injury, scarring and signs of infection, injuries which, in the doctor's opinion, "can well be sustained in the manner [the detainee] claims they were".

Another man had a similar experience in 1996. He said that he was taken to Makuyu Police Station following his arrest in a Nairobi hotel and was:

"surrounded by about five police officers all armed with clubs and hoe handles. They made me sit on the floor and kept on asking me about some allegations. In the process I was beaten thoroughly... Every time I failed to answer questions the way they wanted, they increased the beating.... At one point I was hit on my right forearm as I tried to ward off a heavy blow directed to my head. I felt a sharp pain and screamed, to no avail...."

He was subjected to similar interrogations for six days before being transferred to Gaundu police station where he was again interrogated and beaten. After being taken to other police stations he was taken to court on 25 January and remanded to Nakuru Prison. He was medically examined by a doctor who found swellings and tenderness in arms, knees and ankles. X-rays revealed fractures of the ulna, one of the bones in the forearm near the right wrist, and of the left patella (knee cap). The medical report notes that the position of the wrist fracture "suggests the injury was sustained when the patient was trying to ward off a heavy direct blow from a blunt object". The doctor concluded that "the injuries noted....can be sustained in the manner [he] claims".

A British doctor who reviewed these and similar medical reports at the request of Amnesty International concurred with the conclusions contained in the reports.

Two women and two men were acquitted of robbery with violence in July 1996 by Kiambu Senior Resident Magistrate Margaret Wachira on the grounds that the suspects were tortured. All four had been arrested in Kikuyu Township on 17 December 1995, and reportedly tortured by police officers at Kiambu police station. According to reports, Jane Wanbui, who was five months' pregnant at the time of her arrest, miscarried after a senior police officer kicked her repeatedly in the stomach. The other female detainee, 17-year-old Virginia Nyambura Wambui, was whipped and beaten with sticks, kicked and had salt put in her vagina. She was subsequently treated in hospital. Medical reports produced in court supported the torture allegations. In her ruling the magistrate stated that it was only officers from the rank of an inspector who were authorised to use reasonable force. It was also noted that a fifth suspect, Michael Maina, was shot dead during the arrest. [21]

Deaths in Custody

At least five prisoners died in custody last year apparently as a result of torture. For example, on 5 May 1996 Henry Mutua M'Aritho died three days after his arrest by Administrative Policemen in Nyambene District. He was reportedly whipped, slapped, kicked and beaten on at least three separate occasions and on one occasion his legs were burned. After he died his body was transported to Isiolo District hospital at 5am. It is not clear whether, or to what extent, a post-mortem examination was carried out before he

21 See KHRC *Quarterly Repression Report*, January to June 1996.

was buried on 11 May, or if there has been any subsequent investigation into his death.[22]

On 8 July 1996 Amodoi Achakar Anamilem died while in police custody—but before reaching a police station—in Lokichar, Turkana District. According to eye-witnesses, he was beaten in public, then at a disused building and also at the Lokichar Administration Police camp. He was beaten with his own stick, gun butts, kicks and blows on all parts of his body. The police officers also attempted to strangle him with his own beads. His arrest followed the arrest of the wife and mother of a suspected robber on 6 July. The women appear to have been held as "hostages". On 8 July one of the women incorrectly identified Amodoi Achakar Anamilem as her husband, reportedly as a result of police pressure.

His body was taken to Loichangamatak Dispensary, where he was declared dead and recent injuries to his body were noted. The body was then taken to the mortuary at Lodwar District Hospital. A post-mortem examination was performed 10 days later. However, the cause of death could not be established because of the delay and because the coolers in the mortuary were not functioning.

After considerable pressure by the local Catholic church and human rights non-governmental organizations, the Attorney General ordered an investigation into the incident in August 1996. However, at the end of September 1996 the police officers allegedly responsible for Amodoi Achakar Anamilem's death were still on duty, no public inquest has been set up and, according to local human rights activists who spoke to Amnesty International, there appeared to be a "coordinated effort by the police, the District Administration and the hospital staff to cover up the case, to conceal the truth and to frustrate investigations".

The Kenyan Government's response to Amnesty International's 1995 report

In March 1996 the Kenyan Government responded to an Amnesty International report entitled *Kenya: Torture, compounded by the denial of medical care*, by raising a series of criticisms and attempting to refute Amnesty International's assertion that torture was a serious problem in Kenya.

The main accusations against Amnesty International's report were that it was full of generalizations and therefore difficult to answer; that it was riddled with factual inaccuracies; and that it failed to recognize the positive changes that have happened in recent years. The response went on to point out that torture is illegal in Kenya and that, while torture does occasionally happen, this was restricted to a few security officials and, whenever evidence was available, perpetrators faced the full threat of the law. The government response concluded by saying that:

"Kenya needs no international pressure in order to improve its human rights record because Kenya is committed to promoting and protecting the human rights of her inhabitants.... The Government does not need to accept the recommendation contained in the Report because even before the recommendations were made, the Government was already striving and is striving to uphold and

22 *The Nairobi Law Monthly*, No. 63, October 1996.

follow the ideals set out therein."[23]

Amnesty International continues to maintain that, far from being a relatively isolated event involving only a few officers, torture in Kenya is systematic and carried out with virtual impunity. While the worst examples of torture are less frequent than the routine beatings administered to those arrested, both savage torture and routine beating are contrary to Kenyan, and to international, law.

The government stated in its response that:

"admittedly there could be isolated incidents of torture or ill-treatment involving the security forces. These are not unique to Kenya and should, therefore, be seen in proper context. In Kenya such incidences are treated as criminal offences and, as highlighted in some cases in the preceding section [of the government paper], if established, the culprits, be they security officers or the ordinary public, are dealt with in accordance with the law."[24]

While there certainly are cases of individual policemen who take the law into their own hands and are responsible for torture, it is also true that the majority of people arrested by the police are given some sort of beating. And the overwhelming weight of testimony indicates that there is at least one establishment set up specifically to torture opponents of the current government in Kenya.

As shown above, Amnesty International has witness and medical evidence of continuing torture in Kenya and, moreover, that there was at least one medical person present who was advising Special Branch officers as to whether or not individuals were "fit" for further torture. Many of those tortured at the secret detention centre still suffer from the injuries they received there. Those tortured were subsequently warned by Special Branch officers before their release not to come forward and speak about what happened to them. The evidence does not support the government's claim that torture is arbitrary and the action of individual policemen. The majority of those tortured in Kenya are alleged criminals who come from the poorest sectors of society and are often the most vulnerable. The government's response that most crimes are committed by the poorest section of society does not in itself explain why those people in particular should be the ones tortured.

The government argues that if torture was as prevalent as Amnesty International suggests, then individuals would make an official complaint against the police for assault supported by a medical report—the P3 form (see Appendix 3). To do so, the complainant has to go to the police station and obtain a form from the police and get it signed by his or her doctor or medical practitioner. Amnesty International has frequently received reports of people being discouraged or refused permission by the police from filling in the form. Zacharia Wakiumu Njogu's P3 form was taken from him by the police, prompting his lawyer to write to the Nakuru police station complaining that his client's form "was taken away from him before the Doctor had completed it" and asking that the station commanding officer "kindly instruct your...officers to return the [form] to enable the doctor to complete".

Reports have also been received of P3 forms having been lost or removed from case files

---

23 *The Government of Kenya's preliminary response to the report of Amnesty International entitled 'Kenya: Torture, compounded by the denial of medical care' dated December 1995*, March 1996, p 23 and 24.

24 *ibid.*, p14.

held by the police. Alex Owuor, whose case was mentioned in the Amnesty International Report 1995, visited Nakuru Central police station on a daily basis for three weeks after his release from hospital[25]. Alex Owuor was given a P3 form which was filled in by his doctor and returned to the police. However, in its response the Government states that the police have no record of his complaint [26]

Amnesty International has also received compelling reports that the victims are told by the police not to talk about what happened to them or face rearrest or worse. They are then too scared to go to a police station to make out a complaint.

The government accused Amnesty International of publishing the 1995 report on a public holiday when no government representative would be available to respond. Amnesty International chose the publication day (12 December 1995) because it was the anniversary of the arrest of 150 people in 1994, of whom over 60 were subsequently brought to court. At least 20 were tortured, four so severely that they were never taken to court, but spent the subsequent seven months in hospital before being released without charge or trial. All four are permanently disabled and one had to have his arm amputated because of gangrene as a result of torture. Amnesty International is unaware of an investigation into this case and, in its reply, the government did not refer to it.

The government also criticized Amnesty International for not supporting or recognizing the positive changes that have happened since the advent of a multi-party political system. The organization welcomed the introduction of multi-party politics, in that it allowed for some freedom of association and expression. However, in practice these freedoms have been limited. The continued use of repressive legislation such as the Chief's Authority Act and the Public Order Act have restricted opposition parties from functioning in the public domain. Provincial administrative authorities have prevented or frustrated opposition groups and others from holding public meetings. In Embu, in October 1996, the local District Officer banned all non-governmental organizations and church groups from holding seminars. In 1995 more than 100 people were arrested for short periods.

The law of sedition has frequently been used to imprison government critics. While it is true that the Attorney General reviewed a number of cases of sedition and subversion in 1994 and as a result dropped charges against several journalists that were pending before the court, in the same year an editor and a journalist of *The People* were sentenced to several months' imprisonment after being found guilty of contempt of court.[27] Torture is still continuing and, while the preventive detention laws have not been evoked, capital criminal charges are being used to detain government critics.

There have been some cases of courts refusing to accept prisoners' confessions because

---

25 *Kenya: torture, compounded by the denial of medical care, op.cit., p6*.

26 *The Government of Kenya's preliminary response, op.cit.*, p9.

27 Amnesty International adopted both men as prisoners of conscience, imprisoned for the expression of their non-violent political opinions. The organization believed that they were denied the right to fair trial, as they were tried in the Court of Appeal and were therefore deprived of any right of appeal to a higher court. Moreover, two of the judges hearing their case were interested and aggrieved parties. The law of sedition continues to be used against government critics.

of torture, of which the Ndeiyo Six case[28] is the most notable. The government argues that courts recognize that torture has happened because they order suspects to be taken to hospital or allow private doctors to visit the suspects being detained. However, courts rarely demand an inquiry into the allegations of torture, even when suspects have been sent to hospital because their injuries are so severe. Furthermore, few courts question the police when defendants have been held in prison beyond the legal limit, when torture is most likely to occur.[29]

Amnesty International recognizes that Kenya's legal system has, in principle, adequate legal safeguards for the protection of detainees. The problem, however, is that these are not enforced. For example, arrests should only be made by officers with appropriate arrest warrants issued under judicial authority. However, frequently individuals are arrested without such warrants by individuals who are not police (for example, KANU Youth Wingers) and only occasionally is any action taken against them. To cite another example, there are instances where men and women prisoners are either held in the same cell or in two adjoining cells without a door being closed between them, depriving the women of their right to separate accommodation and placing them at possible risk of abuse from male detainees.

Amnesty International does not accept the argument put forward by the government that economic limitations explain a poor human rights record. Kenya is not the only government to use such an argument. However, Amnesty International believes that there are many reforms that can be introduced by the government that do not have major financial implications. For example, the following steps could be introduced with minimum cost: stopping police officers from beating prisoners; allowing prisoners access to daylight; ensuring that prison food is cooked properly; allowing doctors access to prisoners as and when needed; and allowing opposition members of parliament free access to their constituents. Moreover, many of the actions taken by the government to restrict human rights and prevent freedom of expression and association are costly in themselves. For example, a significant amount of police and judicial resources are used to erode the rights of individuals. It costs money to arrest and detain political opponents on charges of sedition; to ensure that those charged regularly attend court for several months before the case is eventually dropped; to treat victims of torture; and to perform autopsies on prisoners who have died in custody. Amnesty International believes that the Kenyan authorities' policy of blaming economic factors is an attempt to deflect attention away from its obligations under international law.

28The Ndeiyo Six were men arrested in November 1993 and charged with robbery with violence. They all confessed but a court ruled on 10 June 1994 that the confessions had been extracted under torture and they were acquitted. For details see: *Kenya: Torture compounded by denial of medical care*, pp.11-12.

29While a court may recommend an inquiry into allegations of torture, investigations are conducted by the police and the report is submitted to the Attorney General's office. The number of prosecutions of police officers for alleged torture during the course of their professional duties are few. As one senior civil servant told Amnesty International: "Do you think the police will investigate themselves? I don't."

Amnesty International believes that if Kenya signed the United Nations' (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this would go a long way towards proving the Kenyan Government's commitment to abolish torture. The Attorney General told Amnesty International in June 1992 and in March 1995 that the government was considering signing the Convention. There is little indication that any progress has been made on this since the multi-party elections. Equally, greater commitment by the government to the International Covenant on Civil and Political Rights (ICCPR) which it ratified in 1972, would increase a sense of good faith on its part to the protection of human rights. Its first report to the Human Rights Committee established under the ICCPR was received in 1981. Its second report was due in April 1986. To date, it has not yet produced that report, or responded to the 20 reminders it has received from the Human Rights Committee. Amnesty International would argue that if the government is truly committed to human rights, it would ratify the UN Convention against Torture and uphold its responsibilities established by the ICCPR treaty which it has already ratified.

Amnesty International's conclusions and recommendations

Conclusions

1. Torture continues to be practised in Kenya.

Torture continues to be routinely used by Kenyan law enforcement and investigation agencies. Evidence of torture includes eye-witness testimony, pronouncements by Kenyan courts, medical reports produced by Kenyan and foreign doctors, and investigations by both local and international human rights organizations.

2. Justice for victims of ill-treatment continues to be denied.

Prisoners are arrested without due procedure being followed. They are arrested without proper authority and are usually unable to effectively challenge such arrests.

Prisoners are convicted following the use of confessions extracted under torture. In practice, those whose convictions are based on confessions extracted under torture have no or little judicial recourse to have their sentences quashed despite both constitutional and legal prohibitions on the use of torture in any circumstance.

Medical evidence of torture is often not called for in judicial proceedings although some magistrates do call for medical evidence with mixed effect. When it is presented to a court, the findings are sometimes not accepted or are deemed not relevant. Few doctors write reports documenting torture.

3. Medical professionals are organizationally weak and unable to protect the vulnerable.

The professional associations are barred by regulation from playing a major syndicalist role and have not been active in questioning some of the practices which lead to torture and which place doctors and nurses in difficult ethical positions. An attempt to establish a legal and constitutional doctors' and dentists' union was blocked by procedural measures in 1994 and the medical profession remains in a weak position to promote ethical and accessible medical care.

4. Prisoner access to health care.

Access to health care in prisons and police detention centres is inadequate. Only one prison in Nairobi has a full time medical officer present. There is an urgent need for

prisoners to have access to doctors and for regular inspection of prison conditions to take place systematically. Where an outside doctor visits a prisoner to assess their health the consultation is usually impeded by the authorities and will not be confidential.

5. Training in medical ethics.

There is limited training in medical ethics and human rights in medical and nursing schools and in continuing education.

6. Forensic medicine.

Forensic medical services are very limited and appear unlikely to be able to meet the needs of the nation. Only a few doctors are currently undertaking training in pathology. Formal training of forensic pathology in Kenya is unavailable. The chances of proper forensic investigation of deaths in custody, other non-natural deaths or trauma-related injuries are minimal.

7. Role of Nurses

Nurses are the frontline carers in Kenyan prisons. As such they are placed in the difficult position of having to provide medical care for which they have not been properly trained. They are in a weak position to insist on proper medical care being made available to prisoners.

Recommendations

To the Kenyan Government

1. The government should implement in full the recommendations made in Amnesty International's December 1995 report on torture in Kenya. In particular, it should:

·Prevent arbitrary arrest and incommunicado detention.

·Establish strict controls over interrogation procedures and actively prohibit the use of confessions extracted under torture.

·Investigate all reports of gross human rights violations and bring those responsible to justice.

·Ensure that post-mortem examinations in all cases of death in custody are carried out shortly after death and that, as a matter of course, a public inquest is held.

2. The government should ratify the United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and produce the reports required by the Human Rights Committee under the provisions of the International Covenant on Civil and Political Rights which Kenya has ratified.

3. Investigate mechanisms for improving the amount and quality of education in medical ethics for health professionals. The government should ensure that key ethical standards, such as the United Nations' Principles of Medical Ethics are brought to the attention of all government doctors and particularly health personnel working with detainees.

4. Undertake a thorough inquiry into the use of torture in Kenya. The inquiry should be impartial and independent and be given access to necessary information and expertise and be guaranteed security to pursue its inquiries. The government should publish the resulting report.

To the Kenyan Medical Association (KMA)

The KMA could open dialogue with the government with a view to ensuring that it can act as a representational voice for the medical profession on matters of human rights and

medical ethics. It should make public its opposition to:
▪unethical practices by doctors, including collusion with or acquiescence in torture
·the poor state of medical care in prison
·human rights violations in Kenya
and support doctors actively promoting human rights and medical ethics in Kenya.

Appendix 1:Map of the unknown detention centre whose existence was reported to Amnesty International in 1996.

Appendix 2: P3 FORM (typed from a poor copy)

THE KENYA POLICE

MEDICAL EXAMINATION REPORT

PART 1 - (*To be completed by Police Officer requesting examination*)

From_____Ref._____
_____Date _____
To the_____ Hospital/Dispensary

I have to request the favour of your examination of:-

Name _____Age_____(if known)
Address _____Date and time of alleged offence _____
_____
_____
on the _____ 19___ under escort of _____
_____ and of your furnishing me with a report of the nature and extent of bodily injury sustained by him/her.

Date and time reported to police_____
Brief details of alleged offence
_____
_____

_____
Signature of Police Officer

PART II - MEDICAL DETAILS - (*To be completed by Medical Officer or Practitioner carrying out examination*)
(*Please type four copies from the original manuscript*)

Section "A" - This Section Must be Completed in all Examinations

Medical Officer's Ref. No _____
1. State of clothing including presence of tears, stains (wet or dry) blood, etc._____
_____
_____
2. General medical history (including details relevant to offence)_____
_____
3. General physical examination (including general appearance, use of drugs or alcohol and

demeanour)_____
_____
_____
_____

Section "B" To be Completed in all Cases of Assault, including Sexual Assaults, After the Completion of Section "A"

1. Details of site, situation, shape and depth of injuries sustained:-
(*a*) Head
andneck_____
_____
_____
_____
(*b*) Thorax and abdomen
_____
_____
_____
(*c*) Upper limbs
_____
_____
_____
(*d*) Lower limbs
_____
_____
_____
2. Approximate age of injuries (hours, days, weeks)
_____
_____
_____
3. Probable type of weapon(s) causing injury
_____
_____
_____
4. Treatment, if any, received prior to examination
_____
_____
_____
5. What were the immediate clinical results of the injury sustained and the assessed degree, ie. "harm", "maim", or "grievous harm".*

***definitions** -
"Harm" means any bodily hurt, disease or disorder whether permanent or temporary
"Maim" means the destruction or permanent disabling of any external or internal organ, member or sense
"Grievous Harm" means any harm which amounts to main, or endangers life, or seriously or

permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ.

_____
Signature of Medical Officer/Practitioner
Date _____

Appendix 3:

Amnesty International Principles for the Medical Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment

February 1996

Amnesty International has had a long-standing belief in the potential role of health professionals in the effective documentation and exposure of human rights violations. The organization has adopted the following *Principles for the Medical Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment* in order to promote the more effective use of professional expertise in the fight against these abuses. Amnesty International believes that the Principles could form the basis of a standard approach to the medical documentation of torture, consolidating the excellent work which has been carried out by physicians and other health professionals over many years. Amnesty International calls on governments and international and national organizations of health professionals to adopt, and act in accordance with, these principles.

Principles for the Medical Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment

Preamble: A number of human rights standards call for the prompt investigation of allegations of torture or other cruel, inhuman or degrading treatment by relevant authorities. These include the UN Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, regional treaties, and a number of statements adopted by doctors' and nurses' organizations. Such an investigation should be carried out by an appropriate individual or commission having powers to interview witnesses, review prison or police procedures and employ expert assistance. One of the important resources in such investigations is suitably qualified and experienced medical personnel. The principles set out here represent basic steps in the medical investigation of torture and ill-treatment.

1. Prompt Access to a Doctor

A detainee or prisoner should have prompt access to a doctor when an allegation of torture or ill-treatment is made or when there is suspicion that torture or ill-treatment has taken place. Such access should not be dependent on the institution of an official investigation of torture allegations.

2. Independence

The examining doctor should be independent of the authorities responsible for custody, interrogation and prosecution of the subject. He or she should, if possible, be experienced in the examination of individuals for legal purposes. The doctor's affiliation should be made clear to the prisoner and should be recorded in the final medical report. Where an independent doctor is not available, the doctor carrying out the examination should nevertheless comply with these principles.

3. Confidentiality of Examination

The examination should take place in a room where confidentiality is ensured. The doctor should speak to and examine the subject alone. Where the subject is a female, a minor or

a specially vulnerable person, examination should only take place in the presence of a witness acceptable to the subject. Where an interpreter is required, or the examining physician wishes to be assisted by a colleague, their presence should be dependent of the agreement of the subject. Any other third parties present should be asked to leave the examination room. If a third party refuses to leave, the doctor should note the name and affiliation of the person(s), and record his or her perception of the effect of this presence on the course of the examination. The doctor should use his or her judgment as to whether the examination can take place without further risk to the person being examined.

4. Consent to Examination

The doctor should give his or her name and affiliation, explain the purpose of the examination and gain the consent of the subject to the examination if he or she is capable of giving consent. Before consent is obtained, the doctor should inform the subject of the names or posts of all recipients of the medical report.

5. Access to Medical Records

The doctor, and if necessary, a translator, should have access to the subject's previous medical records.

6. Full Examination

The physician's examination should include the elicitation of a full verbal medical history from the subject and the performance of a full clinical examination, including evaluation of the subject's mental state. Further medical, laboratory or psychological investigations, including evaluation of mental health status, should be arranged promptly as deemed necessary by the physician.

7. Report

The physician should promptly prepare an accurate written report. The report should include at least the following four parts:

i. Establishing details—name of the subject and names and affiliations of others present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house etc)—and the circumstances of the subject at the time of examination (e.g. nature of any restraints used; demeanor of those accompanying the prisoner); and any other relevant factor;

ii. A record of the subject's history as given during the interview, including the time when torture or ill-treatment is alleged to have occurred;

iii. A record of all abnormal physical and psychological findings on clinical examination including, where possible, colour photographs of all injuries;

iv. An interpretation as to the probable cause of all abnormal symptoms and all abnormal physical findings.

The report should clearly identify the doctor carrying out the examination and should be signed.

In the interpretation, the doctor should provide a general assessment of the consistency of the history and examination findings with the nature of the subject’s allegations. A recommendation for any necessary medical treatment should also be given.

Where a doctor is unable to finalise the report, whether because of the unavailability of further examination or test results, or for any other reason, this should be stated.

8. Confidentiality of the Report

The subject should be informed of the medical findings and be allowed to inspect the medical report. A copy of the doctor's report should be made available in full to the subject's nominated representative and, where appropriate, to the authority responsible for investigating the allegation of torture. It is the responsibility of the doctor to take reasonable steps to ensure that it is delivered securely to these persons. The report should not be made available to any other person except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

9. Second Examination

A second medical examination by an independent doctor should be permitted if requested by the victim of the alleged torture or ill-treatment and/or by his or her representative. The victim of the alleged torture and/or his or her representative should have the right to nominate the physician who will undertake the second examination. The second examination should be carried out in conformity with these principles.

10. Ethical Duties

The doctor should bear in mind at all times that, in accordance with internationally accepted standards of medical ethics, his or her primary duty is to promote the wellbeing of the patient. In addition, he or she has a duty not to condone or participate in torture or other cruel, inhuman and degrading treatment. No aspect of the subject's character, physical characteristics, ethnic origin, or personal beliefs, nor the fact that an allegation of torture has been made by or on behalf of the subject, permits derogation from these duties.

[originally issued as POL 30/01/96, February 1996]