

£KENYA

@Torture, compounded by the denial of medical care

"Our commitment to the principles of democracy, good governance, the protection and promotion of human rights and the rules of law remains firm."

Stephen Kalonzo Musyoka, Minister for Foreign Affairs and International Co-operation¹

1. Introduction

In recent years, Kenya's human rights record has come under increasing criticism both nationally and internationally. In July 1995 it was raised in a meeting with Kenya's donors in Paris. Many observers feel that any human rights improvements gained in the first few years of the multi-party era are rapidly losing ground.

Torture in Kenya has been a subject of Amnesty International concerns for years. This report presents worrying new evidence of torture, ill-treatment and the denial of medical care to prisoners in Kenya. The pattern of abuses documented by human rights groups throughout the 1980s and early 1990s appears to be continuing. Since the December 1992 election Amnesty International has received numerous reports of police brutality, possible extrajudicial executions by the police – over 43 alleged criminals have been killed, apparently deliberately, in the first six months of 1995 – and torture and ill-treatment by police and security forces. Criminal suspects are routinely tortured to extract confessions, as are some political prisoners. Well-known political prisoners are harassed and ill-treated. Defendants are frequently held in custody beyond the legal limit and this is rarely challenged by the courts. Investigations into allegations of torture by the police are rare – prosecutions rarer still – and many police officers appear to act with impunity. Those charged are held on remand, often for many years, in extremely harsh conditions before coming to trial. Many prisoners suffer serious illness as a result of torture or prison conditions but are often refused medical treatment or receive it very late. Doctors who attempt to treat political prisoners are harassed by the police, prison officers and prison medical personnel.

Amnesty International medical delegates visited Kenya in March 1995 and this report, which highlights torture and the denial of medical care in Kenya between December 1992 and October 1995, includes some of the findings of that visit. Amnesty International hopes this report will be widely read by Kenyans as well as people outside Kenya. The organisation calls on the Kenyan government to implement the extensive recommendations at the end of this report. Amnesty International believes that, if effectively implemented, these recommendations will help to end the pattern of human rights violations in Kenya.

Kenya is due to hold its next election in 1997. Many Kenyans had hoped that democracy would bring a significant improvement in human rights. They are now looking to their government, opposition parties and the international community for that promise to be delivered. Amnesty International remains deeply concerned about the continuing reports of serious human rights violations in Kenya. Without firm and prompt action by the authorities, the pattern of abuse by police and security forces will continue.

¹Statement at the 50th session of the United Nations General Assembly, 3 October 1995

2. Background

Torture took place before the move to multi party politics and has continued since then. It will continue so long as the government uses torture and other human rights violations as a means of curbing political opposition. Since independence from the United Kingdom in 1963 Kenya has had two presidents: Jomo Kenyatta, former leader of the Kenya African National Union (KANU) who ruled until his death in 1978, and Daniel arap Moi who has been president since then. In 1982 the government changed the constitution and made Kenya a one-party state thereby prohibiting the formation of any political party other than the ruling KANU. This followed attempts by government critics to form an opposition party.

In August 1982, an attempted coup by Kenyan Air Force personnel was violently put down and was followed by repression and intimidation. Over 1,000 airforce personnel were arrested and later convicted of treason, mutiny and other offences. In the mid 1980s there was a wave of arrests of suspected government opponents, the majority of whom were tortured. Ten people were detained under the Public Security Regulations, which allow detention for an indefinite period without charge or trial, and almost 100 were convicted of political offences in unfair trials and sentenced to up to five years' imprisonment. Hundreds of others were arbitrarily detained for weeks before being released without charge.

Between 1989 and 1991 the campaign for multi-party democracy intensified. Hundreds of people were arrested because of their non-violent political activities; the majority were released within a short period but some were sentenced to long terms of imprisonment. Several were detained without charge or trial under the public security legislation including former government ministers and human rights lawyers. Many of those arrested were tortured.

After several years of fierce resistance to ending the one party state, President Daniel arap Moi agreed to do so in late 1991. This followed the decision by Kenya's main donors to suspend all aid to the country. The donors criticised the government for corruption and a lack of "good governance". In late December 1992, multi-party elections were held but were alleged to have been marked by electoral irregularities. President Moi and KANU returned to power but opposition parties won almost half the seats in Parliament. In 1992 the authorities released the remaining political detainees and, with one exception, all known political prisoners serving prison sentences.

Since December 1991 over 1,500 people have been killed and more than 300,000 displaced in political violence between the Kalenjin community, President Moi's ethnic group, and the Kikuyu, Luo and Luhya communities. The government has blamed the violence on opposition parties, government critics, the church and the media. However, there is strong evidence that the violence is being instigated and manipulated by the government.² In the last two years the level of violence has decreased significantly.

2.1 Human rights remain under threat

Despite the move to multi-party politics, the pattern of harassment of human rights activists, opposition figures and journalists continues, particularly against those who have been attempting to investigate or report incidents of political violence in the Rift Valley or other parts of Kenya. Although opposition political parties operate openly and freely, many individual critics have been arrested in connection with peaceful demonstrations, speeches, publications or investigations into human rights abuses. The majority

²See *Kenya: Abusive use of the law*, AFR 32/15/94, November 1994.

have been held for short periods and released without charge or charged with sedition or other political offences and released on bail after a few days or weeks. But recently the government has been using criminal charges which carry the death penalty, for which release on bail is not permitted, to detain non-violent critics of the government. Whole editions of newspapers and publications critical of government policy have been impounded, and printing presses have been put out of action. Public meetings, particularly those held in rural areas by opposition members of parliament or government critics, have been stopped, sometimes violently. Kenyan journalists reporting these actions have been detained for short periods; foreign nationals including journalists have been threatened with deportation for publicly criticising the government.

Growing public awareness of human rights issues in Kenya has stimulated the growth of human rights non-governmental organisations (NGOs). Their work is not without risk. In 1995 NGOs involved in human rights activities have been harassed, their staff or board members threatened or attacked by people suspected of having connections with the authorities, and two NGOs have been banned.

3. Torture and Ill-Treatment

Torture and ill-treatment are widespread in Kenya. In some cases such treatment has resulted in permanent disability or even death. The main purpose of torture and ill-treatment of prisoners appears to be to intimidate detainees and dissuade them from engaging in political activities, and to obtain (often false) admissions of guilt which can be used in court. Political prisoners are also tortured to obtain information about their activities. Torture generally happens at the moment of arrest or during the initial phases of interrogation in police custody when detainees are frequently held incommunicado beyond the legal limit of 24 hours – or 14 days if the death penalty is applicable – and moved between different police stations to prevent their whereabouts being discovered.

Torture methods are frequently very brutal, usually beating with sticks, fists, *rumgis* (knobbed sticks), handles of hoes and gun butts on different parts of the body. The most common torture is to beat the soles of the feet where bruises may disappear rapidly but where the pain inflicted can remain for the rest of the person's life. Detainees are often tortured by being suspended upside down on a stick passed behind their knees and in front of their elbows and then beaten on the soles of their feet. One variation used is simultaneous blows to both ears, which is extremely painful and can rupture the ear drums.

Some political detainees have been tortured even more severely. Some have had their fingernails and toenails pulled out. Cases of near-asphyxiation have also been reported where prisoners have been submerged head first in dirty water. Some have been held in cells filled with two inches of water for several days.³ Others have been taken to a forest at night, suspended from the trees and then beaten. Both men and women have been subjected to violent forms of sexual humiliation. Women have been raped and have had objects, such as bottles, inserted into their vaginas. Men have been tortured by having their genitals pricked with large pins or tied with string and pulled.

3.1 The perpetrators

³This method of torture, nicknamed "the swimming pool" was a principle method of torture used by Special Branch on prisoners held at the Nairobi Province headquarters, Nyayo House, in the mid 1980s. See *Kenya: Torture, Political Detention and Unfair Trials*, AI Index AFR 32/17/87, July 1987.

Most political prisoners report that they were tortured by officers of the "Special Branch" officially known as the Directorate of Security Intelligence (DSI) or by officers of the police Criminal Intelligence Department (CID). The CID is reported to have a unit responsible for arresting, detaining and interrogating political prisoners. Special Branch officers, who prior to 1992 reported directly to the Office of the President and currently report to the Commissioner of Police, have also been accused of the torture of criminal suspects, as have the regular police, local administrative police and KANU Youth Wingers.⁴ Any person arrested by KANU Youth Wingers, often under the direction of a local administrative chief or assistant chief should, by law, be immediately transferred to the regular police force.⁵ However, Amnesty International has received reports of individuals detained and tortured by KANU Youth Wingers.

3.2 The victims

The majority of people tortured in Kenya are alleged criminals who come from the poorest and least articulate sectors of society and lack the power to voice their complaints or the money to pay bribes to avoid torture. However, many of those severely tortured are political activists, or alleged activists, often from ethnic groups perceived as supporting the opposition parties. Well known government critics tend not to be physically tortured but are often subjected to harassment and ill-treatment by, for example, the denial of medical care.

a. Criminal suspects

People alleged to be criminal suspects are routinely tortured by the police to obtain a confession of guilt. They are frequently arrested arbitrarily, sometimes solely because they happen to be present when the police are investigating a complaint. Sometimes they are detained in large numbers. For example, on 30 January 1995 over 500 people were violently arrested in Eldoret town by police said to be looking for car thieves, pickpockets and vagabonds. Criminal suspects rarely have access to lawyers and are usually too frightened to come forward and report torture because they fear reprisals.

Often torture only comes to light in court when injuries are detected or when prisoners report torture in the course of requesting medical treatment for their injuries. For example, Francis Mwangi alleged in court on 17 July 1995 that he had "a broken hand following police beatings". He requested medical treatment, to which the court agreed.⁶

On occasions the torture is very severe. David Mbugua Kabata was reportedly very badly tortured in August 1993. Between his arrest on 3 August and his appearance in court on 16 August 1993, when he was remanded on a charge of possessing illegal weapons, he was transferred eight times between six different police stations in Rift Valley Province. He was allegedly tortured at two of them and four times in nearby forests. He said:

⁴Administrative police officers serve the provincial administration, KANU youth wingers are supporters of the KANU Party.

⁵Chiefs and assistant chiefs are part of the provincial administration under the local District Officer.

⁶*Daily Nation* 18 July 1995.

"I was threatened with death unless I agreed to sign some statements. I was fixed between two trees with my hands fastened each to a tree. I was then whipped and beaten with hoe handles all over my body. Then they tied my penile shaft with a string and started pulling until there was a crack which bled."

His medical examination on 27 August 1993 revealed "multiple bruise marks, wounds and scars all over the body". His injuries included two fractures of the facial and skull bones, a circular peri-coronal ulcer on his penis, soft tissue injuries, and he was suffering from acute bronchitis. In his report the doctor stated, "it is my well-considered opinion that the amount of trauma David went through was enough to convince him that his life was in real danger". His trial, which began in mid 1995 is continuing. Amnesty International is not aware of any official investigation into his torture allegations.

Criminal suspects have also been tortured by KANU Youth Wingers. Alex Owuor, a 22-year-old porter at Nakuru bus station, was arrested by five KANU Youth Wingers on 27 December 1994 and accused of stealing. The Youth Wingers then took him to their office near the bus station, where, he stated, he was kicked and beaten with clubs on the ribs, hands, knees and genitals. His injuries, which included a dislocated elbow and swollen genitals, required hospital treatment. Alex Owuor reported the incident to the police who took little action. One of the attackers was arrested but was released on police bond and no further investigation has been carried out. Amnesty International has received numerous similar reports.

There have been similar reports of torture by administrative policemen. For example, in February 1995 administrative policemen reportedly detained a woman and her two children, and held them for two days without food or water at Godjope Chief's Camp in Coast Province.⁷ On 4 January 1995 at Kangaita Chief's Camp, Kirinyaga District, three administrative policemen reportedly tortured 84-year-old Daniel Waweru, his wife and daughter. All three were whipped and Daniel Waweru was held overnight in a cell several inches deep in water before being released without charge.

b. Political prisoners

Amnesty International has received reports of the severe torture of political prisoners which in some cases has resulted in permanent disability. In these cases the perpetrators have almost always been Special Branch officers.

In 1995 over 40 people have been arrested on suspicion of membership of an illegal guerrilla movement called February Eighteenth Movement (FEM) or what is reported to be FEM's armed wing, the February Eighteenth Resistance Army (FERA), and held for several days before being charged or released. The authorities have linked FERA to criminal activity in Western Province. Many of those detained were reportedly tortured. On 22 September 1995 Wang'ondu Kariuki, a lawyer and former prisoner of conscience, was arrested and held incommunicado for seven days before being brought to court. He was stripped naked, repeatedly beaten and, for the first three days, denied food. He was released on bail and at the time of writing was awaiting trial on charges of membership of an illegal organisation. Robert Wafula Buke, a former University of Nairobi student leader, was arrested on 27 March and held until 13 May 1995 on suspicion of membership of FEM. He was reportedly badly tortured at Kawangware Chief's Camp. He was chained to a wall and beaten by a Special Branch inspector and two officers. He was later taken to Naivasha maximum security prison, where he was further tortured and denied food.

⁷ *Quarterly Repression Report January-March 1995*, Kenya Human Rights Commission (KHRC) report.

In February 1995 four men were sentenced to between five and six years for membership of FEM. All four pleaded guilty at summary trials without legal representation. They had all been held in incommunicado detention prior to being brought to court. They were part of a group of at least 32 men arrested between late October 1994 and early February 1995 in Bungoma District, Western Kenya. Many if not all of the group were tortured shortly after their arrest. One, Joseph Baraza Wekesa, a 69-year-old retired teacher, said he was beaten repeatedly, had hot wax poured on his arms and was then threatened with torture to his genitals. After his conviction, Joseph Baraza Wekesa obtained legal representation, appealed against his conviction on the grounds he had been tortured, and applied for bail. His court-ordered medical report stated that: "[T]he effects of his assault are still there for all to see one month after the event and they are an indication of the severity of the injuries at the time he was assaulted". However, the report was accused of being biased and was heavily criticised, by the State Prosecutor, Bernard Chunga, and the High Court judge hearing the bail application subsequently refused to read it. Joseph Baraza Wekesa was refused bail on the grounds that he had pleaded guilty of his own volition.

Two other men facing the same charge pleaded not guilty with the help of several lawyers and were given bail. The lawyers' action prevented any further summary trials from occurring. However, although the initial charge against them was dropped, the two men were not released but were transferred to Kakamega in Western Kenya, 320 kilometres from Nairobi, and charged with murder along with six others from the original group of 32. At least 18 other men were released. Amnesty International has received credible reports that at least five of these men held in Kakamega were severely tortured. They include Taiga Machenjje, a former Chairman, for Mount Elgon district, of the opposition party Forum for the Restoration of Democracy (FORD) - Kenya, who was reportedly so badly tortured that he urinated blood and lost his hearing. Another, Moses Murimi Mukour, alleged he was tortured four days after his arrest by Special Branch officers who stood on his chest and on a piece of wood that was placed across his legs. They also tied his penis and both testicles with string that was stretched and repeatedly hit. His allegations were supported by medical evidence. His medical report noted that, "[M]any of the injuries were invisible but there were residual scars of torture. Both legs are scarred and bruised from the injury described by the patient. There is a wound on the back". The doctor writing the report in the presence of the prison doctor, Dr Luusa, stated that, "[I]t is significant that Dr Luusa and the Prisons Attendant insisted on playing down the significance of this injury claiming that it was not due to police torture". Richard Wasilwa Wafula was also allegedly beaten. His medical report noted: "that this patient was harmed by being assaulted on 8.2.95 and three weeks later his injuries are still quite visible and quite marked".

Four young men were permanently disabled by Special Branch officers who tied them to trees in Dundori forest, near Nakuru, and beat them in December 1994. The four were part of a group of 67 men who were accused of holding an illegal meeting. At least 17 of them were reportedly tortured. They were not given treatment for their injuries for six days. One of the four, Geoffrey Ndungu Gichuki, developed gangrene and, two days after he was taken to hospital, his arm was amputated. Amnesty International medical delegates who examined three of these men in March 1995 found that they had:

"...suffered permanent damage to their bodies, mainly their arms. They all had pronounced impairment of function of their hands. Two of them were especially incapacitated: one of them lost his right arm, the other lost the function of his left hand, and they both had reduced function of the remaining hand. They all had pronounced ligature marks on their arms as unequivocal causes of the damage described above. Self-infliction of the lesions described above is not possible."

Joseph Karanje wa Wangari

Geoffrey Ndungu Gichuki

In an apparent effort to avoid evidence of police torture being given in open court these four men were never charged. They were held in hospital under police guard for seven months then released in July 1995.

The trial of the other 63 prisoners ended in October when 62 were convicted of unlawful assembly and one was acquitted.⁸ A number of them have alleged several times in the past year that they were tortured by prison warders. On 21 September 1995 the lawyer acting for all 63, stated in court that "prison warders had been stripping his clients and thrusting sticks in their bottoms". This allegation was reportedly denied by the prosecutor, on the grounds that there was no medical report to support their claims. The defence lawyer was prevented from responding to the prosecutor by the magistrate who said he was only ready to listen to the lawyer on "relevant matters relating to the case and not on anything else".⁹ In September 1995 all 63 were reportedly on hunger strike in protest against their treatment. They were said to have been moved a week earlier to a block occupied by people suffering from infectious diseases such as tuberculosis and scabies where conditions are appalling. Earlier in the year a Nakuru court ordered 18 of them to receive hospital treatment. They were suffering from malaria and diarrhoea due to poor prison conditions.

⁸Fifty seven were sentenced to two years imprisonment and five young men aged between 17 years old and 20 years old were, at the time of writing, awaiting sentence pending probation reports. None of the 63 had been granted bail during the year.

⁹ *Daily Nation*, 22 September 1995

Geoffrey Kuria Kariuki was one of several people arrested because of their family and political connections with Koigi wa Wamwere, a prominent human rights activist, former politician and former political prisoner. At the time of Geoffrey Kuria Kariuki's arrest in July 1994 Koigi wa Wamwere and three others were on trial for robbery with violence and facing the death penalty if convicted. In October 1995 Koigi wa Wamwere and two others were sentenced to four years imprisonment and six strokes of the cane, the fourth man was acquitted. Canning is cruel, inhumane and degrading treatment. The Human Rights Committee, the body which supervises implementation of the International Covenant on Civil and Political Rights (ICCPR), to which Kenya acceded in May 1972, says that the prohibition of torture or cruel or degrading treatment or punishment under article 7 of the ICCPR "must extend to corporal punishment". The canning has not been carried out yet pending an appeal. Amnesty International has adopted all three as prisoners of conscience.

Geoffrey Kuria Kariuki, a cousin of Koigi wa Wamwere, was reportedly beaten unconscious with rifle butts and batons by around eight plainclothes policemen when he was arrested at a private house in Nakuru on 9 July 1994.¹⁰ He was then held incommunicado for 10 days and reportedly tortured further. Following a habeas corpus application, filed because of fears for his life, he was brought to court on 19 July and charged with robbery with violence along with five others including Michael Kung'u and John Kinyanjui Njoroge who were also said to have been tortured. The defendants had initially been brought to court outside court hours the previous day. However, defence lawyers, who had not been allowed access to their clients, protested and the proceedings were delayed until the following day. Defence council told the court that their clients had been tortured and the magistrate ordered a medical examination. The doctor who examined the defendants on 20 July recommended that Geoffrey Kuria Kariuki, who had serious head injuries, receive a CT (computerised tomography) scan:

"it is apparent that whatever Geoffrey went through in the recent past has left him mentally confused. The red eye and multiple facial bruise marks point to a recent exposure to trauma. The trauma must have been inflicted from blunt object(s) directed to the head."

¹⁰ Geoffrey Kuria Kariuki has been on remand twice before. In October 1990 he was jointly charged with Koigi wa Wamwere and two prominent human rights lawyers with treason. They were released in January 1993 when the charges against them were dropped before the trial started. In November 1993 he was arrested and charged with robbery with violence (with Koigi wa Wamwere) before being released when charges were dropped in January 1994.

Geoffrey Kuria Kariuki had to wait nearly three months until this CT scan was undertaken on 14 October 1994. Following this initial CT scan, it was discovered that Geoffrey Kuria Kariuki was suffering from a *subdural haematoma* (accumulation of blood under the brain membrane). This requires immediate assessment by a neurosurgeon to decide whether medical intervention – including possible surgery – is necessary.¹¹ A second scan in December 1994 was again not followed up by an immediate assessment by a neurosurgeon.

In early February 1995, Geoffrey Kuria Kariuki's lawyer made an application for him to be allowed to see a neurosurgeon to ascertain if he was fit to stand trial. The magistrate postponed the hearing of this

application, and on the day the application was to be heard, Geoffrey Kuria Kariuki

Geoffrey Kuria Kariuki

was transferred to Nyahururu where he was charged with further capital charges along with around 14 others. At the end of February, Geoffrey Kuria Kariuki eventually saw a neurosurgeon who recommended an operation, but not if Geoffrey Kuria Kariuki would be forced to return to prison to convalesce where the conditions could kill him. His lawyers appealed for his release on bail on medical grounds. He was eventually released in May 1995, when the charge against him was reduced to robbery which is bailable. Amnesty International is unaware of any investigation into his alleged torture.

On a few occasions the evidence of torture is so compelling it has resulted in acquittals. On 10 June 1994 the case of six male political prisoners charged with robbery with violence was dismissed on the grounds that the confessions of all six had clearly been obtained as a result of torture, and the magistrate ruled that there was no evidence to warrant their standing trial. The six men had been arrested in November 1993 and initially charged with breaking into the Ndeiya Chief's Camp (they were subsequently referred to as the 'Ndeiya Six') and stealing five guns, several rounds of ammunition and three tear-gas grenades, and with assisting a prisoner to escape. The wife of one of the accused, David Njenga Ngugi, an official of the

David Njenga Ngugi © *Daily Nation*

¹¹ The condition of a person suffering from a *subdural haematoma* can deteriorate at any time. Any delay in an assessment by a specialist therefore means that the scan may no longer accurately reflect the patient's condition, and decreases the value of the scan.

opposition Democratic Party, was arrested at the same time and held for several days in the same cell as the accused men before she was released.¹² The six were released on bail but were immediately re-arrested. On 16 November 1993 they were charged with robbery with violence and thereby prevented from obtaining bail which is not available for charges of a particularly grave nature. The earlier lesser charges against them were subsequently withdrawn.

At the time of their arrest the six men were whipped, forced to walk on sharp objects and had their finger nails and toe nails removed. In his ruling in May 1994, the Nairobi Chief Resident Magistrate noted that David Njenga Ngugi "was so badly tortured to confess that today, eight months later, he still has to walk with the help of crutches. The soles of his feet still have deep black marks and [sores] and swellings are on his feet". The magistrate censured the police and directed the commissioner of police to take immediate action against these men responsible for the torture of the defendants, stating that "it would be good practice where matters of torture are apparent in [the] course of a trial to direct that investigations be conducted by the commissioner of police". The magistrate, who was reportedly criticized by President Moi for his ruling, has since been removed from Nairobi to Kitui, 130 kilometres east of Nairobi. Amnesty International is not aware of any investigation or arrests in connection with the torture of the Ndeiya Six. Since his release David Njenga Ngugi, who is still receiving medical treatment, has reportedly been harassed by the police. Two of the Ndeiya Six are currently suing the Attorney General for damages and costs.

George Karuki Wanjau, a 65-year-old farmer, was reportedly tortured in the presence of the head of Nakuru Provincial CID. He was arrested on 7 November 1993 with his son, and taken to the provincial CID offices in Nakuru where he alleges that the Provincial CID officer slapped him twice on the cheeks

¹² Amnesty International has received reports that women are occasionally held in the same cells as men while in police custody in Kenya. This appears to be an attempt to intimidate women prisoners and there have been allegations that male prisoners have been encouraged by the police to harass and even rape women held in the same cell.

and then ordered the police officers present to beat him. He was beaten by six police officers on his cheeks, head and body. He claimed he was ordered to implicate Koigi wa Wamwere in an alleged violent robbery on Bahati Police Station near Nakuru on 2 November 1993. He lost four teeth, his mouth and cheeks were swollen and his mouth bled. He was then held in Menengai police station for three days without receiving any medical attention. He was charged with robbery with violence with 11 others including Koigi wa Wamwere. His son was held in custody for 14 days and then released without charge. George Kariuki Wanjau was released in January 1994 when the charges against him were dropped. Amnesty International medical delegates who examined him in early 1995 stated that their findings were consistent with his allegations of torture.

At least five men charged with George Kariuki Wanjau were reportedly tortured while they were held by the police in incommunicado detention. Three subsequently received hospital treatment for their injuries which included a burst ear drum, a ruptured bladder and a fractured leg. Amnesty International is unaware of any official investigation of these reports of torture.

c. Women Victims

Female political prisoners and women accused of common crimes have also been tortured by the police and Special Branch. For example, Alice Mariga Ashioya alleged in court on 17 January 1995 that she had been tortured by a woman police inspector who forced a bottle containing pepper into her vagina in an attempt to force her to admit to the murder of her husband. Another suspect in the same case alleged in court that he had been tortured by police who had taken him to Kambatia Forest and suspended him from a tree. They were both acquitted after the magistrate refused to accept their confessions on the grounds that they had been obtained through torture.¹³

Josephine Nyawira Ngengi, a prisoner of conscience and a member of the Release Political Prisoners (RPP), a non-violent campaigning group, and sister of G.G. Njuguna Ngengi, was arrested in May 1994 in Nakuru. She was held illegally and incommunicado for 22 days before being charged with robbery with violence, which carries the death penalty. Two other women, Ann Wambui Ng'ang'a and Tabitha Mumbi, and 16 men, were charged with the same offence. All three women and two other men allege that they were tortured

Josephine

Nyawira Ngengi

while in police custody.

Josephine Nyawira Ngengi stated that she was beaten and blunt objects were forced into her vagina until she bled. She said:

¹³ See *Quarterly Repression report January - March 1995*, (KHRC).

"At one point, one officer got so incensed that he took a wooden plank and hit me hard on the head. I was then ordered to wipe the blood from the floor from the resulting wound with my tongue, which I did."

Her case is continuing. Amnesty International is not aware of any investigation into the torture claims of these three women or of the men charged with them.

Truphena Obwaka Shirako, aged 51 years, was accused of stealing 15,000 Kenyan shillings (Ksh) (US\$150 equivalent) from her employer, an international NGO, and arrested in January 1994. She was tortured by four policemen at Langas police station, Uasin Gishu District. During her ordeal a bottle was pushed into her vagina and one of the policemen is also said to have put his hand in her vagina "to look for the money". She was beaten for five hours. She had extensive injuries and bleeding and was eventually taken to hospital. A senior provincial police officer said the "cruel and shameful" incident would be investigated. Two policemen were arrested and charged with "indecent assault and assault causing actual bodily harm". Both denied the charges and were released on bond. Their trial began in late 1994, but has been adjourned on a number of occasions and is still continuing. An eye-witness – a pastor – testified that he had heard one policeman say to the woman that she would be taken to the "slaughter house".

d. Refugees

Amnesty International has received a number of reports of refugees from Uganda, Somalia and Rwanda being harassed, ill-treated and even tortured by Kenyan security forces. However, because of the fear of the individuals involved, the organization has been unable to substantiate many of these reports. Frequently, refugees living in Nairobi appear to be illegally harassed for bribes and many of those unable to pay have reportedly been arrested and ill-treated. Amnesty International has received unconfirmed reports that young Somali men living in refugee camps in Eastern Province have been arrested and detained by police officers on charges of stealing. They are said to be held and tortured or threatened with torture until their relatives pay a bribe to release them. Amnesty International has also received reports that Ugandans have been arrested and accused of illegal entry or robbery with violence, and then coerced into pleading guilty and deported. On 8 May 1995, 75 Ugandans living in Nairobi were deported from Kenya. All had been convicted of vagrancy. They were taken to Madaraka court where they were "coerced to plead guilty to illegal entry into Kenya".¹⁴ The Ugandans claimed that they were accused by the Kenyan security forces of spying for the leader of the FEM.

4. Deaths in custody

Nahashon Chege, an 18-year-old street boy, died at Pangani police station, reportedly on 1 April 1995, as a result of torture. Eyewitnesses stated that he had been beaten with gun butts as he lay on the floor after his arrest. Two other youths arrested with him were also reportedly beaten. These two and seven other street boys arrested at the same time were taken to Madaraka Court and bonded to keep the peace for two years. In response to press reports about the death of Nahashon Chege, the police stated that he had died at Kenyatta National Hospital two days after he had been arrested. Nahashon Chege was buried on 22 April 1995. Amnesty International does not know if an inquest has been carried out, or if there has been any subsequent investigation into his death.

¹⁴ *Quarterly Repression Report, April-June 1995*, p.47-48, KHRC.

Lieutenant John Kubwana, a Ugandan army officer, died in Bungoma hospital in April 1995 where he had been admitted with severe injuries. Lieutenant John Kubwana had reportedly been kidnapped by Kenyan security agents from his home in Bukabayi village in Mbale district, Uganda, on 23 April. He was accused of having recruited and trained members of the FEM. According to his relatives, he is said to have received knife wounds and to have been battered with blunt objects. It is not known if there has been any inquiry or investigation into his death.¹⁵

Sergeant Martin Obwong died on 18 March 1995, on the day of his release from Makongeni police station, Nairobi. Sergeant Martin Obwong, a prison officer attached to Nairobi's Industrial Area Remand Prison, had been arrested the previous night following a quarrel with a police officer in a bar. He reportedly collapsed several times shortly after his release and was taken to the prison's clinic by his relatives with a swollen face and a mouth "full of blood". His son stated that his father told him he was beaten by police officers at the police station. An investigation is reportedly being carried out, but no one has yet been arrested.

At least one woman has died in police custody as a result of torture. Rosemary Nyambura was reportedly beaten by up to seven police officers at Ruaraka police station, near Nairobi. She died as a result of her injuries on 10 May 1992. Police had stopped her early that morning as she returned from a nightclub with a friend. The police reportedly searched both women and demanded their identity cards. Rosemary Nyambura was unable to produce hers and the police reportedly searched her and took from her Ksh 6,000 (US\$ 60 equivalent). Police corruption in Kenya is rife and there are regular reports of police taking money in this way. Rosemary Nyambura followed the police officers back to Ruaraka police station demanding the return of her money. At the police station she was arrested. The police later alleged that she had committed suicide, but the post-mortem report indicated she died of ruptured kidneys and spleen. Her family demanded an inquiry and the Federation of Women Lawyers-Kenya Branch (FIDA) took up the case, but it was over a year before an investigation started and as yet no police officer has been charged in connection with her death.

5. Why Torture Continues

Amnesty International believes that the main reason that torture continues in Kenya is because of the impunity enjoyed by the perpetrators. Investigations into complaints of torture and ill-treatment are rare or inadequate, as are prosecutions. Courts consistently fail to investigate complaints of torture and frequently do not examine the medical evidence or question the lack of medical treatment when a prisoner has alleged torture. Furthermore, courts rarely call the police to task when a prisoner has been detained beyond the legal limit.

Torture and ill-treatment are clearly prohibited by Article 74 (1) of the Constitution of Kenya which states that "no persons shall be subject to torture or to inhuman or degrading or other treatment". Torture and ill-treatment are also prohibited by international standards, including the African Charter on Human and Peoples' Rights (ACHPR) which Kenya ratified in 1992, and the ICCPR which Kenya ratified in 1972. Kenya has yet to ratify the United Nations (UN) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Although the authorities at the highest levels have condemned torture and ill-treatment in the past, they frequently deny it exists. Senior police officers are clearly aware that torture occurs and appear to condone it, and some have reportedly participated in the

¹⁵ *Quarterly Repression report April - June 1995, (KHRC).*

torture of political prisoners. There appears to be a lack of political will to end torture and even direct interference in the work of those who do try. Lawyers who defend political prisoners who have been tortured have faced threats to their employment and received excessive income tax bills.

There is also a lack of adequate safeguards to protect detainees and the safeguards that exist are inadequately enforced. For example, detainees are often held in police custody for long periods without charge. Without access to their relatives, lawyer and doctors, detainees are vulnerable. Under Kenyan law the police can hold alleged suspects for 24 hours or 14 days if they are investigating a capital charge. Detainees are frequently held beyond this period in incommunicado detention. Police have sought to justify illegal detention on the grounds that the detainee is "helping the police with their inquiries" but this is rarely challenged by the courts. *Habeas corpus* actions, which may be invoked to ensure a detainee is brought to court, are costly and only open to those whose relatives can afford a lawyer.¹⁶

Reports of torture are rarely investigated by the police and the courts fail to systematically look out for possible cases of coercion. It is very rare for a confession of guilt to be declared inadmissible by the magistrate on the grounds that it was obtained under torture. Magistrates usually find in favour of the police, even when there is evidence that torture has occurred. There is serious concern at the lack of independence of the judiciary in Kenya.¹⁷

The resources and training in investigative techniques given to the police is limited so many police officers appear to resort to torture in order to obtain confessions. They then compound this torture by denying or restricting the victims access to medical care and harassing doctors who are willing to treat victims of torture.

As one doctor stated, "it is an open secret that the police have all along been attempting to influence what doctors write in their medical reports, especially when it is obvious a suspect has been tortured".

6. The restriction and denial of medical care

Private doctors who attempt to treat prisoners frequently report difficulties in gaining access to their patients. Under rule 102 (3) of the prison rules, "An unconvicted prisoner on remand ... shall be allowed to see a registered medical practitioner appointed by himself or by his relatives ... 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". However, the officer in charge of the prison usually insists on a court order to allow the doctor to examine the patient, which can take up to a week to obtain, and even then the doctor may be refused access unless the prison doctor is available which, given there are very few prison doctors, compounds delays. One doctor informed Amnesty International that despite the fact that the prison doctor and medical orderly were in the prison, both the doctor and a relative were kept waiting all afternoon without having access to their patient. The prison doctor informed them he was too busy. However, when the doctor asked to examine the patient in the presence of the medical orderly this was refused. Yet the following day the doctor was allowed to see the patient in the presence of the medical

¹⁶ Court charges increased in 1995 often doubling in price. A *habeas corpus* action now costs Ksh 6,000 (£68).

¹⁷See 'The Dream of Judicial Security of Tenure and the Reality of Executive Involvement in Kenya's Judicial Process.' (KHRC), 1994.

orderly. For private doctors, who have to close their clinics to make prison visits, visiting a patient in prison can be very time consuming and therefore difficult.

When doctors finally get access to their patient, they report that this is usually in the hearing of the prison warders who reportedly intimidate the doctor. One doctor stated:

"supposing, by the grace of God, you do finally gain access to the patient, the police will make sure they hear every word of what the patient is telling you. They will keep on interrupting during the interview. I have been asked [several times] why I was taking too many details about the injuries the patient sustained. At one time they even asked me whether I was recording statements or treating the patient ... If the suspect happens to have been arrested for political reasons, the police will openly accuse you of being politically orientated. You are bluntly reminded that association with such individuals will most surely land you into problems. Some CID officers asked me angrily at one time, "why do you have to take risks by treating such people?".... Many times I have been advised to stop writing medical reports on torture victims because as they would say, "you are making our work very hard, we can hardly pinch anybody because we fear you will write about it". (The doctor's name has been withheld for fear of reprisals.)

The police and prison officials often refuse to take torture victims to hospital and frequently hold them in the police cells or prison. They may be eventually taken to hospital if it becomes apparent that their injuries will not heal without medical attention, by which time they may be extremely ill or be in danger of dying. This is apparently also true for prisoners suffering from illnesses not caused by torture or ill treatment. For example, an 81-year-old woman arrested on 24 April 1995 and charged with murder was ordered by a court on 3 May to receive medical treatment. However, 14 days later she still had not received any. The woman had diarrhoea and severe chest pains as a result of contracting pneumonia before she was arrested.

In January 1995 Dr Lawali Oyondi, a veterinary surgeon and an opposition member of parliament, was reportedly removed from Nakuru provincial hospital by a police officer, denied medical treatment recommended by his doctor and returned to Nakuru prison. At the time Dr Lawali Oyondi was on remand charged with sedition following his arrest, with nine others, at a church service in Longonot held in memory of people recently killed in political violence. Two days later when his condition had seriously deteriorated 301 inmates reportedly staged a hunger strike and refused to return to their cells until he received hospital treatment. He was taken to hospital later that day. Another member of parliament, Njenga Mungai, who was detained with Dr Lawali Oyondi, suffered from a urinary condition which required surgery. He was taken to Nakuru hospital but the government doctors refused to treat him. They reportedly feared that, like some other government doctors, they could be forcibly evicted from their homes if they treated a political prisoner. Njenga Mungai was eventually taken to Nairobi for examination before being released after four months detention.

While in hospital Njenga Mungai was chained to the bed at night. All prisoners in hospital are chained to their beds at night for 'security' purposes, and sometimes during the

Prisoner handcuffed to the bed in hospital © Daily Nation

day as well. Doctors state that they do not have much control over the conditions in which prisoners are held in hospital. One professor noted, "we do not have much say on which patients should be handcuffed or not, but we maintain they be uncuffed when being examined and treated. We have no control of regulations from the prison side, but we hope that ethics will prevail in most cases."

In December 1994 Koigi wa Wamwere was prevented from receiving adequate medical care after he had undergone a test under general anaesthetic in hospital to identify why he was urinating blood. Despite a medical recommendation that he remain in hospital for 24 hours for observation, he was returned to prison. Two hours later he was taken to court for the continuation of his trial. After representations by his lawyer and doctor to the court the magistrate ordered that he be referred to Nakuru provincial hospital. However, the hospital refused to admit him and he was returned to prison.

When prisoners are finally taken to hospital their medical needs still do not appear paramount. On 18 August 1995 Elis Githeya was reportedly taken to hospital under heavy police escort after he had reported at Kiambu police station that he had been shot by two police officers for unknown reasons. However, police removed him from the hospital before he received any treatment. Police officers said their superior officer had asked them to take Elis Githeya to Nairobi central police station. He was later released on bail. A similar incident occurred in April 1995 when David Kimiti Chege who had been shot by police was removed from Kiambu District hospital. His lawyer alleged that his injuries were prodded by police during his interrogation. He returned to hospital for three weeks, following a court order, where he was handcuffed to the bed.

There are almost 4,000 doctors in Kenya. Some 700 are employed in the public sector treating 80% of the population. In some districts with about 200,000 people there is only one doctor in charge, and very rarely more than two or three. Government doctors formed a union in 1994 and went on strike between July and November that year in an unsuccessful attempt to gain official recognition for their union and to call for improvement in their poor working conditions.

Private doctors are also harassed and intimidated and at least one private doctor has been imprisoned for several days for writing medical reports on political prisoners. On 20 November 1993 Dr S. K. Mwangi, who had been giving medical treatment to political prisoners recently detained, was arrested. He was due to present a medical report to the court on Koigi wa Wamwere and four others, including Geoffrey Kuria Kariuki who was ill with typhoid, on 22 November. Dr S. K. Mwangi was held incommunicado for three days before being charged with sedition and possession of explosives and

released on bail. He denied the charge and it was later dropped. Amnesty International believes that his arrest was really due to his attempts to arrange independent medical treatment for these prisoners. Another doctor, a human rights activist, had attempted to visit these prisoners shortly after their arrest and had been denied access and threatened by the police.

The majority of private doctors are all members of the Kenya Medical Association (KMA) which is affiliated to the Commonwealth Medical Association. The KMA is a fairly weak body which acts mainly as a social organisation. It has not assisted members who have been harassed by the security forces for treating victims of torture or political prisoners. One member of the KMA Ethics Committee expressed apprehension about the KMA speaking out. He told Amnesty International "we would certainly give moral support, but the louder the words, the harder the hammer". At a symposium on human rights in 1993, one Kenyan doctor accused the KMA of being notably silent about doctors who were guilty of abetting torture.

6. Prison Conditions

Conditions in Kenyan prisons are harsh. In September 1995 a Kenyan High Court judge described them as "death chambers" because of the high mortality rate. He noted that "going to prison these days has become a sure way for a death certificate". In October 1995 the Minister for Home Affairs, Francis Lotodo, announced that over 800 prisoners had died since the beginning of the year. The majority died from AIDS, meningitis, malaria and typhoid. Among the dead were 291 prisoners on remand and 528 convicted prisoners.

Prisoners suffer from severe overcrowding, insanitary conditions and a lack of adequate food, clothing, blankets and basic sanitary requirements. In these conditions, infectious diseases such as diarrhoea, typhoid, tuberculosis and AIDS spread easily. Prison clinics lack medicines and many only have medical orderlies as there are few prison doctors. In July 1995 there were 37,066 inmates in Kenya's 78 prisons which have a capacity for only 21,000. On 10 October 1995 President Moi pardoned 10,898 prisoners, mostly petty offenders, which helped to reduce the overcrowding.

7. Possible extra-judicial executions, beatings and severe ill-treatment by security forces

There is increasing concern about the number of alleged or suspected criminals shot dead by the police. Most cases seem to occur because the authorities have failed to ensure that all members of the police force respect the right to life and security of person and that they obey internationally recognised standards regarding the use of force.¹⁸ However, some killings appear to be extrajudicial executions. In the first eight months of 1995 more than 40 people had been killed by the police, including two employees of the Kenya Power and Lighting Company who were shot by two administrative police officers in Eldoret on 10 July 1995. Following a national outcry the two police officers were charged with murder. In August 1994 an administrative policeman was accused of shooting an unarmed 15-year-old street boy. He was arrested in September 1994 following widespread protests. This case came to trial in February 1995. He was found not guilty for lack of evidence but the magistrate criticised the police for inadequately investigating the shooting. The same policeman was accused of killing five street children in July 1994 and his trial for these other killings is continuing.

¹⁸For example, the United Nation (UN) Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The killing of three men in June 1995, which was investigated by the non-governmental Kenyan Human Rights Commission (KHRC), appears to have been a case of extrajudicial execution. James Nomi Kangara, Abel Mwaure Kimani and Frances Njoroge Chiira, were reportedly shot dead in the Pangani area of Nairobi on 7 June 1995 as "suspected gangsters". According to press reports, on 6 June police took the men from the police station where they were being held to their "hideout". There, according to these reports, police shot the men as they attempted to fire on the police officers. However, the KHRC in a recent report said it had obtained credible evidence that all three men had been tortured after their arrest and when they were taken to their "hideout" their hands were handcuffed behind their backs and they were guarded by over 40 heavily armed police officers.

In the report the KHRC concluded: "Even if we assume that the three victims were criminals with serious records, it is clear that this was not a case where guns should have been used. This was not only excessive, but completely unwarranted, as there was no threat of danger or escape. The shootings were deliberate and in cold blood. They amount to murder."¹⁹

In the period between April and June 1995, 32 people were reportedly killed by the police. As yet no inquest is known to have been held into any of these deaths. The Criminal Procedure Code requires that public inquests should be held into the death of anyone who dies in police custody, prison or in circumstances that are unclear. However, this provision is rarely enforced.

Beatings and severe ill-treatment by police are common in Kenya. Demonstrations, public meetings and strikes have been violently broken up by the police using batons, tear gas and sometimes shooting into the crowd which has resulted in injury and sometimes death. On 10 June 1995, riot police reportedly beat two Kenyan opposition members of parliament with gun butts before detaining them, apparently in an attempt to stop them from attending a by-election in Mombasa. Otieno K'Opiyo and Otieno Mak'Onyango, both members of the FORD-Kenya Party, were taken to hospital where they were treated for chest and back injuries. On 1 June 1995 two *East African Standard* photographers, Jacob Waweru and Jacob Otieno, were beaten up by the police at Nyayo national stadium in Nairobi during celebrations marking Madaraka Day, the day Kenya attained self-governing status from the British Colonial Government. Jacob Waweru was beaten when he took photographs of plain clothes policemen beating up a man whom they had stripped naked reportedly for attempting to seek an audience with President Moi. While Jacob Waweru was being beaten up, Jacob Otieno took photographs. Police threatened Jacob Waweru with shooting because he had taken photographs of the policemen. Both had their films confiscated. Despite complaints from both journalists to senior police officers about the incident, no further action has been taken.

In March 1992 a group of mothers, on hunger strike to campaign for the release of their sons who were political prisoners, was violently attacked by the General Services Unit (GSU), a paramilitary police unit. In response to the violence, some of the mothers, who were aged between 60 and 82, stripped naked in a traditional expression of protest causing the police to turn away and violence to be reduced.²⁰

¹⁹ *Licensed to Kill: Police Shootings in Kenya, KHRC Report, August 1995.*

²⁰ The women's hunger-strike continued for over a year by which time 51 out of the 52 political prisoners, some of whom were prisoners of conscience, had been released.

Plain clothes Special Branch officers and KANU Youth Wingers have also been responsible for violently attacking members of the public. On 10 August 1995 members of the opposition party, Safina (which has not yet been registered), were attacked outside Nakuru Magistrate's Court where they were waiting for two of Koigi wa Wamwere's lawyers before visiting him in Nakuru prison. Eye witnesses stated that plain clothes Special Branch officers threw eggs and then stones at Richard Leakey, Njeri Kabeberi and several other Safina officials and supporters. They were then assaulted by a group of men, said to be KANU Youth Wingers. Provincial CID officers reportedly threatened to shoot onlookers who tried to intervene. Richard Leakey was singled out and severely beaten and his car was badly damaged before he was able to leave Nakuru for Nairobi. After the incident a group of Safina supporters went to visit Koigi wa Wamwere. The group, including his lawyers, his mother and several journalists, were reportedly stopped at the prison by the prison riot squad who beat them with truncheons and sticks and chased them away from the prison into the arms of a group of up to 40 KANU Youth Wingers. A number of the group were seriously injured and subsequently hospitalized. Mirugi Kariuki, a human rights lawyer, suffered a broken collar bone and was badly bruised. Louise Tunbridge, a journalist for the British *Daily Telegraph* was also beaten and severely bruised. Following widespread condemnation of the assaults, police arrested three people who have been charged assault and are currently on bail.

In January 1995, Zacharia Wakumu Njogu was attacked by six KANU Youth Wingers who beat him with a club all over his body and stole his identity card and Ksh 4,500 (£60). He was hospitalized for two weeks and had his right leg in plaster. However, although Zacharia Wakumu Njogu reported the attack, naming three of his assailants whom

he had recognised, only one was detained briefly before being charged with assault and released on bail. No further action was taken despite the fact that Zacharia Wakumu Njogu visited the police station regularly to pursue the case. He informed Amnesty International representatives that: "This is a normal thing for the KANU Youth Wingers to attack people at the bus station, wherever you report to police the matter is dismissed".

Killings, beatings and ill-treatment by the security forces which are not investigated leads to the impression that the authorities have no intention of curbing the security forces, which is tantamount to encouraging them in these acts.

Zacharia Wakumu Njogu

8. Conclusions and recommendations

As long as the Kenyan Government continues to allow the security forces to act with apparent impunity, its commitment to the effective protection of human rights must be called into question.

In the past, the Kenyan government has responded to criticism of its human rights record by making largely cosmetic changes, with little lasting effect. Without significant international pressure Kenya is unlikely to prevent torture and police brutality in the future nor to adequately address current allegations of human rights violations by the security forces. Many of these violations are being raised by Kenyan human rights activists and NGOs who need the protection of the international community if they are to continue to

challenge their government's human rights record. Without effective action serious human rights violations will continue.

Amnesty International calls on the Kenyan Government to implement the following recommendations:

1. Prevention of arbitrary arrest

- No one should be arbitrarily arrested in accordance with Kenya's obligations under Article 9 (1) of the ICCPR and in terms of Article 6 of the ACHPR.
- All arrests should be carried out under strict judicial control and only by authorized law enforcement personnel. Arrests by KANU Youth Wingers should be declared illegal.
- Everyone should be informed, at the time of arrest, of the specific reasons for his or her arrest and all detainees should receive a clear oral and written explanation of how to avail themselves of their legal rights, including the right to lodge complaints of ill-treatment.

- The maximum legal period of 24 hours a detainee may be held by the police without being brought before a judge should be adhered to. Those facing possible capital charges should also be brought before a judge without delay.²¹

2. Prevention of incommunicado detention

The provisions of the UN Standard Minimum Rules for the Treatment of Prisoners pertaining to untried prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment must be adhered to by the Kenyan authorities, in particular:

- All detainees should be held in an authorized and publicly known place of detention.
- Detainees should have access to relatives, lawyers and doctors from the moment of arrest and regularly throughout their detention or imprisonment.
- The government should provide free legal assistance to defendants without resources. Interpreters should be provided for non-Swahili speaking defendants where necessary.
- Relatives should be informed immediately of any arrest and should be kept informed of the detainees' whereabouts at all times.
- *Habeas corpus* petitions should be admissible from the moment of arrest. The cost of filing of *habeas corpus* petitions should be significantly reduced.
- Every detention centre and prison should be required to keep a detailed up-to-date record, bound with numbered pages, of those detained or imprisoned, as well as the time of arrest and the identities of those who carried out the arrest. The record should include the time the detainee appeared before the judicial authority.

3. Strict controls over interrogation procedures

- Interrogation should always take place in the presence of a lawyer.
- In addition to a lawyer, a female officer should be present during interrogation of women detainees.
- Children under 18-years-old should be questioned only in the presence of a parent or next of kin and a lawyer.
- The date, time and duration of each period of interrogation should be clearly recorded, as well as the names of all those present during interrogation. These records should be open to judicial scrutiny and to inspection by representatives of the Attorney General's Office, lawyers and relatives of detainees.
- The government should publish current guidelines of interrogation procedures incorporating the provisions of the ICCPR pertaining to access to a lawyer, the principles contained in the UN Basic Principles on the Role of Lawyers and the specific provisions of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment pertaining to access to legal counsel and interrogation. Both procedures and practices should be reviewed periodically, inviting submissions and recommendations from civil rights groups, defence lawyers, bar associations and other interested parties.

4. Separation of the authorities responsible for detention and interrogation

- There should be a clear and complete separation between the authorities responsible for detention and those responsible for the interrogation of detainees. This would allow an agency not involved in interrogation to supervise the welfare and physical security of detainees.

²¹In the view of the Human Rights Committee, in its comments on Article 9.3 of the ICCPR regarding the requirement to bring anyone arrested on a criminal charge promptly before a judge, "delays must not exceed a few days".

5. Prohibition of the use of confessions extracted under torture

- Confessions obtained as a result of torture or other ill-treatment should never be admitted in legal proceedings, except as evidence in proceedings against the perpetrators of torture and ill treatment. Article 14 (3) (g) of the ICCPR which stipulates that a defendant "not be compelled to testify against himself or to confess guilt" requires the courts to undertake prompt, thorough and impartial investigations of torture and ill-treatment in determining whether statements were voluntarily made. Defendants convicted on the basis of coerced confessions should have their convictions promptly reviewed.

6. Implementation of judicial safeguards

- Delays in criminal proceedings exceeding legal limits should be strictly prohibited and compensation paid if it occurs.
- Judges should be rigorous in examining the legality of detention and the physical condition of defendants, and in investigating all claims of torture.
- International standards pertaining to the judiciary, including those contained in the UN Basic Principles on the Independence of the Judiciary, should be incorporated into Kenyan law and legal practice.

7. Ensuring an effective supervision of detention and imprisonment

- Kenya should ratify the United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) Treaty and ensure that domestic law and practice should conform fully with international human rights treaties ratified by Kenya as well as international human rights standards, in particular, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners.
- The government should oversee the immediate and effective elimination of all cruel, inhuman or degrading treatment, including caning, in all detention centres and prisons.
- Any form of detention or imprisonment and all measures affecting the human rights of a detainee or a prisoner should be subject to the effective control of the Attorney General's Office and the judicial authority, from the moment of detention.
- The Law Society of Kenya and *bona fide* human rights groups should be ensured immediate and effective access to any police station, detention centre or prison in the country.
- The government should take particular care to ensure the protection of detainees who are vulnerable for reasons of age or gender.
- The authorities should ensure that defendants awaiting trial remain separated from convicted criminals.
- All detention centres and prisons should be open to visits and regular inspections by representatives of an independent body such as the International Committee of the Red Cross according to their working principles.
- Any detainee or prisoner should have the right to communicate freely and in full confidentiality with the inspectors. The inspectors should have unrestricted access to all relevant records and be authorized to receive and deal with detainees complaints.
- The inspection body should prepare detailed reports of each visit, particularly about overcrowding and the health of the detainees, and should ensure that appropriate action is taken to remedy all shortcomings relating to the treatment of detainees and prisoners.
- The inspection body should make recommendations for improving conditions of detention in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners. These should be acted upon within a reasonable period.

8. Adequate medical safeguards

- An independent medical examiner's office should be established, with full administrative autonomy, to provide forensic expertise at a national level.
- Medical examinations should be regularly provided for detainees and prisoners and should be performed by independent professionals under the supervision of a

professional association, in accordance with the following principles:

- A medical examination should be carried out on each detainee promptly after arrest and before interrogation.
- Detainees should be medically examined every 24 hours during the period of interrogation; on a frequent and regular basis throughout detention and imprisonment; and immediately before transfer or release.
- The examinations should be performed by the authorized doctor, who should explain to the detainee the importance of having a full and contemporary record of his or her condition.
- Detainees should be informed of the importance of these examinations in verbal and written notice of their rights.
- Examinations should be carried out in private, exclusively by medical personnel. Special care should be taken to ensure that the examinations of women prisoners are carried out in an acceptable manner.
- Each detainee should have access to a medical officer at any time on the basis of a reasonable request.
- Detailed medical records on detainees should be kept and should include weight, state of nutrition, visible marks on the body, psychological state, and complaints about health or treatment received.
- These records should be confidential but should be communicated, at the request of the detainee, to a legal adviser, his or her family, or the authorities charged with investigating the treatment of prisoners.
- Each detainee should be entitled to private examinations by his or her own doctor at the request of the detainee or the detainee's lawyer or family.
- The medical examination of alleged victims of human rights abuses should be carried out by a doctor independent of the detaining and law enforcement agencies. The person alleging the abuse should have the right to be able to request the presence of independent witnesses including a health professional designated by the family, his/her legal representative or a professional designated by an independent medical association.
- Forensic doctors should be provided with the training and resources necessary for the diagnosis of all forms of torture and other human rights violations.

9. Investigation of all reports of gross human rights violations

- All reports of suspected torture, ill-treatment or extrajudicial executions should be promptly, thoroughly and impartially investigated in accordance with Kenya's obligations under national law and international law.
- When detainees allege that their confessions were extracted under torture, the authorities should ensure a prompt, full and impartial investigation by an independent body into such allegations.
- The investigating authority should have the power to obtain all information necessary to the inquiry; adequate financial and technical resources for effective investigation; and the authority to oblige those accused of torture to appear and testify.
- Any government official who suspects that torture has been committed should report it to the relevant authorities, which should fully investigate all such reports.

- The absence of a complaint by the victim or relatives should not deter investigation.
- The involvement or complicity of health professionals in the torture and ill-treatment of detainees should be thoroughly and impartially investigated. Disciplinary proceedings should be instituted against medical personnel found to have breached the UN Principles of Medical Ethics.
- In all cases of deaths in custody, forensic investigations should conform to international standards including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- Guidelines, incorporating the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, should be published and law enforcement officials should be trained in the application of such guidelines.
- The government should conduct prompt, thorough and impartial investigations into all allegations of extrajudicial execution; make the findings public; and bring perpetrators of extrajudicial execution to justice.
- The government should publicly issue orders making it clear that law enforcement personnel use force only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable in order to protect life.

10. Bringing those responsible to justice

- Any law enforcement agent or person acting under the direction of law enforcement agents who is responsible for human rights violations, or for ordering, encouraging or condoning the practice of such abuses, should be brought to justice, and formal criminal proceedings should be immediately carried out into the allegations.
- Any law enforcement agent charged in connection with torture or other human rights violations should be immediately suspended from duties directly relating to arresting, guarding or interrogating detainees. If convicted, he or she should be automatically dismissed from duty, in addition to whatever punishment is imposed by the court.
- The crimes of torture and other gross human rights violations such as extra-judicial executions should not be subject to any statute of limitations.
- Any decision to suspend or dismiss security officials accused or convicted of human rights violations should be made public.

11. Protection of victims and witnesses

- The government should ensure that all necessary measures are taken to prevent attacks on or threats against victims of human rights violations and their relatives, witnesses to such abuses and human rights activists, and that all those responsible for such actions are brought to justice.

12. Compensation for victims and witnesses

- Legal reforms should be adopted to ensure that all victims of gross human rights violations receive medical treatment and rehabilitation where necessary, and financial compensation commensurate with the abuse inflicted.
- In cases where a detainee's death is shown to be the result of a gross human rights violation such as torture or extra-judicial execution, the victim's relatives should receive compensatory and exemplary damages.

13. Promoting respect for human rights

- An absolute prohibition of torture and ill-treatment as crimes under domestic law should be visibly displayed in every detention centre in the country.
- The government should adopt and publish a code of conduct for all law enforcement agents who exercise powers of detention and arrest. This code should conform to the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- In addition to categorically prohibiting the use of torture and ill-treatment, the Kenyan penal code should specify that law enforcement agents have the right and duty to oppose the practice of torture or any other human rights violation, and therefore should refuse to carry out orders to inflict abuses on detainees. They must report any such abuses of authority to their superior officers, and, where necessary, to the authorities vested with review or remedial powers.
- Breaches of the code should result in specified disciplinary sanctions and criminal prosecutions of the agents involved.
- The government should ensure that all law enforcement agents receive adequate training on human rights standards, both domestic and international, and on the means for their protection. That training should include training in preventing human rights violations, medical ethics and prisoners rights. It should also be given to all prison personnel, including medical personnel.

Appendix A. Summary of 16 medical reports written between August 1993 and February 1995

ID	Year	Number of places detained	Tortured number of times	Other alleged torture (legend below)	Visible marks	Medical treatment	Attempted forced confession	Medical examination number of days after alleged torture
1	1993	10	5	1, 2, 3 (Fracture of skull in two places)	+++	insufficient	yes	27
2	1993	5	3	1, 4	+	none	yes	8
3	1993	1	1	1, 5, 6	+++	no info.	yes	11
4	1993	5	2	1	none	no info.	no info.	37
5	1993	6	1	1, 3	++	none	yes	16
6	1993	3	1		none	none	yes	20
7	1994	5	-	deprived of his usual, necessary medicine	none	none	no	49
8	1994	3	1	7 (Ruptured ear drum)	+	none	yes	11
9	1994	not known	not known	subdural haematoma	+++	none	no info.	11
10	1994	4	1	1	++	yes	yes	11
11	1994	4	1	1	+	none	no	10
12	1994	4	1		+	none	yes	9
13	1995	5	1	1, 8	+	yes	yes	20
14	1995	5	1	9, 10 (Ruptured eardrum)	++	none	yes	21
15	1995	5	2	1, 2, 11, 12	+	no info.	yes	50

16	1995	4	2	13	+	no info.	yes	56.00
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MEDICAL RECORDS: TYPES OF TORTURE: 1=Whipping, 2=String around genitals and pulled, 3=tied between two trees and tortured, 4=handcuffs on wrists and ankles and suspension on the bar ("the parrot" in South America), 5=Biting, 6=Nails torn off, 7=slapping ears ("telephono"), 8=rope around wrists and ankles pulled apart, 9=hot candle wax dripped on skin, 10=flashing light, 11=two persons standing on wooden beam across legs of lying victim, 12=person standing and trampling on chest of victim, 13=forced complicated physical exercises and verbal abuse.

Appendix B.

Comments on the table of medical reports

Before being imprisoned the detainees were exposed to considerable strain by being moved from one detention centre or police station to another - on average they were moved four or five times.

With the exception of one case, they were all beaten systematically with sticks, fists, *rungus*, (knobbed stick), handles of hoes, guns butts etc. In several cases they were heavily beaten causing widespread lesions. In one case a prisoner was beaten for three hours by four policemen, two at a time. The torture ceased when the victim lost consciousness. Three quarters of the detainees were exposed to other kinds of torture. The aim of the torture was not given explicitly but in four cases false, forced confessions were given and in eight cases forcing confessions was attempted. In all cases the findings at the medical examinations were in agreement with the accounts of the prisoners. The reports do not give systematic information on medical treatment. However, in eight cases it is mentioned that sufficient medical treatment had not been given. In two cases *insufficient* treatment had been administered. In four cases serious, potentially life-threatening or disabling negligence of treatment was described.

On average, the detainees were examined by a medical doctor 24 days after exposure to torture. In spite of the fact that the examinations were performed so late, only in two cases physical after-effects of alleged torture could not be documented.

In some cases severe torture sequelae were found. Thus one man had a subdural haematoma (bleeding in his brain). The man in question was confused when examined by a medical doctor and unable to give relevant information. There were multiple signs of violence on his skull. Although a CT scan of the brain was requested by the examining doctor, this examination was not performed until three months later. Another man lost consciousness three times during torture and his skull had been fractured in two places. One detainee was unable to walk 11 days after having been subjected to beating on the soles of his feet and pulling off one toe-nail, and even brain damage was suspected.

In one case, pulling of a string tied around the testicles and the penis led to an infected wound, five mm in depth and three mm wide. This type of torture is described in two cases. Furthermore two cases of other kinds of torture against the genitals are described. In one of these cases fibrosis and shrinking of the penis was foreseen. Three prisoners passed blood in their urine or they had difficulty in passing urine which was thought to be consequence of torture. Permanent after-effects of torture are expected in some cases. One prisoner was deprived of his usual, indispensable life-saving medicine taken for treatment of a chronic disease.