

KENYA

VIOLATIONS OF HUMAN RIGHTS

Communications between Amnesty International and the Government of Kenya

1. Introduction

In May 1997 Amnesty International sent the Kenyan Government a memorandum setting out the organization's current concerns in Kenya regarding human rights and its recommendations for the protection and promotion of human rights. On the 5 June 1997 the organization met in Nairobi the Vice-President, the Attorney General and Solicitor General, senior cabinet ministers, the Commissioner of Police, the Commissioner of Prisons and senior security officials who presented the government's response to the memorandum. In a letter to Amnesty International dated 6 August 1997 the Attorney General responded to the specific cases raised in the memorandum. Detailed below are the concerns Amnesty International raised with the government directly in the memorandum and what the response was.

While in Kenya Amnesty International also met ordinary Kenyans, religious leaders, business people, human rights activists, donors, political parties -- including the ruling party the Kenya African National Union (KANU), professional groups and the diplomatic community. What was seen and heard confirmed the organization's concerns about the human rights situation and that these concerns are shared by many Kenyans. Since then the situation has deteriorated. In the run-up to elections in 1997, pro-democracy rallies have been violently disrupted, at least nine people killed and hundreds injured. Many Kenyans are demanding constitutional and legal reform prior to the elections. They believe that the present legislation which, for example, restricts freedom of association and expression, renders their vote meaningless.

In late July in response to this pressure, the National Executive Council (NEC) of KANU recommended a bill seeking the establishment of a commission, prior to the elections, to review the Constitution. The NEC also recommended the repeal, prior to

the elections, of several laws which violate human rights. At the beginning of August 1997 the Kenyan government published two bills for introduction into the National Assembly, *The Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997* and *The Constitution of Kenya Review Commission Bill, 1997*. These were cautiously welcomed. However, concern has been expressed by pro-democracy advocates at the lack of opportunities for dialogue with the government about the reforms or the proposed time frame for the debate and implementation of these proposals.

If further violence is to be avoided, the concern of ordinary Kenyans needs to be responded to positively. They do not want genuine human rights protection in Kenya falling victim to political posturing, or the very real issues lost in internal arguments. What they want is meaningful dialogue to improve the situation so that the next few months in particular are not marred by violence and a lack of respect for human rights.

In the five years since the introduction of a multi-party political system, there has been continued criticism of Kenya's human rights record by both national and international human rights organizations and others. Recently the Kenyan authorities have taken a number of steps to promote human rights, in particular accession in early 1997 to the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the establishment of a Standing Committee on Human Rights. However, allegations of torture continue and the Standing Committee on Human Rights, which has a limited mandate, has yet to publicly publish any reports.

2. Legislation

In December 1991 the Constitution of Kenya was amended to allow for a multi-party political system. The introduction of multi-party politics was welcomed, in that it advanced the rights to freedom of association and expression. However, in practice these freedoms have been restricted by the continued use of legislation which contravenes international standards. Amnesty International has expressed concern about these laws, including the following:

i) The Preservation of Public Security Act allows for *inter alia*, indefinite detention without trial, restrictions on the media and prohibition of meetings and public gatherings. Although there have been no detentions under this Act since 1992, the Act has not been amended to remove the possibility. The powers granted to the President under this Act affect the right to exercise freedom of expression and association guaranteed by international human rights treaties which Kenya has ratified. The Act should be amended to bring it into conformity with the provisions of Article 4 of the International Covenant on Civil and Political Rights (ICCPR) which stipulates criteria for derogating from obligations under the treaty and which prohibits derogation from certain core rights including the right to life, and the right not to be subjected to torture or cruel, inhuman or degrading treatment.

ii) Sections of the Penal Code dealing with sedition and treason continue to be used to arrest and imprison government critics. In July 1996, 21 members of the Release Political Prisoners (RPP) pressure group were detained for two weeks following an attempt to hold a three-day cultural event in memory of Karimi Nduthu, Secretary General of the RPP, who was murdered in suspicious circumstances in March 1996. All 21 were charged with holding an illegal meeting without a licence, incitement to violence and disobeying a lawful order. They were released on bail. In May 1995 Njehu Gatabaki, journalist, publisher and member of parliament, was charged with sedition. The case against him is still pending. In May 1996 he was arrested and held for nine days after he failed, because of ill-health, to attend a court hearing.

iii) The Public Order Act requires certain public meetings to be licensed in advance, and has been used to restrict meetings and rallies of opposition political parties as well as non-political meetings, such as civic education seminars and workshops run by church groups and others. In October 1996 for example, the District Officer in Embu banned non-governmental organizations and church groups from holding seminars. In April 1997 a seminar in Loitokitok, organised by the local Catholic Justice and Peace Commission, was closed down by the District Officer who cited a confidential circular from the Office of the President: "The government of Kenya has noted with grave concern the activities of ngos [non-governmental organizations (NGOs)] carrying out civic education. These organizations are posing a threat to the security of the state and their activities must be curtailed."

iv) The Chiefs' Authority Act gives local Administrative Chiefs wide powers including those of arrest and detention and restriction of movement. There have been numerous reports of abuse of these powers. A review of this act was promised by the government in parliament in May 1996, but it remains in force. Three teachers who had attended the seminar in Loitokitok in April 1997 were arrested by Administrative Police Officers on the orders of the District Officer. They were beaten and locked in the District Officer's toilet for several hours. They were eventually released when the local Catholic priest and nuns intervened.

v) The Administration Police Act allows the Provincial Administration direct control over a section of the police, reinforcing the powers of local chiefs and District Officers. In April 1997 the bodyguard of Kijana Wamalwa, the leader of FORD-Kenya, was shot and wounded by an Administration Police Officer, reportedly on the orders of the District Officer. The incident happened when Kijana Wamalwa was attempting to open a FORD-Kenya office in Kakamega District.

vi) The Societies Act restricts freedom of association and inhibits organizations, including trade unions and political parties, from obtaining registration.

In the lead-up to the presidential and parliamentary elections due this year, these laws have been used to further restrict the activities of opposition parties and others and thereby deny them the right to freedom of expression and association. On 7 July pro-democracy rallies in different parts of Kenya were violently broken up by the authorities using the police, the riot squad, the General Service Unit and the Administrative Police. In Nairobi, City Council askaris (council security guards) were used which is against the law. At least nine people were killed. In some parts of the country, such as Nakuru, KANU youth wingers were also used to forcibly disperse a peaceful demonstration by pro-democracy activists. Given that KANU supporters are able to meet and demonstrate freely there is concern that widespread clashes between KANU supporters and pro-reform activists are increasingly likely.

Within one week in April 1997 there was a series of incidents in which opposition Members of Parliament were targeted by the authorities. In addition to the shooting of Kijana Wamalwa's bodyguard, mentioned above, Raila Odinga of the National Democratic Party of Kenya and Oburu Odinga of FORD-Kenya were injured by police who broke up a meeting in Eldoret. Charity Ngilu of the Social Democratic Party, who had been beaten by police in November 1996, was besieged in her home by police claiming they were dispersing an illegal meeting.

2.(a) The government responded to Amnesty International's concerns regarding constitutional and legal reform by stating that:

"after the general elections this year, a Constitutional Review Commission will be appointed to review the Kenyan Constitution in its entirety taking into account the interest of the people as a whole... The Government of Kenya believes that the best approach to Constitutional Reform is not one in which leaders whether they be political, professional, religious, academic, or even Civil Society try to solicit the endorsement of their preconceived ideas on the Constitution by the people. The best approach is one where the people themselves originate the proposals to be enshrined in the Constitution.

The practical reason for deciding to embark on Constitutional review after the election is that given the Parliamentary Calendar and the election mood enveloping the country, the period between now and the expiration of the term of the present Parliament is inadequate for such an important exercise."

Amnesty International questions how the current government, which has stated that it is committed to free and fair elections, can make commitments for a new government yet to be elected; why all the leaders appear to be excluded from this review, except those appointed by the government; and why seminars educating Kenyans about the Constitution continued to be disrupted or prevented if the Constitution is to be drawn up by popular participation? Surely education on the issue is essential?

The government also informed Amnesty International that, “all the laws that Amnesty is calling for review are actually under active review” (by Task Forces appointed in 1993). In June 1997 the government pledged to repeal the Public Order Act and replace it with a “Peaceful Assemblies Act which will liberalise the exercise of the freedom of assembly”. However, the government informed Amnesty International that “the Preservation of Public Security Act is so inextricably linked to the Constitution that its reform must go hand in hand with Constitutional review....the recommendations of those task forces or indeed any new legislative proposals are unlikely to be enacted as law during this session of Parliament due to want of Parliamentary time”.

Amnesty International fails to understand why these reforms, under active review since 1993, have still not been completed and presented to the public. The organization remains concerned that even with the proposed amendments to the Public Order Act and other legislation the President will retain widespread discretionary powers

to restrict freedom of association and expression - such as those granted under the Preservation of Public Security Act. In his letter of 6 August the Attorney General reiterated that *"..the Preservation of Public Security [Act] which is so intertwined with the Constitution of Kenya [and which] will be reviewed as the Constitution is reviewed"*. It is therefore not likely that the Preservation of Public Security Act will be amended in the immediate future.

The government also stated that despite any reform it will ensure *"that the forthcoming elections are free and fair and that the political playing field will be even. All complaints that have been raised in the past with regard to the actual conduct of the elections will be addressed and redressed as appropriate"*.

Serious concerns were expressed after the 1992 elections by election monitoring groups. The National Election Monitoring Unit (NEMU) concluded that *"the December 1992 Elections were not free and fair"*.¹ The Commonwealth Observer Group concluded that *"some aspects of the elections were not fair. These included:*

- *the registration process in many parts of the country;*
- *the nominations process - particularly in the Rift Valley, resulting in the unopposed return of 16 KANU Parliamentary candidates;*
- *the lack of transparency on the part of the Electoral Commission;*
- *the intimidation, administrative obstacles and violence that marked the political campaign;*
- *the partisanship of the state-owned radio and television;*
- *the reluctance of the Government to de-link itself from the KANU Party."*²

¹*The Multi-Party General Elections in Kenya.* The Report of the National Election Monitoring Unit (NEMU), 29 December 1992.

²*The Presidential, Parliamentary and Civic Elections in Kenya.* The Report of the Commonwealth Observer Group, 29 December 1992.

Amnesty International expressed concern at the intimidation and political violence during the 1992 election period. Human rights violations impacted on the election result and many occurred well before polling day.

That the forthcoming presidential and parliamentary elections will be free and fair within the current legal framework has been challenged by many Kenyans including, opposition politicians, religious leaders, pro-democracy advocates, human rights activists and others. They have questioned the impartiality of the Electoral Commission, restrictions on opposition parties -- including lack of access to broadcast media -- and the independence of the registration process. A shadow Electoral Commission has been set up by the National Convention Assembly, an alliance of religious groups, opposition parties, professional groups, human rights activists, NGOs and others. Human rights violations linked to the elections are already happening. Peaceful rallies calling for reform have been violently broken up by police officers using teargas, batons, live bullets and rubber bullets. Some individuals who are considering standing for election have already been targeted, particularly women. For example, Rhoda Fadhil, a prospective parliamentary candidate in North Western Kenya, alleges she has been harassed, intimidated and threatened with rape by the local member of parliament and his supporters. She has complained to the police, but has received no protection, and now fears for her personal safety. NEMU noted in the 1992 elections that all the women candidates they observed were harassed by their male political opponents as were some of their supporters: "*In one incident, some ten women supporters of Charity Kaluki Mwendwa were sexually abused and raped by men who claimed to support her rival.*"³

A number of national and international monitoring programs are planned. For the protection and promotion of human rights it is essential that any election monitoring programs begin as soon as possible and include human rights monitoring as a central part of their brief. Reports of any violations should be reported directly to the authorities and publicized.

A little over a month after meeting Amnesty International and in response to national and international pressure, the Kenyan Government appeared to be changing its position. The government announced the setting up of a commission to review the Constitution prior to the elections. It also announced it would bring forward the review of the legislation and enact a law prior to the elections to

³*The Multi-Party General Elections in Kenya, op.cit., p83-84.*

repeal a number of laws which violate human rights, including: the Public Order Act, the Preservation of Public Security Act, the Penal Code, the Chief's Authority Act, the Public Collections Act and the National Assembly and Presidential Elections Act, which includes a code of conduct for elections.

A proposed bill published by the Kenyan Government on 4 August 1997 establishes a Commission to review the Constitution of Kenya. The task of the Commission is to review the entire Constitution and to propose changes. The Commission is required to present its report within twenty-four months, but this period may be extended by another twelve months. In the appointment of Commissioners the President is required to request a list of nominees from religious, political, professional and non-governmental organizations. While this initiative is an attempt by the government to respond to the demands of Kenyan citizens, it does not meet the demands for certain minimum changes before the elections.

On 1 August 1997, the government published proposed amendments to several laws including the Public Order Act, the Societies Act and the Chief's Authority Act. In the Memorandum of Objects and Reasons published with the amendments the government explains that it is repealing the Outlying Districts Act, which restricts movement to and from certain areas, and the Special Districts (Administration) Act to enhance the enjoyment of human rights by all in Kenya.

The proposed amendment to the Public Order Act replaces the licence requirement for the holding of public meetings and processions

with a notification procedure. The police may prevent the holding of a meeting if notice of another meeting has already been received. However, the police are authorized to stop or prevent the holding of a meeting if no notice has been given or if the meeting has been prohibited because of another meeting or if "there is clear, present or imminent danger of a breach of the peace or public order". Under these amendments the police retain wide discretionary powers to prevent the holding of public gatherings. While amendments to the Penal Code reduce the penalties for the offence of sedition, the offence itself remains and may still be used by the government to criminalize peaceful opposition to the government.

The proposed amendments to the Chiefs Authority Act do not affect the powers of arrest and detention held by the local Administrative Chiefs under this Act. However, one of the proposed amendments repeals the authority of Chiefs to regulate the movement of persons from the jurisdiction of one Chief to that of another.

The proposed amendment to the Societies Act allows for the decision of the Minister and Registrar of Societies to be challenged in the High Court.

3. Arbitrary arrest

Arbitrary arrests are prohibited by Article 9(1) of the ICCPR, and Article 6 of the African Charter on Human and Peoples Rights (ACHPR). However, Amnesty International has received numerous reports of human rights defenders being threatened, harassed, beaten or arbitrarily arrested for their non-violent activities. Their meetings

have been disrupted and their premises raided. Journalists trying to report on events have been assaulted by police and by members of the KANU youth wing. They have been arrested and had their cameras and film destroyed. Opposition newspapers have been impounded and printing presses have been put out of action.

Police have also rounded up the poor, women, street children and refugees in mass arrests. Accused of being drunk and disorderly, of hawking, of prostitution, of vagrancy or of being illegal aliens, they are held in police cells, where few have access to a lawyer, either because of poverty or because they do not know their rights. Many are remanded to Kenya's overcrowded prisons, where conditions are often life-threatening. It is left to be whether repeal of the Vagrancy Act will reduce such arrests and detentions.

3.(a) The government responded to Amnesty International's concerns regarding arbitrary arrest stating that:

"The law of Kenya is quite clear that one can only be arrested on suspicion of having committed or being about to commit an offence known to law. Anybody who is arrested otherwise than in those circumstances has a legal remedy against the arresting person or authority. And the Government is not kind to any of its officers who transgress the law. They are effectively disciplined and often brought to justice.

As regards the detailed administration of our Police Stations and Prisons...we have detailed rules and regulations which are followed.

And of course nobody is or can be arrested solely on the basis of their nationality or ethnic origin. The Government is also aware of its obligations under International refugee law and would not return a refugee back to his country if he were likely to be at real risk of persecution”.

However, police have wide powers of arrest without a warrant including on the grounds of suspecting a person has committed or is about to commit an offence. These powers have been used to hold female relatives of alleged criminals and political prisoners. In July 1996 Akai Eregae and Akal Lobongou Margaret, the wife and mother of an alleged criminal, were arrested and detained until they identified (wrongly) their suspect.⁴ . Numerous cases of street children arbitrarily arrested by the police have been documented by Human Rights Watch, particularly “at times of international conferences or during holiday seasons, when national and international attention is focused on a city”.

Refugees have also been arbitrarily arrested and sometimes deported. On 18 July 1997 at least 80 Rwandese were arrested shortly after seven other Rwandese had been arrested in Nairobi, at the request of the International Criminal Tribunal for Rwanda, on suspicion of playing a leading role in the genocide in Rwanda in 1994. However, the 80 arrested were not known to face accusations of

⁴Kenya: *Detention, torture and health professionals*. AI Index: AFR 32/01/97, January 1997, p13. See also *Women in Kenya: Repression and resistance*. AI Index: AFR 32/06/95, July 1995, Section 3.2., and the International Federation of Women Lawyers - Kenya Chapter *Annual Report on the Legal Status of Kenyan Women for 1996*, p 20.

involvement in the genocide and appear to have been arbitrarily arrested by police searching for several other suspects who had escaped. In July 1996, over 900 Somali refugees were forcibly returned to Somalia by the Kenyan army six days after seeking asylum in Kenya. In March 1996, seven recognised refugees and several others were detained beyond the legal limit and threatened with refoulement. Almost all those arrested were Ethiopian Oromos and members or supporters of the Oromo Liberation Front. They were eventually released in April 1996, following national and international appeals.

4. Independence of the Judiciary

The justice system has failed to defend people's basic rights. Section 84 of the Constitution provides for redress before the High Court for violation of any of its provisions; however, the High Court has decided that it has no jurisdiction to enforce the human rights provisions in Chapter V of the Constitution. This leaves victims of human rights violations without any judicial protection. Furthermore, Amnesty International is concerned that the judiciary appears to have been subjected to undue government interference. High Court and Court of Appeal Judges are appointed by the President on the advice of the Judicial Services Commission. Members of the Commission are appointed by the President. Magistrates who have acted with independence and impartiality have been transferred to outlying stations. For example, in September 1994 the Nairobi Chief Resident Magistrate was transferred to Kitui, 130 kilometres east of Nairobi, shortly after he refused to accept the confessions of six men who had

been tortured following a raid on Ndeiya Chiefs' Camp. The Magistrate censured the police and directed the Commissioner of Police to take immediate action against the 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."

Some Presidential statements appear to have conflicted with the *sub-judice* rule on a number of occasions and pronounced on matters pending in court. For example, the President commented on the case against the University Academics Staff Union (UASU) following their strike between 1993 -1994. More recently the President has stated that the courts should not interfere in land matters or intervene in the affairs of public universities or issues relating to political parties. In July 1997 Mr Justice William Mbaya, a retired judge, argued that the President's statements "can only be regarded as being intended to influence the decision of the Courts".⁵ The chairman of the Kenya Magistrates and Judges Association (KMJA), stated in March 1997: "These pronouncements clearly threaten the rule of law, the independence of the judiciary and the constitutional doctrine of separation of powers". The Attorney General subsequently said that these statements represented the President's personal views, but the power of the President is such that they cannot be ignored.

⁵The Daily Nation 16 July 1997.

Magistrates and judges have been prevented from attending meetings of the East African Law Society, most recently in Mbarara, Uganda, in April 1997 and attendance at seminars within Kenya has also been restricted. In September 1996 the Chief Justice issued a circular which requires those wishing to hold seminars to submit for approval the topics for discussion and proposed speakers to Mr Justice Lakha, Judge of Appeal and Head of Training for the judiciary. Similar restrictions were placed on members of the judiciary invited to present papers relating to a judicial matter arranged by another body. According to the chairman of the KMJA, when they discussed this with Justice Lakha he informed them that he would prevent meetings between them and other bodies, such as the Law Society of Kenya and that " he was not going to allow us to discuss topics like the rule of law, human rights, independence of the judiciary or judicial accountability". The Chairman of the KMJA went on to note that "if the rights of the members of the judiciary are being limited, then no Kenyan or other person can expect the courts of the country to allow him or her the enjoyment of those rights".

4.(a) The government responded to Amnesty International's concerns regarding independence of the judiciary stating that:

"The independence of Kenya's judiciary is both a Constitutional and factual reality", that a legal notice had been promulgated delinking the judiciary from the executive arm of government and that the salaries of judicial officers had been reviewed favourably. "As regards alleged executive interference, this is fiction. Even when members of the press express robust views about the judiciary (and they often do

so), judges are nonetheless able and do actually decide the cases before them according to the law and evidence, which is what they are sworn to do.”

However, the impact of presidential statements is clear. UASU's court case was dismissed after the President's statement. In March 1993 the President directed Nakuru magistrates not to give bail to suspects charged with illegal possession of firearms. This was followed up by a similar direction from the Chief Justice in a circular to all magistrates. The power of the President is not only felt by the Kenyan judiciary. In June 1997 Amnesty International visited the Turkana District Commissioner in Lodwar, North Western Kenya, The day before the visit President Moi had accused the Pastoralists Forum, a network of local and national NGOs working with several pastoral peoples, of being a front for a guerrilla movement. The Pastoralist Forum is well known to the District Commissioner who has attended some of their meetings. When asked to comment on the President's statement he said "What the President says is the truth and it shall be the truth". Shortly after the President's statement some members of the Pastoralists Forum were interrogated by Special Branch officers.⁶

The International Bar Association, in a recent report on *The Legal System and Independence of the Judiciary in Kenya*, noted that "whatever judicial independence there may be in Kenya, there

⁶At least 80 people were arrested in Western Kenya in 1995 following a similar statement about guerrilla activity in the area by President Moi. Many of those arrested were severely tortured by special branch officers, see *Kenya: Detention, torture and health professionals*, op.cit., p 7-11.

certainly, with few exceptions, does not seem to be a proper degree of independence of the judiciary from the main executive arm”⁷. The report goes on to argue that the pronouncements by President Moi mentioned above contravened the United Nations Basic Principles on the Independence of the Judiciary⁸ and that “Presidential utterances in breach of the sub-judice rule affect at least the perceived independence of the judiciary. The sub-judice rule has to be observed not only by all Kenyans but the President himself has to be exemplary in his treatment of the rule.”

5. Denial of Fair Trial

The right to fair trial is enshrined in the ICCPR and also in the ACHPR. Serious concerns have been raised about the right to fair trial in Kenya. These include:

- The lack of legal aid for defendants in Magistrate’s Courts. Defendants charged with robbery or attempted robbery with violence who face a mandatory death sentence if convicted do not receive legal aid, (see section 7 on the death penalty for details).
- The lack of understanding of the language used in court by the defendant. This is in contravention of Article 14(3) (f) of the ICCPR which states that everyone is entitled to “*have the free assistance of an interpreter if he cannot understand or speak the language used in court*”, and Article 76(1) (f) of the Constitution of Kenya which states that all defendants are permitted an interpreter paid for by the state if they cannot understand the language used during the trial. This is particularly true of cases involving Kenyan Somalis from Eastern Province.
- The admissibility in court of confessions made to police officers even when the interrogation of the defendant was carried out without anyone else being present. Many defendants appear to have been convicted on the basis of a “confession” given to the police during interrogation when no one else was present and often the accused will plead guilty, but subsequently change their plea to not guilty alleging that they were tortured during interrogation by the police.

⁷International Bar Association. *Report on The Legal System and Independence of the Judiciary in Kenya*, November 1996, p16-17.

⁸Adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, 26 August to 6 September 1985 and endorsed by the UN General Assembly Resolution /RES/04/32, 29 November 1985.

In cases where criminal suspects allege in court that they have been tortured there is usually what is known as a "trial within a trial" carried out by the magistrate or judge presiding over the case in order to establish whether there is any basis to the allegation. Under Article 13 of CAT, "*Each State Party shall ensure that any individual who alleges he has been subject to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by, its competent authorities*". Amnesty International is concerned that the current practices of "a trial within a trial" does not provide for adequate impartial investigation of torture allegations. The emphasis is on establishing whether a confession or statement was obtained under duress and therefore cannot be used as evidence in court, with the prosecuting counsel arguing in favour of admitting the evidence and denying any allegations of police brutality. This does not constitute an impartial investigation into an allegation of torture or cruel, inhuman or degrading treatment by an investigating body which is able to demonstrate its formal independence from the detaining and interrogating authority.

- The length of pre-trial detention beyond the legal limit, when torture is most likely to happen. Detainees are often held in pre-trial detention for a period which exceeds the maximum period permitted by national laws, which is 24 hours, 14 days for people suspected of a capital crime. Police have sought to justify illegal prolonged detention on the grounds that the detainee is "helping the police with their inquiries" but this is rarely challenged by the court. *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.

The issue of illegally prolonged detention is often not taken into account in the "trial within a trial", unless it is raised in court by the defendant or their lawyer. In October 1996 the Chief Justice directed all subordinate courts to reject a plea of guilty from a defendant held in police custody beyond the legal limit when the police fail to give convincing reasons for the defendant's detention. The court should enter a plea of not guilty and proceed. He denied that pre-trial detention beyond the legal limit violated the constitutional rights of defendants and rejected an application for a constitutional reference for five defendants, who had been held for up to 65 days without charge.

- The withdrawal of charges under section 87(a) of the Criminal Procedure Code by the prosecution. This appears to have been used to intimidate defendants who are threatened with rearrest if they claim they have been tortured. There have been cases when defendants have been rearrested outside the court and subsequently recharged with the same crime in another court. Josephine Nyawira Ngengi was charged with robbery with violence in three separate magistrates' courts during the 22 months she was held. Twice the charge against her was withdrawn and twice she was immediately rearrested and charged with the same crime before finally being acquitted in March 1996.

- Inadequate time and facilities provided for the defence of trials in magistrates' courts. This prevents defendants from having adequate time to prepare to meet the case against them as required by Article 14(3) (b) of the ICCPR and Principle 21 of the UN Basic Principles on The Role of Lawyers. There is no advance disclosure to the defence of either prosecution evidence or of lists of prosecution witnesses in trials in magistrate's courts. Prosecution evidence is not provided to the defence until a witness has finished his or her direct testimony. The defence is then shown the original hand-written statement of that witness for the first time to use for cross-examination. They cannot retain it and photocopies of it are not provided. The cross-referencing of witness statements and study of such statements is therefore very difficult. There is also no list of evidence and the defence does not know which witnesses are coming next. This is a serious handicap for the defence as it impedes their ability to prepare. It violates the principle of equality of access and is a further denial of the right to fair trial for defendants in magistrates' courts where some defendants face a mandatory death sentence if convicted.

- In a least one political trial, that of Koigi wa Wamwere and his three co-defendants, the independence of the magistrate was questioned by both national and international observers. He was noted, for example, leading and supporting prosecution witnesses, constantly interrupting defence lawyers during their cross-examination and sometimes stopping the proceedings in the middle of cross-examination by the defence counsel prior to the normal ending time of a court session. He also allowed questions not permitted for re-examination under Kenyan rules of evidence to be asked by the prosecutor, even when they were objected to by the defence counsel, and the recalling of prosecution witnesses, which is highly irregular.

There is no independent record of the proceedings in magistrates' courts. The court record of the evidence, known as the proceedings, is taken by the magistrate. Observers queried the accuracy of the official record of the proceedings. Defence lawyers also challenged the accuracy of the court record. Copies of the proceedings of the trial have still not been provided, over 18 months after it has finished. The lack of an accurate record renders challenges to the independence of the court and appeals difficult.

5.(a) The government responded to Amnesty International's concerns regarding fair trial stating that:

"The principle of fair trial in court is enshrined in the Constitution. Interpreters are provided at the expense of the State, the maximum period of confinement is 24 hours except in capital cases when the same is 14 days. If these periods are exceeded, the burden of justifying any excess is on the detaining authority. Compensation is paid if delay is unjustified. Confessions obtained as a result of torture are inadmissible as evidence. This is regular practice".

However, as noted above, Amnesty International has found few cases where magistrates or judges challenge the length of pre-trial detention. The police usually state that they had not finished their inquiries. As one magistrate informed Amnesty International, “*We don’t think of the rights of the prisoners*”. This practice continues. In July 1997 two men were arrested on a Friday and were only brought to court the following Wednesday after a *habeas corpus* action was issued. Both men had been distributing leaflets calling on the people of Mombasa to stay at home on 7 July in support of demands for Constitutional and legal reform. Once they were brought to court the *habeas corpus* action fell. They were charged with publishing false statements “*likely to cause fear and alarm to the public*”, Section 66 (1) of the penal code, and released on bail.

Interpreting is usually done by one of the court officials who are not always available in court. In its recent report on *Juvenile Injustice*, Human Rights Watch documented the case of a 14 year-old boy who did not have access to an interpreter.⁹

In the meeting with the government, the Solicitor General informed Amnesty International that many people had successfully sued the government for illegal detention. He gave the example of Wanyiri Kihoro, who was detained without trial in 1986 and severely tortured. However, while Wanyiri Kihoro was awarded compensation for torture and unlawful detention between 1986 and 1989, he has yet to receive it. Furthermore the ability to sue the authorities is not open to every Kenyan citizen. Many are too afraid or do not have the resources to file a case. In 1995 the government raised the court fees for filing and hearing cases by several hundred pounds sterling. The onus is on the government to strictly prohibit detention beyond the legal limit, punish any transgressors, and provide compensation to the victim, not on the victims or their families to pursue a case for compensation.

6. Torture and Deaths in Custody

⁹*Juvenile Injustice*, op.cit., p59.

Torture is clearly prohibited by both national law and international treaties that Kenya has ratified, including recently the CAT. There is ample provision in national legislation to punish such practices. The authorities at the highest levels have repeatedly publicly condemned torture and ill-treatment. In February 1997 the new Commissioner of Police, Duncan Wachira, told police officers in Embu: "If the police have to interrogate suspects, they should ensure that they don't hurt them since it is against the law". There has been an increase in the number of police officers who have been prosecuted for human rights violations, particularly when the victim has died¹⁰. These measures appear to have had some effect in reducing the incidents of torture.

However, reports of ill-treatment, torture and deaths in custody as a result of torture continue to be received, and many previous allegations of torture appear either not to have been investigated or the investigations have been inadequate. Amnesty International has raised concerns about torture in Kenya in two previously published reports.¹¹ Serious concern has been expressed by human rights organizations in Kenya about the impunity the police appear to enjoy. In response to Amnesty International's December 1995 report the Kenyan Government stated that: "It has been made

¹⁰In June 1997 Amnesty International was given a list by the government of police officers currently facing charges for a number of offences including 23 cases of murder between 1992 and 1997. The organization was informed this was a preliminary list and no details of those killed, dates or circumstances were given.

¹¹*Kenya: Torture, compounded by the denial of medical care*, December 1995, AI Index: AFR 32/18/95 and *Kenya: Detention, torture and health professionals*, op. cit.

clear to law enforcement officers that in their work, they should follow not only the law in Kenya, but also the UN Code for Law Enforcement Officers. If they exceed lawful force or torture, then they are subject to criminal prosecution and/or disciplinary measures''. However, investigations of human rights violations by the police remain the responsibility of the police force rather than an independent body and this procedure is fraught with difficulties. For example, in order to file a complaint against the police, the alleged victim is required to obtain a P3 (medical report) form from the police. This form has then to be filled in by the doctor who examined the alleged victim and returned to the police, but this procedure is clearly not working effectively.

Amnesty International has received numerous reports of victims either being threatened by the police not to report torture, too scared to go to the police station to obtain a P3 form, or refused a P3 form by the police. As a result, allegations of torture or ill-treatment often do not reach the courts. The organization has also been informed that P3 forms, in the keeping of the police, do not always appear in the defendant's case file when the case reaches court and as a result the issue of torture may not be raised unless the defendant has a lawyer who retained a copy of the P3 form. Thus, medical evidence, which is often crucial to determine whether or not the allegation of torture is proven, appears not always to be reaching the courts under the current system.

The current procedure for the use of P3 forms is clearly failing to protect victims of human rights violations by the police. Thorough

and impartial investigations into allegations of torture and ill-treatment and the bringing to justice of those responsible would send a clear message to law enforcement officials that excessive use of force or torture is unacceptable.¹²

At least five prisoners died in custody last year, apparently as a result of torture. On 8 July 1996 Amodoi Achakar Anamilem died while in police custody—but before reaching a police station—in Lokichar, Turkana District. His arrest followed the arrest of the wife and the 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 and this apparently led to his arrest. 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 and gun butts, and received kicks and blows on all parts of his body. The police officers also attempted to strangle him with his own beads.

After his death, on the same day his body was taken to Loichangamatak Dispensary, where he was declared dead and recent

¹²Appendix 1 includes a list of cases of alleged torture victims. Amnesty International

requested information regarding any investigations into these allegations and any subsequent prosecutions and in his response on 6 August 1997 the Attorney General indicated that in

most cases raised there is no report of torture in police records.

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 of the advanced decomposition of the body as a result of the coolers in the mortuary not functioning.

The Attorney General ordered an investigation into the incident in August 1996 and in April 1997 announced that an inquest would be held, although no date was given. However, the police officers allegedly responsible for Amodoi Achakar Anamilem's death are still on duty. According to local human rights activists, there appears to be a coordinated effort by the police, the District Administration and some hospital staff to cover up the case, to conceal the truth and to frustrate investigations. Of particular concern in this, and a number of other cases, is the delay in performing the autopsy and the fact that the police officers accused of his death have not been suspended pending investigations.

Many autopsies are delayed by the need for a family member to be present. The effect of this delay is to lose vital medical evidence as to the cause of death. An autopsy needs to be performed within 48 hours of death, which is often not the case. Amnesty International has received reports that the police put pressure on the victim's family not to take their case further following an autopsy.¹³

¹³Appendix 2 includes a list of cases of deaths in custody. Amnesty International requested information regarding any investigations into these

6.(a) The government responded to Amnesty International's concerns regarding torture and death in custody stating that:

"Torture is outlawed by the Constitution of Kenya. There is determination to uphold our national laws and international obligations on torture. Where incidents occur, it is not because the Government does not frown on torture: It is in spite of it, and accordingly, action is taken against the culprits.

As regards deaths in custody, inquests are always held to determine the cause of death of anyone who dies in Police or Prison Custody."

However, Amnesty International continues to receive reports of torture and deaths in custody where little or no action has been taken by the police. Josephine Nyawira Ngengi was detained illegally and alleges she was severely tortured before being charged with robbery and violence (see section 5 above). Government officials claimed that there had been no investigation into her torture because she had not filed a complaint. However, a complaint was lodged when she was charged, when the Court ordered her to be medically examined, and her confession was later rejected because it had been obtained under torture. The responsibility lies with the Kenyan authorities - not the victim - to ensure that all allegations of torture are investigated.

allegations and any subsequent prosecutions and in his response of 6 August 1997 the Attorney General indicated that most of these cases were being investigated or have been referred to a judicial enquiry

This is an obligation under the UN Convention against Torture, to which Kenya has acceded.

To most allegations of torture, the Attorney General has responded that there has been no official complaint of torture. Such an official complaint requires victims of torture to make sworn statements to the police, sometimes to the very police officers who allegedly tortured them. Fear and intimidation prevents victims from lodging formal complaints. However, it is the responsibility of the Kenyan Government to investigate allegations of torture, irrespective of there being an official complaint or not. This obligation arises not only under Article 74 (1) of the Constitution of Kenya but also from Kenya's accession to the Convention against Torture. Article 12 of Convention against Torture states "Each party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction". Under this provision, the responsibility lies with the Kenyan authorities to institute "a prompt and impartial investigation". An investigation by the police who are accused of torture does not meet this obligation. There is also no requirement under this article for an official complaint and the authorities are obliged to investigate "whenever there is reasonable ground to believe that an act of torture has been committed". Again, the Kenyan Government has failed to meet this obligation.

In May 1997 a 17 year-old herd boy died in police custody two days after his arrest in the Turkana district, North Western Kenya.

A police post-mortem conducted by the local medical officer failed to establish the cause of death. A subsequent post-mortem by an experienced government pathologist, acting privately for the family, concluded that he had been beaten and had died of strangulation and head injuries. The District Commissioner told Amnesty International in June 1997 that a police officer had been arrested and charged with the killing. However, he was still at large and there was no court record of any charge against him. An inquest is yet to be held into the boy's death.

The response of the Attorney General to most of the allegations of torture is that there is no official record of a complaint of torture.

In cases of deaths in custody the investigations or judicial inquiries are continuing, in some cases four or five years after the death occurred. In only one case of assault by the police have we been informed that disciplinary action was taken against the police officers.

In three cases of deaths at the hands of the police, charges have been brought against the police and the criminal cases are pending before the Courts. Although the magistrate ruled in July 1995 for policemen involved in the death of Rosemary Nyambura to be charged with murder, no charges have been brought more than two years later and more than five years after her death.

Without adequate post-mortems, prompt, thorough and impartial investigations and the bringing to justice of those responsible in every case, torture and deaths in custody will continue. All police and prison personnel must be made aware that they cannot get away with violating human rights.

7. Corporal Punishment and the Death Penalty

Amnesty International believes that caning is a cruel, inhuman and degrading punishment and, as such, is prohibited by international human rights law. The UN Human Rights Committee has stated that the prohibition against torture in the ICCPR extends to a prohibition of corporal punishment and excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.¹⁴ In April 1997, the UN Commission on Human Rights, in its resolution 1997/38, reminded governments that “corporal punishment can amount to cruel inhuman or degrading punishment or even to torture”. The UN Special Rapporteur on torture, Nigel Rodley, in his report to the UN Commission on Human Rights dated 10 January 1997 stated that “corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined inter alia, in the Universal Declaration of Human Rights, the ICCPR, the Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture.”¹⁵

However, Kenyan courts continue to impose caning as a punishment for a variety of offences including robbery and rape. Under section 27 (3) of the Kenyan Penal Code, caning can be substituted, or administered in addition to, any other punishment of a

¹⁴Human Rights Committee General Comment 20, para 5.

¹⁵UN Doc: E/CN.4/1997/7, at p.5, para 6.

convicted male under the age of 18 years. Many prisoners facing sentences of caning have been convicted in trials which did not conform to international standards for fair trial. Many young men under 18 years are caned as an alternative to, or in addition to, their custodial sentence. In October 1995, three prisoners of conscience were sentenced to six strokes of the cane in addition to four years in jail after a blatantly unfair trial that lasted more than 16 months.

More than 700 prisoners are under sentence of death in Kenya. No executions have been reported for nine years, but many prisoners on death row have died as a result of appalling prison conditions. The death sentence is mandatory under the Penal Code for anyone convicted of treason, murder, robbery with violence or attempted robbery with violence, and for administration of an unlawful oath to commit a capital offence. Under Kenyan law the death penalty may not be imposed on anyone under the age of 18 years at the time of the offence, a pregnant woman or an insane person.

The death sentence for treason, murder and for administration of an unlawful oath to commit a capital offence has been in force since independence in 1963. The death sentence for robbery with violence and attempted robbery with violence was introduced in an amendment to sections 296 and 297 of the Penal Code in April 1973, following widespread concern at the increase in violent robbery in Kenya. This amendment established a mandatory death sentence for persons found guilty of robbery or attempted robbery while being armed with an offensive weapon, or being in the company of one or more persons, or using violence to any person. Under this amendment a person convicted of threatening violence while in the company of two or more others during the course of a robbery or attempted robbery, even if they had not been armed or had not actually used any violence, would be sentenced to death.

The police can hold without charge and for up to 14 days people suspected of "having committed or being about to commit an offence punishable by death". However, Amnesty International has received numerous reports of prisoners who have been held for longer than 14 days, (see section 5 above). Bail cannot be given for any crime which carries the death penalty.

Defendants charged with murder or treason are tried in the High Court and if convicted have a right of appeal to the Court of Appeal. Members of the Armed Forces charged with treason are tried by Court-Martial with a right of appeal to the High Court. Defendants charged with robbery or attempted robbery with violence are tried in

magistrates' courts and if convicted have the right of appeal to the High Court and then Court of Appeal. In 1996, three men who had been given custodial sentences had these overturned and were sentenced to the death penalty on appeal. The length of time taken for appeals to be heard by the High Court and Court of Appeal varies in Kenya and there is no time limit within which appeals are heard. Lengthy delays in appeals by the court are not uncommon. The cases of all prisoners sentenced to death, once the appeals process has been exhausted, are automatically passed to the President of Kenya under section 27 of the Constitution of Kenya, which provides for the Prerogative of Mercy. The President has the right to pardon or commute the sentence of any person convicted of any offence, under the Presidential Prerogative of Mercy.

The government justifies the use of the death penalty on the basis of law:

“International law knows not of any legal norm or custom that stipulates that legitimate administration of the death penalty after the due process of law has been followed amounts to a breach of human rights. The only requirement is that an accused person is afforded a fair trial and the due process of law is followed. If after a proper trial an accused person is convicted, the application of the death penalty is justified.” The UN Commission on Human Rights has recently stated in its resolution on the death penalty that it is *“Convinced that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights.”*¹⁶ The Commission calls upon all State Parties to the ICCPR to consider acceding to or ratifying the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

Defendants facing the death penalty in Kenya are often convicted after trials which fail to meet international standards. For example, not all defendants facing the death penalty have the right to state legal aid. If a person is executed pursuant to a judgement handed down in an unfair trial, such execution will amount to an arbitrary execution and a violation of the right to life. All defendants facing the death sentence have the right to legal representation under section 76 (1)(d) of the Constitution of Kenya. State legal aid is only given for capital cases before the High Court and Court of Appeal, that is, in cases of treason and murder. Cases heard before magistrate's courts do not qualify for state legal aid. Defendants charged with robbery with violence or attempted robbery with violence are therefore not eligible for legal aid if they cannot afford to pay for legal representation, despite the fact that they face the death penalty if convicted. As a consequence, many of those condemned to death have no legal representation and therefore may not have the opportunity to prepare a full legal defence or appeal against conviction. The majority of offenders convicted of robbery with violence or attempted robbery with violence and sentenced to death do not have any legal representation. The Kenyan authorities have an obligation to provide legal assistance in

¹⁶UN Doc:E/CN.4/1997/L.11/Add.1, at p.19.

capital cases under Article 14(3) (d) of the ICCPR which states that everyone shall be entitled to: "...be tried in his presence, and defend himself in person or through legal assistance of his own choosing; to be informed if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

In addition some defendants have stated in court that they were tortured or ill-treated to make them plead guilty. Amnesty International is concerned that some prisoners may have been wrongly convicted on guilty pleas made under duress. The UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions made a declaration in 1993 requiring that trials of people facing the death penalty "*should conform to the highest standards of independence, competence, objectivity and impartiality of the judges, and all safeguards and guarantees for a fair trial must be fully respected, in particular as regards the right to defence and the right to appeal and to seek a pardon or commutation of the sentence*".¹⁷ Article 5 of the UN Safeguards Guaranteeing the Protection of the Rights of those facing the Death Penalty states that "*Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR*".

Since 1993 capital criminal charges, which are non-bailable, appeared to have been used against political opponents. For example, on 2 November 1993, Koigi wa Wamwere, a prominent government critic and former member of parliament in Kenya, was arrested and charged with an offence carrying the death penalty. The trial of Koigi wa Wamwere and his three co-defendants was attended regularly by observers from national and international human rights and legal organizations. Serious concerns were raised by observers regarding the fairness of the trial, relating specifically to the conduct of the trial and the evidence, and they questioned the impartiality of the court. On 2 October 1995, the charge was reduced to simple robbery and Koigi wa Wamwere, his brother Charles Kuria Wamwere and Njuguna Ngengi, were sentenced to four years and six strokes of the cane. They were released over a year later on medical grounds pending appeal. Their lawyers are still awaiting the transcript of the trial proceedings to pursue the appeal.

7.(a) The government responded to Amnesty International's concerns regarding corporal punishment and the death penalty stating that it:

"awaits the report of the Task Force on Penal Law Reform on possible reform in these two areas. In the meantime, the Government must continue to execute the law as it is.

¹⁷UN Doc. E/CN.4/1993/46, para 680.

Amnesty's proposals that pending the abolition of the death penalty, nobody should be executed, or that no one should have a prison sentence increased to death by an Appeal court, amount to a recommendation to suspend our laws. That is wholly unacceptable."

The task force on Penal Law Reform has been reviewing these two "areas" since 1993. In the meantime Kenyans continue to be sentenced to caning or even death. For example, in July 1996 two men were sentenced to 10 years' imprisonment and 13 strokes of the cane for rape. At least 63 people were sentenced to death in 1996 alone. Given the concerns Amnesty International has noted above regarding these two practices, the organization has recommended their suspension prior to their abolition. This is in order to protect the rights of Kenyans - rights which continue to be violated while these practices are under review.

8. Prison Conditions

Conditions in Kenyan prisons are harsh and in many places they amount to cruel, inhuman and degrading treatment. 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". Hundreds of prisoners have died each year, the majority from infectious diseases resulting from severe overcrowding and shortages of food, clean water and adequate medical care. Prison clinics lack medicines and many have only medical orderlies as there are few prison doctors. Official figures are scarce, but in October 1995 a government minister stated that more than 800 prisoners had died in the first nine months of the year.

In discussions with Amnesty International the government noted the problem, but stated that although they were confined by financial limitations, conditions had improved and that they were looking into measures to reduce the prison population. In February 1996 a committee on Community Service Orders was set up to look into reducing the number of custodial sentences.¹⁸ When launching the committee the Attorney General

¹⁸The committee was asked to study the report and the recommendations of the symposium in Extra-Mural Penal Employment and the Criminal Justice System, held in December 1995; to develop a plan of action on how to implement; and recommend a preliminary draft of a bill on community service orders.

noted that “75% of inmates in our penal institutions are not only young but include single mothers with children”. In June 1997 the Attorney General informed Amnesty International that a draft bill was almost ready.

However, conditions remain very harsh. For example, at Lang’ata Women’s Prison members of the Released Political Prisoners (RPP) pressure group, a human rights NGO, noted that “the prison blocks are congested, each cell holds three and more people who share a small, torn mattress and tattered, old blankets which they use to wrap themselves with while washing the prison cloths - “kunguru”. They are not allowed to wear shoes or slippers neither are they provided with anything to cover their feet and thus they walk barefooted. Walking barefooted on this filthy grounds does not only harm their feet but also makes them sick with feet diseases and constant colds.”¹⁹ And the prison population continues to grow. In 1996 it rose by over eight thousand to nearly 41,000 despite the pardoning of 4,288 prisoners by President Moi in October.

9. Excessive use of lethal force

A disturbing number of Kenyans have been killed in recent years by the police in situations where they posed no threat and some were unarmed. One illustrative case occurred in October 1996: Stephen Muthuo Kahara, a lay preacher, was shot dead by Administration Police officers in Uthiru, Kiambu. Stephen Muthuo Kahara had heard the cries of his neighbours being robbed in the middle of the night and went to their homestead to help, together with about 30 other local people. Two Administration Police Officers, who thought they were thieves, fired directly at the group without identifying themselves or issuing a warning. Stephen Muthuo Kahara was shot in the leg. Unable to run away he was assisted by his brother, Gichere, to a nearby lane. Gichere was then shot and injured by the police who chased him as he ran home. Stephen Muthuo Kahara was left on the side of the lane. He was unarmed and had only a torch. According to witnesses the two police then returned to where Stephen Muthuo Kahara was laying and shot him, at close range, three times in the stomach and once in the arm. He died the following day as a result of his injuries. The local police have since accused Stephen Muthuo Kahara and his brother of being part of an armed gang. It is not known if any investigation has been carried out, but the two policemen have not been arrested. The actions of the police may amount to the extrajudicial execution of Stephen Muthuo Kahara. In his response

¹⁹A Stay in Hell - Experiences in Industrial Area and Lang’ata Women’s Prisons Nairobi Kenya 22 July - 6 August 1996, The Release Political Prisoners (RPP) pressure group prisons condition mini-report, p 5. This report was written after 21 of their members, including three women, were detained in July 1996.

the Attorney General indicated that "an inquest file was opened and has been placed before a magistrate for orders"

The UN Code of Conduct for Law Enforcement Officials and the Basic Principles on Use of Force and Firearms by Law Enforcement Officials (LEOs) restrict the use of force to exceptional circumstances only when strictly necessary, if non-violent means remain ineffective: *"The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities."*²⁰

Article 10 of the Basic Principles on the Use of Force and Firearms by LEOs states that when using firearms, LEOs must identify themselves and give a clear and timely warning of intent to use firearms. Amnesty International is concerned at what appears to be excessive use of force and the extrajudicial execution or arbitrary deprivation of life by the Kenyan police in contravention of international standards and Kenya's treaty obligations under the ICCPR and the ACHPR. The UN Human Rights Committee in its General Comment on Article 6 of the ICCPR stated: *"The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities"*.

²⁰Article 3(c) Code of Conduct for LEOs.

While there has been an increase in the number of police officers who have been arrested for murder in these circumstances, there appear to be many cases where no arrests have taken place or the evidence available from any investigation is not sufficient to result in a prosecution.²¹

9.(a) In its response to Amnesty International's concern regarding the excessive use of lethal force, the government stated that it:

“ does not tolerate misuse of arms by Security Personnel. Police brutality is not condoned by the Government. Where excessive use of force by the police is proven after investigations, those responsible have been subjected to due process of law. There are a number of cases where police officers have been charged with murder, manslaughter or assault. In appropriate cases, inquests have been held. Many have been disciplined. The Government has recently ratified the United Nations Convention Against Torture.”

The Constitution of Kenya allows for a very wide interpretation of the lawful use of firearms, including defence of property, the prevention of escape and in order to prevent a crime being committed.²² These provisions go beyond the restrictions recommended in the UN Code of Conduct for LEOs and the Basic Principles on the Use of Force and Firearms. Although the government informed Amnesty International that this section of the Constitution was interpreted very strictly, the killing of unarmed Kenyans including criminal suspects and demonstrators continues.²³ In December 1996, three university students were shot dead in two separate incidents during student demonstrations. The killings provoked widespread revulsion and demands for the resignation of the Police Commissioner. He was subsequently replaced. A "thorough investigation" was announced. Twelve police officers were charged in connection with one incident and an inquest held in the other. In March 1997 Anthony Chege, a student, was shot by police officers as he walked along the street with two friends. He died on the way to hospital. His two friends were badly beaten and held by police for seven days.

²¹Appendix 3 includes a list of shootings by the police. Amnesty International requested information regarding any investigations into these shootings and any subsequent prosecutions and in his response of 6 August 1997 the Attorney General indicated that in most of these cases judicial inquiries were pending.

²²*The Constitution of Kenya*, section 71.(2).

²³The Kenya Human Rights Commission estimates that 316 people were killed by police between 1994 and 1996.

10. Treaty obligations

Amnesty International recommended that the Kenyan Government should produce the reports required by the Human Rights Committee under the provisions of the ICCPR and the African Commission under the provisions of the ACHPR, both of which Kenya has ratified. 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 its second report, or responded to the 20 reminders it has received from the Human Rights Committee. Kenya has not yet filed any report to the African Commission.

The government responded stating that it, "is aware of its shortcomings with regard to its reporting obligations under International Treaties. It is a question of inadequacy of technical expertise and want of proper co-ordination. Both problems are being addressed by the establishment of a central Treaty Registry in the Office of the Attorney-General and the recruitment of necessary personnel."

Amnesty International was not given any time frame for the production of reports to the treaty bodies.

11. General issues

Amnesty International also received comments from the Kenyan Government on its methods of research, recommendations and language used:

"Amnesty could do much to inspire confidence in its recommendations when it is conducting its research or investigations if necessary Government representatives and agencies are asked for their views before recommendations are formulated and presented to the world at large as the whole truth, nothing but the truth. And of course such recommendations as the Government finds well founded will be given effect subject to our material and human resources and the imperative dictates of our national Sovereignty. Government will not submit to recommendations which question our national Sovereignty or are couched in the peremptory and prescriptive terms which are usually employed in Master-servant relationship. Government hopes that Amnesty will in future be sensitive to our national Sovereignty and that its recommendations will be couched in befitting language."

Amnesty International has sometimes submitted reports to governments prior to releasing them, and noted that government's response in its subsequent publication, usually when there is useful dialogue between Amnesty International and the government concerned. Many of the cases Amnesty International has cited in reports on Kenya and issues raised have been raised first with the Kenyan Government. As noted above, this report was initially submitted to the government as a memorandum and their response has been included in full.²⁴

The government accuses Amnesty International of interference in its domestic affairs and argues that human rights are an issue of national sovereignty. By ratifying international human rights treaties, the government has recognized that the international community has a right to monitor the human rights situation in the country, and hold the government accountable for its human rights record. The recommendations Amnesty International makes and the language it uses are based on these international standards which were drafted by governments. The organization uses similar language in its recommendations to all governments. These international standards incorporate rights which belong to everyone, they are not the prerogative of governments. The people of Kenya want their human rights protected. They are entitled to the same rights as everyone else.

12. Conclusions and Recommendations

Amnesty International welcomes this dialogue with the Kenyan Government, but remains seriously concerned about its position on human rights.

The government claims it "*will uphold its laws in the interests of Kenyans and will not condone any transgression of those laws...the maintenance of law and order is the first obligation of any Government and the Government of Kenya will not falter in this*".²⁵ The government has recognized that the laws which violate human rights are bad and is reviewing them -- and has been since 1993. In the meantime these laws continue to be used. When human rights activists, government critics and others flout these laws they are beaten, arrested or even killed, by police officers acting "within the law".

The continued use of delaying tactics and the lack of concrete action to tackle human rights violations has resulted in many Kenyans questioning the government's commitment to human rights reform. The response of the Attorney General to Amnesty International on 6 August 1997 confirms this. Many viewed with scepticism the

²⁴See appendix 4.

²⁵Government statement 11 July 1997.

recent proposal by the government, to review the Constitution and repeal or amend laws which violate international standards. It is not enough to hope that this time they are serious. All those involved in the current crisis must be brought together immediately in a meaningful dialogue to ensure that freedom of expression, assembly and association are guaranteed to all Kenyans.

In its recently published *Human Rights Manifesto for Kenya*, Amnesty International called on the Kenyan Government to meet the promises it has made to its people by signing and ratifying international human rights treaties.²⁶ The organization urges the government to implement the following recommendations:

A. Legal and Constitutional reform

1. Kenyan laws which infringe internationally agreed human rights standards and Kenya's treaty obligations should be repealed or amended including:

- The Preservation of Public Security Act, which allows indefinite detention without trial and restrictions on freedom of movement.
- Sections of the Penal Code dealing with sedition and treason which are used to imprison government critics.
- The Public Order Act, which is used to restrict freedom of association by requiring certain public meetings to be licensed in advance.
- The Chiefs' Authority Act, which gives local administration chiefs wide powers to restrict freedom of movement and other basic rights.
- The Administration Police Act, which gives chiefs and sub-chiefs direct control over a section of the police force.
- The Societies Act, which restricts freedom of association and inhibits organizations, including trade unions and political parties, from obtaining registration.

2. The Constitution should be strengthened to guarantee the fundamental rights of Kenya's citizens at all times, to prohibit arbitrary detention, and cruel, inhuman and degrading punishments, such as caning and executions, and to ensure freedom of expression, movement, assembly and association, and freedom from discrimination. The Constitution should be further strengthened to ensure that constitutional rights cannot be abridged, abrogated or abolished by the executive authorities. The Constitution should allow for the restriction of rights in the Constitution only where certain stipulated criteria are met (for example, where such limitations are strictly necessary in an open and democratic society based on freedom and equality). The Constitution should also empower the Courts to review legislation or government action which restricts rights in the Constitution and to order appropriate measures to be taken by the government to remedy the situation.

²⁶A human rights manifesto for Kenya, what needs to be done. AI Index: AFR 32/18/97.

3. State of emergency legislation should comply with Kenya's obligations under international treaties, in particular Article 4 of the ICCPR. Emergency measures should never be introduced or maintained as a means of suppressing the legitimate exercise of rights. Provisions of emergency legislation that weaken safeguards against abuse of authority should be repealed.

4. Incorporate into law the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Declaration on the Elimination of Violence Against Women. Kenya is a party to CEDAW but it has not been incorporated into law. At present Kenyan domestic law contravenes the provisions of these human rights standards.

The government should also adopt a coherent strategy to implement the Beijing Platform for Action. Whilst the government has committed itself to women's human rights by ratifying international treaties little has been done to bring the Kenya's Constitution and other laws which discriminates against women into line with these.

B. Arbitrary arrest

1. All arrests should be carried out under strict judicial control and only by authorized personnel. Arrests by KANU youth wingers should be prohibited. Everyone should be informed, at the time of arrest, of the specific reasons for his or her arrest. 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 period of 24 hours a detainee may be held by the police without being brought before a judge should be adhered to. This period should be the same for all detainees including those facing possible capital charges. Those failing to adhere to these safeguards should be effectively disciplined or brought to justice.

2. Prevention of incommunicado detention. All detainees should be held in a recognized police station or prison. Detainees should have access to relatives, lawyers and doctors from the moment of arrest and regularly throughout their detention or imprisonment. 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, even during periods of suspended constitutional guarantees. Filing of *habeas corpus* petitions should be free. Detainees and prisoners should not be moved between police stations, but be held in one police station throughout their detention or imprisonment. Every police station and prison should be required to keep a detailed up-to-date record, bound with numbered pages, of those imprisoned, as well as the time of arrest and the identities of those who carried out the arrest. There should also be a record of all instances when the detainee has been removed from the police station for investigation or other reasons. The record should include the time the detainee appeared before the judicial authority.

3.No one should be arrested solely on the basis of their nationality or ethnic origin. No refugee should be sent back to their country of origin if they are likely to be at risk of human rights violations there.

C. Independence of the Judiciary

1. The judiciary should be protected against undue interference by the executive, and should receive the necessary political support and resources to carry out its duties.

2. International standards relating to the judiciary, prosecutors and lawyers, including those contained in the UN Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors and the Basic Principles on the Role of Lawyers, should be incorporated into Kenyan law and legal practice.

D. Fair Trials

1. The government should provide free legal assistance to defendants without resources including, but not limited to, defendants charged with capital offences. This should include free pre-trial legal assistance.

2. Interpreters should be provided for non-Swahili-speaking defendants and others.

3. 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, where the maximum legal period is 14 days, should also be brought before a judge without delay.

4. Illegal detention should be strictly prohibited and compensation paid if it occurs.

5. Judges should be rigorous in examining the legality of detention and the physical condition of defendants, and in investigating all allegations of torture and other cruel, inhuman or degrading treatment or punishment.

6. 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 alleged perpetrators of torture and ill treatment. Article 15 of the CAT stipulates that "*each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made*". CAT requires the authorities to initiate prompt, thorough and impartial investigations of all allegations 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.

E. Torture and Deaths in Custody

1. The government 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 torture and ensure that there is an independent and impartial investigation in order to 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 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 UN Principles of Medical Ethics are brought to the attention of all government doctors and particularly health personnel working with detainees.

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

4. 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.

5. 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.

6. The Kenyan Government should make a declaration under Article 22 of the CAT, recognizing the competence of the UN Committee against Torture to receive complaints from and on behalf of individuals.

F. Caning and death penalty

1. Amnesty International recommends the replacement of caning by other penalties which are consistent with recognized international standards for the prevention of crime and treatment of offenders.

2. The death penalty should be abolished and all existing death sentences should be commuted.

3. Pending abolition of the death penalty, no executions should be carried out, no offence should carry a mandatory death sentence, no one should be tried for an offence carrying the death penalty without having legal representation, no one should be tried for an offence carrying the death penalty in a magistrate's court and no one should have a prison sentence increased to a death sentence by an appeal court.

G. Prison conditions

1. *The government should 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.*

2. *The government should take particular care to ensure the protection of detainees who are vulnerable for reasons of age or gender.*

3. *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.

H. Extrajudicial executions

1. Police officers should use force or firearms only when strictly necessary, and to the minimum extent required in the circumstances. Police officers should minimize injury and respect and preserve human life in their use of necessary force. Lethal force should only be used when strictly necessary to protect the lives of others.
2. When injury or death is caused by the use of force and firearms by police officers, they should report the incident to their superiors, who should ensure that independent and impartial investigations of all such incidents are carried out.
3. International standards, including the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, should be incorporated into Kenyan law and practice.
4. Force or firearms should not be used to disperse non-violent assemblies. All allegations of unlawful killings by police officers should be investigated and those responsible brought to justice.

I. Treaty obligations

Amnesty International continues to recommend that the government produce reports required by the Human Rights Committee of the ICCPR and the African Commission under the provisions of the ACHPR.

APPENDIX 1

ALLEGED TORTURE BY MEMBERS OF THE KENYAN SECURITY FORCES

DATE AND PLACE OF ARREST	NAME AND CHARGE	POLICE/ GROUP ALLEGEDLY RESPONSIBLE	LOCATION AND DETAILS
August 1993 Nakuru	David Mbugua Kabata. Charged with possessing firearms without a certificate and with robbery with violence.	Police Officers.	He was held in two different police stations in the Rift Valley- and other nearby locations. He was allegedly tortured shortly after his arrest. In its response to Amnesty International in March 1996, the government declared the case <i>sub-judice</i> and expressed scepticism as Kabata had not complained to the Magistrate. In his response to Amnesty International of 6 August 1997 the Attorney General stated "There is nothing on record to show that he complained of torture".
November 1993 Ndeiya, Limuru town	‘The Ndeiya Six’. James Njau Wabururu, Charles Kimani (alias Saint), David Njenga Ngugi, Alex Mbugua Njoroge (alias Kaniu),	Police Officers from Parklands Police Station.	They were held incommunicado and tortured severely. The names of the police officers accused of torture were given in court. In his ruling the Magistrate ordered the arrest of the four police officers. The government in its response to Amnesty International in March 1996 confirmed that the men had been acquitted because their confessions ‘were not voluntarily obtained’. They noted that the police investigation into torture allegations were still

	John Eskra Mwombe, Charles Kanori Mbai. Charged with robbery with violence.		ongoing. The government claimed that the perpetrators would be prosecuted or disciplined. There was no indication given of the time this would take. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "the Attorney General raised the question of what disciplinary action, if any, would be taken against the suspected police officers. A reply is awaited".
May 1994 Nakuru	Josephine Nyawira Ngengi. Charged with robbery with violence.	Police Officers.	She was held in incommunicado detention for 22 days. She alleges that she sexually tortured and beaten. In its response to Amnesty International in March 1996 the government noted facts of her arrest but made no mention of her allegations of torture. She was acquitted and released March 1996. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "there is nothing on record to show that she complained to the Police of any torture or mistreatment".
July 1994 Nakuru	Geoffrey Kuria Kariuki. Charged with robbery with violence.	Eight plainclothes police officers.	He was arrested and allegedly beaten in a private house in July 1994. He was allegedly tortured and held in incommunicado detention. He was released on bail in July 1996 on medical grounds when the charge against him was reduced to simple robbery. The government makes no mention of this case in its response of March 1996. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "there is no report of torture in Police Records".
December 1994 Laikipia District	Geoffrey Ndungu Gichuki. Accused of holding an	Special Branch Officers.	He was taken to Dundori Forest where he was tied to a tree and beaten. Following this he was held in hospital for seven months

	illegal meeting.		under police guard before being released without charge or trial. No mention of these allegations was made in the government response to Amnesty International in March 1996. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "there is nothing on record to show that he was held in Police custody, neither is there a report of torture filed by him or anyone else on his behalf".
December 1994 Nakuru	Alex Owuor.	KANU youth wingers.	He was accused by KANU youth wingers of robbery and badly beaten at Nakuru Bus Station. In its response in 1996 the government stated that there was no record of complaint by Owuor in the Occurrence Book at Nakuru Central Police Station or through a P3 form. It also noted that the Attorney General had received no complaint. Owuor alleges he visited the police station every day for three weeks after his release from hospital to make a complaint. In his response to Amnesty International of 6 August 1997, the Attorney General stated that they have "checked our records held in Nakuru but there is no report madeIt is therefore not true that anyone was arrested in connection with the purported incident."
Between January and September 1995	About 50 people from western Kenya.	Special Branch Officers.	They were accused of membership of an illegal organization (February Eighteenth Movement), and were taken to an unknown detention centre. They were allegedly severely tortured, some for several weeks before being either charged or released. Four were convicted of membership of an illegal organisation in summary trials in February 1995. A number were charged with murder for several months before the case against them was dropped. In his

			response to Amnesty International of 6 August 1997, the Attorney General stated that "no names were given. We cannot therefore comment on people we do not know".
September 1995 Nairobi	Wang' Ondu Kariuki. Charged with membership of illegal organisation.	Special Branch Officers.	He was held for seven days incommunicado. He was allegedly beaten, stripped naked and denied food. The government response noted the charges and that he had allegedly admitted being Secretary General of FEM. In its response the government stated that the matter was <i>sub-judice</i> and gave no response to the allegations of torture. He has withdrawn his guilty plea on the grounds that he was tortured. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "Mr Wang' ondu Kariuki hasinformed the court that he had been tortured. This will be an issue when the trial is held".
November 1995 Egerton University	Suba Churchill Mechack. (Chairman of Kenya University Student Organisation).	Special Branch Officers.	He was held at Menegai, Molo and Nakuru Railway Station Police Stations. He alleges he was tortured by eight police officers who beat him with clubs and hoe handles and stood on him. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "the allegations of torture were not investigated because no formal complaint was lodged with the Police".
March 1996 Kakemega	Philip Eshialo. (13 years old).	Police Officers.	He was arrested and detained for 10 days in connection with the theft of a bicycle involving his elder brother. During this time he alleges he was beaten and tortured. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "there is no record to show that he complained to the Police".

March 1996	John Wanjala. (Journalist with the <i>Daily Nation</i>)	Police Officers.	He was allegedly beaten with whips and kicked by police officers. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "no complaint was lodged with the Police".
June 1996 Molo	Raphael Munge. (correspondent for <i>East African Standard</i>).	KANU youth wingers.	He was allegedly stabbed in the hand and had his camera stolen. In his response to Amnesty International of 6 August 1997, the Attorney General made no reference to this case.
October 1996	Charity Ngilu (Member of Parliament) and two women journalists	Police Officers.	Kitui Police Officers broke up a civic education seminar. The three women were detained and allegedly beaten. Following public outcry, two police officers were suspended pending an investigation. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "her complaint was investigated and the officers responsible were dealt with disciplinarily. After investigations the State decided not to proceed with the case and withdrew charges against her".
November 1996 University of Nairobi, Kikuyu Campus	Solomon Muruli (student leader).	Police Officers.	He was allegedly detained for five days during which time he was tortured while being questioned about student unrest. The Police Commissioner responded to public outcry by ordering an investigation. In February 1997 Solomon Muruli positively identified a police officer as responsible for his alleged torture. He died in suspicious circumstances in February 1997. An inquest into his death is ongoing. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "the hearing of the inquest into the death.....is continuing....the matter is therefore sub-judice. We are waiting for the outcome

			of the inquest".
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APPENDIX 2

ALLEGED DEATHS IN CUSTODY AS A RESULT OF TORTURE BY KENYAN SECURITY FORCES

DATE AND PLACE OF ARREST	NAME	POLICE STATION POLICE/ GROUP RESPONSIBLE	DETAILS OF THE CASE
May 1992 Nairobi	Rosemary Nyambura.	Ruaraka Police Station.	She was arrested after police officers allegedly stole from her. She died of ruptured kidneys and spleen. Police claimed it was suicide. However, following an inquest four policemen were reportedly to be charged with her murder. According to reports no one has yet been arrested. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "the file was later forwarded to the DCI for consent to prosecute".
April 1995 Nairobi	Nashashon Chege. (18 years old, street boy).	Pangani Police Station.	He died reportedly due to torture and beatings. The government response in March 1996 to Amnesty International claimed that Nashashon fell ill while in custody. He was declared dead on arrival at Kenyatta National Hospital. A ruptured spleen was identified as the cause of death. An inquest was opened. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "an inquest file...was opened and forwarded to

			court on 24/1/96. The hearing date has not been fixed".
March 1996	Peter Mukinyo Muhia.	Bombolulu Police Station.	The autopsy showed the cause of death as internal bleeding and multiple bruises over his body, which were inflicted while he was in police custody. It is not known if an inquest has been held into his death. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "an inquest file was opened and forwarded to the local Magistrate in Mombasa for orders".
May 1996 Mikunduri	Henry Mutua M'Aritho.	Two Administrative Police (AP) Officers.	He was arrested at Mikunduri market by two Administrative Police Officers (APs). He was taken handcuffed to his home to allegedly assist the APs in the search for stolen goods. After searching the house the APs took him to Mikunduri Chief's Camp, where he was tortured for three days. He was allegedly suspended from the ceiling, whipped, clubbed, kicked and burnt, he died in that position. Another AP was arrested over his killing and is in remand at Meru Prison. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "the Administrative Police Constable responsible for the deathwas arrested and charged with murder. APC...will appear before court for hearing on 24 June 1997."
May 1996 Kandara	Noah Njuguna Ndung'u.	Kandara Police Station.	He died as a result of being beaten. The autopsy which was performed by a police pathologist and witnessed by a family doctor found that he had died after being hit on the head and chest with a blunt instrument. Also wound marks on his buttocks were inflicted by a sharp instrument. It is not known if an inquest has

			<p>been held into his death. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "an inquest file was opened and forwarded to the Magistrate for orders".</p>
<p>July 1996 Lokichar, Turkana District</p>	<p>Amodoi Achakar Anamilem.</p>	<p>Police Officers. Lokichar Administration Police Camp.</p>	<p>He was taken by police after being wrongly identified. He was beaten in public in front of witnesses, with his own stick, gun butts and also received kicks and blows on all parts of his body. According to reports the police also tried to strangle him with his own beads. He was then put into a police vehicle and driven to Lochwangikamata, where he was dead on arrival. A postmortem was conducted 10 days after his death. In April 1997 the Attorney General announced that there would be an inquest into his death, although no date was given. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "the Attorney General has directed that the file be placed before the Magistrate with a view of holding an inquest".</p>

APPENDIX 3

ALLEGED SHOOTINGS BY KENYAN SECURITY FORCES

Police officers frequently use lethal force in attempts to apprehend criminal suspects. According to government figures, police killed 74 “suspected robbers” between June 1995 and June 1996. The non-governmental organization, the Kenyan Human Rights Commission (KHRC) reported that police killed 88 people in the first nine months of the year, while a separate organization reported 74 extrajudicial killings by security forces in the first nine months of the year, including 12 by torture. According to the Attorney General’s office, 12 police officers were charged with brutality and wrongful killing in 1996.

DATE AND LOCATION	NAME	POLICE/ GROUP RESPONSIBLE	DETAILS OF THE CASE
June 1995 Pangani, Nairobi	James Nomi Kangara (alias James Njuguna Macharia), Abel Mwaura Kimani and Francis Njoroge Chira	Police Officers.	The three men were arrested on the 6 June. On 8 June they reportedly agreed to show police their ‘hideout’. The police alleged one of the men then opened fire and was shot dead, the other two were shot dead trying to escape. According to witnesses all three were handcuffed and heavily guarded when they went to show the police their ‘hideout’. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "a public hearing of the inquest will be held on 16 June 1997".
November 1995 Jamhuri	Kennedy Omondi Omolo.	Police Officers from Jamhuri Police Post.	He was arrested near Kenya Science Teachers College by police. He reportedly made a statement and was then detained. He was

			tortured and eventually died after being shot in the stomach. Eight months after his death the Attorney General ordered the arrest of the officers involved. In his response to Amnesty International of 6 August 1997, the Attorney General stated that ".....who shot the deceased was arrested and charged with murder....Hearing will be on 6 and 7 October 1997".
February 1996 Nairobi	Patrick Kariuki and four other men (not named).	Police Officers.	The family of Mr Kariuki describe this as a case of mistaken identity. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "details given insufficient".
February 1996 Kiambu District	Evans Atsango Lusuli.	Police Officers.	He was shot dead outside his employer's house by police. The police claimed he was wanted for armed robbery and that he had been killed after firing on police who were giving chase. Following a public outcry an inquest was ordered in January 1997, no details on its progress are known. In his response to Amnesty International of 6 August 1997, the Attorney General did not refer to this case.
June 1996 Nakuru	Jane Wanjira Mathenge.	Plainclothes Police Officer.	She was shot dead by a plainclothes police officer immediately after he had killed her cousin, a wanted criminal, outside a hotel. Police claimed she had been killed in a 'shoot-out' after her cousin fired on police. The police officers involved were awarded a promotion by the Commissioner of Police. It is not known if any investigation has been carried out. In his response to Amnesty International of 6 August 1997, the Attorney General stated that an" inquest file... was opened and forwarded to the Attorney General for advice".

<p>October 1996 Uthiru, Kiambu District</p>	<p>Stephan Muthuo Kahara.</p>	<p>Administrative Police (AP).</p>	<p>After going to the aid of his neighbours who he believed were being attacked by thugs, he was shot and killed. The assailants who later identified themselves as APs claimed that Stephan Muthuo Kahara and his brother Gichere, who was also shot and wounded, were part of an armed gang. The APs have not been arrested. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "an inquest file was opened and has been placed before a magistrate for orders".</p>
<p>December 1996 Egerton University, Nakuru District</p>	<p>Festa Etaba Okongo. (student)</p>	<p>Police Officers</p>	<p>Police officers fired into the crowd of unarmed students who were protesting at the arrest of their leaders. An inquest has been opened. In his response to Amnesty International of 6 August 1997, the Attorney General stated that "a public inquest is being heard in Nakuru. The matter is therefore <i>sub-judice</i>".</p>
<p>December 1996 Kenyatta University, near Nairobi</p>	<p>Kenneth Makokha Mutabi and Eric Kamundi. (students)</p>	<p>Police Officers</p>	<p>They were shot and killed while demonstrating at Kenyatta University at the death of Festa Etaba Okongo. The government announced that a "thorough investigation" would be carried out. 12 Police officers have been arrested and charged. In his response to Amnesty International of 6 August 1997, the Attorney General stated that they "have been committed to the High Court for trial".</p>