



**Consejo Económico  
y Social**

Distr.  
GENERAL

E/CN.4/2000/9/Add.4  
9 de marzo de 2000

ESPAÑOL  
Original: INGLÉS

COMISIÓN DE DERECHOS HUMANOS  
56º período de sesiones  
Tema 11 del programa provisional

LOS DERECHOS CIVILES Y POLÍTICOS, EN PARTICULAR LAS CUESTIONES  
RELACIONADAS CON LA TORTURA Y LA DETENCIÓN

Informe del Relator Especial, Sir Nigel Rodley, presentado de conformidad  
con la resolución 1999/32 de la Comisión de Derechos Humanos

Adición

Visita del Relator Especial a Kenya

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\* El anexo se reproduce en inglés únicamente.

## INTRODUCCIÓN

1. En respuesta a una solicitud hecha en enero de 1996, el Gobierno de Kenya invitó al Relator Especial en 1998 a visitar el país en misión de determinación de los hechos en el marco de su mandato. El objeto de la visita, efectuada del 20 al 29 de septiembre de 1999, era permitir al Relator recoger información de primera mano de una amplia gama de contactos a fin de evaluar mejor la situación respecto a la tortura en Kenya. El Relator Especial puede ahora, pues, recomendar al Gobierno una serie de medidas para que cumpla sus compromisos y poner fin a los actos de tortura y otras formas de malos tratos.
2. Durante su visita, el Relator Especial se reunió en Nairobi con las siguientes autoridades: el Presidente Daniel arap Moi; el Procurador General, Sr. Amos Wako; el Ministro de Seguridad Interior; el Ministro de Estado de la Presidencia encargado de la Seguridad y la Administración Provincial, Sr. Marsden Madoka; el Ministro de Estado encargado de la Defensa; el Ministro Delegado de Relaciones Exteriores, Sr. Sheldon Muchilwa; el Presidente del Tribunal Supremo, Sr. Bernard Chunga; el Secretario Permanente del Gabinete y Jefe de la Administración Pública, Dr. Richard Leakey; el Comisionado de Policía, Sr. Philemon Abongo; y el Comisionado de Prisiones, Sr. Edward Lepokoityot. El Relator Especial lamenta sin embargo que el Secretario Permanente del Ministerio de Salud, profesor Julius Meme no pudiera recibirle en la fecha fijada. Finalmente, también se reunió con varios miembros del Comité Permanente de Derechos Humanos.
3. En Kenya, el Relator Especial visitó, además de Nairobi, la ciudades de Nakuru y Garissa, en donde se reunió con las autoridades provinciales, a saber, el Comisionado Provincial, el Comisionado de Distrito y el Jefe de la Policía Provincial y visitó los calabozos de la policía. También visitó las prisiones del Estado de Nakuru y Garissa, aunque se le negó el acceso a la cárcel de máxima seguridad de Kamiti, en Nairobi.
4. El Relator Especial también se entrevistó con presuntas víctimas de torturas y otros malos tratos o con sus familiares y recibió información verbalmente y por escrito de organizaciones no gubernamentales, entre ellas, las siguientes: el Servicio de Medicina Forense Independiente, la Comisión de Derechos Humanos de Kenya, el Pueblo contra la Tortura y la Comisión sobre la Violencia Étnica de la Sociedad de Derecho de Kenya. Finalmente, también se entrevistó con algunos abogados y médicos.
5. El Relator Especial desea agradecer al Gobierno de Kenya la invitación a visitar el país y la plena cooperación que brindó en el cumplimiento de su misión y que tanto le facilitó la tarea. También desea expresar su gratitud al Coordinador interino del Programa de las Naciones Unidas para el Desarrollo y a su personal por el apoyo logístico y de otra índole que le prestaron.

## I. LA PRÁCTICA DE LA TORTURA: ALCANCE Y CONTEXTO

### A. Cuestiones generales

6. En los últimos años (véanse E/CN.4/1996/35/Add.1, párrs. 414 a 425; E/CN.4/1997/7/Add.1, párrs. 289 a 307 y E/CN.4/1999/61, párrs. 426 a 435), el Relator Especial había venido advirtiendo al Gobierno que recibía información, corroborada por un elevado

número de casos particulares, de que la policía recurría a la tortura de manera casi sistemática para obtener "confesiones". Al parecer también se torturaba a los detenidos, con el fin de intimidarlos, de disuadirlos de participar en actividades políticas y de extorsionarlos. Según los informes, los agentes de la Dirección de Seguridad (DS o "División Especial" - que se disolvió posteriormente), el Departamento de Investigaciones Penales, los agentes de la denominada "brigada móvil", fuerza especial creada en 1995 y encargada de investigar los atracos a mano armada y de vehículos, los agentes del Servicio de Parques Naturales de Kenya y de las policías administrativas locales, los afiliados a las Juventudes de la Unión Nacional Africana de Kenya, la sección juvenil del partido gobernante, también practican la tortura (véase anexo). Entre las torturas infligidas figuraban las siguientes: las palizas, en particular con varas de madera o de plástico; los azotes en diversas partes del cuerpo, y especialmente en los pies; la flagelación de las plantas de los pies estando la víctima suspendida cabeza abajo y con un palo pasado por detrás de las corvas y por dentro de los codos; las violaciones y otros abusos genitales, como la introducción de objetos en la vagina y el tirar del pene o el punzarlo con alfileres.

7. Aunque la ley permite mantener incomunicados a los detenidos acusados de delitos que no estén castigados con la pena capital hasta un máximo de 24 horas, en la práctica se mantiene a esos detenidos incomunicados durante mucho más tiempo. Se afirmaba que a fin de mantener la detención en régimen de incomunicación, los agentes a menudo trasladaban a los detenidos de una comisaría a otra al detenerlos. Según parece, en esos períodos es cuando se infligen la mayor parte de las torturas y malos tratos.

8. Se dice que a las personas que desean presentar denuncia por malos tratos contra la policía se les disuade o la propia policía les niega el permiso para rellenar el formulario denominado "informe de examen médico", conocido como formulario P3, y que incluso cuando se llegaba a rellenar el formulario éste solía perderse o lo retiraban de los expedientes. Al parecer, muchas víctimas ya no ponían denuncia porque antes de ser puestas en libertad la policía las amenazaba con volverlas a detener o con otras represalias.

9. El Relator Especial también transmitió al Gobierno información según la cual rara vez los tribunales investigaban las denuncias de tortura, examinaban las pruebas médicas, investigaban la falta de asistencia médica a los presos que decían haber sido torturados o declaraban inadmisibles las pruebas o confesiones obtenidas mediante tortura. Al parecer, se ha amenazado también a los abogados defensores de los presos que dicen haber sido torturados y parece ser habitual la negativa de prestar asistencia médica a los presos. Se suele denegar el acceso a éstos a los médicos particulares o se les obliga a remontar obstáculos tales como conseguir un mandamiento judicial, y los que por fin conseguían examinar a los presos al parecer eran objeto de intimidación por parte de los guardianes. Según la información recibida, a los detenidos se les niega a menudo el acceso a los hospitales, y cuando son internados, a veces se los obliga a abandonar el hospital antes de terminar el tratamiento.

10. Finalmente, el Relator Especial advirtió también al Gobierno que estaba recibiendo información en el sentido de que las condiciones en las cárceles eran muy duras y ponían en peligro la vida de los presos. Éstos, al parecer, vivían hacinados, no tenían suficiente agua potable, estaban mal alimentados, carecían de camas en condiciones y recibían una asistencia médica deficiente. Además, se decía que a los presos enfermos se los trasladaba en la caja de los camiones y no en ambulancias y que a menudo morían camino del hospital. También se decía que a algunos presos enfermos ni siquiera se los hospitalizaba, a pesar de los mandamientos

judiciales al efecto. Según algunas organizaciones no gubernamentales ha habido docenas de presos muertos de esa forma, en su mayoría de enfermedades infecciosas, resultado del hacinamiento y de la falta de alimentos, agua potable y medicación elemental. Al parecer, en 1997 habían muerto 630 presos<sup>1</sup>.

11. Durante su misión, el Relator Especial recibió información de fuentes no gubernamentales y de muchas presuntas víctimas de tortura y de testigos, de los que se reproduce una selección en el anexo al informe y que indican que la tortura está generalizada y que se recurre a ella con los detenidos de manera indiscriminada. No obstante, parece ser que en la mayoría de los casos no se denuncia a las autoridades competentes debido a la ignorancia, a la falta de asistencia letrada o al temor a las represalias. Las palizas parecen ser lo más corriente y los actos de tortura en general tienen al parecer por objeto conseguir confesiones o sobornos o castigar o intimidar a los sospechosos de delitos. También se denunciaron algunos casos de muertes en detención, presuntamente a causa de las torturas.

12. Según el Servicio de Medicina Legal Independiente, el 98% de las lesiones documentadas en unos 400 casos que se le comunicaron entre septiembre de 1998 y agosto de 1999 afectaban a músculos y huesos y estaban causadas presuntamente por palizas dadas con objetos contundentes. El 25% de los pacientes sufrieron lesiones neurológicas que les afectaron a la visión o al oído. Las víctimas de tortura tienen edades comprendidas entre los 7 y los 97 años, y la mayoría de los casos relatados corresponden a varones jóvenes de entre 20 y 35 años. El Servicio también informó de que había llevado a cabo 40 autopsias de personas fallecidas en las comisarías y de que 36 parecían deberse a lesiones internas originadas por traumatismo externo.

13. Todas las autoridades con las que se entrevistó el Relator Especial, en particular el Ministro de Estado encargado de Asuntos del Interior y el Ministro Delegado de Relaciones Exteriores afirmaron que el Gobierno no condona la tortura, si bien reconocieron que, en ocasiones, algunos agentes del orden pueden tener una reacción excesiva. Subrayaron en particular el problema del nivel de violencia, especialmente el de la violencia armada al que tiene que hacer frente la policía. Explicaron al Relator Especial que los agentes de la policía, a veces mal equipados, tenían en ocasiones que recurrir a la fuerza para defenderse. Aseguraron al Relator Especial, no obstante, que en todos los casos en los que los agentes de la ley reaccionaban de manera excesiva, el Gobierno estaba decidido a adoptar todas las medidas pertinentes, aunque en su opinión la violencia policial no era un fenómeno generalizado.

14. El Ministro Delegado de Relaciones Exteriores destacó que Kenya estaba atravesando una época de cambio con el apoyo del Gobierno y del propio Presidente y que, desde luego, llevaría tiempo acabar con las viejas prácticas. Asimismo, el Jefe de la Administración Pública reconoció que tradicionalmente la población acepta e incluso apoya un trato duro de los detenidos, aunque también destacó que las autoridades más altas del país estaban sinceramente decididas a erradicar el fenómeno y que en su opinión ya se habían producido cambios importantes en los últimos cinco años. Algunas organizaciones no gubernamentales confirmaron

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<sup>1</sup> Informe anual de 1998 de Amnistía Internacional.

que tradicionalmente la violencia es una práctica aceptada en Kenya y destacaron en consecuencia la necesidad de formar a la población, a lo que dedicaban muchas de sus actividades.

15. Según todos los interlocutores del Relator Especial, incluidos los no gubernamentales, desde que se estableció el sistema pluripartidista a principios de los noventa han disminuido mucho los casos de tortura de detenidos políticos. La Dirección de Seguridad, conocida como "División Especial", de la que se dice que torturaba a los oponentes políticos que mantenía en sus locales de Nyayo y Nyati, por ejemplo, ha quedado disuelta. De igual manera, desde mediados de los noventa no ha habido ningún informe reciente de que en las provincias occidentales se torturara a personas acusadas de apoyar o estar afiliadas al presunto movimiento de guerrillas de la oposición, Movimiento 18 de Febrero o Ejército de Resistencia del 18 de Febrero. No obstante, en varias ocasiones la policía ha hecho uso excesivo de la fuerza, al parecer secundada por miembros de la División Juvenil del KANU, contra manifestantes pacíficos y participantes en mítines políticos de la oposición (véase anexo). Se informa de que cada vez es más frecuente recurrir a pandillas patrocinadas por el Estado para disolver reuniones y asambleas de críticos del Gobierno. Al parecer, tanto el partido en el Gobierno como los de la oposición han creado sus propios grupos de seguridad civil. Según las organizaciones no gubernamentales, la mayoría de las víctimas de tortura o de otras formas de malos tratos son personas sospechosas de participar en asesinatos y robos a mano armada. Se dice que la tortura se emplea para conseguir confesiones y castigar. Dado que rara vez se emplean métodos modernos de investigación, la policía al parecer se vale de la tortura para conseguir información que le permita cerrar expedientes.

16. El Ministro de Estado encargado de la Defensa informó al Relator Especial de que rara vez se recurre al ejército para mantener el orden público, salvo en el norte de Kenya, zona especialmente infestada de bandidos y por la que al parecer se introducen en el país armas de contrabando. Según las organizaciones no gubernamentales el ejército y la policía han estado empleando la tortura como forma de castigo colectivo en esa parte del país. Al parecer se hacen redadas en las aldeas y sus habitantes son objeto de palizas, violaciones y ejecuciones sumarias (véase anexo). Cuando el ejército es el autor de los abusos, el Ministro indicó que se adoptan medidas rigurosas de conformidad con el reglamento militar. Por ejemplo, se informó al Relator Especial de que se estaba investigando el incidente ocurrido en mayo de 1999 en Marsabit, en el que al parecer algunos civiles fueron objeto de malos tratos (véase anexo).

17. El Relator Especial también recibió información según la cual la policía hace redadas de mendigos, mujeres, niños de la calle, migrantes y refugiados, que son objeto de detenciones en masa. Los solicitantes de asilo, en particular los oromos de Etiopía sospechosos de pertenecer o de apoyar al Frente de Liberación Oromo y los somalíes permanecen detenidos durante más tiempo del permitido, son maltratados y amenazados con ser devueltos por la fuerza a su país, donde podrían ser torturados o víctimas de otras violaciones de los derechos humanos. En las aglomeraciones urbanas suelen hacerse redadas y practicarse detenciones de niños de la calle. Al parecer, la policía los apalea, abusa de ellos sexualmente y los extorsiona. Se dice además que se los mantiene detenidos durante días o semanas y, cuando finalmente comparecen ante el juez, son acusados de vagabundeo o clasificados como personas "necesitadas de protección o disciplina". Se informa de que en Kenya hay más de 40.000 niños de la calle<sup>2</sup>, y al parecer

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<sup>2</sup> Véase Human Rights Watch, "Juvenile Injustice" (1997).

también los pobres son víctimas de la violencia policial. Se dice que la policía hace redadas y nocturnas sin mandamiento de registro en los barrios de chabolas y que concluye la operación apaleando a la gente, pidiendo dinero a cambio de la libertad y acosando sexualmente a las mujeres.

18. También se informó de que la violencia o justicia popular era un fenómeno que se daba en Kenya y que explicaron algunos funcionarios por la falta de confianza en la policía y en la administración de justicia. Al parecer en los últimos cinco años habían aumentado los incidentes de ese tipo en los centros urbanos. Las fuentes no gubernamentales sugirieron que lo que hacía la población era reproducir la conducta policial. Según la Comisión de Derechos Humanos de Kenya, en el primer semestre de 1999 más de 130 personas murieron a manos de las turbas<sup>3</sup>. Se decía que esta forma de violencia contaba con la aprobación tácita de la policía y que ésta se mostraba reacia a investigar los hechos.

19. Finalmente, el Relator Especial fue informado de que, desde enero de 1998, se había producido un recrudecimiento de los "enfrentamientos técnicos" de motivación política, en particular en los distritos de Laikipia y Nakuru, en la provincia de Rift Valley, zonas en las que se dice que un gran número de personas votaron contra el actual Gobierno en las elecciones generales de diciembre de 1997. Al parecer hubo más de 120 muertos y miles de desplazados. Por primera vez miembros de la comunidad kikuyu, el grupo más numeroso de población de Kenya (21%), entre los más de 40 grupos étnicos del país, respondieron a los ataques de manera organizada, lo que justificaron diciendo que las fuerzas gubernamentales no los habían protegido ni habían adoptado las medidas necesarias para castigar a los autores. Según la información recibida parece ser que las divisiones y disputas étnicas locales se atizan deliberadamente con fines políticos<sup>4</sup>. En 1998 se constituyó una comisión judicial de encuesta para examinar las causas de los enfrentamientos étnicos ocurridos en el país desde 1992.

#### B. Información sobre la policía

20. En su misión, el Relator Especial visitó las siguientes comisarías: en Nairobi, Kikuyu y Thika; en Nakura, Menengai y Njoro; y en Garissa, el cuartel general. La primera visita de un calabozo policial la hizo en la tarde del 22 de septiembre en la comisaría de policía de Kikuyu. Para empezar, los agentes de policía le permitieron acceder a las celdas y hablar con los detenidos, aunque no sin antes haber intentado infructuosamente ponerse en contacto con el oficial encargado de la comisaría y comprobar las credenciales de la delegación del Relator Especial. Transcurrida una hora aproximadamente apareció el oficial encargado e interrumpió al Relator, impidiéndole proseguir la visita. A pesar de las seguridades previas dadas por el Ministro de Estado encargado de los asuntos del interior y del comisionado de la policía de que se permitiría al Relator Especial pleno acceso a todos los calabozos de la policía y celebrar entrevistas confidenciales con los detenidos, el oficial encargado, tras consultar por teléfono con el oficial encargado del distrito policial, negó al Relator Especial el derecho a seguir la visita. El primero dijo que el segundo no había recibido ninguna orden de sus superiores acerca de la

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<sup>3</sup> Comisión de Derechos Humanos de Kenya, Quarterly/Human Rights, vol. 1, N° 2 (abril-junio de 1999), pág. 1.

<sup>4</sup> Véase Amnistía Internacional "Kenya: political violence spiral" (AFR.32/19/98).

visita y las condiciones en que se haría. No obstante el oficial encargado de la comisaría invitó al Relator Especial a volver al día siguiente por la mañana. El 23 de septiembre por la mañana, el equipo del Relator Especial volvió a la comisaría de policía de Kikuyu, y nuevamente el mismo oficial encargado le denegó el acceso. Tras este incidente, el comisionado de la policía nombró a un comisionado superior adjunto para que acompañara al Relator Especial en su misión y garantizara el acceso a todas las comisarías y calabozos. El Relator Especial quiere dar las gracias al comisionado adjunto, cuya cooperación le facilitó enormemente la tarea.

21. En la mayor parte de los calabozos que visitó el Relator Especial el problema del hacinamiento era grave. Los detenidos se quejaban de la falta de espacio y ventilación. Esta situación era patente en la comisaría de Kikuyu cuando la visitó el Relator Especial. En una de las tres celdas, que medía aproximadamente unos 15 m<sup>2</sup>, había detenidos 13 hombres. Según uno de ellos, que llevaba en la celda 12 días, unos días antes había habido hasta 40 personas detenidas en esa sola celda. Como las tres celdas estaban abarrotadas de hombres, 9 mujeres y 2 niños tenían que dormir sobre mantas en el exiguo pasillo que había entre las celdas y bajo la vigilancia directa de los policías de servicio, con lo cual se veían privadas de cualquier intimidad. En la comisaría de policía de Thika, según el registro de celdas, la capacidad de las cinco que había era de 150 detenidos. Cuando la visitó el Relator Especial estaban ocupadas por 129 personas. A pesar de no estar llenas hasta su capacidad oficial declarada, en ninguna de ellas, salvo en la que estaban encerradas las mujeres, podían acostarse los detenidos por la noche. Uno de ellos indicó que el día anterior había habido unas 40 personas detenidas en esa misma celda, mientras que cuando el Relator Especial la visitó sólo había 12, y que 3 se habían desmayado por falta de ventilación. Cuando visitó la comisaría el Relator, el 27 de septiembre, las dos celdas de la comisaría de Garissa estaban vacías. Cada una medía unos 10 m<sup>2</sup> y, según el registro de celdas, el 23 de septiembre había habido en ellas hasta 72 personas.

22. En ninguna de las celdas visitadas había mobiliario salvo mantas que se entregaban al parecer a los detenidos por la noche y algún que otro colchón de paja. La mayoría de los detenidos dormían sobre en el suelo de cemento. Hay que señalar que, aunque malolientes, todas las celdas visitadas estaban relativamente limpias. De hecho en la mayoría de los calabozos de la policía no había aseos y a los detenidos se les entregaba un cubo que, según ellos, se vaciaba con regularidad. Las posibilidades de baño eran muy escasas o nulas. En los patios de algunas comisarías había duchas rudimentarias; la mayor parte de las celdas no tenían suficiente ventilación ni luz.

23. Según las autoridades con las que se entrevistó en la visita a las comisarías de policía, se mantiene rigurosamente la separación entre las diferentes clases de detenidos. De hecho, en todos los calabozos en los que había mujeres cuando los visitó el Relator Especial, a saber Kikuyu, Thika y Njoro, las mujeres estaban separadas de los hombres. A los menores se los mantiene en general detenidos en las celdas de mujeres, pero no se separa a los detenidos según la gravedad del delito, y los reincidentes están mezclados con los delincuentes primarios.

24. Salvo en la comisaría de Thika, la mayoría de los detenidos entrevistados por el Relator Especial habían sido torturados o maltratados, y podía apreciarse que tenían señales recientes para corroborar lo que decían (véase anexo). En las oficinas del Departamento de Investigaciones Penales de las comisarías de Kikuyu, Njoro y Garissa, el Relator Especial pudo ver látigos, palos y mangueras que coincidían con la descripción de objetos semejantes dadas por las víctimas. No se dio ninguna explicación de por qué había semejantes instrumentos en los



despachos policiales. Algunos agentes dijeron que eran pruebas, pero ninguno de los instrumentos tenía etiquetas de identificación que pudieran convencer al Relator de la veracidad de la explicación.

25. El 27 de septiembre el Relator Especial visitó el cuartel general de la policía de Garissa en el que entonces había dos celdas vacías. No obstante, en el registro de celdas se indicaba que había habido 17 personas detenidas en ellas hasta la mañana de ese mismo día y que una persona había sido llevada al hospital, otra había sido trasladada a la comisaría de Thika, cinco habían sido puestos en libertad y nueve habían sido llamadas ante el juez. No había ninguna anotación junto al nombre del detenido Ali Mohammed Hassan (véase anexo), y ni los agentes de la policía presentes ni el oficial encargado del distrito policial pudieron dar al Relator Especial ninguna explicación sobre su paradero. El Relator Especial dijo al oficial encargado que quería que se le presentara a esa persona, ya que al parecer ni había sido puesto en libertad ni trasladada a la cárcel u otra comisaría. Varias horas después, agentes de la policía devolvieron al cuartel general a Ali Mohammed Hassan, quien informó al Relator Especial de que lo habían ocultado en el despacho del jefe, donde seguía detenido otro hombre llamado Abubakar Abdi Noor (véase anexo) cuyo estado de salud era crítico. Según el registro de celdas, Abubakar Abdi Noor había sido trasladado al juzgado el 27 de septiembre. Contrariamente a las anotaciones correspondientes a los sospechosos trasladados al juzgado, en este caso no se había anotado en el registro la hora del traslado. El Relator Especial dijo al oficial encargado que no abandonaría el cuartel de la policía sin ver a esa persona. A las 2.30 horas le fue presentado finalmente Abubakar Abdi Noor, sin que los agentes que se hallaban presentes dieran ninguna explicación, aunque sí admitieron que se había mantenido detenidos a aquellos dos hombres en el despacho del jefe. El Relator Especial opina que se ocultó a estas dos personas intencionadamente debido al trato a que habían sido sometidos y que otras podrían haber sido puestas en libertad o trasladadas a otros lugares por el mismo motivo. Esa opinión se vio corroborada por el hecho de que dos personas que habían estado detenidas en el cuartel general de Garissa y a las que se había trasladado a la cárcel de Garissa el 24 de septiembre, Issa Suko Abdi y Abdulrashid Hassan (véase anexo), al parecer fueron torturadas mientras permanecieron detenidas en el calabozo.

26. Finalmente, la persona trasladada al hospital (cuyo nombre no supo el Relator Especial) había sido detenida el 15 de septiembre bajo sospecha de robo con violencia. En esa fecha, según constaba en el registro de incidentes, sufrió una herida de bala en el brazo derecho, y según el mismo registro fue trasladado al hospital para recibir tratamiento el 23 de septiembre y devuelto a la celda el mismo día. A pesar de que, según el registro de celdas, había estado enfermo desde el 24 de septiembre, sólo se le trasladó al hospital general de Garissa el día que el Relator Especial visitó el cuartel general de la policía (27 de septiembre), y cuando al día siguiente lo visitó el equipo del Relator Especial en el hospital, su estado de salud no permitía entrevistarle. Según el médico que lo había operado, tenía vendadas las heridas que le había producido la infección, pero no se tenía previsto amputarle el brazo.

27. El Relator Especial elogió a todos los agentes de policía por el rigor con el que llevaban los registros de incidentes y de las celdas, a pesar de la existencia de graves discrepancias entre la situación real de los detenidos y las anotaciones de los registros. Según el Comisionado de la Policía, el oficial encargado de la comisaría verifica cada día esos registros y puede por tanto cerciorarse de si sus subordinados respetan las normas y adoptan las medidas disciplinarias procedentes. Además, al oficial encargado también debe visitar regularmente todas las celdas

para comprobar el estado de salud de los detenidos<sup>5</sup>. El Relator Especial opina que los oficiales de la policía encargados de la mayoría de las comisarías que visitó no cumplían debidamente sus deberes de supervisión o no habían tomado las medidas que correspondía.

1. Tortura agravada por denegación de tratamiento médico

28. El 22 de septiembre en la comisaría de policía de Kikuyu, el Relator Especial se entrevistó con dos muchachas, Mary Njeri (de 17 años) y Zippora Ndiko (de 15 años), quienes tenían los pies claramente hinchados y las piernas con muestras visibles de malos tratos, como heridas y hematomas (véase anexo). Al parecer habían sido detenidas el 17 de septiembre bajo sospecha de haber participado en el asalto a un automóvil y trasladadas a esa comisaría el 19 de septiembre. A pesar de sus peticiones y de su estado físico, en el registro de incidentes figuraba la anotación "al parecer en buen estado físico" junto a su nombre, y se les había negado tratamiento médico. El Relator Especial expresó su grave preocupación al oficial encargado y pidió que a las dos muchachas se les prestara de inmediato atención médica adecuada. El 28 de septiembre, con ocasión de su segunda visita a la comisaría de policía de Kikuyu, las dos muchachas le informaron de que después de irse él las habían hecho comparecer ante el oficial encargado para repetir lo que habían comunicado al Relator Especial y que se les dijo, al parecer, que, a pesar de la intervención de aquél, no se les iba a prestar asistencia, y se las devolvió a la celda sin que recibieran tratamiento médico. Hay que señalar que ambas muchachas estuvieron detenidas sucesivamente en tres comisarías distintas sin que en ninguna de ellas recibieran atención médica. Tras la segunda visita del Relator Especial, las autoridades de policía le dieron seguridades de que las dos muchachas recibirían prontamente asistencia médica apropiada.

29. En la comisaría de policía de Njoro, el Relator Especial observó que en la celda había por lo menos tres personas que necesitaban tratamiento médico urgente (véase anexo: expediente de Julius Odhiambo Odienja y otros), mientras que en casi todos los demás se podían apreciar a simple vista claras muestras de haber recibido malos tratos. Siete de ellos, incluidos los tres que preocuparon gravemente al Relator Especial, fueron detenidos los días 21, 22 y 23 de septiembre y trasladados a la comisaría donde al parecer fueron torturados, antes de que el 24 de septiembre fueran trasladados a la comisaría de Njoro. En el registro de celdas de esta última comisaría, figuraba junto a sus nombres la anotación "al parecer en buen estado físico", y en el registro de incidentes la anotación siguiente: "ingresaron todos con lesiones en cara y piernas y con manchas de sangre en la ropa. Se les practicó un registro e ingresaron en las celdas aquejados de dolores". Según el testimonio de los propios detenidos, en ningún momento los vio el oficial encargado de la comisaría. A petición del Relator Especial se llevó de inmediato al hospital a seis de los detenidos y se le prometió que se llevaría a otros a la mañana siguiente. Según la información recibida, en el momento en que el Relator Especial abandonaba el país, al parecer eran objeto de una investigación los oficiales encargados de las comisarías de Menengai y Njoro. En el momento de escribir el presente informe no se conocía todavía el resultado de estas investigaciones.

30. Estos dos incidentes graves, junto con la información recibida por el Relator Especial durante su misión, le inducen a creer que está justificada la preocupación de las organizaciones

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<sup>5</sup> Según el Comisionado de la Policía el oficial encargado de la policía de distrito visita periódicamente las celdas y el oficial de división lo hace una vez al año.

no gubernamentales y de ciertos médicos particulares en cuanto a la falta de voluntad de los oficiales de la policía de prestar tratamiento médico a los detenidos que lo necesitan.

2. La brigada móvil

31. Según la información recibida de fuentes no gubernamentales, la brigada móvil, dependencia cuya constitución no se hizo por ley explícita, se creó en 1995 para responder a la gran proliferación de asaltos de vehículos en los centros urbanos, especialmente en Nairobi. Los agentes que la forman proceden del Departamento de Investigaciones Penales y de la Dependencia de Servicios Generales y tienen su base en la comisaría de policía de Pangani, en Nairobi, y en la comisaría de Makuyu, en el distrito de Thika. Tanto antes como durante la visita (véase anexo), el Relator Especial fue informado de muchos casos de tortura, con la participación de agentes de la brigada móvil. Se dice que el Inspector Jefe de esa brigada (cuyo nombre conoce el Relator Especial) ha intervenido en muchos de esos casos. Según la información recibida, a los detenidos por la brigada móvil se los mantiene incomunicados en las comisarías por períodos prolongados de tiempo, ya que la policía dice que esos detenidos no están bajo su jurisdicción y, en consecuencia, no permite a nadie ponerse en contacto con ellos.

32. En relación con la brigada móvil, el Ministro de Estado Encargado de Asuntos del Interior destacó la dificultad de su tarea, que consiste en detener a delincuentes muy violentos, y manifestó su satisfacción por la forma en que cumplían su misión, aunque no dejó de reconocer la posibilidad de que algunas personas inocentes hubieran sufrido daños de manera involuntaria. Añadió que se habían impuesto medidas disciplinarias a algunos agentes de la brigada móvil.

3. La policía administrativa

33. Según información recibida de las organizaciones no gubernamentales, la policía administrativa, que presta asistencia a la policía nacional y ejerce sus funciones a las órdenes de los jefes, oficiales de distrito y, como máxima autoridad, de los comisionados provinciales, también suele practicar detenciones. No obstante, el Comisionado Provincial de Nakuru explicó al Relator Especial que, en la práctica, la policía administrativa actúa bajo el mando del oficial de la policía provincial y, aunque tiene competencia para detener a sospechosos, su obligación es llevarlos de inmediato a la comisaría más próxima, ya que sólo la policía nacional tiene competencia para practicar detenciones. Se dice, no obstante, que a los detenidos se los suele llevar al despacho del jefe o del oficial de distrito donde se los retiene de manera arbitraria y, según la información recibida por el Relator Especial, también son torturados (véase anexo). Cabe señalar a este respecto que en Garissa, las dependencias del jefe se utilizaron para ocultar del Relator Especial a dos personas (véase el párrafo 25 supra). Además, se dice que los jefes y los oficiales de distrito suelen celebrar "simulacros de juicio" en los que se imponen multas a los detenidos y, en el caso de que no puedan pagarla, la policía administrativa suele recurrir a la violencia física.

34. Las autoridades provinciales de Nakuru indicaron al Relator Especial que, por falta de medios de transporte, no siempre la policía administrativa puede trasladar de inmediato a las personas a la comisaría, sobre todo en zonas remotas. Reconocieron que era posible que a algunas personas se las hubiera hecho pasar la noche en el despacho del jefe o del oficial de distrito. Pero señalaron que el jefe u oficial de distrito que retuviera a alguien como sospechoso durante más de 24 horas incurriría en medidas disciplinarias. Según el Procurador General, las

detenciones practicadas por la policía administrativa constituyen abuso de autoridad, y el Secretario Permanente de Seguridad Interna indicó que en el pasado se habían impuesto a jefes y oficiales de distrito medidas disciplinarias por abuso de autoridad. No se mencionó ningún caso concreto. Según la mayor parte de los interlocutores oficiales, el hecho de que la policía administrativa deba comunicar cada 12 horas al oficial de policía provincial el número de personas arrestadas es garantía suficiente de que la policía administrativa no detendrá a nadie de manera arbitraria.

35. Al parecer, es la policía nacional la que atiende las denuncias contra la policía administrativa. De manera más general, las denuncias contra las autoridades provinciales se remiten siempre a las autoridades nacionales. Por ejemplo, a raíz del incidente de Eldoret ocurrido en abril de 1999, en el que falleció Mwaniki Gitari (véase anexo), al parecer como consecuencia de actos de tortura, el abogado del Estado que representaba al Procurador General a nivel provincial ordenó practicar una investigación. En el momento de escribir el informe sigue sin conocerse el resultado.

### C. Información sobre las prisiones

36. No corresponde al mandato del Relator Especial la descripción y estudio exhaustivos de las condiciones de detención. No obstante, al igual que en sus visitas a otros países, aprovechó su presencia en Kenya para visitar la cárcel de Nakuru y la prisión del Estado de Garissa, sobre todo para hablar con personas que pudieran dar testimonio del trato recibido antes de su traslado a la cárcel. El Relator lamenta que no se le permitiera visitar la prisión de máxima seguridad de Kamiti, a pesar de la petición oficial que hizo y que aceptó el Comisionado de Prisiones, y de haber esperado durante dos horas a la puerta de dicha cárcel.

37. Todas las organizaciones no gubernamentales se quejaron de la falta de acceso a las cárceles, a pesar de que la Ley de prisiones no prohíbe explícitamente que los miembros de la sociedad civil entren en ellas, motivo por el cual fue escasa la información facilitada al Relator sobre las condiciones de reclusión. Al parecer, hasta los abogados tienen dificultades para entrevistarse con sus clientes y, cuando lo consiguen, se les exige permanecer en una sala determinada, sin que puedan inspeccionar las condiciones de reclusión. Los jueces deben visitar las cárceles periódicamente, pero parece ser que rara vez lo hacen y, por ejemplo, según el registro que pudo ver el Relator Especial, las últimas visitas de un juez a la prisión del Estado de Nakuru tuvieron lugar el 3 de diciembre de 1998 y el 23 de octubre de 1995.

38. El Comisionado de Prisiones indicó al Relator Especial que le complacería mantener contactos con organizaciones no gubernamentales kenyanas. Dijo que se habían distribuido ampliamente en las cárceles folletos sobre los derechos de los reclusos editados por esas organizaciones y negó la información de que las organizaciones no gubernamentales no tuvieran acceso a las cárceles. Dijo que si las organizaciones no gubernamentales extranjeras podían entrar en ellas, como así era, no veía ningún motivo para que se negara el acceso a las organizaciones locales. Según la información recibida de las organizaciones no gubernamentales internacionales, ni siquiera ellas podían visitar las cárceles de Kenya, a pesar de haber cursado varias solicitudes en ese sentido.

39. Según fuentes no gubernamentales, para los presos es un problema conseguir medicamentos. La mayoría de las enfermerías de las prisiones disponen de muy escasos

recursos, lo que afecta tanto la cantidad como la calidad de los medicamentos dispensados. Cuando por fin reciben los presos medicamentos se les suele obligar a pagarlos y, caso de que ni ellos ni sus familiares puedan pagarlos, se les deniega el tratamiento o se les da un tratamiento insuficiente. El Relator Especial también recibió información de que, por los motivos antedichos era insuficiente la medicación administrada que podía consistir meramente en analgésicos, y eso, para tratar lesiones que exigían un tratamiento mucho más intensivo.

40. En cuanto a la supuesta falta de atención médica, el Comisionado de Prisiones indicó que cada prisión cuenta con un dispensario y centro de salud. El personal médico de las prisiones depende del Ministerio de Salud (el resto del personal depende del Ministerio del Interior) pero, como indicó el Comisionado, muy pocas cárceles, fuera de Nairobi, cuentan con un médico, y dependen del oficial médico de distrito. Según las organizaciones no gubernamentales, este último visita a los presos sólo muy de tarde en tarde. Según el Comisionado, a todos los reclusos se les presta atención médica gratuita. Subrayó que cuando había surgido la necesidad, el Ministerio del Interior había aportado fondos de emergencia para medicamentos, y el médico que estuvo presente en la visita del Relator Especial a la prisión del Estado de Nakuru dijo que no había escasez de medicamentos.

41. Hay que señalar que en el reglamento de prisiones se dispone el examen médico de los presos en diversas ocasiones: "a) al ingresar en prisión;... c) antes de recibir castigos corporales o de otra índole que puedan afectarles a la salud, para certificar si el preso está en condiciones de sufrir el castigo [y] ... e) antes de ser puestos en libertad"<sup>6</sup>. El artículo 26 del Reglamento dice que "el médico encargado examinará a cada preso por lo menos una vez al mes [y]... d) inspeccionará toda la prisión por lo menos una vez al mes y prestará particular atención al equipo de cocina y equipo sanitario". No obstante, según los reclusos, esas normas no se observaban.

42. En cuanto a los castigos corporales impuestos por las autoridades penitenciarias como sanción disciplinaria<sup>7</sup> (lo que es compatible con la prohibición de la tortura conforme a la Constitución -véase el párrafo 52 más adelante), el Comisionado de Prisiones indicó que en los últimos diez años no había tenido oportunidad de confirmar ninguna recomendación de imponer castigos corporales por faltas disciplinarias (confirmación que sería necesaria a tenor del párrafo 2 del artículo 55 de la Ley de prisiones). Se indicó al Relator Especial que este tipo de castigo debía aplicarse en presencia de un médico (véase el párrafo 41 supra). El Comisionado

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<sup>6</sup> Párrafo 1 del artículo 24 del reglamento de prisiones de Kenya.

<sup>7</sup> El párrafo 3 del artículo 51 de la Ley de prisiones de 1967 dice que "el recluso que tras la investigación correspondiente fuere declarado por una autoridad superior o administrativa "culpable de falta disciplinaria grave" podrá ser sancionado con "a) un castigo corporal consistente en azotes que no excedan del número fijado". En los artículos 54 (examen médico) y 55 (número de azotes) se establecen las condiciones en que puede aplicarse el castigo corporal en las cárceles. Según el párrafo 2 del artículo 55, el Comisionado podrá confirmar la sentencia, aumentarla o reducirla o sustituirla por cualquier otro castigo que tenga autoridad para imponer. En el párrafo 5 del artículo 55 se dice que no se infligirá castigo corporal a las mujeres reclusas, a los presos civiles o a los condenados a muerte.

de Prisiones también informó al Relator Especial de que desde 1985 se observaba una moratoria en la aplicación de la pena de muerte<sup>8</sup>.

43. En Kenya hay 78 prisiones con capacidad para 15.000 reclusos, en las que, según la información aparecida recientemente en los medios de comunicación, hay reclusos en la actualidad 50.000 presos<sup>9</sup>. El Comisionado de Prisiones reconoció que el hacinamiento y el suministro de agua potable eran los principales problemas del sistema penitenciario de Kenya. Indicó que el hacinamiento se veía agravado por las demoras en la administración de justicia, cuyo resultado era el mantener a numerosos presos en detención provisional, y por la falta de fondos. También señaló que los oficiales de prisiones habían recibido capacitación en derechos humanos y opinaba que, aunque podían darse casos aislados de violación de los derechos humanos en las cárceles, ya se habían adoptado las medidas necesarias para solventar cualquier posible violación de los derechos humanos dentro del sistema.

44. Cuando el Relator Especial visitó la prisión del Estado de Nakuru había en ella 500 reclusos, siendo de 600 su capacidad oficial. El Comisionado Provincial de Prisiones y el director de la prisión mencionada le indicaron que en diciembre de 1998 había llegado a haber hasta 800 presos. No obstante, no se permitió al Relator Especial consultar el registro de celdas de la cárcel. Las autoridades de la prisión le dijeron que el despacho en que se guardaba estaba cerrado y que los sábados no abría. En el edificio de documentación el Relator Especial pudo ver un encerado en el que estaba escrito: "presos convictos: 893; en prisión preventiva ordinaria: 327; en prisión preventiva por delitos penados con la pena capital: 84; por robo con violencia: 74; deudores civiles: 2; por cuestiones de seguridad: 4; total: 1.384". El director explicó que estas estadísticas se referían al número de detenidos en la prisión desde principios de mes, lo que significaba que se había trasladado o puesto en libertad a más de 800 personas, ya que al parecer entonces sólo había 500 detenidos. Según el testimonio de los detenidos y la información facilitada por las organizaciones no gubernamentales, muchos presos, posiblemente 400, habían sido trasladados a otras cárceles tres días antes de la visita del Relator y 100 fueron trasladados al parecer a las 01.00 horas anterior a la visita. Varios detenidos indicaron que de esta manera el número de personas que había en su pabellón se había reducido a la mitad. Cuando el Relator Especial les hizo preguntas sobre el posible traslado de presos antes de su visita, las autoridades respondieron que esos traslados tenían lugar todas las semanas. Al Relator Especial no le cabe ninguna duda de que la información que le dieron los detenidos, que no tenían motivos para esperar que los interrogara, y las organizaciones no gubernamentales, era más verosímil que las explicaciones del director.

45. Las autoridades de la provincia nororiental dijeron que no había problemas de hacinamiento en las tres cárceles de la provincia: Garissa, Wajir y Mandera. Indicaron que el problema de la delincuencia lo abordaba cada comunidad, lo que tal vez explicaba por qué en las cárceles del noreste no había hacinamiento. Cuando la visitó el Relator Especial, había en la prisión de Garissa 350 reclusos, lo que correspondía al parecer a su capacidad oficial.

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<sup>8</sup> Según Amnistía Internacional, las últimas ejecuciones no anunciadas oficialmente, tuvieron lugar en 1986 (véase el Informe Anual de 1986).

<sup>9</sup> Según Amnistía Internacional, a finales de 1996 la población penitenciaria era de 41.000 reclusos (Informe Anual de 1997).

46. Conforme al artículo 5 del Reglamento de prisiones "se dispondrá lo necesario en todas las cárceles para que, en la medida de lo posible, las distintas categorías de presos estén en todo momento separadas". Esas categorías son: los menores, que comprende a los convictos menores de 17 años aparentes, la clase Star, formada por los delincuentes primarios y los presos de buen comportamiento, la clase ordinaria, que comprende a todos los demás presos convictos de delito y la clase de no convictos formada por los detenidos provisionales. Además, a los condenados a más de cinco años de cárcel se los traslada a las prisiones de máxima seguridad. Todos los agentes entrevistados por el Relator Especial indicaron que las distintas categorías de presos estaban claramente separadas: los varones de las mujeres, los adultos de los menores y los provisionales de los convictos. (Según la información recibida, los detenidos en prisión preventiva permanecen generalmente en prisión, aunque la policía puede pedir a los jueces que les permita mantenerlos en su custodia para que el detenido pueda colaborar en la investigación.) En su visita a las cárceles el Relator Especial pudo ver que, de hecho, se cumplía esta norma de separación.

47. La prisión del Estado de Nakuru está dividida en nueve galerías para convictos. Todas estaban muy limpias y había en cada una 17 colchones, y encima de ellos una manta doblada. También había un libro de oraciones e incluso una flor en la mayoría de los colchones. En algunas celdas se reservaba al parecer un colchón para los musulmanes. Se explicó al Relator Especial que los presos compartían colchones y que, a pesar de las peticiones de las autoridades carcelarias, no había bastantes para todos los presos. En todas las galerías había instalaciones sanitarias muy limpias, incluso una ducha. En todas había asimismo rollos nuevos de papel higiénico y jabón. Todos los presos llevaban uniformes limpios y los que cumplían prisión preventiva vestían ropas civiles. Hay que señalar que los detenidos en prisión preventiva por delitos penados con la pena capital también vestían uniforme, a pesar de que había que considerarlos inocentes hasta que fueran declarados culpables. Las autoridades de la prisión justificaron la medida por el hecho de que, muy probablemente, esos detenidos iban a permanecer internados por un período más largo que los detenidos en prisión preventiva.

48. En la prisión de Nakuru el Relator Especial visitó también la biblioteca, en la que al parecer unos 80 presos habían asistido a clase desde enero de 1999; el taller, en el que al parecer unos 10 presos fabricaban artículos de madera para su venta en el exterior; y el dispensario, donde había un enfermero durante las 24 horas del día y donde había medicamentos a disposición de los reclusos. En un pabellón separado estaban los presos enfermos, en particular los tuberculosos: cuando los visitó el Relator Especial había 22 internos. Siete sospechosos menores estaban detenidos en el edificio de documentación ya mencionado. Dos muchachos, de edades respectivas de 14 y 15 años indicaron que antes de que se los trasladara a esa cárcel habían estado en el cuartel general de la policía de Nakuru y en la comisaría de Ravin durante 11 y 20 días acusados de vagabundeo y hurto, respectivamente. Aunque al primero ya se le había hecho comparecer ante el juez, no era ese el caso del segundo. Al parecer, no se había informado de su detención a las familias respectivas.

49. El Relator Especial también visitó el pabellón de mujeres de la prisión de Garissa, cuyas galerías estaban totalmente separadas de las de los hombres. Todos los guardianes eran mujeres, incluida la oficial a cargo del pabellón. Cuando hizo la visita, había 50 reclusas convictas que compartían 22 colchones en dos galerías y 56 detenidas en prisión preventiva que compartían 16 colchones en dos galerías. Al menos seis mujeres tenían con ellas a sus hijos.

50. Todos los presos entrevistados en la prisión del Estado de Garissa fueron seleccionados al azar por el Relator Especial, y hay que destacar que todos tenían miedo de posibles represalias de los guardianes. De hecho, se les advirtió que no hablaran de las condiciones de detención. No obstante, mencionaron el hecho de que se habían introducido cambios recientemente con motivo de la visita del Relator. Por ejemplo, el día de la visita había mejorado mucho la calidad de la comida: al plato habitual de "ugali" (maíz con agua) se le habían añadido verduras. Las autoridades de la cárcel lo negaron. En cuanto a la comida, las autoridades confirmaron que la ración de los detenidos en prisión preventiva era sólo la mitad de la que recibían los convictos, lo que se justificó por el hecho de que los primeros no trabajaban. Según fuentes no gubernamentales, por esta razón algunos detenidos en prisión preventiva se declaran culpables para recibir una ración completa. Según los detenidos, casi siempre la comida tenían que comprársela a los cocineros. El acceso al agua, y especialmente al agua potable, también era al parecer, según las autoridades de la cárcel y los detenidos, un problema continuo. Y a pesar de haberse recibido nuevos colchones, el problema del hacinamiento parecía agudizarse por la noche. Según varios presos, eran tantas las personas que había en sus galerías respectivas que nadie podía moverse.

51. Finalmente, el Relator Especial también visitó las casas de los guardianes, donde pudo apreciar las precarias condiciones de alojamiento del personal de prisiones.

#### D. Los castigos corporales

52. Con respecto a los castigos corporales ordenados por el tribunal como parte de una sentencia<sup>10</sup>, según el párrafo 2 del artículo 74 de la Constitución de Kenya no son incompatibles con la prohibición de la tortura a que se refiere el párrafo 1 del mismo artículo. El Procurador General indicó que en julio de 1999 se había presentado una moción en el Parlamento para abolir el párrafo 2 del artículo 74. Se mostró de acuerdo con el Relator Especial en que el castigo corporal no es compatible con la prohibición de la tortura y otros tratos o penas crueles, inhumanos o degradantes<sup>11</sup>. No se facilitó al Relator ninguna información, concretamente estadísticas, sobre la frecuencia de tales castigos.

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<sup>10</sup> En el Código Penal de 1970 se hace una relación de las faltas por las que podrá imponerse un castigo corporal además de la pena de cárcel, como la violación (art. 140), la agresión sexual a una mujer (párr. 1, art. 144), el vivir, tratándose de un varón, de las ganancias proporcionadas por la prostitución (art. 153), "los actos deshonestos entre varones" (art. 165), la agresión que cause daño corporal (art. 251) y la muerte de un animal con intención de robo (art. 289). Además, en el Código Penal se impone también el castigo corporal por los siguientes delitos: el robo de vehículos de motor (art. 278 A), el hurto a personas, en viviendas, etc. (art. 279), el robo (párr. 1, art. 296), la tentativa de robo (párr. 1, art. 297), el robo con escalo (párr. 2, art. 304) y la preparación armada de un delito grave (párr. 1, art. 308).

<sup>11</sup> Véase en los párrafos 9 a 11 un análisis de la cuestión del castigo corporal (E/CN.4/1997/7).



53. El Reglamento de la educación (disciplina escolar) de 1972, promulgado en aplicación de la Ley de educación de 1968, autoriza el castigo corporal en las escuelas, aunque con algunas restricciones. Pueden imponerse castigos corporales "por negligencia continua o grave en el trabajo, por mentir, por intimidar a los compañeros, por insubordinación grave, por indecencia, por faltas de asistencia y por otros hechos parecidos" (art. 11). El artículo 13 dispone que sólo se podrá emplear una vara o palmeta para dar azotes en las nalgas, o una correa "no más estrecha de pulgada y media" en la palma de la mano, y que los profesores no podrán administrar más de seis golpes como castigo. En los artículos 12 y 14 se fijan otras condiciones que han de cumplirse para poder infligir castigos corporales. Según el artículo 12 sólo podrán administrarse ante el jefe de estudios o el director de la escuela y tras haberse hecho una averiguación completa, y nunca en presencia de otros alumnos". El artículo 14 dispone que en todos los casos se llevará un registro de los castigos corporales infligidos. El manual de directores de escuelas de enseñanza media (1987), editado por el Ministerio de Educación, dice también que los castigos no han de imponerse para "maltratar o humillar al alumno", y que deben "ser proporcionados a la falta" y estar adaptados al "niño de que se trate". Además, los maestros deben "discutir con los padres y alumnos cuando sea necesario".

54. A pesar de las diferentes salvaguardias que contiene la legislación de Kenya y de algunas declaraciones del Ministro de Educación para disuadir del empleo de la vara, el Relator Especial recibió información sobre numerosos casos en que el castigo corporal en las escuelas rebasó las disposiciones del Reglamento de educación (disciplina escolar) de 1972, lo que a veces tuvo consecuencias graves para la integridad mental y física del niño (véase anexo). Según la información recibida, los alumnos tampoco suelen recurrir para que se apliquen a los maestros medidas disciplinarias en caso de abusos, por temor a recibir otros castigos o a verse excluidos de la enseñanza, y porque cuando trataron de recurrir, rara vez tuvieron éxito.

55. Según la información recibida, los maestros recurren de ordinario al castigo corporal en las escuelas por una serie de actos por los que, conforme al Reglamento de educación (disciplina escolar) de 1972, no debería imponerse, como la falta de rendimiento escolar ocasional por parte de un alumno o de toda la clase o por faltas disciplinarias leves. Además, a menudo los maestros imponen los castigos sin respetar los límites del reglamento, ya sea dando más azotes de los permitidos, empleando objetos no autorizados, como varas de bambú o de madera o fustas de goma, o dando además al niño bofetadas, puñetazos o patadas con resultados que van de los cardenales al daño psicológico y a las lesiones graves como fractura de huesos, hemorragias internas, rotura de dientes y agravamiento de enfermedades que ya tuvieran. En algunos casos, al parecer, los castigos corporales llegaron a causar incluso la muerte del alumno (véase anexo).

56. El Relator Especial ha dicho ya con anterioridad que "los castigos corporales son incompatibles con la prohibición de la tortura y otros tratos o penas crueles, inhumanos o degradantes"<sup>12</sup>, y toma nota de la Observación general del Comité de Derechos Humanos de que "la prohibición debe hacerse extensiva a los castigos corporales, incluidos los castigos excesivos impuestos por la comisión de un delito o como medida educativa o disciplinaria"<sup>13</sup>. Puesto que esos castigos están previstos en la ley, con lo que el Estado incurre en responsabilidad, y

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<sup>12</sup> E/CN.4/1997/7, párr. 6.

<sup>13</sup> Comité de Derechos Humanos, Observación general N° 20.

dado que manifiestamente en las escuelas de Kenya se recurre en exceso a esos castigos, el Relator Especial no duda en pedir que se deroguen inmediatamente las normas en cuestión y que se actúe con diligencia, mediante acciones penales, contra el personal docente por agresión o, en su caso, por lesiones, como resultado de estos incidentes.

## II. LA PROTECCIÓN DE LOS DETENIDOS CONTRA LA TORTURA

### A. Cuestiones legales

57. El 21 de febrero de 1997, Kenya ratificó la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes de 1984. El artículo 74 de la Constitución dispone que "nadie será sometido a torturas ni a penas inhumanas o degradantes ni a otros tratos semejantes". Sin embargo, no existe ninguna disposición explícita sobre la tortura en el Código Penal ni en el Código de Procedimiento Penal. No obstante, en noviembre de 1997 se modificaron los párrafos 2) y 3) del artículo 14(A) de la Ley de policía, en los siguientes términos: "2) Ningún agente de policía someterá a nadie a torturas ni a tratos crueles, inhumanos o degradantes. 3) Todo agente de policía que contravenga las disposiciones de este artículo incurrirá en un delito grave". Según el Fiscal General, las disposiciones del capítulo V de la Constitución, titulado "Protección de los derechos fundamentales y las libertades de la persona", deberían definirse más claramente para ajustarse a los instrumentos internacionales. Señaló que esta era una de las principales tareas asignadas a la comisión encargada de revisar la Constitución de Kenya.

58. Debe señalarse que el artículo 84 1) dispone que si una persona alega que alguna de las disposiciones de los artículos 70 a 83, que garantizan los derechos y las libertades fundamentales de la persona, "ha sido, está siendo o es posible que sea infringida en perjuicio suyo (o, en el caso de una persona detenida, si otra persona denuncia una infracción en perjuicio de la persona detenida), en tal caso, sin perjuicio de cualquier otra acción relativa a la misma cuestión prevista por la ley, esa persona (o esa otra persona) podrá solicitar reparación al Tribunal Supremo". El párrafo 2 de ese mismo artículo dispone que el Tribunal Supremo "podrá dictar órdenes, emitir mandatos y cursar las instrucciones que considere oportunas para exigir o garantizar el cumplimiento de cualquiera de las disposiciones de los artículos 70 a 83". Por último, según el párrafo 5 de ese mismo artículo, el Parlamento "b) dispondrá i) la concesión de asistencia económica a todo ciudadano indigente de Kenya cuyos derechos en virtud de este capítulo se hayan infringido, o para permitirle contratar los servicios de un abogado para defender sus intereses". Sin embargo, según la información recibida, el Tribunal Supremo ha decidido que no tiene competencia para exigir el cumplimiento de las disposiciones sobre derechos humanos del capítulo V de la Constitución<sup>14</sup>.

59. Según la información recibida de fuentes no gubernamentales y reunida por el Relator Especial durante su visita a los calabozos de la policía, a menudo se detiene a personas por períodos prolongados sin presentarlas ante un juez, a pesar de que el párrafo 3 del artículo 72 de la Constitución establece que "una persona arrestada o detenida... y que no sea puesta en

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<sup>14</sup> Amnistía Internacional, "Kenya - Violation of Human Rights - Communications between Amnesty International and the Government of Kenya", (AFR 32/27/97), pág. 9.

libertad, deberá ser presentada ante un tribunal tan pronto como sea razonablemente posible, y si no se la presenta ante un tribunal a las 24 horas de su detención o del inicio de su detención, o a los 14 días de su arresto o detención cuando sea arrestada o detenida bajo sospecha razonable de que ha cometido o está a punto de cometer un delito punible con la pena de muerte, la carga de la prueba de que la persona arrestada o detenida ha sido presentada ante un tribunal tan pronto como sea razonablemente posible recaerá sobre la persona que alegue que se han cumplido las disposiciones de este apartado". Se consideran delitos punibles con la pena de muerte la traición, el juramentarse para cometer delitos punibles con la pena de muerte, el asesinato y el robo con violencia o el intento de robo con violencia<sup>15</sup>. La mayoría de las personas detenidas bajo sospecha de robo entrevistadas por el Relator Especial estaban registradas como sospechosas de robo con violencia, lo que por lo tanto permitía legalmente a la policía retenerlos durante un máximo de 14 días. Según la explicación de algunos oficiales de policía, únicamente la investigación podría determinar si el robo se había cometido con violencia o no. La definición de robo con violencia es la siguiente: "Si el delincuente está armado con un arma o instrumento peligroso u ofensivo, o está acompañado de una o más personas, o si, en el momento inmediatamente anterior o inmediatamente posterior al robo hiere, golpea, ataca o utiliza cualquier otro tipo de violencia personal contra cualquier persona, será condenado a muerte". El Relator Especial considera que la policía había clasificado un gran número de casos en la categoría de "robo con violencia" únicamente para poder retener legalmente a los interesados durante un período superior a las 24 horas habituales. Según las organizaciones no gubernamentales y los testimonios recogidos por el Relator Especial, durante este período inicial de detención es cuando los detenidos corren el riesgo de sufrir torturas y otras formas de malos tratos. Además, según muchos testimonios recogidos por el Relator Especial, se detiene a las personas únicamente sobre la base de la denuncia de un ciudadano. El Relator Especial también ha recibido información según la cual a menudo se producen arrestos masivos a final de mes, cuando la gente ha recibido su sueldo. Se dice que estos arrestos se llevan a cabo con el fin de obtener sobornos.

60. Según varios interlocutores no gubernamentales, especialmente abogados, el párrafo 3 del artículo 72 de la Constitución es demasiado vago: la expresión "como sea razonablemente posible" ofrece un resquicio legal que, según se informa, la policía utiliza regularmente para retrasar la presentación de la persona ante el tribunal. En este sentido, las organizaciones no gubernamentales y los detenidos con los que se reunió el Relator Especial afirmaron que a menudo se detenía a las personas a última hora de un viernes y se las retenía durante el fin de semana antes de presentarlos ante un juez, o bien se las trasladaba de una comisaría a otra, de modo que técnicamente eran puestos en libertad y luego se les volvía a detener durante un nuevo período de 24 horas. El Fiscal General señaló que, en una declaración de gran alcance, el Presidente del Tribunal Supremo había decidido que los tribunales podrían trabajar los sábados con el fin de cumplir la exigencia de las 24 horas. También se ha establecido un sistema de jueces de guardia durante los fines de semana. Sin embargo, las organizaciones no gubernamentales afirman que en la mayoría de los casos es difícil ponerse en contacto con estos jueces. Además, debe señalarse que los oficiales de policía entrevistados por el Relator Especial señalaron que, según creen entender, los fines de semana y las vacaciones no se incluyen en el período de 24 horas o de 14 días. Sin embargo, según el Presidente del Tribunal Supremo, si una

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<sup>15</sup> Artículos 40, 60, 220 y 296 2) del Código Penal, respectivamente.

persona ha sido retenida durante casi 14 días, la mayoría de los magistrados solicitarán automáticamente una investigación, teniendo en cuenta el período pasado bajo custodia policial. No obstante, según las organizaciones no gubernamentales y los abogados informaron de que esto ocurría muy raras veces. Por último, debe señalarse que las acciones de hábeas corpus, que pueden invocarse para garantizar que un detenido sea presentado ante el tribunal, son costosas y únicamente están al alcance de los pocos que pueden permitirse un abogado.

61. También, las organizaciones no gubernamentales señalaron a la atención del Relator Especial la vaguedad del artículo 36 del Código de Procedimiento Penal, que establece que "cuando una persona ha sido detenida sin un mandamiento judicial por un delito distinto del asesinato o traición, el oficial a cargo de la comisaría de policía a la que se haya llevado a la persona podrá en cualquier caso y deberá, si no parece posible presentar a esa persona ante un tribunal inferior competente en el plazo de 24 horas después de su detención, investigar el caso y, a menos que el delito le parezca de naturaleza grave, deberá poner en libertad a la persona si ésta presta una fianza con o sin aval... pero si se mantiene detenida a esa persona, deberá ser presentada ante un tribunal inferior lo antes posible". Según la información recibida por el Relator Especial, se prestaba fianza en muy pocos casos. A juicio del Relator Especial, bastantes personas con las que se reunió en los calabozos de la policía podrían haberse beneficiado de esas fianzas. También se alegó que los fiscales se oponían a la libertad condicional basándose en que las investigaciones no se habían concluido.

62. Según el artículo 26 de la Ley sobre las pruebas "[una] confesión o cualquier admisión de un hecho que tienda a probar la culpabilidad realizada por el acusado no será admisible en un proceso penal si el tribunal considera que la confesión o la admisión ha sido provocada mediante coacción, amenaza o promesa relativa a los cargos contra la persona acusada...". Se ha afirmado que esta disposición queda debilitada por el artículo 31 de la misma ley, que establece que "sin perjuicio de las disposiciones de la sección 26... cuando se presenta un hecho descubierto como resultado de la información obtenida de una persona acusada de un delito, la parte de esa información, ya se trate o no de una confesión, que se refiera claramente al hecho descubierto podrá considerarse como prueba". No obstante, el Presidente del Tribunal Supremo destacó que el término "podrá" otorga a los jueces un poder discrecional con respecto a la admisión de la información obtenida de manera viciada. Además, indicó que en el caso de "pruebas sospechosas", los fiscales no deberían dirigirse al tribunal, sino solicitar más información, ya que saben que el tribunal no aceptará en una declaración forzada o una información obtenida mediante una confesión forzada. Expresó la opinión de que los jueces de Kenya verificaban con especial cuidado las circunstancias en que se obtenía una confesión y si los sospechosos habían sido tratados correctamente cuando se encontraban bajo custodia de la policía.

63. Según fuentes no gubernamentales, a menudo se condena a los sospechosos a raíz de confesiones obtenidas bajo tortura. En la práctica, las personas cuyas condenas se basan en confesiones obtenidas bajo tortura disponen de pocos o de ningún recurso judicial para que se anulen sus condenas, a pesar de las prohibiciones constitucionales y legales sobre el uso de la tortura en cualquier circunstancia. Las fuentes no gubernamentales también dicen que en los procedimientos judiciales no suelen pedirse testimonios médicos. La mayoría de los sospechosos no están representados por un abogado y, por lo tanto, no denuncian el tratamiento al que han sido sometidos al no conocer los procedimientos disponibles para denunciarlo.

64. Según el Fiscal General, no es necesario que las confesiones sean corroboradas por otras pruebas para que el tribunal las acepte. Varios interlocutores señalaron a la atención del Relator Especial la posibilidad de modificar el artículo 28 de la Ley sobre las pruebas<sup>16</sup> a fin de limitar esta disposición a las confesiones hechas en presencia de un juez. Como señaló el Presidente del Tribunal Supremo, esa modificación exigiría un aumento considerable del número de jueces. Por el momento, el Presidente del Tribunal Supremo dijo que no se recurría al apartado a) del artículo 28.

#### B. Acceso a los detenidos

65. Los abogados también se quejan de que a menudo se les niega el acceso a sus clientes detenidos en prisión preventiva o en la cárcel, incluso cuando cuentan con una orden judicial. No existe ninguna disposición clara en la legislación, pero las organizaciones no gubernamentales y el Fiscal General reconocieron que, sobre la base del capítulo V de la Constitución, los abogados tienen legalmente derecho a ponerse en contacto inmediatamente y sin obstáculos con sus clientes en cualquier momento. Al parecer la policía y los funcionarios de prisiones hacen caso omiso de esta garantía. Por ejemplo, se dice que al periodista Tony Gachoka, detenido en la prisión de máxima seguridad de Kamiti, se le denegó el acceso a un abogado al menos durante las dos semanas anteriores a que el Relator Especial intentara visitar dicha prisión (29 de septiembre) y que se le mantuvo incomunicado durante un período considerable. Además, se dice que no se informa a los detenidos de su derecho a tener un abogado. Esto fue confirmado en las entrevistas celebradas por el Relator Especial con detenidos en calabozos de la policía y con abogados defensores. Varias fuentes no gubernamentales expresaron su preocupación por la falta de asistencia letrada, ya que se cree que únicamente el 10% de los delincuentes comunes están representados por un abogado, y la cifra es aún menor en las zonas rurales. Se dice que pocas organizaciones no gubernamentales trabajan en este campo y que el Colegio de Abogados de Kenya aún no proporciona esa asistencia letrada. Únicamente las personas sospechosas de haber cometido delitos punibles con la pena capital reciben esta asistencia jurídica.

66. Los médicos entrevistados por el Relator Especial señalaron que, puesto que no existía un derecho legal que garantizara explícitamente el acceso a las personas detenidas en los calabozos de la policía, era muy raro que se les permitiera el acceso a estos detenidos. Técnicamente, los detenidos en prisión preventiva tienen derecho a que les examine un médico de su elección, pero al parecer los jueces ordenan invariablemente que un médico del Gobierno realice los exámenes. Los médicos privados confirmaron que les era casi imposible ver a los detenidos sin una orden judicial, que, al parecer, se obtenía en muy raras ocasiones. Los médicos privados indicaron que, incluso cuando disponían de esa autorización legal, aún se necesitaba el consentimiento del

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<sup>16</sup> El artículo 28 de la Ley sobre las pruebas dice lo siguiente: "ninguna confesión hecha por una persona mientras se encuentra detenida por la policía se considerará como prueba contra esas personas a menos que se haga en presencia inmediata de:

- a) Un juez;
- b) Un oficial de policía de rango superior o equivalente al de inspector".

médico de la prisión. En esos casos, las posteriores consultas con sus clientes se llevaban a cabo en presencia del médico de la prisión y por lo tanto ya no eran confidenciales.

### C. Procedimiento de reclamación

67. Según fuentes no gubernamentales, muchos casos de torturas y otras formas de malos tratos no se denuncian a los tribunales ya sea porque las presuntas víctimas o sus parientes no conocen debidamente la ley para pedir una investigación y presentar una denuncia o bien tienen miedo de verse sometidos a represalias si lo hacen. De hecho, se han denunciado muchos casos de hostigamiento y se dice que su objetivo han sido también los defensores de los derechos humanos. Según las organizaciones no gubernamentales, su red de supervisión, especialmente en las zonas más remotas está aún en estado embrionario y, por lo tanto, sus informes no reflejan con exactitud el fenómeno de la tortura. Además, también afirman que muchas de las presuntas víctimas no desean que sus nombres se hagan públicos por miedo a represalias. Así, se dice que la mayoría de los casos quedan sin denunciar.

68. Otro obstáculo para que las víctimas denuncien las torturas es la inexistencia de un organismo independiente encargado de investigar los presuntos casos de torturas cometidas por funcionarios del orden público. Así, las presuntas víctimas deben dirigirse a la misma comisaría de policía en que estuvieron detenidos y fueron maltratados para presentar su denuncia. Según muchos testimonios obtenidos por el Relator Especial (véase el anexo), resultaba por lo tanto imposible que las presuntas víctimas presentaran una denuncia. Varias organizaciones no gubernamentales han solicitado la creación de un organismo independiente encargado de investigar las violaciones cometidas por funcionarios del orden público, una necesidad que también reconocieron el Fiscal General y el Jefe de la Administración Pública.

69. El Comisionado de policía señaló al Relator Especial que los reglamentos de la policía establecían normas claras para tramitar las denuncias, que debían ser investigadas inmediatamente y a fondo. Esas investigaciones debían estar siempre a cargo de un oficial de policía de rango superior al de inspector, lo que, en su opinión, garantizaba un cierto grado de imparcialidad. Cuando el Relator Especial cuestionó la cooperación de los oficiales de policía pertenecientes a la misma comisaría que los presuntos responsables de los malos tratos, el Comisionado indicó que siempre era posible dirigir esta solicitud a un funcionario superior, es decir, al oficial a cargo de la comisaría o incluso al oficial a cargo de un distrito de policía o al Comisionado de distrito o provincial. También señaló la existencia de un departamento de reclamaciones en su propia oficina que podía remitir los casos pertinentes a la Oficina del Fiscal General. Señaló que todos sus subordinados tomaban muy en serio todas las denuncias. Por lo tanto, expresó la opinión de que este sistema jerárquico evitaba cualquier encubrimiento de los casos.

70. Además, el Comisionado de policía explicó que las investigaciones relativas a denuncias penales quedan a cargo de inspectores del CID bajo la responsabilidad del oficial a cargo de una comisaría de policía (el OCS). El expediente con las conclusiones y recomendaciones se entrega al OCS, que debe verificar la calidad de la investigación y adoptar una decisión en cuanto a las medidas que deben adoptarse, o pedir asesoramiento al Fiscal General en los casos dudosos. Por lo tanto, el OCS garantiza que las investigaciones se lleven a cabo adecuadamente, de conformidad con las disposiciones constitucionales que prohíben la tortura. En su opinión, el hecho de que los inspectores del CID sepan que el modo en que hayan llevado a cabo su

investigación será sometido a escrutinio por parte de su superior evita que abusen de su autoridad. Además, cuando los inspectores de policía investigan denuncias de tortura, ese mismo escrutinio jerárquico evita que encubran los casos. Todas las organizaciones no gubernamentales destacaron la necesidad de que la policía reciba formación sobre derechos humanos. En consecuencia, el Fiscal General indicó su intención de publicar un manual para la formación de los oficiales de policía.

71. El Comisionado de policía también señaló que debían notificarse a los denunciantes las medidas adoptadas. Según las organizaciones no gubernamentales y los testimonios recibidos por el Relator Especial, muchas de las presuntas víctimas se quejan de que no se les informa de las medidas adoptadas, si es que hay alguna, tras su presentación de una denuncia. Según el Comisionado de policía, todos los fallecimientos no debidos a causas naturales, incluidas las muertes acaecidas durante la custodia policial, debían ser comunicadas a un juez, que automáticamente iniciaría una investigación. Por lo tanto, el Comisionado consideraba que era imposible que la policía encubriera un caso de muerte ocurrida durante la custodia. Si existían pruebas claras, se denunciaría a los oficiales responsables; si no existían indicios decidiría el tribunal. Cuando el Relator Especial le interrogó sobre varios casos concretos de muertes ocurridas durante la custodia policial, en particular en casos en que había intervenido el "escuadrón volante", el Comisionado se negó a responder, diciendo que no conocía la situación de estos casos y que no estaba autorizado a proporcionar ese tipo de información a una persona ajena a la policía. Sin embargo, en su opinión el número de casos señalados en los medios de comunicación se había exagerado.

72. Igualmente, el Presidente del Tribunal Supremo explicó al Relator Especial que consideraba que el gran número de denuncias por torturas se debía en parte al hecho de que los acusados que hacían confesiones que conducirían al tribunal a condenarlos a cadena perpetua estaban dispuestos a utilizar en su defensa alegaciones de tortura. Destacó que, aunque muchos acusados afirman que han sido torturados, en pocos casos se demuestra que sea cierto. El Fiscal General también señaló que se estaban presentando denuncias falsas contra la policía para obtener indemnizaciones económicas del Estado. En consecuencia, señaló que debían considerarse estas denuncias con cautela para evitar abusos. Al mismo tiempo, destacó que cuando recibía información, incluso a través de los medios de comunicación, de casos verosímiles de presuntas torturas o malos tratos, siempre ordenaba una investigación. Según fuentes no gubernamentales, la Fiscalía General tiende a contestar a todas las denuncias de las organizaciones no gubernamentales, informándoles de que se ha recibido su denuncia y de que se ha iniciado una investigación. Sin embargo, las organizaciones no gubernamentales se quejaron de que no recibían ninguna información posterior acerca de las medidas adoptadas.

73. El "Informe médico", denominado formulario P3, debe cumplimentarlo el oficial de policía que solicita el examen y el médico que lo lleva a cabo. Contiene información sobre la identidad de la presunta víctima y las circunstancias en las que se supone que se ha producido la tortura, así como una descripción del médico de las lesiones sufridas como resultado de los supuestos malos tratos. En este sentido, según fuentes no gubernamentales, el hecho de que los médicos a menudo utilicen el término general "lesiones en los tejidos blandos" para calificar todo tipo de lesiones plantea un grave problema cuando se presenta este tipo de certificados en el tribunal. Los denunciantes, los parientes o los abogados deben presentar este formulario a la policía. Las organizaciones no gubernamentales y las presuntas víctimas alegan que a menudo el formulario se "pierde" o no se presenta en el tribunal. Además, a falta de representación jurídica de las

víctimas, rara vez se informa a los médicos de la celebración de las actuaciones del tribunal, por lo que no pueden presentar el documento ante el tribunal cuando la policía no presenta el formulario P3 original. También se afirma que los médicos a menudo son objeto de hostigamiento o amenazas por la policía o por funcionarios para obligarles a falsificar sus informes.

74. La solicitud para que se expida un formulario P3 debe presentarse a la policía, que, según se dice, a menudo se niega a entregar al paciente o incluso al médico dicho formulario y, por lo tanto, impide la presentación de un caso por la falta de pruebas. Según las organizaciones no gubernamentales, la mayoría de los jueces aceptan únicamente el formulario P3 como prueba, aunque no existe ninguna disposición legal que prohíba que las víctimas presenten en el tribunal un certificado expedido por un médico privado. El Fiscal General confirmó que las presuntas víctimas podían ser examinadas por un médico privado y presentar el consiguiente certificado médico en el tribunal. Reconoció que, a veces, las presuntas víctimas tenían problemas para obtener formularios P3, y que por lo tanto era necesario adoptar normas para que los oficiales de policía les entregasen este formulario. El Relator Especial señaló a su atención la sugerencia hecha por varias organizaciones no gubernamentales en el sentido de que estos formularios deberían estar disponibles en otros lugares, además de las comisarías. Sin embargo, el Comisionado de policía indicó claramente que eran documentos policiales y que deberían permanecer bajo custodia de la policía y no entregarse a los civiles. De hecho, los funcionarios de policía son los que deben facilitar el examen médico de las víctimas, por lo que el formulario P3 debería permanecer en los archivos de la policía como prueba para su presentación ante el tribunal.

75. Las organizaciones no gubernamentales afirman que los médicos designados por el Gobierno a menudo conspiran con la policía y los fiscales y falsifican los informes médicos. Asimismo, se afirma que los informes de las autopsias también se falsifican. Sin embargo, debe señalarse que los médicos privados, miembros de la Asociación Médica de Kenya, pueden ser objeto de medidas disciplinarias si se descubre que han violado la ética médica. Por el momento ningún médico se ha visto sometido a dichas medidas disciplinarias. En abril de 1998 se creó un Comité de Derechos Humanos en la Asociación Médica, con el objetivo de impartir formación a los médicos acerca de los derechos humanos. Una de las principales preocupaciones del Comité es el hostigamiento al que se dice que se ven sometidos los médicos para expedir certificados médicos que no acusen a la policía.

76. Según las organizaciones no gubernamentales, los jueces a menudo rechazan en el tribunal los informes médicos, incluidos los formularios P3. También se informó de casos de presuntas víctimas que habían comparecido ante el tribunal en malas condiciones evidentes, sin que el juez hubiese dictado una orden para que se les proporcionara tratamiento médico. Sin embargo, se dice que, en ocasiones, los jueces ordenaban que se llevara a los detenidos a un hospital para recibir tratamiento médico. Al parecer, estas órdenes no siempre son cumplidas posteriormente por los funcionarios de policía o los guardianes de las cárceles. Por otra parte, el Presidente del Tribunal Supremo señaló que los jueces de Kenya eran muy escrupulosos, no sólo en cuanto al estado de salud de los sospechosos, sino también en cuanto a las circunstancias relativas a la confesión, y que tenían autoridad para ordenar la apertura de una investigación cuando el acusado no parecía estar en buena salud. También destacó que si no se había planteado la cuestión de los malos tratos en la primera comparecencia ante el tribunal, nada impedía que el denunciante la planteara posteriormente en el curso de las actuaciones.



77. Según fuentes no gubernamentales, uno de los principales obstáculos para reducir la incidencia de la tortura estriba en las dificultades a la hora de obtener reparación, principalmente la negativa a entregar formularios P3 para documentar las lesiones, la convicción pública de que el examen para completar un formulario P3 debe ser llevado a cabo por un médico del Gobierno y el retraso y desinterés en las investigaciones llevadas a cabo por oficiales de policía acerca de sus colegas.

#### D. Impunidad

78. En diciembre de 1998, el mayor Marsden Madoka, Ministro del Estado responsable de la Seguridad Interna, dijo al parecer a los kenianos que "olvidaran" los actos generalizados de tortura cometidos por las fuerzas de seguridad del país<sup>17</sup>. Según la información recibida de fuentes no gubernamentales, muy pocas veces se investigan completa e imparcialmente las denuncias de torturas, si es que se investigan, y muy pocas veces se suspende a los funcionarios de seguridad sospechosos de haber cometido actos de tortura. Una vez más debe destacarse que, como no existe ningún organismo independiente que investigue las denuncias de tortura, las investigaciones recaen en los oficiales pertenecientes a la misma unidad de los sospechosos de haber cometido actos de tortura. Así, el Ministro del Interior reconoció la posibilidad de que los funcionarios de policía que investigaban las acciones de sus compañeros encubrieran dichos actos. No obstante, según el Fiscal General, en el momento de la visita del Relator Especial había procesados más de 60 funcionarios de los servicios de seguridad por torturas. El Relator Especial manifestó su interés en recibir información acerca del resultado de estos casos. Según las estadísticas correspondientes a 1998 y 1999, recibidas del Fiscal General en una carta de fecha 29 de octubre de 1999, había 134 procedimientos penales pendientes ante el tribunal contra funcionarios de seguridad, 2 casos se estaban investigando, 8 estaban pendientes de que se detuviera a los autores y 63 se habían concluido; de estos casos, 103 constituían delitos contra la persona. Se consideran delitos de este tipo los siguientes: asesinato, homicidio, violación, asalto, heridas dolosas, daños graves, estupro, atentados contra el pudor, actos contra natura e intentos de asesinato. El Relator Especial también recibió información según la cual los pocos casos de tortura presentados ante los tribunales son objeto únicamente de procesos civiles. Aparentemente, no se inician procedimientos penales contra los funcionarios del orden público en estos casos, ya que los abogados consideran que dichos procedimientos no tendrían éxito. Por último, las organizaciones no gubernamentales comunicaron al Relator Especial que parece existir una tendencia a trasladar a los funcionarios de policía sospechosos de participar en casos de tortura a la provincia norderoriental como "medida disciplinaria", lo que podría explicar la alta tasa de denuncias por torturas en esa provincia.

79. Según la jurisprudencia, los jueces deberían celebrar "un juicio paralelo" cuando un acusado afirma que ha sido torturado. El Fiscal General confirmó que estas actuaciones tenían lugar con frecuencia. Sin embargo, los abogados y las organizaciones no gubernamentales afirmaron que sólo ocurrían en contadas ocasiones y únicamente cuando el abogado defensor insistía. En su opinión, los jueces deberían desempeñar un papel más activo en la investigación de casos en que los acusados presentaban señales de tortura o malos tratos. Sin embargo reconocen que los jueces tienen excesivo trabajo y no siempre tienen tiempo de comprobar

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<sup>17</sup> Véase el comunicado de prensa de Amnistía Internacional AFR 32/32/98, del 4 de diciembre de 1998.

cuidadosamente el estado de salud de los acusados. Además, cabe señalar que, según las organizaciones no gubernamentales, "el objetivo principal de este juicio paralelo es determinar si una confesión o una declaración se han obtenido mediante coacción y por lo tanto no pueden ser utilizadas como prueba ante el tribunal; en ese caso, el fiscal pide que se admitan las pruebas y se rechace toda alegación de brutalidad policial"<sup>18</sup>. Aunque, según afirmó el Presidente del Tribunal Supremo desde un punto de vista jurídico la carga de la prueba en esos "juicios" recae sobre el Fiscal, al parecer en la práctica la defensa debe demostrar que las pruebas no se obtuvieron de manera libre y justa. Por último, las organizaciones no gubernamentales destacaron que en cualquier caso esos "juicios" no constituyen una investigación imparcial de supuestas torturas por un organismo investigador capaz de demostrar su independencia formal de las autoridades que han ordenado la detención y el interrogatorio y que, por lo tanto, no debería ser un sustituto de una investigación propiamente dicha e independiente de las alegaciones de tortura.

80. El Fiscal General señaló que los oficiales de policía acusados de un delito quedaban suspendidos de su cargo. Sin embargo, los oficiales de policía investigados continuaban trabajando durante la investigación. Según las organizaciones no gubernamentales, únicamente se han iniciado tres acciones civiles contra funcionarios de policía sospechosos de torturas, de las cuales dos tuvieron éxito, aunque, según se informa, aún no se ha pagado una indemnización.

#### E. Comité Permanente de Derechos Humanos

81. Por orden del Gobierno, se estableció en mayo de 1996 el Comité Permanente de Derechos Humanos. El mandato del Comité incluye la investigación de las presuntas violaciones de derechos humanos, con excepción de todas las cuestiones pendientes ante los tribunales, y la educación del público en cuestiones relativas a los derechos humanos. Esta última función se considera primordial, teniendo en cuenta la falta de conocimientos entre el público y los funcionarios de los servicios de seguridad. También se ha encargado al Comité que asesore al Gobierno sobre las medidas que deberán adoptarse para garantizar una mejor protección de los derechos humanos, tal como está establecido en la Constitución de Kenya y en los instrumentos internacionales en los que Kenya es Parte. por último, el Comité debe visitar cualquier prisión u otra institución controlada por el Gobierno en que haya personas detenidas y estudiar las condiciones de la detención con el fin de hacer recomendaciones para mejorar el trato de los detenidos. En el momento de la visita del Relator Especial, el Comité había recibido 418 denuncias, de las cuales se habían investigado 104. Una vez concluida la investigación de una denuncia, el Comité puede, entre otras cosas, iniciar una acción penal contra el sospechoso de haber violado los derechos humanos o recomendar al demandante y al Gobierno u otro organismo público interesado otro método para atender la reclamación u obtener reparación<sup>19</sup>. El Comité ha emitido seis informes confidenciales destinados al Presidente. En diciembre de 1998 publicó su primer informe público, una reseña general de las leyes y definiciones en materia de derechos humanos, con tan sólo una somera referencia a los abusos de los derechos humanos.

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<sup>18</sup> Amnistía Internacional, "Kenya - violations of human rights - communications between Amnesty International and the Government of Kenya" (AFR 32/27/97), pág. 12.

<sup>19</sup> Ley sobre el Comité Permanente de Derechos Humanos (1998), párr. 18.

### III. CONCLUSIONES Y RECOMENDACIONES

#### A. Conclusiones

82. El Relator Especial desea expresar su agradecimiento al Gobierno de Kenya por haberle invitado a visitar el país y por las facilidades que le concedió para garantizar el eficaz desempeño de su misión, incluso entrevistas con el Jefe del Estado, ministros y funcionarios superiores. Desea dar las gracias especialmente al Sr. Amos Wako, Fiscal General, por sus buenos oficios al organizar muchas de las reuniones. En general, éstas respondían al mandato habitual de tales misiones, en especial en lo referente, después de una visita interrumpida, al acceso a las comisarias. Sigue siendo motivo de preocupación el hecho de que no se le permitiera el acceso a la prisión de Kamiti en Nairobi, la prisión mayor y más importante del país. Sin embargo, no considera que esta omisión le impidiera tener una imagen razonablemente clara del alcance de los problemas en el ámbito de su mandato.

83. Kenya desempeña un importante papel político y económico, no sólo en la región de África oriental, sino también a nivel continental. Salió de un período de unipartidismo del KANU a principios de los años noventa, y el KANU mantuvo la presidencia y el control del Parlamento en las elecciones celebradas en 1992 y 1997. Sin embargo, la política se ve influenciada de manera endémica por factores étnicos y abundan las acusaciones de corrupción en la economía, la estructura política e incluso en la administración de la justicia. De hecho, a raíz de la suspensión de los préstamos del Fondo Monetario Internacional debida a la corrupción, el Gobierno actual designó recientemente un equipo dirigido por el internacionalmente conocido Dr. Richard Leakey, el antiguo jefe de los Servicios de Protección de la Naturaleza de Kenya, que actualmente es secretario del Gabinete y Jefe de la Administración Pública, con amplios poderes para erradicar la corrupción oficial.

84. La parte septentrional del país presenta problemas especiales. Esta zona es desértica o semidesértica, y limita al oeste con el Sudán, al norte con Etiopía y al este con Somalia. Existe un intenso movimiento transfronterizo de personas que a menudo comparten orígenes étnicos y que es posible que no hablen swahili, el idioma local predominante en Kenya. Así, los desórdenes y la violencia de los países vecinos se desbordan hacia Kenya, por lo que los esfuerzos para mantener el orden público en un ambiente físico tan hostil constituyen una tarea ingente.

85. Es inevitable que esta situación repercuta en la capacidad de los servicios de seguridad para respetar escrupulosamente el estado de derecho. La propia ley se presta a abusos, incluso a abusos en el ámbito del mandato del Relator Especial. Así, en el caso de cualquier delito punible con la pena capital, término que incluye el delito común de robo con violencia, la policía tiene derecho a retener a un sospechoso durante un máximo de 14 días, frente a las 24 horas previstas para otros delitos. Además, el Relator Especial tuvo conocimiento de muchos casos que confirmaron las denuncias recibidas antes y durante la misión, de que es posible que estos plazos no se respeten en la práctica. La situación se agrava por la falta casi absoluta de asistencia letrada para la gran mayoría de sospechosos detenidos por la policía, ya que la mayoría no puede pagar un abogado y sólo los acusados de delitos punibles con la pena capital tienen derecho a esta asistencia. Esto resulta especialmente lamentable habida cuenta de una disposición de la policía que presume que toda denuncia de un ciudadano contra un sospechoso es prueba suficiente para detenerlo. Además, no sólo es la policía la encargada de la investigación forense

de las denuncias contra la propia policía, sino que en ocasiones se niega a facilitar el formulario P3 necesario para documentar médicamente el estado físico de un denunciante.

86. Varios de los interlocutores oficiales del Relator Especial reconocieron que tradicionalmente en Kenya los sospechosos eran objeto de malos tratos por parte de la policía. Al Relator Especial le resultó evidente que entre estos malos tratos eran corrientes las palizas en todo el cuerpo con palos, barras de metal y tiras de goma, que dejan marcas inconfundibles de su utilización. El objetivo de estas palizas, que sólo pueden ocasionar un dolor y un sufrimiento intensos, es generalmente obtener información o confesiones. En ocasiones, también parece ser una forma de castigo extrajudicial. Desde esta perspectiva, hay que considerar que esta práctica, que evidentemente está extendida y es sistemática<sup>20</sup>, queda incluida en la definición de tortura que figura en el artículo 1 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes.

87. El Relator Especial se muestra dispuesto a creer que es posible que los ministros y los funcionarios superiores, incluyendo algunos en los niveles más altos de la fuerza de policía, no conozcan plenamente la realidad del problema. Sin embargo, habida cuenta de la información transmitida en repetidas ocasiones a las autoridades por el propio Relator Especial y por organizaciones no gubernamentales internacionales y locales, esta falta de conocimiento puede reflejar una falta de voluntad de examinar a fondo el problema. Esto se debe a la inexistencia de procedimientos eficaces de supervisión y tal vez pueda atribuirse también a la sensación de que sería imprudente indagar demasiado. No obstante, el resultado es una sensación general de impunidad entre los encargados, principalmente los miembros del CID, de investigar las actividades penales sospechosas.

88. Deben señalarse algunos aspectos alentadores. En primer lugar, el sistema de registros de las comisarías de policía parece en general bastante concienzudo. De hecho, permitiría a cualquier organismo de supervisión diligente evaluar si una persona está detenida en condiciones distintas a las exigidas por la ley y controla los movimientos de los detenidos. En segundo lugar, se ha desmantelado la división especial, que se encargaba de casos políticos y de orden público y cuya propensión a utilizar los métodos de tortura más terribles era conocida. En tercer lugar, una prensa libre y atrevida habla ahora abiertamente de cuestiones relativas a los derechos humanos, incluidas las relacionadas con el trato de las personas privadas de libertad. En cuarto lugar, el Comité Permanente de Derechos Humanos se ha comprometido a estudiar estos problemas.

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<sup>20</sup> Por lo que respecta al término "sistemático" el Relator Especial toma como referencia la definición dada por el Comité contra la Tortura: "El Comité considera que sí hay práctica sistemática de la tortura cuando parece que los casos de tortura notificados no son fortuitos ni se han producido en un solo lugar o en un momento concreto, y se observa en ellos elementos de hábito, generalidad y finalidad determinada por lo menos en una parte importante del territorio del país. Además, la tortura puede revestir un carácter sistemático sin que eso se deba a la intención directa de un gobierno. Puede ser consecuencia de factores que al Gobierno le puede resultar difícil controlar y su existencia puede indicar un desfase entre la política concreta del Gobierno central y su aplicación por la administración local. Una legislación insuficiente que en la práctica permite la posibilidad de recurrir a la tortura también puede contribuir al carácter sistemático de esta práctica" (A/48/44/Add.1, párr. 39).

89. En lo referente al sistema penitenciario, esta claro que, a su más alto nivel, se rige por normas autoritarias y arbitrarias apoyadas por su impermeabilidad ante el escrutinio externo. Prueba de ello son las dificultades que tienen los abogados para ponerse en contacto con sus clientes, ya que a menudo tienen que presentar órdenes judiciales con este fin; o también el traslado de un gran número de reclusos con anterioridad a la visita del Relator Especial y la incomunicación del periodista Tony Gachoka, así como sus dificultades para tener acceso a un abogado. Está claro que el sistema penitenciario presenta problemas de gran hacinamiento e insuficiencia de recursos, lo que hace muy dura la vida de los detenidos, mucho más que la simple privación de libertad. Su personal está mal pagado, mal formado y en ocasiones alojado en condiciones calculadas para minar cualquier simpatía que pudieran sentir por los detenidos.

90. Hay que decir en favor de los dirigentes que, a pesar de que la ley permite los castigos corporales por faltas de disciplina graves, no se ha infligido ningún castigo de este tipo en los últimos años.

91. Sin embargo, se exige al personal que ejecute los castigos corporales impuestos por el juez como sanción penal. No se facilitaron al Relator Especial estadísticas sobre la frecuencia de estos castigos, que el Relator Especial considera inhumanos y degradantes.

#### B. Recomendaciones

92. En consecuencia, el Relator Especial hace las siguientes recomendaciones:

- a) El Gobierno debería garantizar que todas las alegaciones de tortura y malos tratos o similares sean investigadas de manera inmediata, independiente y exhaustiva por un órgano con autoridad para iniciar acciones penales contra los autores.
- b) La policía, debería realizar, al menos a nivel de comisionado adjunto, visitas sistemáticas, exhaustivas y sin anunciar a las comisarías para verificar la legalidad de la detención de todas las personas retenidas, así como su trato y condiciones de detención. En caso de abusos, deberían aplicarse de preferencia sanciones disciplinarias y, de ser necesario, iniciarse acciones penales.
- c) Debería dotarse a un organismo como el Comité Permanente de Derechos Humanos de la autoridad y los recursos necesarios para inspeccionar discrecionalmente, siempre que sea necesario y sin previo aviso, todo lugar de detención, sea oficial o no, para publicar sus conclusiones con regularidad y para presentar pruebas del comportamiento delictivo al organismo fiscal correspondiente y a los superiores administrativos de la autoridad pública cuyos actos se cuestionan; podrían participar en estas funciones organizaciones no gubernamentales de prestigio.
- d) De conformidad con las Directrices 15 y 16 de las Naciones Unidas sobre la Función de los Fiscales<sup>21</sup>, la Fiscalía General debería prestar especial atención al

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<sup>21</sup> "15. Los fiscales prestarán la debida atención al enjuiciamiento de los funcionarios públicos que hayan cometido delitos, especialmente en los casos de corrupción, abuso de poder, violaciones graves de derechos humanos y otros delitos reconocidos por el derecho internacional y, cuando lo autoricen las leyes o se ajuste a la práctica local, a la investigación de esos delitos.

enjuiciamiento sin dilaciones de los casos de tortura y malos tratos similares cometidos por funcionarios de orden público y tomar las medidas adecuadas cuando dispongan de información que parezca indicar que las pruebas se han obtenido por tales métodos.

- e) Cuando existan pruebas verosímiles de que una persona ha sido sometida a torturas o malos tratos similares, debería pagarse inmediatamente una indemnización adecuada; debería establecerse un sistema con este fin.
- f) El período de detención policial en casos de delitos punibles con la pena capital (14 días) debería ajustarse al período habitual de 24 horas aplicable a las personas sospechosas de otros delitos.
- g) Las confesiones que una persona realice bajo detención policial sin presencia de un abogado no deberían ser admisibles contra esa persona.
- h) Debería facilitarse asistencia letrada a toda persona bajo custodia de la policía o en prisión preventiva que no tenga recursos para pagar los servicios de un abogado, y debería permitirse a los abogados el acceso inmediato a sus clientes. La Asociación de Derecho (Law Society) debería considerar la posibilidad de establecer un plan apropiado en cooperación con el Gobierno.
- i) Debería informarse inmediatamente a los familiares próximos de los detenidos de la detención de sus parientes, y permitírseles ponerse en contacto con ellos.
- j) Debería ponerse fin al monopolio de la policía para expedir los formularios P3 de los exámenes médicos.
- k) Los jueces y los magistrados, así como los fiscales, deberían preguntar siempre a las personas que hubieran estado bajo custodia policial cómo han sido tratadas y prestar una atención especial a su estado físico.
- l) Debería modificarse el sistema de designación de jueces con el fin de garantizar una verdadera independencia del poder judicial. Se insta al Gobierno a que considere la

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16. Cuando los fiscales tengan en su poder pruebas contra sospechosos y sepan o tengan sospechas fundadas de que fueron obtenidas por métodos ilícitos que constituyan una violación grave de los derechos humanos del sospechoso, especialmente torturas, tratos o castigos crueles, inhumanos o degradantes u otros abusos de los derechos humanos, se negarán a utilizar esas pruebas contra cualquier persona, salvo contra quienes hayan empleado esos métodos, o lo informarán a los tribunales, y adoptarán todas las medidas necesarias para asegurar que los responsables de la utilización de dichos métodos comparezcan ante la justicia."

Directrices sobre la Función de los Fiscales, adoptadas por el Octavo Congreso de las Naciones Unidas sobre la Prevención del Delito y Tratamiento del Delincuente, La Habana (Cuba), del 27 de agosto al 7 de septiembre de 1990.

posibilidad de invitar al Relator Especial sobre la independencia de los magistrados y abogados a visitar el país.

- m) Es necesaria una liberalización generalizada del sistema penitenciario, de modo que facilite en lugar de disuadir, el acceso al mismo de la sociedad civil. En concreto, deberían eliminarse los obstáculos al acceso de abogados, médicos y familiares. Debería recabarse la colaboración de la sociedad civil, para contribuir a humanizar un sistema falto de recursos y con exceso de detenidos. Una vez logrado esto, la comunidad internacional también debería estar dispuesta a colaborar, por ejemplo, facilitando educación y formación profesional.
- n) Los jueces deberían ser más diligentes a la hora de visitar e inspeccionar las cárceles y más circunspectos en su predisposición a mantener a los sospechosos en prisión preventiva o condenar a los delincuentes a penas de privación de libertad. Esto se aplica especialmente al caso de los delincuentes no violentos, personas que cometen delitos por primera vez, sospechosos y delincuentes juveniles.
- o) Debería abolirse inmediatamente el castigo corporal como sanción penal. Lo mismo cabe decir, a pesar de su obsolescencia, del castigo corporal para faltas de disciplina en la prisión.
- p) Se invita al Gobierno a considerar favorablemente la posibilidad de hacer la declaración prevista en el artículo 22 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, en virtud de la cual el Comité contra la Tortura podrá recibir denuncias individuales de las personas que afirmen que se han violado los términos de la Convención. Asimismo se invita al Gobierno a que considere la posibilidad de ratificar el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, a fin de que el Comité de Derechos Humanos pueda recibir denuncias individuales.
- q) Se invita al Fondo de Contribuciones Voluntarias de las Naciones Unidas para las Víctimas de la Tortura a que considere favorablemente las solicitudes de asistencia de las organizaciones no gubernamentales que se esfuerzan por atender las necesidades médicas de las personas torturadas y obtener reparación legal por los daños sufridos.

Annex

SUMMARY OF ALLEGATIONS\*

1. **Luka Wafula**, a 66-year-old former teacher and provincial chief, was reportedly asked by three police officers, one from the administrative police, one from the national police and one from the Special Branch, on 21 July 1992 to go to Bungoma to meet with the District Commissioner. The latter is said to have ordered him to go to the office of the Head of the Special Branch. As he entered, around 9.30 p.m., he was reportedly slapped on the face, ordered to sit on the floor and to say everything he had on his mind. Half an hour later, he was taken to a small office where a statement about his personal life was recorded. According to him, he was suspected of involvement with FERA and of having smuggled arms into the country. He was allegedly beaten on his private parts several times by six members of the Special Branch. He was then reportedly detained for seven days. He was allegedly stripped naked, pushed into a cell and left there without food. On the seventh day, he learnt that his brother had been shot dead by the police and he was reportedly allowed to attend the funeral. He is said to have then stayed at home after a brief stay in Uganda and to have repeatedly reported to the police station, where he was told to return home. He was reportedly arrested and interrogated on several occasions: in March 1993 at Bungoma, Webuye and Kakamega police stations, and in May 1993 at Kakamega police station. On 15 March 1995, he was reportedly arrested and taken to Bungoma police station, where he stayed for two days. Then he was reportedly transferred to Nandi Hills police station. At night, he was blindfolded and taken to an unknown location where he was allegedly beaten for two days. He was interrogated by men in suits who allegedly exercised pressure on his back, the soles of his feet and his ankles. He was also reportedly kicked on the chest. He reportedly did not reply to the questions asked him. According to the information received, he was then given painkillers. Seven days later, he was allegedly subjected to the same kind of treatment and interrogated again about his alleged involvement with the February the Eighteenth Resistance Army (FERA) and his leader, for four days. His private parts are said to have been tied to an electric wire and he was allegedly forced to enter a room in which there was a big snake. He was reportedly given hot water to heal his swollen legs. He believes that he was held in Navasha Maximum Security Prison and to have been detained there for 42 days. He was then reportedly taken to Kakamega police station, where a statement is said to have been recorded. He was reportedly charged with breaking into a police station, rape, abduction of children, military involvement with FERA and treason. He is said to have denied all these charges in court. He was put on remand in prison for three months and released on 18 August 1995.

2. **Truphena Obwaka Shirako**, a 51-year-old woman was reportedly arrested in January 1994, accused of stealing from her employer. According to the information received, she was taken to the Langas police station in Uasin Gishu. At the police station, four police officers allegedly inserted a bottle into her vagina. One of the policemen also allegedly inserted his hand into her vagina, apparently saying he was looking for the money. She was later reportedly beaten for five hours. The officers involved were apparently charged with assault and causing bodily harm, but all were reportedly released on bond.

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\* For ease of reference, the following summaries are presented in a chronological order.



3. **Joseph Barsabas Wekesa**, on behalf of whom the Special Rapporteur sent a communication to the Government in 1996 (see E/CN.4/1997/7/Add.1, para. 293) was reportedly arrested on 4 February 1995 at around 10 p.m. by several persons, including an assistant chief. He was reportedly taken from his compound and was allegedly slapped by a plain clothes policeman. Handcuffed and blindfolded, he was reportedly put in the trunk of a van and was taken to Sirisia police station, where he was detained in a cell infested with mosquitoes. The following day, he was reportedly transferred to Kimilili police station and then to Webuye and Kakamenga police stations. The same night, he was reportedly again transferred, blindfolded, to an unknown location. The following morning, he was interrogated about the February Eighteenth Movement (FEM) and was allegedly severely beaten. A wooden stick is said to have been inserted in the upper part of his back. At the time of the interview (25 September 1999), a mark consistent with this allegation was still visible. He was allegedly tortured for the next 12 days. He was allegedly beaten on all parts of his body, including his private parts and toes, and an electric wire was applied to his hips. Wax from a candle is said to have been dropped on him. He was constantly interrogated while being beaten about the FEM's objectives. On 19 February, he was reportedly blindfolded and taken to Nairobi. He believes he was held in Niati House by the Special Branch. On 22 February, he was reportedly taken to the Nairobi High Court, where, because of the threats he had received while in detention at Niati House, he reportedly did not complain about the ill-treatment he had allegedly been subjected to and agreed to knowing about the FEM. On that basis, he was reportedly sentenced to six years in prison. He was reportedly immediately transferred to Kumi Maximum Security Prison. The following day, his lawyers are said to have filed a complaint with the High Court. The High Court reportedly ordered a medical examination. He reportedly received medical treatment for the next five months. On 21 December, his case was reportedly referred to the Attorney-General and, on 4 January 1996, to the Chief Justice. On 28 January, his sentence was reportedly reduced to two years' imprisonment and on 21 June 1996 he was reportedly released.

4. **Alex Mwangangi Kimongo**, an army officer based at the Nanyuki barracks was reportedly arrested on 17 June 1995 on suspicion that he had participated in a violent robbery of firearms. During the ensuing investigations, he was allegedly tortured by police, which caused him to lose one of his testicles. The robbery case against him reportedly commenced on 25 February 1997 and he was sentenced to death on 4 June 1997.

5. **Hitler Wepukhulu** was reportedly arrested on 30 July 1995 at his home in Lwakaka in Bungoma district. According to the information received, he was bundled into a car, blindfolded and taken to several police stations before finally arriving at Nyati House. There, he was reportedly kept in a cell by himself for three days without anyone coming to see him. He reportedly did not have any food, access to toilet facilities nor a bath for those three days. On the fourth day after his arrest he was reportedly taken out of the cell and given some food. Thereafter he was reportedly taken to a room with about 12 men in it and after being forced to strip naked was made to sit in the middle of the room. He was reportedly subsequently interrogated by police about whether he had any guns in his possession and when he reportedly denied having any guns, he was allegedly simultaneously beaten by five police officers. According to the information received, the alleged beatings were with whips and broken pieces of wood. The beatings reportedly continued each day for two weeks. By the end of the two weeks, he reportedly could not walk as a result. The police officers also allegedly threatened to

shoot him and made him sit on an imaginary chair. According to the information received, he was placed in solitary confinement for the next 82 days before allegedly being forced to sign a confession before he was released.

6. **Mary Wangui**, a woman who was pregnant at the time, was reportedly arrested on 10 October 1995 and taken to the Buru-Buru police station. At the station, she was allegedly kicked, hit and whipped. She reportedly gave birth prematurely seven hours later. She was allegedly denied access to medical care at the time, and had her baby taken by police officers. The baby reportedly died but she was reportedly not informed of the death until two days later.

7. **Khelef Khalifa**, a founding member of the opposition Safina political party was reportedly arrested around mid-day on 12 January 1996, which was supposedly the eve of a visit by some of the party's national officials to Mombasa. He was reportedly taken to a number of police stations, including the Urban police station, the Port police station and the Makupa police station. According to the information received, at around 2 a.m., while he was being driven away from the Makupa station, just near the Mombasa bridge the police allegedly beat him and interrogated him about belonging to the Safina political party. He was reportedly put in the boot of the car and one of the officers allegedly suggested that they take him into the bush and shoot him. Another officer allegedly said they should throw him over the bridge. He was reportedly released from police custody four days later.

8. **Jennifer Njoki**, a 16-year-old orphaned school-girl was reportedly arrested at her brother's house on 17 October 1996 and taken by police officers to the Pangani police station. After reportedly being interrogated as to the whereabouts of her brothers, police officers allegedly stripped her naked, whipped her and pulled out her finger nails. She was reportedly detained at the police station for a further five days, after which she was released. According to the information received, she later attempted suicide.

9. On 17 July 1996, a **student** at Githunguchu Primary School in Kiambu was allegedly caned at least 11 times by three teachers. She reportedly lost consciousness and was said to have been taken to hospital where she died. The teachers were said to have been subsequently charged with murder, however the case was reportedly dismissed on the grounds that the post mortem results had allegedly indicated a pre-existing heart problem.

10. **Lucy Muthoni Muthumbi**, a 38-year-old woman who had just given birth, was reportedly arrested on 17 October 1996, together with her husband, and taken to the Central police station in Nairobi. At the police station she was reportedly stripped naked by police and searched before being locked up in a cell. While in the police station, she was reportedly kicked on her thighs and had some of her braided hair pulled out of her head. She was allegedly threatened that she would be killed by the police officers present. According to the information received, 13 days later she was released. She was reportedly later told by one of the police officers involved that she had been a victim of mistaken identity.

11. On 25 October 1996, a **12-year-old boy**, along with several other children, at Munyu Primary School in Naivasha was reportedly caned repeatedly on the hands by two teachers when they had allegedly left school early without permission. As a result, he was said to have sustained severe bruising, swelling and serious nerve damage to one of his thumbs for which he

reportedly required ongoing medical treatment for over two years. The teachers involved were reportedly charged and convicted of assault. They were allegedly fined only K Sh 2,000 (the equivalent of US\$ 35) each and were reportedly still teaching at the same school.

12. **David Okello** who reportedly retired from his position as Senior Public Health Technician on 31 December, 1996, was allegedly beaten by Kisumu Municipal Council askaris in January 1997, allegedly pursuant to an order of the town treasurer. He had reportedly gone to collect his retirement benefits at the time of the alleged beatings.

13. **Mark Kwata**, a nurse at the Kakamega General Hospital and **Morgan Opembe**, a businessman, were allegedly beaten by police officers in Kakamega in January 1997. According to the information received, the local police chief has launched an investigation into what happened.

14. **Charles Kinyua**, a Kerugoya taxi driver, was allegedly beaten by administration policemen at around 11 p.m. on 24 January 1997. According to the information received, the policemen accused him of smoking and peddling bhang and ordered him to produce it. When he reportedly denied the accusations, he was taken to the local Kerugoya police station. On the way to the police station, he was reportedly asked for a bribe to be released. When he reportedly said he did not have any money, one of the police officers allegedly hit his private parts with a boot, which made him fall to the ground. He was reportedly later operated on at Kerugoya District Hospital.

15. **Joseph Mwangi Muiruri**, an 18-year-old boy was reportedly arrested by police officers in Kigumo on 13 February 1997. According to the information received, he was subsequently investigated and found innocent. However, instead of being released, he was reportedly taken by a police officer from the station to an unknown location. He was later found dead. A post mortem examination is said to have found that the cause of death was head and chest injuries, allegedly the result of the beatings.

16. **John Kamanda**, a Kenya Human Rights Commission monitor in Nairobi, was reportedly on his way home from Muthaiga, on 17 February 1997, where he had been collecting signatures for a Commission petition against police killings, when he was reportedly stopped by policemen. The officers allegedly grabbed him by the collar and accused him of being a thug who was harassing residents at night. A second police officer allegedly grabbed an envelope he was carrying. Upon noticing that it contained material on the KHRC "Campaign against police killings" and other documents on human rights violations in Kenya, the officer allegedly hit him hard and accused him and the KHRC of defending "criminals". He was allegedly kicked and slapped several times and when he reportedly refused requests to hand over his materials, he was allegedly hit more vigorously. He was reportedly then ordered to leave, amid insults and verbal abuse.

17. **Macharia Gicheru**, a peasant farmer from Londiani, Nakuru district, suffering from tuberculosis, was reportedly arrested by so-called "flying squad" officers on 18 February 1997. At the time of his arrest he was reportedly preparing to go to hospital. The police officers reportedly told his wife that they were taking him to Sotik for interrogation, supposedly in connection with a theft of spare car parts. According to the information received, he was instead

driven to Eldoret. He was reportedly lying on his back in the police vehicle when he was being driven. According to the information received, he was then taken to the “flying squad” headquarters at the Pangani police station in Nairobi, having been allegedly savagely beaten by police. When he was at the station, he was reportedly put in a wet cell, was refused requests to be taken to hospital. According to the information received, he was suffering from acute pain in the ribs, diarrhoea and vomiting. He was reportedly kept in the police station for seven days and died on 24 February 1997. Apparently, his relatives went to the police headquarters to lodge a complaint about his death. However no inquest was held, as reportedly required under Kenyan law.

18. **Johnson Kigwiri** was reportedly arrested by a police officer on 8 April 1997 at a bar in Kamukunji. According to the information received, he was first taken to Shauri Moyo police station, where he was reportedly held until 9 p.m. before reportedly being transferred to Ruiru police station and finally, the same evening, to Makuyu police station. At Makuyu police station, he was allegedly kicked and beaten repeatedly by police officers using rungus. At the time of the alleged beatings, he was reportedly asked to surrender a sewing machine that had reportedly been sold to him. His denial of any knowledge about the machine reportedly led to further alleged beatings by the police. According to the information received, the following day police officers returned and allegedly beat him with whips and kicked him for more than an hour. On 10 April, he was reportedly taken to Kabati police station, where he was reportedly detained until 21 April 1997. At this police station, he reportedly sustained a knee injury, allegedly from police beatings.

19. **Mariam Mweru**, the wife of a suspect in a 96 million Kenyan shilling theft case was reportedly arrested by the police in May 1997. According to the information received, she was allegedly raped by a police officer in Karura Forest at gunpoint. The police officer also allegedly put pepper into her vagina before forcing her to wash herself with dirty water. An investigation into these allegations has reportedly been ordered by a court.

20. **Sekoture Awando**, a businessman based in Kisumu, was reportedly arrested from his house in Kisumu by an assistant chief, a police officer and a KANU Youth Wing member in May 1997. He was allegedly frog-marched to the chief’s camp for reasons unknown to him. At the camp, he was allegedly beaten with walking sticks, which caused a fracture to his femur. The chief and his team then reportedly hired a taxi and took him to Kisumu police station where he was accused of being in possession of bhang. He was later reportedly released unconditionally.

21. The Special Rapporteur has received information on three rallies organized by the National Convention Executive Committee (NCEC) in 1997, which were reportedly dispersed by the police, using force. On 3 May 1997, NCEC reportedly organized a rally at the Kamukunji grounds in Nairobi. According to the information received, the meeting was called to discuss constitutional reforms and to discuss resolutions of the Limuru Convention held between 3 and 6 April 1997. The meeting was reportedly disrupted before it commenced at 10 a.m.. According to the information received, police officers armed with pangas and whips were stationed from 8 a.m. about a kilometre from the meeting at the Machakos Country Bus Station. Two preachers, the **Reverend Timothy Njoya** and **Samuel Njoya** were reportedly the first to be stopped by police at the Country Bus Station. They were allegedly whipped in full view of the

police before walking to the Kamukunji grounds, which police had allegedly sealed off, blocking all entries. While he was arguing with the police, the Reverend Njoya's robe was allegedly grabbed and torn by an officer. The two men were then reportedly taken to the middle of the Kamukunji grounds and held there for more than seven hours without having a chance to leave or to address the attendants. Thereafter, a number of NCEC officials reportedly entered the grounds from different directions. Among the group was **Peter Ndwiga**, who was allegedly "hit" by more than six police officers as he made his way through a human barrier that had been erected. **Willy Mutunga**, NCEC Co-Convenor and Vice-Chairman of the Kenya Human Rights Commission, was allegedly slapped as he tried to enter the grounds. The police officers then reportedly held the leaders in the middle of the grounds and allegedly used tear gas and beat several people present. Members of the Shauri estate were reportedly among the group of people allegedly beaten by the police. According to the information received, at around 4 p.m., the Reverend Njoya and two other men led members of the public out of the Kamukunji grounds. Upon reaching the Country Bus Station, the group reportedly encountered a contingent of regular and General Service Unit police officers. The police officers allegedly exploded tear gas canisters and used whips, batons and machetes to disperse the group. Many people reportedly began to disperse, however at least one man was arrested, **James Orengo**, an opposition member of Parliament, who was later released. Journalists were also reportedly injured during the confrontation. It is reported that **Govedi Atsusa**, a photographer for the Daily Nation sustained an injury to his arm. Another journalist, **Karen Shaw**, who was working with the Kenya Human Rights Commission, was allegedly hit by a club by a police officer as she took photographs of what was happening. She reportedly wrote a letter to the Commissioner of Police but there has allegedly been no response.

22. **Grace Wangari Gicharu** was allegedly brutally assaulted on 13 February 1997 by the Assistant-Chief at the Ol-Kalou police station after she reportedly refused to leave her house, which was going to be destroyed. She was allegedly repeatedly knocked against the wall. She allegedly sustained serious injuries and had a miscarriage. According to the information received, she reported the incident to the Ol-Kalou police station and obtained a P3 form, which was later filled in by a doctor after she had received medical treatment at the Ol-Kalou district hospital. The officer-in-charge of the police station is nevertheless said to have refused to take action. On 16 August 1999, her lawyer is reported to have written a letter to the Commissioner of Police, who responded by letter dated 4 December 1999 that the investigation had been closed because of lack of evidence.

23. A second NCEC constitutional reform rally reportedly took place on 31 May 1997, also in Nairobi. According to the information received, many participants present at the rally reportedly sustained serious injuries and were later admitted to various hospitals when the rally was allegedly disrupted by police at Central Park, which had been cordoned off by police at around 8 a.m. The rally reportedly commenced at St Andrew's Church near the University of Nairobi and then proceeded to Central Park, which people were reportedly blocked from entering. According to the information received, police officers allegedly threw stinging teargas canisters into the crowd and allegedly started beating people indiscriminately when prayers were led by Reverend Njoya. People reportedly scattered and trampled on each other and police allegedly beat several people present. The following individuals were reportedly amongst those harmed: **Muturi Kigano**, the Chairman of the Safina party, was allegedly hit on the head by police. He was reportedly admitted to Nairobi Hospital for treatment. **Saulo Busolo**, Ford-Kenya MP for

Webuye, reportedly sustained a broken arm after he tried to stop police batons allegedly aimed at his head. He was reportedly admitted to Nairobi Hospital for treatment. **Eddah Rubia**, reportedly a Ford-Asili activist, suffered a fractured leg after a police officer allegedly hit her repeatedly with a baton. **Kiraitu Murungi**, Member of Parliament (MP) for Imenti South, was reportedly injured on the head when a teargas canister exploded on his head. **Njuguna Muthahi**, a Kenya Human Rights Commission official, was reportedly running from police officers when he fell to the ground, where he was allegedly beaten on the head and elbows. He was reportedly later treated at the AAR clinic in South 'B'.

24. On 10 October 1997, a third NCEC rally, of around 5,000 people, reportedly took place in the Kamukunji grounds, Nairobi. It was reportedly interrupted by heavily armed police officers who allegedly entered the venue and boxed, kicked and whipped persons present. The officers were reportedly acting under the control of the Buru Buru divisional police chief. According to the information received, police officers lobbed tear gas canisters into the crowd, which resulted in several injuries. Some people were also reportedly injured by rubber bullets. The following individual cases have been brought to the Special Rapporteur's attention: **Henry Ruhiu**, MP for Embakasi, who is a recovering stroke victim, was reportedly beaten in front of around 40 local and international journalists. The police chief allegedly descended upon him with sticks, kicking his ribs after knocking away his walking stick. **Paul Muite**, also an MP, was allegedly kicked and punched before being held firmly on the neck and dragged for several metres. Other MPs allegedly beaten and/or tear-gassed are **Aloo Ogeska**, **Otieno Mak'Onyango**, **Benjamin Ndubai**, **Kamau Icharia**, **Philip Gitonga**, Safina members **Muturi Kigano**, **Richard Leakey** and **Ngengi Muigai** of FORD-Asili.

25. **Imam Amir Banda** was reportedly arrested on 16 August 1997 by six armed police officers who came to his house and told him that the Kwale District Commissioner wanted to see him. He was reportedly held until the following day when he was taken to the provincial headquarters of the Criminal Investigations Department. According to the information received, at the headquarters he remained in custody for five days until 21 August 1997. He was reportedly then taken to court and remanded for 40 days. While in custody, he was reportedly denied food for three days. In one reported incident, he was allegedly tied to a roller by police and rolled twice on the beach, while he was naked. He was also allegedly beaten by police officers with sticks on his joints and on the soles of his feet. According to the information received, he was denied access to medical attention for these reported injuries.

26. **Richard Abura**, the editor of a Vihiga-based government newspaper, was reportedly held by the police for an hour on 7 October 1997, at the Majengo market. The police reportedly went to his house at the market at 10 p.m. and allegedly told him that he had been a public nuisance for too long. He reportedly struggled with the policemen who allegedly hit him with gun butts and removed his shoes before frog-marching him to the Vihiga police station, about five kilometres away. He was reportedly later released on a K Sh 5,000 bond, after the intervention of CID officers who knew him.

27. The Special Rapporteur has received information that around 30 plain clothes policemen allegedly forcibly dispersed a tree planting meeting at Ihururu in Nyeri district on 20 October 1997. The ceremony was reportedly organized to pray for constitutional reforms in the country and to honour so-called "freedom fighters" of Kenya. The meeting was reportedly

dispersed by police officers allegedly using tear gas. According to the information received, police officers also allegedly kicked many people present. As people dispersed, police allegedly pursued them in police Land Rovers with canisters of tear gas. Several people were reportedly arrested and detained for about six hours.

28. **Erasmus Nasongo** and **Edward Nafula**, two young men, were reportedly suspected of having stolen household items from a farm in Kipkabus and taken to the offices of the chief of police in the Burnt Forest area on 8 November 1997. At the offices, they were allegedly beaten by the chief and the owner of the farm from where the goods were missing. Mr. Nasongo was reportedly beaten very badly and thrown into a river, where he stayed for an hour. Mr. Nafula was reportedly taken to the Eldoret Nursing Home in a critical condition.

29. The Special Rapporteur has received information concerning the allegedly violent dispersion of people at the Nakuru Municipal Council Old Town Hall, where election votes were reportedly being counted on 30 December 1997. According to the information received, armed police violently beat several persons outside the hall. Many of the people injured were reportedly treated by the Kenya Red Cross. The following individuals were reportedly amongst those who were injured. **Peter Mbae** reportedly had his nose and face wounded. **James Mwangi** was reportedly rushed to Pine Breeze Hospital with a gunshot wound to his left arm, which was reportedly shattered by the bullet. **Joseph Onyango** was reportedly shot in the head, while **Michael Onyango** was also reportedly shot in the left arm, both men were reportedly taken to the Nakuru Nursing Home for treatment.

30. **Simon Lasike Turkanan** and his five brothers were reportedly arrested on 3 January 1998 by the "flying squad", allegedly in connection with tribal clashes in the Lai Kipia district (Kikuya, Pakot, Samburu). The police were reportedly carrying out a raid and rounding up young people. The brothers were first taken to a General Security Unit camp where they were beaten on the soles of their feet, back and legs. The Special Rapporteur found that Simon Lasike Turkanan bore long slash marks on his back, which were reportedly caused by whips. Every day, Simon Lasike Turkanan and his brothers were reportedly asked to produce guns used in the clashes. He was reportedly beaten with hoes on the soles of his feet, which were swollen for two weeks. He reportedly did not give the police any information and allegedly said that they were not involved in the clashes. He was subsequently said to have been locked in Ngarwa for one week in the custody of the "flying squad". He allegedly did not receive any medical attention and the "flying squad" reportedly refused to issue him with a P3 form. He is said to have been taken to Nyahururu court, where he was allegedly told to wait for documents to allow him to be remanded. He reportedly informed the judge that he could not walk on his feet, that he was not receiving medical treatment and that he was suffering in custody. The judge allegedly told him that he was looking for "flying squad" members to question about his treatment. Simon Lasike Turkanan was reportedly further informed that the court was waiting for documents to determine if he was responsible for murder, which would determine where he was taken. According to the information received, the interrogation by the "flying squad" continued and was allegedly accompanied by beatings. Simon Lasike Turkanan was reportedly tied to a table by his hands and legs, and his head was allegedly placed under the table, when he was said to have been beaten. The Special Rapporteur found that Simon Lasike Turkanan bore a mark on his upper thigh and horizontal marks across his buttock. Again he is said to have stated that he had nothing to confess.

31. **Dominic Kabeo Kamau** was reportedly stopped by two police officers from Nakuru in the Lare area of Njoro on 25 February 1998 while he was on his way to work at a nearby farm. He was reportedly stopped because he was carrying a panga (machete) and a hoe. According to the information received, he was taken to a valley where police officers allegedly beat him with a metal bar and shaved his hair off with the panga, which they had seized from him. He reportedly received injuries to his wrist and left ankle. After the police officers left him, he apparently limped his way to a nearby road, from where he was taken for treatment at the Rift Valley Provincial General Hospital.

32. **Yarrow Abdi** and **Ibrahim Hussein** were allegedly shot by police on 28 February 1998 at Korogocho on suspicion of being robbers. After the first shot, they were taken to a remote place where the police are said to have attempted to summarily execute them. They were allegedly taken by the police to Kenyatta National Hospital mortuary as the police officers believe they were both dead. Yarrow Abdi was only seriously injured, while Ibrahim Hussein was declared dead. Yarrow Abdi was admitted to the hospital, where he reportedly stayed under police guard until 10 March 1998. On that day, he was allegedly taken by the police to Kasarani police station, where he was charged with preparing to commit a felony. The court is said to have ordered his release on bail, but he could only raise the necessary money after having spent six days at the Area Remand Home with unhealed bullet wounds and a bullet still lodged in his ribs.

33. **Patrick Kamende Mwakavi** was reportedly detained at the Karatina Criminal Investigation Department police station on 9 March 1998. According to the information received, when he refused to sign a statement implicating himself in a robbery, one of the police officers present allegedly beat him over the shoulders and knees with a piece of metal, reportedly saying to him that his signature would be his only saviour. He was apparently taken to Karatina Hospital but removed by police because he had been talking to journalists.

34. The Special Rapporteur has received information of the mass round-up and alleged torture of Mbalambala residents on 12 and 13 March 1998. According to the information received, at around 3 a.m. on 13 March, approximately 38 people were reportedly arrested. Their arrests reportedly took place after a police officer was reportedly killed in the area on 9 March 1998. The information received indicates that people were taken from their homes, herded together and then stripped naked, tear-gassed, kicked and whipped by police officers. The police officers who allegedly did this, according to the information received, may have been officers from outside the Mbalambala force. The events reportedly took place in a bush area about three kilometres from Mbalambala, as well as at the police station in Mbalambala. Some of the people were reportedly made to hang by their hands from trees, which reportedly caused paralysis of their arms. According to the information received, a commission was established to investigate what happened, but its findings have reportedly not yet been made public. The Special Rapporteur has received information on the following individual cases:

**Barre Shale**, a 42-year-old man, was reportedly sleeping in his house when he was woken by several police officers at 3 a.m. on 13 March. He was reportedly taken to a bush area three kilometres from Mbalambala, together with approximately 48 other people. There, police officers reportedly ordered him to strip naked and lie down. Police officers then allegedly sprayed tear gas at him. He was reportedly coughing, choking and



vomiting as a result of the tear gas. He was then reportedly put into a truck and taken to the police post. At the post, police reportedly ordered him to kneel down naked and they tied his hands behind his back. Next, the police officers allegedly tied his testicles to a gadget which they pulled on, which caused him to urinate. One officer reportedly threatened to rape him. He was also allegedly kicked and whipped by the police, who used leather whips and guns. He reportedly remained at the police station until the following day. According to information received, he is still suffering from chest pains and is unable to control urination as a result of what happened. He has apparently not received any medical attention.

**Aden Bilat Hadun**, a 56-year-old man with a speech disability, was reportedly also arrested from his house in the early hours of 13 March. He was reportedly taken to the same bush area, where seven police officers wearing boots allegedly trampled on his chest. According to the information received, the police officers allegedly demanded that he tell them where some stolen guns were. Police officers allegedly hit him with gun butts when he did not respond. According to the information received, he was in very poor health after the alleged incident and was unable to talk about what happened. He reportedly suffered a left broken rib, and now frequently vomits blood and is unable to eat, allegedly as a result of the police beatings. He has apparently received no medical attention.

**Mohammed Abdile Abdi**, a 28-year-old Mbalambala shopkeeper, was reportedly arrested at his shop on 13 March. Police officers in the Mbalambala police reportedly made him strip naked and then tied him to a tree. While he was tied up, he was reportedly kicked on the back and slapped around by police officers who also reportedly verbally abused him. Police officers are said to have demanded that he hand over some guns which he reportedly knew nothing about. He was allegedly hit with gun butts on his chest. According to the information received, he now has breathing problems, suffers from nose bleeds and cannot bend, owing to the injuries he reportedly sustained on his back. He also apparently has rope marks on his body as a result of reportedly being tied to a tree overnight. He is believed not to have received any medical attention.

**Issa Hassan Mursal**, was reportedly arrested on the same night by the police. He is said to have been kicked and beaten by the police and subjected to tear gas. He reportedly fell on a stone after the alleged beatings, and was rendered unconscious. According to the information received, he now regularly coughs up blood and suffers from pain in his left leg.

**Shaiya Mohammed**, an 18-year-old woman living in the Dujis division was reportedly approached by police at her house on the afternoon of 12 March. Several police officers reportedly asked her to produce her husband. She apparently explained that her husband was out of town and the police officers then left her house. Four of the same officers reportedly returned at around 1 a.m. on 13 March and again asked for her husband. After explaining that her husband was still out of town, she was apparently ordered not to close the door behind her. One police officer then allegedly sneaked behind her, grabbed her neck and encircled it with both of his hands. She reportedly fell to the floor, where the police officer allegedly raped her continuously until about 4 a.m. Her 14-year-old sister

was said to have been present in the room and was holding the woman's 10-month-old baby. Shaiya Mohammed is believed to have stayed in hospital for the injuries she reportedly sustained.

35. **Godfrey Ngige Kinuthia** was reportedly picked up by two police officers on 27 March 1998 and taken to the Jogoo Road police station. According to the information received, he was beaten unconscious by the police officers, who also allegedly injured his penis for reportedly attempting to rape his girlfriend. He was reportedly later taken to the Kenyatta National Hospital for treatment.

36. **George Gacheru Muchiri** was reportedly arrested on 31 March 1997 at a petrol station where he was working, in Banana town, Kiambu district. He was reportedly arrested by two plain clothes policemen on suspicion of having stolen some money. He was taken to Karuli police station, where he reportedly stayed for two days. He was then transferred to Kiambu police headquarters, where he was tied to a wooden stick and hung between two tables. He was then allegedly beaten with wooden sticks on the legs and on the soles of the feet. He reportedly spent one night in Kiambu police station before being transferred to Mai Mahi forest, near Narok, where, along with two other detainees who had been arrested on suspicion of having stolen the money in the same petrol station, he was severely beaten after having been hung up on a tree. He allegedly had a shot fired above his head, which is said to have impaired his hearing. His private parts were allegedly tied up and beaten. The two others were allegedly subjected to the same treatment. They were then reportedly taken back to Kiambu police station. According to the information received, during the transfer they were allegedly beaten again. They reportedly spent one night at Kiambu police station before being returned to Karuli police station, where they reportedly stayed for three days. On 9 April, George Gacheru Muchiri was reportedly taken to Kiambu court, where he was charged with theft. He reportedly did not complain about the ill-treatment to which he had allegedly been subjected. He was taken on remand to the Industrial Area prison where he reportedly stayed for one week, before a relative could pay the bond. He then reportedly received medical treatment. He reportedly did not file any complaint because of fear of reprisals.

37. **Vincent Nyumba Kiema**, a 27 year-old man from Mutune village in the Kitui district, was reportedly arrested on 5 April 1998 for his alleged involvement in a shop break-in. He was reportedly detained at the Kitui police station for seven days. According to the information received, his mother visited him at the police station twice and noticed several injuries. During her second visit on 9 April, she allegedly saw a police constable beat him, saying that he had not cooperated with the police. On 14 April 1998 he was brought to court, where he reportedly complained of his treatment by the police. He was reportedly released on a bond to enable him to seek medical attention for chest, back and stomach pains. He was also reportedly frequently passing blood in his urine. He died on 20 April. A post-mortem examination was apparently performed, which found that his death was caused by the rupturing of some of his internal organs, including his kidneys and liver, allegedly as a result of the police beatings.

38. **Hassan Salesa, Ibrahim Dadacha, Ali Tuka, Barako Mohamed, Adan Boru and Morid Wachu**, all from Rapsu sub-location, Isiolo district, were seriously injured on 25 May 1998 by Kenya Wildlife Service (KWS) officers who accused them of having killed an elephant. They were all detained and later released without charge. In the same incident, **Sarah Aki** is said to

have miscarried as a result of the beatings she was subjected to and **Muyo Habiba**, a nursery school pupil, was reportedly seriously injured and admitted to the Isiolo District Hospital.

39. **David Njuguna** was reportedly arrested in June 1998 on suspicion of having stolen his aunt's radio and clock. He was reportedly taken to Kikuyu police station, where he was allegedly beaten on the soles of the feet and on other parts of his body in an attempt to make him confess.

40. **Mohammed Sheikh Yahya** was reportedly arrested at his home at about 5.30 p.m. on 13 June 1998 by military officers who allegedly suspected him of having killed a herdsman during a bandit attack in Boka. Military officers allegedly tied him to the back of a Land Rover and dragged him for about two kilometres to a nearby forest. He was reportedly killed in the forest. According to the information received, when his body was found, his eyes had been gorged out and one of his ears cut off. A post mortem examination was reportedly performed which revealed that he had suffered cuts to his chest, back, legs and head. His upper torso had also reportedly been partly burnt and both of his wrists had been broken. The results of the post mortem examination were allegedly ordered to be covered up by security officers.

41. In connection with the same alleged bandit attack in Boka, military forces reportedly arrested 30 people in the Bangale town of Tana River on 13 June 1998 for alleged possession of firearms. Eleven of the suspects were said to have been taken to a military camp at Boka where they were reportedly held for eight days and **subjected to ill-treatment**.

42. **Ronald Ngara Momanyi** was reportedly arrested by police on 21 June 1998 and taken to the Nyamira police station. While at the police station, police allegedly beat him as he was being held incommunicado. His dead body was found shortly after, at the Nyamira District Hospital mortuary, by family members. His body had allegedly been dumped there secretly by the police. His body was reportedly covered in marks indicative of having been beaten. All of his limb joints were reportedly scarred and broken, and there were apparently marks on his hands and legs showing that they had been tied together with wire. His back was apparently covered in welt marks, allegedly as a result of whip lashing, and there was reportedly clotted blood around his nostrils and mouth.

43. **Nickson Cheruiyot** was reportedly assaulted at his home in Nakura at 6.30 p.m. on 28 June 1998 by members of the Administrative Police who kicked him in his genitals and slapped and punched him when he refused to hand over his money. One police officer allegedly beat him with a stick and made death threats against him. The officers are then said to have taken him to the bush where he was allegedly kicked until 10 p.m. The police are believed to have subsequently asked him for his identity card, which he reportedly handed over to them. They allegedly stated that they had mistaken him for someone else and left him in the bush. The same night, Nickson Cheruiyot is said to have reported the event to the assistant chief, who allegedly accompanied him the following morning to see the police officers, who reportedly once again subjected him to death threats. Following this event, Nickson Cheruiyot is reported to have met with an Assistant Commissioner of the Police, who allegedly did not take any action despite a promise to investigate and advice that he seek medical treatment. Subsequently, Nickson Cheruiyot reportedly met a senior officer of the Administrative Police, who allegedly asked him to forget the whole matter. After having consulted a medical doctor, Nickson

Cheruiyot was reportedly referred to the Rift Valley Hospital, where his genitals were operated on. As he was not able to pay KSh 10,000, the operation was allegedly delayed for three days. A member of the Administrative Police was subsequently said to have been arrested and to have agreed to pay Nickson Cheruiyot's hospital bill. The hospital's invoice for KSh 80,000 was allegedly sent to a senior officer of the Administrative Police; however, the bill was said never to have been paid. Consequently, the Administrative Police officer was reportedly released from detention in order to look for the money, but allegedly never settled the bill, which reportedly led to the hospital's refusal to continue further treatment. Nickson Cheruiyot was reportedly discharged from hospital after 50 days and recorded a statement at Njoro police station on 24 August. He was said to have been issued a P3 form which he sent to a government medical doctor, as the medical doctor who had performed his operation was not a government doctor and hence could not complete the form. He was reportedly requested to go to Kenyatta Hospital where his form was allegedly completed and where he was again operated upon. After his release from hospital, Nickson Cheruiyot reportedly handed in his form at Njoro police station, where he was said to have been told that his statement had been misplaced. He reportedly recorded a second statement and was referred to another police station, in Likin, which allegedly sent him back to Njoro police station. After he had been sent back and forth between the two police stations for over a week, he reportedly eventually went to the officer-in-charge of the police district, who advised him to record a second statement. He was reportedly informed that the accused police officers would record separate statements, which they allegedly refused to do. In May 1999, he reportedly had to return to hospital. The P3 form was said to have been completed incorrectly in that the police surgeon omitted to mention the scar on his torso allegedly caused by beating with a rifle. He also reportedly stated that Nickson Cheruiyot's testes were normal, whereas one testis was said to have been removed and the other to have been operated upon. Reportedly, the government doctor based his report solely on that of the Kenyatta Hospital, without independently examining Nickson Cheruiyot. Allegedly, journalists have been barred from reporting on this case and from visiting Nickson Cheruiyot in the Rift Valley Hospital. The Kenyan Head of State is said to be aware of this case. Reportedly one Administrative Police officer involved has committed suicide.

44. **John Chege Komu**, 20 years old, was reportedly arrested with two others on 3 July 1998 and taken to the Kahawa Sukari police station, where he was held for five days. He reportedly lost consciousness and went into a coma as a result of alleged police beatings. He was reportedly rushed to the Thika General Hospital before being transferred to the Forces Memorial Hospital, where he died on 8 July 1998.

45. **John Muhia Munyinyi** was reportedly arrested together with his two brothers, his parents and his three sons on 24 July 1998 in the Githunuguri area of Kiambu district. Police from Githunguri division allegedly raided his home and reportedly handcuffed his three sons and led them to a nearby road, where they set police dogs on them. Two of his sons, **David Munyinyi** and **Joseph Njuguna Muhia**, reportedly sustained serious dog bites which rendered them unable to walk independently. All the family members were reportedly taken to the Githunguri police station where they were reportedly denied access to medical treatment and to relatives who wanted to visit them.

46. **Simon Munyao** was reportedly arrested on 25 July 1998 at Muthesya by a local chief accompanied by KANU Youth Wingers. According to the information received, they accused

him of having stolen two goats. He was allegedly suspended upside down from a tree for two hours with his hands and legs tied together tightly. He was allegedly severely beaten with a tyre whip. He was then reportedly taken to a police station by boat on the Massinga dam and was allegedly immersed in the water several times during the transfer. He reportedly sustained injuries to the head, chest and legs.

47. **Paulina Nauram, Ekiru Ekuwam**, aged 11, **Akiru Asikiria**, aged 13, **Lochuck Elimlim**, aged 17, **Mput Etelej**, aged 17, **Paulina Napayok**, aged 17, **Nayanae Nakwawi**, aged 32, **Akatapan Ekuwam**, aged 25, **Elisabeht Asikiria**, aged 35, and **Nkotin Mtuu**, aged 75, all from Ngare Mara and Daaba, Isiole district, were allegedly assaulted on 8 August 1998 by a contingent of about 1,000 uniformed and armed men who were reportedly searching for stolen guns and livestock. They were allegedly severely beaten and some of the women were reported to have been raped in an attempt to make them produce the stolen arms.

48. **Murage Njoka** was reportedly arrested on 13 August 1998 and accused of robbery with violence. He was interrogated for two weeks at Kikuyu police station, where he was allegedly severely beaten with batons, clubs and sticks on his chest, legs and ears. He is said not to have signed any statement and to have complained to a judge, who reportedly wrote a note in order to send him to a hospital for medical treatment. The note is believed to have been thrown away by the police. He was reportedly sent to Kumiti prison on remand. In September 1999 he was still awaiting trial in the same police station.

49. **Peter Ndegua Kemali** was reportedly arrested on 30 August 1998 by CID officers and taken to Kikuyu police station and then to Apland police station. While detained in Kikuyu, he was allegedly forced to sit on the floor and beaten with clubs every day during two hours. At the time of the interview, scars on his legs and arms consistent with his allegations were still visible. After six days, he was reportedly transferred to Apland police station. According to the information received, during his transfer between the two police stations he was severely beaten and was then forced to sign a statement upon arrival at Apland police station, where he reportedly stayed for three days. On 9 September 1998, he was reportedly charged with robbery with violence. He was then reportedly sent to Kumiti prison on remand.

50. On 16 September 1998, a **13-year-old student** at a boarding school in Eldama Ravine was allegedly caned more than 20 times on his bare buttocks after having allegedly accidentally broken a school window. After reportedly paying for the window, he was said to have been called into the head teacher's office, where he was allegedly asked to lie on the ground and to remove his shorts. As a result of the caning, he was said to have lost consciousness. When he regained consciousness, the teacher reportedly continued hitting him when he put his shorts back on. He was reportedly not allowed to go home after the beating. As a result, he was said to have suffered from swollen buttocks, a severe headache, chest pain and a dislocated right thumb. Criminal charges had reportedly been filed against the head teacher, however the case remained unresolved at the time of writing of the present report.

51. On 17 September 1998, a student at Kayoi primary school in the Rift Valley province had allegedly died after being caned by a teacher. The teacher was said to have been subsequently charged with murder on 21 April 1999, but the charges were said to have been withdrawn by the prosecutor on 10 May 1999, pending an inquest. A magistrate allegedly discharged the case,

pending the outcome of the inquest. The district education officer reportedly did not take any disciplinary action against the teacher, on the grounds that the post-mortem had been said to have revealed that the student had been malnourished and that his intestines had coiled abnormally.

52. On 23 September 1998, a **13-year-old girl** and the rest of her class were reportedly severely caned by her head teacher at Masewani primary school. She was allegedly asked by the teacher to lie down and remove her cardigan. She is then said to have been caned on her back for more than five times in front of the other pupils. As a result, she reportedly lost consciousness and sustained cuts and bruises on her hand and back. Subsequently, she allegedly reported what had happened to the police. When she returned to school three days later, she was said to have been threatened by the head teacher with further beatings and to have been told that she had been expelled. Her mother, who is said to have been a teacher at the same school, and her father, who reportedly complained to the head teacher, were allegedly also threatened. Allegedly owing to her parents' persistence, the head teacher was charged with assault in Kiambu District Court. The case was still pending at the time of writing of the present report.

53. **Clement Njuguna Ndungu** was reportedly shot on his right wrist and left elbow around 1 p.m. on 23 September 1998 by a police officer while he was working on his farm in Katungu, Subukia location, Nakuru district. At the time of the interview (25 September 1999), his elbow was still swollen to the extent that it appeared deformed. According to him, it was still very painful. The police, who had been called upon to stop a land dispute are said to have shot at random. The inspector who had shot him asked his colleagues why Clement Njuguna Ndungu was not dead and asked them to take him with other arrested persons to the Kirengero police station. Upon arrival at the police station, he was reportedly left alone in the back of the truck and was eventually transferred to the general provincial hospital around 9 p.m.. He was reportedly only treated the following day. His family is said to have come the same day and to have taken him to the Pine Breeze (private) Hospital, where he stayed for five months. It is reported that he filed a complaint on 10 May 1999 against the inspector who allegedly shot him. According to the information received, he was then arrested on 23 May 1999 and taken to Subukia police station, where he was informed that he was charged with five minor charges, including stealing firewood and breaking into a house. He was summoned to attend a court hearing, but the High Court is said to have ordered that the case against him be dropped. A case for compensation is reportedly still pending.

54. **Pauline Mueni** was reportedly set ablaze on 25 September 1998, after her boyfriend, who at the time was a constable in the Kitui police force, allegedly locked her in his house in the Kitui police station residential yard and doused her with paraffin. Her boyfriend had reportedly approached her on the street while she was walking with a friend and, stripping her clothes off her, had slapped and kicked her. He reportedly frogmarched her to the police station, threatening to kill her. On the way to his house, they reportedly passed by duty officers sitting outside the police station. They allegedly did nothing to come to her rescue when they saw her being attacked.

55. **Redempta Nduku** was reportedly arrested in September 1998 by members of the "flying squad". Allegedly she was stripped naked, her breasts were pricked with needles and her genitals burnt with cigarette butts in order to extract a confession. She was then allegedly

blindfolded and raped. According to the information received, she was then taken to Thika court, where she was charged with robbery and detained on remand.

56. **Mzee Stephen Sum** was reportedly beaten on 15 October 1998 by the administration police on the order of a Chief of the Koisagat location, Uasin Gishu district, with whom he had had a personal dispute.

57. **John Khakhua Wanyama** was reportedly summoned without reason by the Assistant-Chief of Kuyawa, Bungoma district, on the morning of 23 November 1998. Upon arrival at the Assistant-Chief's office, he was allegedly beaten with sticks for approximately 15 minutes by the Assistant-Chief and three villagers. He was then reportedly tied with a rope and dragged into a bare cell in the Assistant-Chief's office. According to the information received, he was then transferred to the Chief's office where he was reportedly punched and kicked, and locked in a cell. On 25 November, he was reportedly released. He is said to have given a statement at the police station and was asked to go to the hospital in order to fill in a P3 form. He was reportedly treated for injuries on his back, shoulders ankles and wrists. On 18 January 1999, the P3 form was reportedly returned to the police station. On 24 January 1999, he is said to have been told by the officer-in-charge of the police station to come back later. He reportedly never received any response regarding his complaints. Six months later, he is said to have seen the officer commanding a police division and the Kakamega Provincial Police Officer who informed him that his file was not complete. Meanwhile, he is reported to have filed a civil case.

58. **Abdi Hussein Hassan** was reportedly arrested on 29 November 1998 in Dabad town. A lieutenant and a constable are said to have asked for his identity while he was in his brother's restaurant and then to have taken him to the administrative police camp in Dabad. He was reportedly taken with one of his friends, **Ali Abdullahi**, in a military vehicle to the forest, where he was allegedly severely tortured. Abdi Hussein Hassan was allegedly attached to the roof of a moving vehicle. His body was reportedly banging against the vehicle. He reportedly fainted. Water was then reportedly poured on him in order to make him recover consciousness. He was interrogated about a gun that he denied possessing. He was then allegedly beaten, kicked and burnt with a cigarette on his neck and legs. Ali Abdullahi was reportedly treated in a similar manner. This is believed to have lasted for six hours. They were then returned to the camp and released a few hours later. At the time of the interview (26 September 1999), Abdi Hussein Hassan was still suffering from headaches and had problems urinating. He reportedly complained to the district officer, who asked the lieutenant in charge of the operation to apologize, which eventually happened on 30 November 1998. On the following day, Abdi Hussein Hassan reportedly went to the Dabad police station in order to get a P3 form. On 3 December 1998, he was reportedly taken to Garissan Provincial General Hospital and then to Garissa Nursing Home to receive medical treatment.

59. **Hellen Wanjiru**, who was pregnant at the time, was reportedly arrested near her home and accused of loitering on 18 November 1998 by police officers from Mwiki police station.

She reportedly pleaded with police to release her after she started having labour pains, but they reportedly refused and allegedly slapped her. She was reportedly detained for 12 hours before giving birth prematurely.

60. **Dennis Muthomi**, aged 10, and another boy were reportedly arrested on 11 December 1998 and detained at the Meru police station, where they were allegedly severely tortured. The following day, they are said to have been admitted to the Meru District Hospital, where they were treated for multiple serious injuries, especially in the spinal and cervical areas.

61. **Peter Muraya** was reportedly arrested on 20 December 1998 at his home in Gitare Marigu, in Dandora, Nairobi, on suspicion of being in possession of chang'aa, an illicit brew. He was reportedly taken to Buru Buru police station, where he was detained for four days without being taken to court. His mother is said to have visited him on 23 December and he reportedly complained to her about the beatings he had been subjected to. On the following day, his mother found his body at the mortuary. The police is said to have claimed that he had committed suicide. According to a post-mortem examination, he died from suffocation. No action is said to have been taken.

62. **Peter Muchiri Munene** reportedly appeared before the Nyeri court on 30 December 1998 on crutches, suffering from a broken leg. He had allegedly been tortured by prison warders. According to the information received, the magistrate ordered an investigation the results of which were not known at the time of writing.

63. On 6 January 1999, at about midday, a contingent of armed government security personnel reportedly appeared at Danisa C village in the Tana River district. They allegedly started shooting indiscriminately, ordering men, women and children of the Galje'el community to come out of their houses. The security personnel are said to have subsequently told them to "go back" to Somalia and to have subjected them to beatings. They are also alleged to have raped about 20 women in an attack on two successive nights. The attack was believed to have been carried out in response to an attack against the district commissioner of Baringo which had reportedly been carried out by bandits near Lagabuna four days earlier.

64. **Jeffrey Lutilo** was reportedly arrested on 12 January 1999 in Malaba and taken to Malaba police station, where he was interrogated about a cousin accused of having stolen a car in Nairobi. One week later, he was reportedly transferred to Eldoret police station, where he is said to have stayed for two days. The first day, he was allegedly taken to a nearby forest, where he was severely beaten with wooden sticks for approximately one hour on his legs, feet and chest by five police officers from Eldoret and Nakuru. He is believed to have had a broken right leg as a result of the beatings. According to the information received, he was denied medical treatment while in detention, except some attention from fellow detainees. He was then transferred to Nakuru Central police station, where he was interrogated and beaten again with bamboo sticks on his back. At night, his testicles were allegedly tied up, pulled, beaten and squeezed. Matches were allegedly inserted into his penis. He was allegedly stripped naked, chained and suspended on a wooden bar between two tables, and beaten in that position. He is reported to have become unconscious several times. According to the information received, he was eventually asked to sign three different statements, none of which he was allowed to read. He signed because he was



in great pain. On 2 February, he was reportedly taken to Nakuru court, where he was charged with car robbery. He is said to have informed the magistrate of the alleged ill-treatment to which he had been subjected, and the magistrate is reported to have indicated that the prison guards would transfer him to a hospital for appropriate medical treatment. But he was reported to have been taken to the Nakurua general hospital only one week later. His leg is said to have been put in plaster and he also apparently received medical treatment for his penis, which was bleeding. He stayed at the hospital for four days. At the time of the interview (25 September) he was still receiving medical treatment while in detention in Nakuru prison and his case was believed to remain pending in court.

65. **David** was reportedly visited at his home in the middle of the night of 17 January 1999 by three police officers, 10 members of the KANU Youth Wing and a number of villagers from Kikuyu who had the intention of arresting him for rape. The allegations were allegedly solely motivated by a personal grudge on the part of the members of the KANU Youth Wing against David and his mother. It is reported that at 1 p.m. the previous day, David had protected a girl from being sexually assaulted by several men, but had not seen another girl who had reportedly been raped by the same men. He was allegedly subsequently suspected by villagers of having raped her. When the police arrived at David's home, his mother reportedly started screaming and three KANU Youth Wing members allegedly beat her. She was said to have subsequently attempted to run away and allegedly was cut by barbed wire. She also allegedly sustained swelling to her right eye and bruises to her thighs from being whipped. When David attempted to run from the police, the officers reportedly set a dog on him. Three policemen allegedly beat him all over his body with whips and clubs made of black rubber for over 45 minutes. When he reportedly lost consciousness, he was woken up and taken back to his home, where he was allegedly beaten again. His mother was said to have come back out of her house and to have been subjected to a renewed assault. At about midnight, David's brother, **Arthur**, reportedly attempted to come to his brother's and his mother's rescue with a sword. Subsequently, the police was said to have beaten him for about 15 minutes and to have unleashed the police dog, which bit his left thigh. He was also reportedly further beaten by the police with whips and clubs and had his arms tied with a belt. Arthur and David were allegedly subsequently taken to Kikuyu police station by the police. At about 2.30-3 a.m., they were said to have been placed in a cell. When their mother came to see them the following day, she was reportedly arrested and placed in a cell from which she was said to have been moved 15 minutes later. On 18 January 1999, an officer of the Criminal Investigation Department allegedly pre-prepared statements. Arthur was reportedly questioned by the deputy officer in charge of the police station about the rape allegation and wrote a statement. Arthur and David are reported to have complained of their injuries, but to have been denied access to a medical doctor. On 19 January, Arthur is believed to have been taken to court on charges of obstruction of justice, for which his sword was allegedly used as evidence. At the trial, he was said to have requested bail and was released on payment of K Sh 30,000. His case was allegedly scheduled for 1 October 1999. David was reported to have been taken to court on 26 January 1999 charged with rape. He is said to have pleaded not guilty and was allegedly released on bail on payment of K Sh 50,000 on 27 January 1999. The date of his substantive trial was reportedly set for 5 October 1999. Arthur and David are said to have received treatment from a medical doctor. They reportedly went to Kikuyu police station on 15 February to request a P3 form, which was allegedly refused

on the grounds that their cases were pending at the time of their request. The KANU Youth Wing members who are said to have come to the house of David's mother are reported to have been arrested for the murder of a 28-year-old man.

66. **Moses Kaporot Ben**, a 39-year-old farmer from Maseek sub-location, Chongewo location, was reportedly severely beaten on 19 January 1999 around 9.30 a.m. by an assistant-chief (whose name is known by the Special Rapporteur) and three of his colleagues who were working on his farm on a new road opening. He was allegedly tied with a rope and beaten by the assistant-chief on the mouth, the chest and the back. He was reportedly released after his friends intervened, and received medical treatment in Kopsilo dispensary. On 21 January, he reportedly filed a complaint at the Kipsigon police base. The same day, he was reportedly arrested by the Administrative Police and taken to Chelebei Patrol base, which is said to be a room rented by the Administrative Police in order to detain persons. Later that day, he was reportedly transferred to Kopsito police post, where he stayed without being given food for five days. On 22 January, he was reportedly asked why he wanted to beat the assistant-chief. On 25 January, his case was reportedly referred to the Kimilili Magistrates Court in Bungoma district. However, no judge was present. The following day, he reportedly appeared in court and denied the charges brought against him of creating public disturbances. He was reportedly sent to Bungoma prison on remand. On 28 January, he was released on bail. A judgement concerning his case was expected on 21 October 1999. He reportedly received medical treatment from a private doctor working in conjunction with Independent Medical-Legal Unit (IMLU), an NGO, and completed a P3 form (a copy of which is in the possession of the Special Rapporteur) on 31 January 1999. On 11 February, he is said to have returned to Kipsigon police station with two witnesses in order to write a statement. On 3 May, he reportedly wrote a letter to the officer-in-charge of the police station. On 8 June, he is said to have received a response from an officer commanding a police division saying that an inquiry would take place. Since then, it is alleged that nothing has been done by the police regarding his complaint against the assistant-chief and his colleagues.

67. **Gentrix Musuya**, a 25-year-old woman who was eight months pregnant at the time, from Kolongotuy sub-location, Emia location, Mont Elgon district, was reportedly beaten at her home by Administrative Police officers on 29 January 1999. She was reportedly interrogated about some people who were accused of drinking illegally brewed beers. She was allegedly beaten and kicked in the stomach, leading her to miscarry. The following day, she went with her husband to the Kipsigon police station, where she was advised to first get medical treatment, given her poor state of health. She was reportedly treated at the Kopsino health centre and by a IMLU doctor whose reports indicate that she was experiencing pain in her lower abdomen and back, as well as experiencing shock and depression from having miscarried. On 10 February, she filled in a P3 form (a copy of which is in the possession of the Special Rapporteur), which was returned to the police on 18 February. The same day, she wrote a statement at the Kipsigon police station. Since then, she has not heard anything about her complaint, despite the fact that the District Commissioner and the officer commanding a police division promised her that they would follow up her case.

68. In February 1999, a 17-year-old from Nyanza province and his whole class were reportedly subjected to beatings with the cane for alleged under-performance. The 17-year-old was reportedly caned four times while lying on his stomach. He was allegedly grabbed by the headmaster, further hit on the sides of his head and told to lie down again. He was then allegedly

caned on his back, punched and stepped on. Other teachers reportedly started to leave at this point. His back was said to have been bleeding and he was allegedly sick. When he reportedly returned to school, the headmaster was said to have threatened him with more severe beating if he failed or missed a test.

69. **Romano Wasike**, aged 68, was reportedly arrested by six persons in plain clothes on 22 February 1999 around 5.30 p.m. in Mufutu, Bungoma town. He was allegedly beaten with rubber truncheons and was taken to the Bungoma police station, where he was reportedly accused of having beaten a policeman. He was reportedly interrogated for three days by the crime section and then was told to leave. During his detention, he was allegedly kicked and beaten with truncheons each morning and evening, for approximately half an hour at a time. It is reported that he was interrogated by four different police officers, who are believed to have threatened him in order to force him to sign a statement. According to the information received, he finally signed such a statement on 23 February, but was only released on 25 February. The case against him is said to have been dropped by the police.

70. The Special Rapporteur has also received information of alleged violence by security personnel on 22 February 1999 at the Mandizini Estate. According to the information received, on the afternoon of 22 February, several contingents of police arrived at the Estate, purportedly in response to the alleged beating of a police officer there earlier in the afternoon. Thereafter, a reported two-hour reign of terror ensued during which many civilians were reportedly injured. Information was received on the following individual cases:

**Casiah Mugure**, a 69-year-old woman who owns a food kiosk at Mandizini Estate, was reportedly arrested by two police officers at her kiosk at about 4 p.m. She was reportedly holding a water jug at the time of her arrest and the police allegedly beat her with a club and hit her with a gun on the left side of her chest. She was reportedly detained at the Bungoma police station until 23 February, when she was released.

**Amina Raymond**, a 56-year-old housewife at the Mufutu Estate, was reportedly arrested and detained at the Bungoma Police station until 8 p.m. on 22 February 1999. At the time of her arrest, police allegedly beat her on the hips and buttocks using clubs and guns.

**Romano Wasike**, a 67-year-old herbalist and farmer, was reportedly approached by a number of plain-clothed police officers at 5.30 p.m. The police officers allegedly beat his back, hands and legs. He reportedly lost consciousness and was then thrown into a police Land Rover. According to the information received, the police also allegedly destroyed his medicine. He was reportedly taken to the Bungoma police station, where he was detained until 25 February. At the station, police allegedly whipped him on several occasions while ordering him to sign two statements alleging that he had incited youths to beat a police officer and had allegedly obstructed police officers from carrying out their lawful duties.

**Ali Wafula**, a 42-year-old driver had reportedly just returned to his rented room near the Banana Bar when police allegedly kicked open his front door and allegedly started to beat him using a rungu (club) and a boot. He was reportedly beaten on his hip, hand,

forehead and chest. Thereafter, according to the information received, he was detained at the Bungoma police station until 25 February. He was reportedly released at around 8.20 p.m. on 25 February.

**Margaret Agor**, a 46-year-old mother was reportedly resting on some grass near a food kiosk when police officers allegedly started hitting her on her hips, hands, shoulders and knees. She was reportedly then thrown into a Land Rover and transported to a police station, where she was said to have been detained for the afternoon. During the alleged detention, she was reportedly whipped with rubber strips. **Jackson Macharia Mugo**, a 34-year-old disabled man, was reportedly arrested, allegedly beaten and detained under the same conditions.

**Paul Masiga Nyongesa**, a 21-year-old businessman, was reportedly returning home around 5 p.m. when he was allegedly arrested near the Moi primary school by the police. The information received indicates that the police hit him several times on the head with a pistol muzzle, then reportedly beat him with clubs (rungus) before whipping him with rubber strips. He was said to have been detained at the Bungoma police station until 24 February, during which time he was allegedly whipped by police with rubber strips. According to the information received, he apparently has some physical marks on his body allegedly caused by the whipping.

**Haji Yusuf**, aged 68 years at the time, was reportedly coming back from his rental plot of land opposite Victory Church, when he supposedly met several police officers who allegedly beat him with rungus on several parts of his body. He reportedly lost consciousness as a result and was taken to Mumias Road Nursing Home, where he was reportedly admitted with a fractured head. According to the information received, he later died, on 14 May 1999. A post-mortem examination was apparently performed.

**Enock Bukachi**, a 28-year-old businessman residing in Mandizini, was reportedly coming home from a video library when he saw police officers allegedly beating someone. He was reportedly beaten with rungus several times on the hand, shoulder and back. According to the information received, he was then thrown into a Land Rover and brought to a police station, where he was reportedly detained until about 6 p.m. on 24 February.

71. **Jane Chasoo**, from Mont Elgon, Kapsokuan district, was reportedly arrested by two police officers while she was returning home with her brother-in-law on 14 March 1999. She was allegedly pinned to the ground and raped in the presence of her brother-in-law. The following day, she reportedly went to Kipsigon police station in order to file a complaint. According to the information received, she was first told to go to the hospital for treatment. When she came back from hospital, a P3 form was completed at the police station. Since then, she reportedly has not received any news regarding her complaint despite repeated inquiries with the District Officer. The officers allegedly responsible for her rape were said to be still on duty.

72. **Isaac Mwaniki Gitari** was reportedly arrested in April 1999 by two officers of the Administration Police and frogmarched to Eldoret police station, where he was allegedly threatened with a gun and severely beaten. He was eventually released the same day owing to

his nephew's intervention. He is said to have collapsed five hours after his release and to have been taken to the Uasin Gishu District Hospital. He is said to have died 12 days later. An autopsy said to have been conducted at the Moi National Teaching Hospital reportedly found the cause of his death to have been a dislocation of his upper cervical vertebrae and compression of his spinal cord. Reportedly as a result of pressure by family and human rights groups, an investigating team was said to have been sent from Nairobi. According to the information received, no proceedings had been instituted against the officers at the time of writing the report.

73. **Duncan Ndegwa**, a policeman attached to the Nairobi Provincial Criminal Investigation Department Headquarters, was reportedly arrested in May 1999 and allegedly severely tortured by members of the "flying squad" based in Pangani. According to the information received, he was questioning the propriety of a person's arrest when he himself was arrested.

74. **Peter Munga** and seven other individuals were reportedly arrested by the "flying squad" in May 1999 at Waithaka. According to the information received, they were taken to Kikuyu police station, where they were allegedly severely tortured. **Tama Kimotho** is said to have died from his injuries and to have been taken to Kenyatta National Hospital mortuary.

75. **David Munyoki** was reportedly beaten to death on 10 May 1999 by residents of Ikanga location in Kitui district who suspected him of having been one of six people who had reportedly broken into the home of a resident at 11 p.m., allegedly beating him with rungus and taking money from him. He was allegedly frogmarched to the resident's home. The villagers were said to have beaten him with whips and sticks. His hands were reportedly tied with a rope. On the way to the Chief's camp, he was said to have been continually beaten by a group of young men, who reportedly forced him to sign a confession naming his alleged accomplices. He was reportedly beaten to death and left by the roadside. His body was believed to have only been collected by officers of the Kitui police station at around 4 p.m. the next day. No one had reportedly been arrested by 30 June 1999.

76. On 23 May 1999, officers of the Kenyan army and the police are believed to have jointly attacked herders of the Gabbra community at the Baresa watering point in Marsabit district, bordering Ethiopia. The attack was said to have been a "security operation" by the Kenyan security forces aimed at expelling members of the Ethiopian Oromo Liberation Front who were allegedly staging raids against the Government of Ethiopia from Kenya. Over 70 men were reportedly herded together and stripped naked. Some men were said to have had their testicles pulled, whilst others were reportedly pricked with thorns between their fingers and toes. The military were said to have investigated the matter. At the time of writing the report, the findings of the investigations had reportedly not been made public, nor any arrests made.

77. **Erustus Gakungu Mwangi** was reportedly arrested on 25 May 1999 around 5.50 a.m. by four policemen from Gakoigo police post and taken to Maragwa police station in Muranga district. At the time of arrest, he was allegedly severely beaten. On the following day, his brother is reported to have found his body at the mortuary. According to the information received, the police had taken his body to the mortuary but had registered him under a fictitious name. The police are also said to have claimed that he had been killed by an irate mob.

78. **Jirma Hussein**, a 29-year-old man from Sololo (Obbo) division in Moyale district, was reportedly arrested by a group of plain clothes police officers at 9.30 p.m. on 28 May 1999. At the time of his reported arrest he was apparently attending a funeral. A group of police officers from the Kamukunji police station allegedly then started to beat him. One of the police officers allegedly kicked him on the genitals, causing him to scream in pain while the police officers reportedly laughed. Thereafter, the police officers allegedly pointed their guns at his eyes and threatened to shoot him if he spoke. One of the officers reportedly grabbed him from behind by his belt and, holding the back of his neck, pushed him to walk forward. The officers allegedly ordered him not to look behind and told him that if he did, they would shoot him. When he did reportedly look behind, one of the officers allegedly hammered a gun into his face, causing it to bleed. Later, he was reportedly taken to a house, where police officers allegedly beat him further and jumped on him with their boots. He was later reportedly blindfolded and driven to the Embakasi police station and then the Jogoo police station. He was reportedly beaten and had his testicles pinched until he shouted in pain. He was also reportedly put into a cell and threatened by police officers that they would come the next day to “finish him off”. His requests for medical treatment were apparently all denied. On 30 May 1999, he was reportedly threatened that if he did not sign a prepared statement, his head would be shot by a gun placed into his mouth. He was later released after attending court.

79. **Tache Ole**, aged 41, was reportedly arrested by several officers of the Kenyan Wildlife Service (KWS) in the Shambole market, Magadi, Rift Valley province, on 2 June 1999. Two of his friends, **Aleke** and **Abdu**, are said to have been arrested at the same time. They were all taken to Lega market, where they were allegedly beaten on the soles of the feet with a wooden stick. Marks were still visible at the time of the interview (22 September 1999). They were reportedly handcuffed and their legs were tied. They were reportedly surrounded by around 30 KWS officers and left in the sun somewhere on the outskirts of the market. The following morning, around 6 a.m., their feet and hands were tied together from behind and they were forced to lie on their stomachs. They were then allegedly beaten again with wooden sticks. They were kept all the day under the sun. On 3 June, three other persons, **Ibrahim Dabasso**, **Hussein Malisha** and **Alow Omar** were reportedly arrested and taken to the same place, where they were subjected to the same treatment. On 4 June, **Hassan Mohamed**, a Muslim trader from Lega, was also reportedly arrested by KWS officers and taken directly to the Magadi police station, where he was allegedly severely beaten for half an hour with sticks and truncheons. He was also allegedly kicked in front of police officers, who are said not to have intervened. On 4 June, around 6 p.m., some people, including Tache Ole’s wife, took Tache Ole and Ibrahim Dabasso to the Magadi hospital. The others were reportedly taken into police custody at Magadi police station, from where they were directly taken with Hassan Mohamed to Ngong police station. On their way to Ngong police station, it is alleged that Hassan Mohamed was beaten again with gun butts. They were reportedly released on 15 June owing to pressure by human rights activists and the Head of KWS. It is reported that Ibrahim Dabasso died at the Magadi hospital on 11 June, allegedly as a result of the beatings he sustained. Tache Ole reportedly received medical treatment from the non-governmental organization IMLU for two months. He reportedly had a fracture of his right leg and wounds on the feet, legs and back. He, Hassan Mohamed and Alow Omar are said to have obtained a P3 form. Alow Omar reportedly had a broken right leg and foot. During his detention at the police station, he was allegedly refused medical treatment. All of those detained at the police station were reportedly asked to report weekly to the police. According to them, they had been arrested because

somebody had given KWS their names as persons having guns. They were reportedly interrogated about guns. According to the information received, a senior KWS officer was fired by the Head of KWS and two officers were suspended on 15 June. A letter was reportedly sent to the Attorney-General asking for an inquiry to be opened.

80. **Hassan Mohamed**, 39 years old, was reportedly arrested in early June 1999 by KWS personnel, who allegedly beat him with rifle butts and slapped and kicked him. He was seen by a doctor on 16 June 1999 who reported that he had loin and chest pain, a small wound on his skull and tenderness in the lower abdomen. He also reportedly had traces of blood in his urine and may have been suffering from cystitis. A P3 form was completed by him on 4 June 1999 and is in the possession of the Special Rapporteur.

81. **Olow Chachole**, 41 years old, was allegedly beaten by KWS personnel at Magadi from 2 June until 4 June 1999. He was reportedly admitted to Magadi hospital from 4 to 11 June 1999. There he underwent x-rays and treatment for severe soft tissue damage and a broken bone in his right foot. He completed a P3 form on 19 July 1999 at the Magadi police station; it is in the possession of the Special Rapporteur. According to the P3 form, he sustained bruises to both his wrists, wounds on the soles of his feet and a fractured bone in his right foot, allegedly as a result of the beatings.

82. **Alow Omar Hussein**, 38 years old, was reportedly arrested by KWS personnel on 3 June 1999. According to the information received, he was allegedly beaten by KWS personnel, which reportedly caused numerous injuries to his feet, chest and abdomen. He filled in a P3 form (in the possession of the Special Rapporteur) on 4 June 1999, which details a number of injuries he reportedly sustained, including a fractured fifth metatarsal bone in one of his feet and wounds on both of his feet, allegedly as a result of the beatings.

83. **John Njenga** and seven other men were reportedly victims of a lynching at Kiganjo Ranching Company in the Kimuchu area of Thika district around 11 June 1999. They were reportedly suspected of theft. John Njenga had allegedly been working on a construction site when he was approached by a group of people who reportedly told him to accompany them back to the village. His hands were said to have been tied together with a rope and he was allegedly taken to Muthara primary school playground where he was reportedly ordered to sit on the ground next to seven other men. They were believed to have been questioned by the villagers while being beaten by two men with metal rods, whips and pangas. John Njenga reportedly lost an ear in the attack. Other men reportedly castrated some of the victims with a pair of pliers. They were then said to have piled up the victims and a fourth villager was believed to have poured paraffin over them and set them alight. Seven of the victims reportedly died and John Njenga allegedly survived the attack with severe burns. The police at Juja police station were said to have been informed at 10 a.m. but to have only arrived at 5 p.m., by which time the suspects had reportedly been lynched. According to the information received, no arrests had been effected at the time of the report, despite the fact that the parents of the victims had allegedly written statements and had provided the police with the names of those who were reportedly responsible for the attack.

84. **Issa Suko Abdi** was reportedly arrested on 16 June 1999 on suspicion of murder and detained at the Garissa police headquarters. During the first 12 days of his detention, he was

reportedly not interrogated. On 28 June, he was allegedly interrogated by an inspector of the Criminal Investigation Department, who is said to have tried to extract a confession by beating and slapping him. He was allegedly beaten on the knees, thighs, elbows and back. The inspector is said to have written a statement, which Issa Suko Abdi refused to sign.

85. A student from Eldoret Polytechnic was reportedly battered to death on 18 June 1999 by a gang of touts when allegedly participating in a student demonstration against mass examination failures. Armed policemen reportedly stood by without intervening.

86. **Yakub Farah** was reportedly arrested by four policemen on 19 June 1999 while he was on his way to the mosque in Garissa. He was allegedly severely beaten with truncheons and wooden sticks. He allegedly fell down and was then kicked. According to the information received, he started vomiting blood and was then taken in a police vehicle to the Garissa police station, where he was held in a cell. A police officer reportedly decided to take him to hospital, where he is said to have arrived unconscious. He reportedly recovered consciousness three days later. According to the information received, he was released from hospital one week later and went to the Garissa Nursing Home where he reportedly stayed for 10 days. At the time of the interview (28 September 1999), he was still suffering from headaches, he could not see properly with his left eye, and he was reportedly bleeding from his nose when he bent down. According to medical reports which were shown to the Special Rapporteur, the medical superintendent of the Garissa Provincial General Hospital and a medical doctor from the Garissa Nursing Home concluded that he had sustained injuries consistent with his allegations. According to his testimony, he does not know why he was beaten and then arrested. The officer-in-charge of the police division reportedly informed him that an investigation would be carried out.

87. **Brian Ochieng Uruko**, aged 21, was reportedly arrested in Bungoma town by the police on 8 July 1999 during a taxi (Matatus) strike. He was allegedly severely beaten by five policemen with wooden and metallic truncheons. He was reportedly then taken in a Land Rover to the police station at Bungoma, where he was lined up with 15 other persons who had been arrested at the same time. They were allegedly all beaten. He was reportedly accused of causing a public disturbance and of having thrown stones at the police. He is said to have signed a statement at this time. He was then reportedly put into an overcrowded and very hot cell. The following day, he was reportedly brought to court. He was released on bail. It is reported that during the same incident two persons, **Aboubaka Musikoye** and **Jacob Masete**, died. According to the information received, the police declared that they had died because of the conditions of detention, while other persons detained at the same time allegedly claimed that they had died from injuries sustained at the time of arrest. Both were said to have been bleeding from their heads and their bodies reportedly bore marks of injuries. A post-mortem examination by IMLU is said to have discovered blood in the brain due to injuries, and internal bleeding in the stomach. Their families are believed to have been harassed by the police and were offered money not to file a complaint.

88. **Jane Muthoni Maina** was reportedly assaulted by the Assistant Chief at Ol-Kalou on 10 July 1999. She was allegedly beaten and thrown to the ground. As a result, her chest and right hand were reportedly seriously injured. On 20 July 1999, she reportedly went to Ol-Kalou



police station. A P3 form is said to have been completed by a doctor and to have been given to a police officer. According to the information received, she was later informed that the Assistant Chief could not be prosecuted as he was a senior public officer.

89. **Evans Simiti** and his brother, **Joseph Wahongola**, were allegedly beaten on 18 July 1999 by police officers at the market of Kapkaten while they were chasing one of their cows which had been given to them by their brother-in-law as dowry and had now escaped. They were then reportedly taken to the police station, where they were beaten with truncheons for around an hour, by four police officers. They were reportedly put into a cell, from which they were released in the evening of the same day. On the following day, they reportedly went to Bungoma hospital where they received medical treatment. Evans Simiti is said to have broken one of his fingers on his left hand. The two men are said to have tried to file a complaint at the police headquarters of Kapsakwany, Mont Elgon district. It is reported that no one would listen to them. On 4 August, under pressure from a non-governmental organization, the officer commanding the police division in Kapsakwany is said to have agreed to open an inquiry and he also recorded statements of the alleged victims. It is reported that when they went to the hospital to get a P3 form, the police officer accompanying them spoke with the medical doctor before they could see him. According to them, when the doctor finished his conversation with the police officer, he asked both of the alleged victims for 1,400 Kenyan shillings to get a P3 form. The four police officers allegedly involved in this incident are reportedly still working at the police station.

90. **Anastasia Wariera** was reportedly arrested on 25 July 1999 at around 8 a.m. in Gong by two police officers on suspicion of theft. She was reportedly not taken to the police station, but to a bush close to her house, where she was allegedly severely beaten with sticks and plastic truncheons on the legs and arms all day long. At the time of the interview (29 September), marks, in particular an open wound on the upper part of the right leg, consistent with her allegations were still visible. She was eventually taken to the police station at night. The officer-in-charge is reported to have sent her to the Kenyatta Hospital, where she was reportedly treated for two days. She is said to have complained about the beatings to the officer-in-charge, who reportedly suspended the two officers. On 28 July 1999 she gave her statement and on 3 August 1999 she reportedly handed in a completed a P3 form to the officer-in-charge (a copy of which is in the possession of the Special Rapporteur). It is not known whether an investigation was opened.

91. **Omar Sharif Ali** was reportedly arrested on 5 August 1999 by the police at Madoga, Tana River District on suspicion of having stolen shoes and detained at the local police station for two days. During his interrogation, he was allegedly beaten, slapped and whipped for half an hour. Marks on his hands, arms and upper thighs which were consistent with his allegations were still visible at the time of the interview (28 September). He was reportedly forced to sign a statement, which was not read to him despite the fact that he could not read. He was then reportedly transferred to Garissa court, where he pleaded not guilty and was immediately put on remand at Garissa GK Prison. He went to court a second time on 24 September. In the prison dispensary, he is said to have been given painkillers, but to have subsequently been told that he had to pay to receive them.

92. **Peter Mwangi Karanja** was reportedly arrested on 31 August 1999 in Langalanga, Nakuru town and taken to Nakuru Central police station. It is said that he was suspected of attempted robbery. According to the information received, he stayed there for 10 days without being interrogated and was transferred to Bodeni police station on 10 September 1999. On 12 September, he was allegedly beaten on his chest and knees with truncheons by police officers in order to extract a confession. He was allegedly also hit on the right side of his head with a shoe. At the time of the interview (25 September), marks consistent with these allegations were still visible. After this interrogation, he is said to have agreed to sign a statement declaring that he had attempted to knife somebody. He was reportedly produced in Nakuru court on 13 September, but was not able to complain about the ill-treatment to which he had allegedly been subjected. He was reportedly unable to pay his bond. He intended to complain to the magistrate at the next hearing, which was due to be held on 27 September 1999.

93. **Patrick Kamau Chege** was reportedly arrested in Molo between 6 and 8 p.m. on 2 September 1999. He was said to have subsequently been taken to Molo police station. At midnight, he was allegedly transferred to Leburgon police station by plain clothes police officers and from there to the police headquarters. Patrick Kamau Chege was said not to have been aware of the reason for his arrest. At 10 p.m. the following evening, he was reportedly forced into a car boot and taken to identify a person who he allegedly had never seen before. Subsequently, the police are said to have released a police dog to attack Patrick Kamau Chege and the other person. The dog reportedly bit their legs and testicles. Patrick Kamau Chege was allegedly placed in the vehicle and taken back to Molo police station where he was said to have been beaten with sticks. He was reportedly subjected to continuous beatings until 6 September, aimed at his joints, toes and ribs. He was also allegedly stripped naked and had his hands tied behind his knees. He was reportedly first presented to a magistrate on 10 September 1999. The magistrate ordered him to be taken to hospital; he was said to have been brought to a clinic and the clinical officer reportedly sent him to hospital. He was reportedly placed on remand and charged with robbery with another group of people despite a reported absence of evidence. During his reported presence in the police lock-up, his family is said not to have been allowed to have access to him.

94. **Abdulrashid Hassan** was reportedly arrested on 3 September 1999 on suspicion of having abused a nurse and detained at Garissa police headquarters. According to the information received, he was beaten several times while being interrogated. He was also slapped and kicked in the cell. He was allegedly subjected to this treatment for five consecutive days. On 13 September, he was reportedly taken to court where, after having been charged, he was transferred to Garissa GK Prison on remand. He returned to court twice and, according to the information received, his case was listed for hearing on 14 October 1999. He is suffering from tuberculosis, information which is noted in the prison cells register. But he is said not to be receiving any drugs despite his requests.

95. **Abubakar Abdi Noor**, a member of the Ogaden clan, was reportedly arrested on 7 September 1999, according to the cells register of the Garisssa police headquarters where he was detained and where the Special Rapporteur met him on 28 September. He was allegedly beaten with sticks, kicked and lashed while he was interrogated about a weapon he claims to have returned to the police. According to the cells register, he was detained on suspicion of robbery with violence. He was allegedly subjected to such beatings every day. The occurrence

book indicates that Abubakar Abdi Noor was taken from his cell several times for the purpose of interrogation by various Criminal Investigation Department (CID) officers. Upon each return from the CID office, a mention “appearing normal and no complaint” had been written down next to his name. He also believed that he may have been subjected to this treatment because of his membership of the Ogaden clan. At the time of the interview, he was bearing visible marks of torture, including open wounds and haematomas, on the right leg and buttock, consistent with his allegations. Throughout his time in detention, he was reportedly never taken to court. According to the information received, on the morning of 27 September 1999, the day on which the Special Rapporteur started his visit to the Garissa police headquarters, he was taken by the head of the CID to the Chief’s office. According to the cells register, he had been taken to court on that day. On the evening of 27 September, he was reportedly taken to another location, where a CID officer allegedly kept watch on him. At 2.30 a.m. on 28 September, he was eventually produced before the Special Rapporteur. According to the information received, he was taken to the hospital on the morning of 28 September and received medical care. He was then taken back to the cell. He was supposed to be taken to court on the same day or released.

96. **Gibson Musungu** was arrested on 15 September 1999. He was reportedly brought to Nakuru police headquarters. A central police officer allegedly borrowed K Sh 250 from him to pay for dental work. This police officer is said to have subsequently threatened Gibson Musungu with disappearance. Allegedly, his relatives were not informed of his detention. He was reportedly subjected to beatings in the Criminal Investigation Department office at the police headquarters. He was allegedly kicked in the head and ribs with boots, whipped, beaten on his back and punched on the jaw, which reportedly led to headaches and to a broken tooth. On 22 September, he asked to be taken to hospital. He was allegedly informed by the clinical officer that an appointment had been booked. He was reportedly presented to a judge after one week in prison and was allegedly informed that he would be given bail, monitored from the outside and that he would be able to get medical attention. Instead of being released, Gibson Musungu was allegedly brought to Nakuru GK Prison for a probation officer to see him and, at the time of the Special Rapporteur’s visit, he had allegedly been in detention there for approximately one week.

97. **Mary Njeri**, aged 17, and **Zippora Ndiko**, aged 15, were reportedly arrested on 17 September 1999 on suspicion of having participated in a carjacking. They were allegedly found in the stolen vehicle and taken to Mutarakwa police post. According to the information received, they were beaten with sticks while being interrogated about the whereabouts of the carjackers. They reportedly informed police officers that Zippora Ndiko had been raped by one of the carjackers and needed appropriate medical treatment. The following day, they were said to have been taken to Tigoni police station, where they allegedly requested medical attention, without success. They were interrogated and beaten with hoe sticks on the knees and feet by three policemen. A policeman is said to have stepped on Mary Njeri’s neck after she was allegedly made to lie on the floor. Zippora Ndiko was reportedly sexually abused by a policeman and was allegedly forced to have oral sex with some others. The following day, the officer-in-charge of the police station reportedly intervened and the beatings consequently stopped. On 19 September, Mary Njeri and Zippora Ndiko were reportedly transferred to Kikuyu police station. During all their detention, they have reportedly never seen a magistrate and Mary Njeri’s family was apparently never informed of her arrest.

98. **Augustin Tuna Kimari** was reportedly arrested at his home at around 6.30 a.m. on 17 September 1999 by members of the so-called “flying squad”. His arrest is confirmed in the occurrence book, which was seen by the Special Rapporteur. He was reportedly accused of having stolen cars. He was reportedly taken to Nakuru Central police station where he was allegedly interrogated and beaten with a metal rod on his knees, ankles and elbows. At the time of the interview (26 September), marks consistent with his allegations were still visible. He was also allegedly slapped on his face and on other parts of his body. He was reportedly not able to walk properly after this interrogation session and is said to have been denied medical treatment. He is also said to have been denied access to a lawyer and to see members of his family. On 24 September, he was allegedly transferred to the Menengai police station, where he was reportedly left in a cell without being interrogated or brought to a magistrate.

99. **Tari Godana Gababa** was reportedly arrested on 20 September 1999 in Olrongai by police officers from Menengai police station on suspicion of having stolen a bicycle. He was allegedly severely beaten with sticks for approximately half an hour at the time of arrest. At the time of the interview (26 September), marks consistent with his allegations were still visible on the left side of his back. Other persons arrested at the same time were reportedly released after having paid a bribe. He was allegedly denied medical treatment, but he reportedly did not complain about the beatings he was allegedly subjected to.

100. **Joe Cosmas Kiplagat Birir** was reportedly arrested at around 7.30 p.m. on 21 September 1999 by two teachers at the Kabarak high school in Olkilge, Nakuru town, who had asked him to buy something for them. He is said to have been taken in a taxi to the Menegai police station. It is reported that he was severely beaten in the taxi. According to the information received, he was beaten especially on the chest, with a piece of metal found in the taxi. He is said to have been vomiting blood in the taxi and upon his arrival at the police station. The beatings are reported in the occurrence book at the police station. At the time of the interview (26 September), marks on his body, particularly haematomas, consistent with the allegations, were still visible. No medical attention was reportedly provided to him. He was allegedly deprived of food for the following three days. He was reportedly not interrogated, however, and reportedly no action was taken against the two teachers allegedly responsible for the beatings.

101. **Lokolina Kalore** was reportedly arrested on suspicion of robbery with violence on 15 September 1999 by Rongai police officers, who are said to have severely beaten him. He was reportedly transferred from Rongai police station to Njoro police station the same day. According to the information received, he was in a very bad condition when brought to Njoro police station. The occurrence book, however, indicated that he was physically fit.

102. **Paul Karigo** was reportedly arrested on 20 September 1999 and directly taken from Industrial Area to Njoro police station. The following morning, he is said to have been interrogated in the crime office and to have been severely beaten for approximately half an hour with a rubber whip on the soles of his feet and on his shoulders. At the time of the interview (26 September), marks consistent with his allegation were still visible. He was also allegedly subjected to death threats. He was reportedly not presented to a magistrate.

103. **Ali Mohammed Mussa** was reportedly arrested on 21 September 1999 by his partner, a Garissa police constable and detained at the Garissa police headquarters, where the Special

Rapporteur met him on 28 September. During interrogation, he was reportedly beaten, in particular on his private parts. On 24 September and on two other occasions, he was allegedly blindfolded and taken to the bush where gunshots were fired over his head. On the morning of 27 September, the day on which the Special Rapporteur started his visit to the Garissa police headquarters, he was reportedly taken by the Head of the CID to the Chief's office. No mention of his whereabouts appeared in the cells register next to his name. In the late evening of 27 September, he was eventually produced before the Special Rapporteur and gave him information on Abubakar Abdi Noor, who had been hidden with him, despite threats that he should not speak to the Special Rapporteur. According to the information received, he was released by the Officer-in-charge of the Police District the following morning.

104. **Julius Odhiambo Odienja** was reportedly arrested on 22 September 1999 and taken to Menengai police station, where he is said to have stayed for two days before being transferred to Njoro police station. According to the information received, he was severely beaten in the criminal investigation room of Menengai police station. His hands were allegedly tied with an electric cable between his legs and he was severely beaten with sticks on his back, shoulders, chest, legs and feet, while he was reportedly interrogated about a gun. The officer-in-charge of the station is said to have asked him to jump like a frog, which he reportedly could not do owing to the pain. He was beaten again in the cell because of a misunderstanding over his name.

105. **Benjamin Etabo William** was reportedly arrested on 21 September 1999 on suspicion of having stolen a chicken and taken to Menegai police station, where he was allegedly severely beaten by four policemen with wooden sticks and a rubber hose for approximately half an hour. He was also allegedly punched in the right eye.

106. **Robert Exeno Lokwani, Alex Otware Pundi, Kennedy Kipsang Peter, Moses Lombanyi Wambari, and Bernard Mbugua Ndungu alias Waria** were reportedly arrested on 21 and 22 September and transferred to Njoro police station after having been subjected to similar treatment as Julios Odhiambo Odienja (see para. 104 above) at Menengai police station. The Special Rapporteur could not interview them since, owing to their very serious state of health, they had all immediately been taken to hospital.

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