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公民权利和政治权利，包括：酷刑和拘留问题

特别报告员奈杰尔·罗德利爵士根据人权委员会

第 1999/32 号决议提交的报告

增 编

特别报告员对肯尼亚的访问

目 录

	<u>段 次</u>	<u>页 次</u>
导 言.....	1 - 5	3
一、酷刑情况：范围和背景.....	6 - 56	3
A. 一般问题.....	6 - 19	3
B. 关于警察的资料.....	20 - 35	7
C. 关于监狱的资料.....	36 - 51	12
D. 体 罚.....	52 - 56	16
二、保护被拘留者免受酷刑.....	57 - 81	18
A. 法律问题.....	57 - 64	18
B. 探望被拘留者	65 - 66	21
C. 申诉程序.....	67 - 77	22
D. 法不治罪.....	78 - 80	25
E. 人权事务常设委员会	81	26
三、结论和建议.....	82 - 92	26
A. 结 论.....	82 - 91	26
B. 建 议.....	92	29

附 件 *

申诉内容提要.....	31
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* 附件不译，原文照录。

导 言

1. 肯尼亚政府于 1996 年 1 月接到特别报告员的一项要求以后，于 1998 年请他到肯尼亚根据其职责进行一次调查事实的访问。他于 1999 年 9 月 20 至 29 日进行的这次访问是为了使特别报告员能够通过广泛的会晤收集第一手的资料，以便更好地评量肯尼亚有关酷刑的情况，从而能够建议肯尼亚政府采取若干措施，以便履行其承诺，停止酷刑和其他形式的虐待行为。

2. 特别报告员于访问期间在内罗毕会见了当局的下列人士：总统 Daniel arap Moi、总检察长 Amos Wako 先生、国内保安部长、总统办公室主任安全和省级行政事务的国务部长 Marsden Madoka 先生、国防部长、助理外交部长 Sheldon Muchilwa 先生、首席法官 Bernard Chunga 先生、内阁常务秘书兼公务员首长 Richard Leakey 博士、警察署长 Philemon Abongo 先生和典狱长 Edward Lepokoityot。令特别报告员感到遗憾的是卫生部常务秘书 Julius Meme 教授未能按照约定会见他。最后，他也会见了人权事务常设委员会的一些成员。

3. 特别报告员在肯尼亚除了访问内罗毕以外，还访问了纳库鲁和加里萨。特别报告员在这两个城市会见了一些省政当局人士，包括省级专员、区级专员和省级警官，还访问了警察拘留所，也访问了纳库鲁和加里萨的肯尼亚政府监狱，但当局不准他到卡米蒂重刑犯监狱访问。

4. 特别报告员也会见了一些人，据称这些人自己或他们的亲戚曾受到酷刑或其他形式的虐待，他从下列非政府组织收到口头和(或)书面提出的一些资料：独立医学法律小组、肯尼亚人权委员会、反对酷刑的人民、以及肯尼亚法律界种族暴力问题委员会。最后，他也会见了一些律师和医生。

5. 特别报告员感谢肯尼亚政府邀请他并在访问期间与他充分合作，使他更加容易进行工作。他也要感谢联合国开发计划署的代理协调员及其工作人员向他提供后勤服务和其他支助。

一、酷刑情况：范围和背景

A. 一般问题

6. 最近几年来(见 E/CN.5/1996/35/Add. 1,第 414-425 页；E/CN.4/1997/Add. 1,第 289-307 段；E/CN.4/1999/61,第 426-435 段)，特别报告员向来告诉肯尼亚政府

说：他从许多个人案件中收集到的资料载明，该国警察使用酷刑逼人“招供”，这几乎是体系化的作法。据报，当局也对被幽禁的未判决囚犯施加酷刑，以劝阻他们参与政治活动并向他们索取贿赂。安全情报总局(安情局或“专门组”——该局解散以后是这样称呼的)的一些人员、刑事情报部(刑情部)于1995年成立的负责调查武装抢劫和劫车案件的一个精锐部队所谓“警察追捕队”的成员、肯尼亚野生动植物事务处干事和当地行政警察人员、以及肯尼亚非洲人国民协会(KANU)青年组的成员、执政党青年党部，据说都曾施用酷刑(见附件)。据说，施用酷刑的方法包括：用木棒或塑料棒等拷打；抽打脚部等身体部位；用木棍穿过膝盖后面和肘部前面，把人倒吊起来抽打脚底；强奸和对生殖器的另一些虐待方式，例如以物件插入阴户、拉扯或刺戮阳具。

7. 虽然法律允许对被控以不适用死刑罪名的被拘留者施行不超过24小时的单独囚禁，据报，实际上对被拘留者实行单独囚禁的期间往往远远超过这个限期。据指称，为了维持单独囚禁拘留状态，办案人员往往将逮捕后予以拘留的人从一个警察局移到另一个警察局。据称，酷刑和虐待行为多半发生在这段期间。

8. 据说凡是意图申诉以控告警察虐待的人都会受到劝阻，否则，警察当局也会拒绝填写申诉时必须提交的P3表格——“体格检查表”。这些表格即便填妥了，据说也往往会遗失或从案件文档中被抽走；许多受害人不曾提出申诉，因为在获得释放以前，警察可能曾经威胁他们说：如果他们胆敢提出申诉，就会再度被逮捕或引起另一些不利后果。

9. 特别报告员也向肯尼亚政府递交了一些资料，其中指出，法院很少调查受过酷刑者的申诉、检查医疗证据、或宣布从严刑拷打得到的证据或供词不能采信。据报，为受过酷刑的囚犯辩护的律师会受到威胁。据称囚犯们得不到医疗是司空见惯的事；私人医生往往无法获准为囚犯看病，为了替囚犯看病，必须首先克服取得法院命令的困难。据称，能够为囚犯作体检的医生会受到典狱官的胁迫。所收到的资料载明，被拘留者往往未能获准住院治疗，即使住进医院了，有时候也会在还没有完成治疗之前就被带走了。

10. 最后，特别报告员通知肯尼亚政府说，他收到的一些资料显示监狱条件很苛刻，对囚犯的生命构成威胁。据报，囚房里拥挤不堪，饮用水不足，伙食很差，被褥不合规格，保健设施不够。此外，囚犯有病送医是使用卡车、而不是救

护车，据说，往往在送医途中就死了。此外，据称，尽管地方法官下了命令，有些囚犯患病时，狱方根本不曾将他们送医。一些非政府组织表示，有数十个囚犯死亡，多半死于过度拥挤和缺乏食物、干净用水和基本药物不足所引起的传染病。据报，1997 年有 630 多个囚犯死亡。¹

11. 访问期间，特别报告员收到非政府消息来源和许多据称受过酷刑的人或证人提供的资料，选取了其中的一部分载于本报告附件，资料显示，施用酷刑的情事普遍存在，毫无区别地施加于许多被逮捕的人。但是，这些人由于不懂得用法律保护自己，又无从得到司法协助，或担心遭受报复，看来多半没有向有关当局报案。挨打似乎是司空见惯的事。据称，施行拷打是为了逼供或索贿，向犯罪嫌疑人施加惩罚或恫吓。也有人报道了据称在被拘留期间遭受酷刑致死的一些案件。

12. 立场独立的法医小组指出，它于 1998 年 9 月至 1999 年 8 月之间收到的大约 4000 个已经存证的伤害案件中，有 98% 据称主要是受到钝器攻击所造成的伤肌动骨的伤害。25% 的病人受到影响其视觉和听觉的神经系统损伤。据说，在遭受酷刑的人中，年纪轻的只有 7 岁，老的已经 97 岁，就提交检验的年纪在 20 到 35 岁的年轻男子有大多数案件来说，法医小组也指出：它在警察拘留所验尸 40 次，据称其中 36 次显示，致死的原因是由外伤所造成的内伤。

13. 特别报告员所会见的官员——尤其是主管内政部长和助理外交部长——都申明：政府并不原谅施用酷刑的人，但承认：有些执法官员有时候可能反应过度。他们特别强调：警察所必须面对的暴力——尤其是武装暴力的程度问题。他们向特别报告员解释说，警员有时候由于装备粗陋，不得不在必要时施用暴力来防卫自己。他们向特别报告员保证：在一切案件中，如果发现执法人员有反应过度的情事，政府有义务采取一切有关措施。但是，他们认为，警察施用暴力并不是一个普遍的现象。

14. 助理外交部长着重指出，肯尼亚正在进行得到政府和总统本人支持的改革，但要改变老习惯肯定需要一段时间。公务员首长也确认，从文化上说，肯尼亚人民可以接受、甚至支持粗暴对待被逮捕或被拘留者的作法。但是，他也强调说，肯尼亚最高当局真正愿意消除这种现象，他认为，五年来，已经产生了重大

¹ 大赦国际，1998 年年度报告。

的变化。有些非政府组织确认，从文化上说，肯尼亚人民接受施用暴力的作法，因此强调必须教育民众。他们所开展的许多活动就是教育民众。

15. 特别报告员会晤过的人士——包括民间人士——指出：自从 1990 年代在政治上实行多党制以来，对政治犯施用酷刑的情事已经大大减少了。例如，据报曾在其 Nyay 办公室和 Nyati 住房对政治反对派施用酷刑的国家情报处“特别组”，现在已经解散了。自从 1990 年代以来，再也没有任何报告指称，西部省内被指控支持或加入所谓反对派游击运动、二月十八运动或二月十八抵抗军的人员受到酷刑。但是，据说警察有时候在肯尼亚非洲人国家协会青年组的协助下对举行和平抗议和参加反对派政治集会的人过度施用暴力(见附件)。据报，依靠国家支持的团伙驱散批评政府者的会议和集会的趋势日益明显。据说，执政党和反对派都成立了他们自己的平民保安队。一些非政府组织指出，受到酷刑和其他虐待的人多半是涉及谋杀和暴力抢劫的犯罪嫌疑人。据说，施用酷刑是为了逼供或惩罚。据说警察当局很少使用现代化的调查方法，却施用酷刑，以取得为了结案所需要的资料。

16. 国防部长告诉特别报告员说，除了在盗匪横行、有人向国内走私军火的肯尼亚北部地区以外，很少动用军队维持法律和秩序。一些非政府组织指出，在肯尼亚北部地区，作为一种成群惩罚方式，军队和警察都施用酷刑。整个村的居民都被集拢起来，受到到严刑拷打、强奸和即审即决(见附件)。谈到军方虐待居民的事件，国防部长说，已经根据军事规则采取了严厉的措施。例如，他通知特别报告员说，已经对 1999 年 5 月在马萨比特发生的据称军队虐待平民的案件(见附件)展开调查。

17. 特别报告员也接到一些资料，其中载明，警察包围贫民、妇女、流浪街头的儿童、移民和难民，加以成群逮捕。据说，一些寻求庇护者，特别是加入或支持奥罗莫族解放阵线的埃塞俄比亚人，被非法拘留、受到虐待、有可能被强制遣回会对他们动用酷刑或使他们的人权受到其他形式的侵犯的国家。都市中心的儿童经常被成群拘留起来。据称，他们受到警察的拷打、性虐待和勒索。据说，他们被关押几天或几个星期以后就被移送法院控以流浪罪名，或被归类为“需要保护或惩罚”的人。据说，肯尼亚有 4 万多个流浪街头的儿童。² 据说，贫民也遭

² 见人权观察社，“青少年受到的不公正待遇”(1997)。

受警察暴力；警察没有取得搜索许可，就在夜间到棚户区进行搜捕；警察在抓了人以后，接着就打人，得了钱才放人，还对妇女进行性骚扰。

18. 据报，肯尼亚也有“聚众闹事”或“自力救济”现象，官员们解释说，这是对警察和执法人员缺乏信心所致。据报，五年来发生在都市中心的这类事件有所增加。一些非政府组织还说，平民正在模仿警察的行为。肯尼亚人权委员会指出，1999 年上半年由于暴民闹事而死于非命的有 130 多人。³ 据说，这种闹事行为是警方所默许的，警方不愿意调查这类事件。

19. 最后，特别报告员得知，1998 年 1 月以来，裂谷省莱基皮亚和纳库鲁等地区据说由于居民在 1997 年 12 月大选中投票反对现任政府，再度发生由政治动机引起的“族群冲突”。据说，有 120 人死亡，数千人被徙置别处。据报，在肯尼亚 40 多个族群中最大的吉库尤族(在肯尼亚人口中占 21%)首次采取报复性的攻击行为，声称这样做的理由是政府力量未能保护他们，不曾采取必要措施惩罚闹事者。根据收到的资料判断，当地的族群对立和纠纷似乎是基于政治目的煽动起来的。⁴ 为了调查 1992 年以来对全国造成影响的族群冲突原因，于 1998 年 6 月设立了一个司法调查委员会。

B. 关于监狱的资料

20. 特别报告员访问了下列警察局：内罗毕的吉库尤和锡卡警察局、纳库拉的梅南盖和恩乔罗警察局以及加里萨的警察总局。于 9 月 22 日傍晚首次到吉库尤警察局的拘留所访问。特别报告员首先获许到单人囚房参观，一些初级警官设法联系局长但没有联系上，在查验了特别报告员代表团的证书以后，又允许特别报告员同囚犯谈话。大约一个小时以后，特别报告员的访问被打断，警察局长不许特别报告员继续参观。尽管内务部长和警察署长事先曾向特别报告员保证可以自由参观所有警察局拘留所而且可以同被拘留者进行机密会晤，吉库尤警察局长用电话同地区警察局长联系以后，否认特别报告员有权访问。地区警察局长说，他的上级不曾发出命令，向他说明特别报告员的访问和权限。但是，他邀请特别报告员第二天上午再来。9 月 22 日，特别报告员一行又来到吉库尤警察局，同一位

³ 肯尼亚人权委员会，《人权季刊》，第 1 卷，第 2 期(1999 年 4 月-9 月)，p.1。

⁴ 见大赦国际，“肯尼亚：政治暴力事件急剧增加”(AFR32/19/98)。

警官又不许他进去。从此以后，警察署长指定了一位高级助理专员在特别报告员访问期间全程陪同，以确保能够进入所有警察局和拘留所。特别报告员感谢这位助理专员，他的合作大大促进了特别报告员的工作。

21. 特别报告员所访问过的警察拘留所多半过于拥挤。被拘留者抱怨空间太小，通风不良。吉库尤警察拘留所在特别报告员访问的时候显然过于拥挤。在 3 个牢房中，有一个面积约为 15 平米的牢房囚禁了 13 个男人。有一位被拘留了 12 天的人说，就在几天以前，同一个牢房囚禁了 40 多人。由于 3 个牢房都囚禁男人，只好让 9 个妇女和两个婴儿躺在狭小的走廊上，由值勤警员直接监督，一点私密性也没有。锡卡警察局牢房登记处规定，5 个牢房的正式拘留人数应为 150 人。特别报告员访问的时候，这些牢房关押了 129 人。尽管这些牢房除了关押妇女的那间以外，按照规定还没有全部满员，但是要在夜间让所有被拘留的人都躺下来，却是办不到的。有一位被拘留的人说，就在这一天以前，他所在的牢房内关押了大约 40 人，但在特别报告员到访时，只有 12 人，由于通风不良，有 3 人晕倒。特别报告员于 9 月 27 日访问时，加里萨警察总部的两间牢房都空着。每一个牢房的面积约为 10 平米。牢房登记册载明，9 月 23 日关押了 72 人。

22. 特别报告员参观过的牢房内都没有家具，但显然在夜间发给毛毯，有时候还发给草垫。被拘留者多半睡在光秃秃的水泥地上。应该指出，特别报告员参观过的牢房虽然有恶臭，却是比较干净的。实际上，警察拘留所多半没有厕所，只向囚犯们提供了木桶，必须经常倾倒清洗。洗澡的机会很少、甚至没有。有些警察局的庭院里，有一些简陋的淋浴莲蓬头。牢房里通风和采光多半不良。

23. 访问警察局期间所遇到的一些权威人士表示，被拘留者显然是按类别隔离起来。的确，特别报告员访问吉库尤、锡卡和恩乔罗警察局时，关押了妇女的警察拘留所都是男女分开关押的。青少年犯罪嫌疑人通常都关押在女监牢里。但是，被拘留者没有按照涉嫌罪行的严重性隔离开来，已经定罪的犯人同第一次入狱的犯罪嫌疑人关押在一起。

24. 除了被关押在锡卡警察局的人以外，特别报告员所会晤过的人多半受过酷刑或其他虐待行为，身上还有伤疤，情况与他们所指称的相符。(见附件)。在吉库尤、恩乔罗和加里萨的警察局刑事侦察室内，特别报告员看到了皮鞭、木棍和橡胶管，情况与指称的受害人所描述的相符。没有人向他解释为什么警察办公室里会有这些工具。有些警官辩解说，这些都是证物，但上面并没有贴上任何标签，特别报告员不予采信，甚至认为这种解释似是而非。

25. 9月27日, 特别报告员访问了加里萨警察总部。访问期间, 有两个牢房空着。但是, 牢房登记册载明, 直到当天上午, 这些牢房里还关押着 17 人。牢房登记册载明, 有 1 人被送到医院, 有 1 人被转移到锡卡警察局, 5 人获释, 9 人被移送法院。有 1 个被拘留者 Ali Mohammed Hassan 的姓名旁边并没有记载入狱资料 (见附件), 在场的警官和地区警察局长都没有向特别报告员说明这个人的下落。特别报告员告诉地区警察局长说, 他想要见见这个人, 因为这个人似乎从未获得释放, 也没有被转移到另一个警察局的监狱。几个小时以后, Ali Mohammed Hassan 终于由几个警员送回警察总部。他告诉特别报告员说, 为了不让特别报告员遇见, 他被藏在局长室, 有另一位病情严重的人 Abubakar Abdi Noor (见附件) 还被拘留在那儿。牢房登记册载明, Abubakar Abdi Noor 于 9 月 27 日被移送法院。凡是被移送法院的犯罪嫌疑人都记录在册, 但是牢房登记册中并没有记载这个人被移送法院的时间。特别报告员告诉地区警察局长说, 除非见到这个人, 他就不离开警察总部。上午 2 时 30 分, Abubakar Abdi Noor 终于被带到特别报告员面前。在场警官没有提出任何解释, 但是他承认两个囚犯都被藏在局长室。特别报告员认为, 警方之所以蓄意窝藏这两个人, 不让见特别报告员, 是怕他们说受到虐待的情况, 另一些囚犯可能基于同样的理由, 已经获释或移送到别的拘留处所。另外, 曾被拘留在加里萨警察总部的 Issa Suko Abdi 和 Abdurashid Hassan(见附件) 据称被关押在警察拘留所期间曾受到酷刑, 于 9 月 24 日被移送加里萨 GK 监狱, 这个事实使得特别报告员印证了上面的观点。

26. 最后, 被移送医院的那个人 (特别报告员知道他的名字) 由于涉嫌暴力抢劫, 已于 9 月 15 日被逮捕。那一天的记事簿载明, 他右臂中弹。于 9 月 23 日被带到医院治疗, 同天被带回牢房。尽管牢房登记册载明, 他从 9 月 24 日起一直生病, 直到特别报告员访问警察总部那天(9 月 27 日), 才被送到加里萨全科医院就医。特别报告员一行于次日到医院探望他时, 由于他健康情况不佳, 无法与他进行面谈。为他开刀的外科医生说, 在伤口放置的石膏引起了感染, 预计无需截除胳膊。

27. 特别报告员认为, 尽管被拘留者的实际处境与簿籍上的记载有重大出入, 对于所有警官认真记载记事簿和牢房登记册, 还是应该予以赞扬。警察署长说, 各地警察局长每天必须核对这两个簿本, 以便掌握情况, 确保下属遵守规则, 必要时采取必要的惩戒措施。警察局长也必须经常到所有牢房去视察被拘留

者的健康情况。⁵ 特别报告员认为，他所访问过的警察局高级警官多半没有善尽其监督的职责，或者没有采取适当的行动。

1. 施加酷刑又不给予治疗

28. 9月22日，特别报告员在吉库尤警察局与两位少女 Mary Njeri(17岁)和 Zippora Ndiko(15岁)面谈，她们的双脚明显肿胀，双腿也有受到虐待的明显伤痕，例如伤口没有愈合，出现血肿(见附件)。据报，她们于9月17日因涉嫌参加劫车被逮捕，于9月19日被带到这个警察局。尽管她们要求就医，身体状况也表明有此必要，警方还是在记事簿里她们的姓名旁边写上“健康情况尚可”，而不予治疗。特别报告员对警察局长表示严重关切这件事，要求将这两位少女立即送医，给予适当治疗。9月28日，特别报告员再度前往吉库尤警察局，这两位少女告诉他说，他离开以后，她们被叫到警察局长面前，再度提到她们对特别报告员报告的事项。据称，她们接着被告以：虽然特别报告员干预了此事，她们也不会得到任何协助，她们被送回牢房，没有得到任何医疗。必须指出的是，这两位少女接连着被关押在三个警察局拘留所里，任何一个警察局都不曾给予治疗。一些高级警官在特别报告员第二次访问时向他保证：这两位少女将迅速得到适当的治疗。

29. 特别报告员在恩乔罗警察局注意到：牢房里至少有2人需要紧急治疗(见附件：Julius Odhiambi Odienja等人的案件)，其他人多半带有受到虐待以后伤势严重的明显伤痕。有7人——其中包括特别报告员极为关注的3人——于9月21、22和23日被逮捕，带到梅南盖警察局，据称他们先是在这里受到酷刑，接着在9月24日被移送恩乔罗警察局。恩乔罗拘留所的牢房登记册在他们姓名旁边写着“健康情况尚可”，记事簿里则写着：“面部和腿部有伤痕，衣服有血斑，经搜查后，带着伤痛被关进牢房”。这些人的证词显示，恩乔罗警察局局长从来不曾探视他们。应特别报告员的要求，当局立即将6名被拘留者送医，还答应在次日上午将另一些人送医。收到的资料显示，特别报告员离开肯尼亚时，当局正在对梅南盖和恩乔罗警察局局长进行调查。特别报告员编写这份报告时还没有收到关于上述调查结果的任何消息。

⁵ 警察署长说，地区级警察经常巡视所有牢房，省级警察则每年巡视一次。

30. 鉴于这两个严重事件以及所收到的资料，特别报告员认为，一些非政府组织和私人医生对警官不愿意给予应该就医的被拘留者得到适当治疗的机会感到担心，是有其确切根据的。

2. “警察追捕队”

31. 非政府组织提供的资料显示，“警察追捕队”这个按照一项条例以不明确的方式组建的单位是在 1995 年为了应付内罗毕等城市中心劫车事件日益增加而设立的，据说它的警官是从刑事侦查部门和总服务队中选拔的，这个单位设在内罗毕 潘加尼警察局和锡卡地区的马库尤警察局。特别报告员在访问前和访问期间收到许多涉及“警察追捕队”队员的严重酷刑案件的报告(见附件)。据称，这个特殊单位的首席检查官(特别报告员知道他的姓名)涉及许多此类案件。收到的资料显示，凡是被“警察追捕队”逮捕的人，在被带到警察局以后一律实行长期单独监禁，因为警方声称，这些被拘留者不属于它的管辖范围，因此不许接近他们。

32. 内政部长谈到“警察追捕队”，强调它需要拘捕残暴的刑事罪犯，任务艰巨，它能够履行职责，令他感到满意。但是，他承认在办案过程中可以有一些无辜的人受到伤害。他还指出，“警察追捕队”的一些队员由于他们的行动受到了惩戒。

3. 行政警察

33. 从非政府组织收到的资料显示，个别人士常常受到行政警察拘留。行政警察是在地区的主任检察官、地区警察、乃至省警察局长的指挥下帮助国家警察执行任务的。但是，纳库鲁省警察局长向特别报告员解释说，实际上，行政警察在行动上受省警察局局长指挥。虽然行政警察有权逮捕犯罪嫌疑人，却必须立即移送最靠近的警察局，因为国家警察才有权实行拘留。但是，据称，被逮捕的人常常被带到地区主任检察官或地区警察的办公室，遭受任意拘留，特别报告员收到的资料还表明，他们往往受到酷刑(见附件)。必须指出，为了不让特别报告员看到两个人，加里萨地区主任检察官的房舍曾经被用于藏匿他们(见上文第 25 段)。而且，据称主任检察官和地区警察常常开“袋鼠法庭”，对被拘留的人开罚款单。据说，如果被拘留的人不付款，就会受到行政警察的拷打。

34. 纳库鲁省警察局官员告诉特别报告员：由于缺乏交通工具，行政警察往往无法将人员移送警察局，边远地区的情况更是这样。他们承认，有些人可能整夜被拘留在主任检察官或地区警察的办公室。但是，他们着重指出，拘留嫌疑人超过 24 小时的主任检察官或地区警察会受到惩戒处分。总检察长指出，行政警察对某人实行拘留是滥用权力行为，国内保安部常任秘书指出，他曾经惩戒滥用权力的主任检察官和地区警察。但没有提到任何特定的案件。特别报告员会晤过的官员多半认为，行政警察每隔 12 个小时必须向省警察局报告逮捕的人数，这是确保不会有人任意遭到行政警察拘留的充分保证。

35. 据报，针对行政警察提出的申诉是由国家警察处理的。更概括地说，针对省警察局提出的申诉往往提交国家一级的当局处理。例如，1999 年 4 月 Isaac Mwaniki (见附件)发生，据称由于受到酷刑致死的埃多雷特事件以后，在省级代表总检察长的公诉人已经下令进行调查。

C. 关于监狱的资料

36. 详细地说明和分析拘留的情况并不是特别报告员的任务。但是，他沿袭到其他国家访问时的作法，藉着在肯尼亚的机会，到纳库鲁和加里萨去访问，主要是为了会见一些囚犯，请他们证实一下在被移送监狱之前所受到的对待情况。特别报告员感到遗憾的是，尽管他的正式请求得到典狱长接受，在卡米蒂重刑犯监狱门口等候了两个小时以后，该监狱还是不许他入内访问。

37. 所有非政府组织都抱怨无法进入监狱访问，因为《监狱条例》并没有明文规定 不许公民社会的成员访问监狱。因此，特别报告员得到的关于拘留情况的资料很少。据说，即便是律师也难于会见他们所要辩护的人。一旦获准会见了还必须停留在某个房间内，也就无从检查拘留情况。照说，地方法官应该定期视察监狱；但是，据说，他们很少这样做。例如，特别报告员所看到的登记册载明：地方法官最近两次到监狱视察的时间是 1998 年 12 月 3 日和 1995 年 10 月 23 日。

38. 典狱长表示，他欢迎特别报告员同肯尼亚的非政府组织取得联系。他说，一些非政府组织已经在各监狱普遍散发关于囚犯权利的小册子。他对非政府组织不曾获准访问监狱的说法提出异议。他说，如果外国的非政府组织的确能够获准访问肯尼亚监狱，他不理解为什么本地的非政府组织就无法获得这种许可。一些 国际非政府组织提供的资料载明，它们的组织虽然数度提出申请，还是无法获得访问肯尼亚监狱的许可。

39. 一些非政府组织提供的资料载明：囚犯们很难取得药物。监狱的医疗单位的经费多半极其短缺，药物不敷分配，质量也差。当囚犯终于得到药物以后，狱方往往要求他们付款。如果囚犯或其家人无法为医疗付款，已经得到的医疗就会停顿或不充分。特别报告员也收到关于无法付款而导致医疗不充分的资料，例如：对于需要加护治疗的伤势，只给予暂时止痛药。

40. 对于缺乏治疗的传闻，典狱长说，每一个监狱都有一个诊所和保健中心。监狱内的医疗人员归卫生部长管理(其他监狱人员则归内政部长管理)，但是典狱长说，除了内罗毕以外，只有极少数的监狱有医生，因此医疗服务全靠地区医官提供。一些非政府组织说，地区医官只有在极其罕见的情况下才到监狱来。典狱长说，所有被拘留者都得到免费医疗。他们着重指出，内政部长会在必要时拨给紧急药物经费。特别报告员访问内库鲁 GK 监狱时在场的医官说，医药并不缺乏。

41. 必须指出，《监狱条例》规定：医官应在几种情况下检查监狱：“(a) 囚犯入狱的时候---(c) 囚犯接受体罚或任何其他可能影响其健康的刑罚以前证明囚犯是否能够经受体罚[和]---(e) 出狱以前。”⁶ 第 26 条规定：“医官应(a) 至少每月探望每一囚犯一次[和]---(d) 至少每月对整个监狱的囚犯检查一次，特别注意监狱的烹饪及卫生设备。”被拘留者的证词指出，这些规定并没有得到遵守。

42. 关于监狱当局作为纪律制裁下令实行的体罚⁷ (这是与《宪法》禁止酷刑的规定一致的 - 见下文第 52 段)，典狱长说，10 年来，他还没有遇上为了整饬纪律而必须确认实行体罚之建议的情况(《监狱条例》第 55 条第 2 款规定必须实行这种确认)。据特别报告员了解：这种处罚必须在医官面前进行(见上文第 41 段)。典狱长也告诉特别报告员说，1985 年以来，死刑一直延缓执行。⁸

⁶ 《肯尼亚监狱条例》第 24 条第 1 款。

⁷ 《监狱条例》(1967 年)第 51 条第 3 款规定：高级官员或管理人员“经过正式调查后认定囚犯在狱中犯有严重违规行为”可对其施加下列处罚：“(a) 以棍棒杖打不超过可能规定之次数的体罚”。第 54 条(体检)和第 55 条(杖打的次数)规定了在狱中施行体罚的条件。第 55 条第 2 款规定由典狱长确定刑罚，他可以加重处罚、减轻处罚或以他有权采取的其他处罚方式代替原来的处罚。第 55 条第 5 款规定：不得对女囚犯、民事犯和死刑犯施行体罚。

⁸ 大赦国际指出，未经正式通报的前几次执行年份为 1986 年(见《1986 年度报告》)。

43. 肯尼亚有 78 座监狱，收监容量为 1 万 5 千人，目前囚禁了 5 万人。⁹ 典狱长承认：牢房过于挤迫和饮用水不足是肯尼亚监狱所面临的主要难题。典狱长说：由于司法部门的耽搁导致许多囚犯被长期还押，经费又不充足，牢房过于拥挤的问题也就更加严重了。他指出，监狱管理人员都受过人权培训。监狱里可能发生个别的侵犯人权事件，但是，他认为，已经对监狱系统内的任何侵犯人权事件采取行动。

44. 特别报告员到访时，纳库鲁 GK 监狱收监人数为 500 人，收监容量为 600 人。省狱政处处长和纳库鲁监狱典狱长说：1998 年 12 月，这座监狱收监人数达到 800 人。但是，特别报告员没有获得查阅牢房登记册的许可。狱政当局说：存放登记册的房间关闭了，无法在星期六打开。在文献楼内，特别报告员看到一面黑板上面写着：“已定罪囚犯：893 人；普通还押：327 人；可处死刑的还押囚犯：84 人；暴力抢劫犯：74 人；民事债务人：2 人；监护：4 人；拘留总数：1,384 人”。典狱长解释说：这些数字指从这个月初开始拘留的人数。这意味着：800 多人已经移送到其他监狱或获释，据说目前只有 500 人被拘留在纳库鲁监狱。被拘留者的证词和非政府组织提供的资料显示：在特别报告员到访前 3 天，大约有 400 个囚犯被移送到其他监狱，据说有 100 人在到访前夕凌晨 1 时被移送他处。有几个被拘留者说：他们牢里的人数因此减少了一半。当特别报告员问起有没有在他到访前送走任何囚犯时，监狱当局说：每星期都要移送。特别报告员无疑认为，没想到会与特别报告员面谈的被拘留者的证词和一些非政府组织所提供的资料当然比典狱长所作的解释更加可靠。

45. 东北省当局指出，该省的三座监狱—加里萨、瓦吉尔和曼德拉—并不存在过度拥挤的问题。他们说，犯罪问题是在各个社区的范围内非正式地予以解决的，这可能是东北省各座监狱不存在过度拥挤的问题的原因。在特别报告员到访时，加里萨 GK 监狱大约拘留了 350 人，据说这是正式的收监容量。

46. 《监狱条例》第 5 条规定：“各监狱均应作出安排，以尽可能实际的方式经常切实地将各类囚犯分隔开来。各类囚犯分为：年轻囚犯类——年满 17 岁、已经定罪的囚犯；星类——第一次被定罪或守规矩的囚犯；普通类——包括所有其他被定罪的囚犯；未定罪类——还押的囚犯。并将刑期在 5 年以上的囚犯移送到重

⁹ 大赦国际指出，1996 年底囚犯人数为 4 万 1 千人(见《1997 年度报告》)。

罪犯监狱。”特别报告员会见过的所有官员都说：已经将各类被拘留者明确分开：男子同妇女分开；成人同青少年分开；还押的同已定罪的分开。特别报告员收到的资料显示：还押的通常拘留在监狱里，不过，警察可以要求法官容许警方继续拘留，使被拘留者能够帮助调查。特别报告员在访问监狱期间的确看到狱方大体上遵守这种分隔作法。

47. 纳库鲁 GK 监狱分为 9 个牢区。每一个牢区都很干净，分别有 17 个床垫，上面放置着折叠好的毛毯。每一个床垫上面也有一本圣经，有时候也有一朵花。据说，有些牢房为穆斯林囚犯预备一个床垫。特别报告员得到的解释是：囚犯们需要共用床垫，因为尽管监狱当局一再提出申请，还是未能让每个囚犯有自己的床垫。每个牢区都有很干净的卫生间，安装了淋浴莲蓬头。每个卫生间都安装了新的厕纸卷并备有肥皂。所有定了罪的囚犯都穿着干净的制服，还押的囚犯则穿着他们自己的衣服。必须指出的是，可处死刑的还押囚犯尽管在被定罪以前必须被视为无罪，也都穿着制服。监狱当局说这样做的理由是：这些囚犯被拘留的期间总比其他还押囚犯为长。

48. 特别报告员也访问了纳库鲁 GK 监狱的图书馆，据说，从 1999 年起，大约有 80 个囚犯上了课，讲习班里有 10 个囚犯在生产送到监狱外边出售的木材制品，每天 24 小时内，诊所里经常有一位医官值班，负责诊疗处方。有一个隔离区收容生病——尤其是结核病的囚犯：特别报告员到访时，这里拘留了 22 人。上文提到的文献楼里拘留了 7 个青少年嫌疑犯。有两个年纪分别为 14 和 15 岁的男性少年说：在被移送到这个监狱以前他们分别依涉嫌闲荡和偷窃的罪名被囚禁，前者在纳库鲁警察总部囚禁了 11 天，后者在拉文警察局囚禁了 20 天。前者被移送法院时，据说后者还没有移送法官究办。据信，当局不曾将他们被捕的消息通知其家人。

49. 特别报告员也访问了加里萨 GK 监狱的女囚牢房，女牢房同男牢房完全隔开。牢房的所有警卫全是女性，牢房总管也是女的。访问时，两个牢区里的 50 个囚犯共用着 22 个床垫；另外两个牢区的 56 个还押囚犯共用着 16 个床垫。至少有 6 个女囚身边携带着婴儿。

50. 特别报告员在纳库鲁 GK 监狱晤谈的所有囚犯是按照随机抽样办法选定的。必须着重指出的是，他们都害怕遭受监狱警卫的报复。的确有人警告过他们

不要谈到拘留的境况。但是，他们提到这样的事实：最近为了特别报告员到访，已经有所改变。例如，食物的质量在到访那天，大有改善：除了通常的“玉米汤”以外，多了一些蔬菜。监狱当局否定了这个说法。关于食物问题，监狱当局确认：还押囚犯的食物配给量只有已定罪囚犯的一半。采取这个做法的理由是，还押囚犯不需要从事劳动。一些非政府组织提供的资料指出，有些还押囚犯为了得到全份食物配给量而宁愿认罪。一些被拘留者指出：食物通常由厨师分派。监狱当局和被拘留者都认为供水问题——尤其是饮用水的提供是经常存在的问题。尽管最近运到了一些床垫，据说，过度拥挤的问题在夜间最为显著。有些囚犯说，每个牢区所收监的人数多到使大家几乎无法动弹的地步。

51. 最后，特别报告员也访问了纳库鲁监狱警卫的营区，看到了监狱管理人员住房粗陋的情况。

D. 体 罚

52. 关于法院作为其判刑内容之一部分而命令执行的体罚¹⁰，肯尼亚《宪法》第 74 条第 2 款认为这种体罚并不违反同一条中关于禁止酷刑的规定。总检察长指出：为了废除第 74 条第 2 款，议会于 1999 年 7 月提出了一项动议。他同意特别报告员的看法，即：体罚不符合禁止酷刑和其他不人道或有辱人格的待遇或处罚的规定¹¹。特别报告员没有收到关于施行体罚之情事的统计数字等资料。

53. 根据《1968 年肯尼亚教育法》颁布的《1972 年教育(学校风纪)条例》规定学校可以在若干条件限制下施行体罚。其中规定：“如有持续或严重疏忽功课、说谎、欺凌弱小、粗暴犯上、猥亵、逃学等行为”则可施行体罚(第 11 条)。第 13 条规定：只可用棍棒“或细软的枝条”打屁股或用“宽度不小于一英寸半的

¹⁰ 《刑法(1970 年)》列举除了有期徒刑以外还可以实施体罚的一些罪行，例如：强奸(第 140 条)、猥亵妇女(第 144 条第 1 款)、男人靠卖淫或诱惑为生(第 153 条)、“男人之间的淫猥行为”(第 165 条)、由攻击行为引起对身体的实际伤害(第 251 条)以及为了行窃而杀害动物(第 289 条)。《刑法》还规定对下列罪行施行体罚：偷窃汽车(第 278A 条)、进入他人住房等处所行窃(第 279 条)、抢劫(第 296 条第 1 款)、抢劫未遂(第 297 条第 1 款)、入室行窃(第 304 条第 2 款)、企图武装实行严重罪行(第 308 条第 1 款)。

¹¹ 对体罚问题的讨论情况可参看 E/CN.4/1997/7 号文件第 9-11 段。

鞭子”打手心，至多打 6 下。第 12 条和第 14 条还规定了施行体罚的条件。第 12 条规定：体罚只可当着校长的面施行；“经查属实后才可动手而且不可当着其他学童的面施行”。第 14 条规定：必须保持所有体罚的记录。在《中学校长手册(1987 年)》中，肯尼亚教育部还劝告：“体罚不得错误对待或羞辱学生”；“必须有的放矢”；应该调整作法以“适应个别儿童的情况”。此外，教师应“于必要时同家长和学生商量。

54. 尽管有肯尼亚法律中载列的各种保障措施和教育部劝阻使用棍棒的声明，特别报告员已获知在学校施行体罚的一些事例；据说超过了《1972 年教育(学校风纪)条例》所许可的程度，有时候对受到处罚的儿童造成影响其身心完整的后果(见附件)。所收到的资料显示，很少采取对举措失当的教师进行制裁的作法，唯恐教师因而进一步处罚学生或导致学生逃学，如果制裁，也很难凑效。

55. 收到的资料显示：教师常常为了《1972 年教育(学校风纪)条例》所不允许的一些行为在学校施行体罚，例如某个学生或整个班组偶而成绩欠佳，或发生情节轻微的纪律问题。此外，教师使用暴力的程度超出该《条例》所许可的范围：鞭打的次数过多；使用了竹条或木棒或皮鞭等为《条例》所不许可的工具；或进一步对学童拳打脚踢。学童受到的伤害包括伤口和瘀伤、乃至精神损失和严重伤害，例如骨头破折、内出血、牙齿掉落和原有疾病加重。在已经报道的事例中，有些学童因受到体罚而死亡(见附件)。

56. 特别报告员过去说过：体罚不符合禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚的规定。¹² 他注意到人权事务委员会的一般性意见认为：“禁止的规定必须扩大适用于体罚，包括作为对某一罪行的处罚、或作为教育或纪律措施下令施行的过度惩罚”¹³。鉴于这种处罚是载于附属立法中的规定，会引起国家的责任，并且已在肯尼亚学校中明显地被过度使用，特别报告员毫不犹豫地呼吁：立即废除有关规则并坚持不懈地起诉在上述那种事件中殴打学童的学校人员。

¹² E/CN.4/1997/7 号文件第 6 段。

¹³ 人权事务委员会第 20 项一般性意见，HRI/GEN/1/Rev.2，第 5 段。

二、保护被拘留者免受酷刑

A. 法律问题

57. 1997年2月21日，肯尼亚批准了1984年《禁止酷刑和其他残酷、不人道或有辱人格的待遇或处罚公约》。《宪法》第74条规定：“任何人均不应受到酷刑或不人道或有辱人格的惩罚或其他待遇”。但是，在《刑法》或《刑事诉讼法》中都没有就酷刑作出明文规定。不过，在1997年11月，《警察法》第14条A款第2和第3项作了如下修正：“(2)任何警官均不应使任何人受到酷刑或其他残酷、不人道或有辱人格的待遇。(3)违反本条之规定的任何警官应判处重罪。”总检察长认为，《宪法》第五章的规定，“保护个人的基本权利和自由”应该进一步界定，使其与国际文书一致。他指出：这是列入肯尼亚审查委员会组织章程中指派该委员会完成的主要任务之一。

58. 必须指出，第84条第1款规定：如果某人指称据以保证个人基本权利和自由的第70至第83条中的任何规定“在过去、现在或将来会有涉及他的违反公约情事(或对于被拘留的某人来说，如果另一人指称某种涉及该被拘留者的违反公约情事)，则在不妨碍就同一事项依法采取任何其他行动的情形下，该人(或该其他人)可声请高等法院进行纠正。”同一条第2款规定：高等法院“……可为了执行或保证执行第70至第83条中的任何规定，以它认为合适的方式下达命令、颁发人身保护令和给予指示”。最后，同一条第5款规定：议会：“(b) 应拨款 (一) 资助本章中所规定之人权受到侵犯的肯尼亚贫困公民或使他能够聘请律师提起诉讼”。但是，所收到的资料显示，高等法院已经裁定：它对于执行《宪法》第五章的人权规定没有管辖权。¹⁴

59. 非政府组织所提供的资料和特别报告员在访问警察局拘留所期间所收集到的资料显示：有些个人往往被逾期拘留而没有移送地方法官，尽管《宪法》第72条第3款规定：“(a) 应该在合理可行的范围内尽快将被逮捕或被拘留以后未经释放的人移送法院，如果有合理的迹象显示某人涉嫌犯下或将犯下可以判处死刑

¹⁴ 大赦国际，“肯尼亚——侵犯人权——大赦国际和肯尼亚政府之间的通讯文件”(AFR32/27/97)，p. 9。

的罪行而予以逮捕或拘留、但没有在将其逮捕或开始拘留后 24 小时内、或将其逮捕或拘留后 14 天内、移送法院，声称这款的规定已经得到遵守的人应该承担举证责任，说明确实已经在合理可行范围内尽快将犯罪嫌疑人移送法院。”叛国、非法立誓施行可以判处死刑的罪行、谋杀和暴力抢劫、或暴力抢劫未遂都是死罪¹⁵。特别报告员所会晤的涉嫌抢劫而被拘留的案犯多半被记载为涉嫌暴力抢劫，因此警察至多可依法将他们拘留 14 天。一些警官说得在理：只有进行了调查以后才能够确定抢劫是否使用了暴力。暴力抢劫的定义如下：“如果案犯持用任何危险的或攻击型武器或工具，或有一人或多人伴同，或如果在抢劫期间或在抢劫之前或之后，他伤害、殴打、撞击任何人或对任何人使用任何人身暴力，应予判处死刑。”在特别报告员看来，警察将许多案件归类为“暴力抢劫”似乎只是为了可以依法使对有关的人的拘留期间超过通常的 24 小时。非政府组织的意见和特别报告员得到的证词显示，个人遭受酷刑或其他形式的虐待都发生在拘留初期。此外，特别报告员得到的许多证词显示：一些人之所以被拘留只因为有人告发他们。特别报告员也收到一些资料，显示：警方常常在月底人们领薪水的时候大举逮捕。据指称，进行这种逮捕是为了索取贿赂。

60. 特别报告员所会晤的一些非政府人士——尤其是律师认为：《宪法》第 72 条第 3 款含义过于含混，“在合理可行的范围内”是个漏洞，据报，警察经常利用这个漏洞耽搁人员的出庭。在这方面，特别报告员所会见的一些非政府组织和被拘留的人声称：一些人往往在星期五晚间被捕，整个周末被拘留，然后被移送法院或被从一个警察拘留所转移到另一个拘留所，其作法为先予释放、再予以拘留另一个 24 小时期间。总检察长在一份具有里程碑性质的声明中表示：首席法官已经宣布可以在星期六开庭以便履行 24 小时的要求。据报，法官在周末上班是现行制度。但是，一些非政府组织声称：在大多数情况下，很难同这些法官取得联系。此外，必须指出，特别报告员会晤的一些警官表示，就他们所知，周末和例假日并不计入 24 小时或 14 天的时间段。但是，首席法官表示，如果某人被拘留接近 14 天，高级法官多半会自动要求调查，考虑到被关押在警察拘留所的那段期间。但是，据报，一些非政府组织和律师认为很少出现这种情况。最后，必须

¹⁵ 分别载于《刑法》第 40 条、第 60 条、第 220 条和第 296 条第 2 款。

指出，为了确保被拘留者移送法院的人身保护令行动据说费用高昂，只有极少数请得起律师的人才有可能采取这种行动。

61. 一些非政府组织也请特别报告员注意《刑事诉讼法》第 36 条含义模糊的情况，该条规定：“在无逮捕证的情况下，由于某人犯下谋杀或叛国以外的罪行而将其拘留的警察局主管，如果认为实际上无法在拘留以后 24 小时内将案犯移送有关的下级法院，在任何情形下都可以、而且应该、对案件进行调查，除非认为案情严重，可在交保或不交保的情形下予以释放……，但如果已将某人拘留，则应在可行范围内尽快将其移送下级法院”。特别报告员收到的资料显示，交保释放的事例很少。特别报告员判断，他在警察拘留所遇见的许多人有可能交保释放。也有人说，检察官以调查尚未完成为理由反对交保释放。

62. 《证据法》第 26 条规定：“如果法院认为供认是在引诱、威胁或在为涉及被告人之罪名承担义务的情况下作出的，则不能在刑事诉讼中采信某一被告人所供认的势必成为罪证的某一事实……。”历来有人认为：第 26 条为随后的同法第 31 条所削弱，第 31 条规定：“虽然有第 26 条的规定，……由于任何犯罪嫌疑人提供的资料所揭示的得到佐证的事实，就这些资料明确涉及所揭示的事实而言，无论它是否称得上一种供认，均可得到证实。”但是，首席法官着重指出：“可”字使法官有裁量权，可以对供词是否以有害的方式取得作出判断。此外，他指出：对于“可疑的证据”，检察官不应该到法院去，但要求得到更多的资料，因为他们知道，法院不会采信被胁迫时说的话或被逼迫供认的信息。他认为，肯尼亚法官对于取得供词的情况和犯罪嫌疑人是否在被警察拘留期间受到良好的对待的核查，特别小心。

63. 一些非政府组织来源指出，法院往往根据犯罪嫌疑人被屈打成招的供词定罪的。实际上，尽管宪法和一般法律都禁止在任何情况下使用酷刑，但是，被按照屈打成招后被定罪的人，并不或很少采取司法手段要求取消对他们的判刑。一些非政府组织来源也说：司法诉讼中往往并不要求出具体检证明。犯罪嫌疑人多半没有聘请律师，由于不懂得现有申诉程序，也就没有对他们所受到的待遇提出申诉。

64. 总检察长认为，法庭能够采信供词无需以更多的证据加以确认。特别报告员会晤的一些人请他注意：可以对《证据法》第 28 条¹⁶进行修订，将这一条中提到的供词限定为在法官面前招认的供词。首席法官指出，这一修订案文将要求大量增加法官人数。到目前为止，据说首席法官不援用第 28 条(a)款。

B. 探望被拘留者

65. 律师们也抱怨：警方常常不许他们会见委托人，在收审拘留中心或监狱都发生这种情况，就是当他们持有法院的命令的时候也不行。法律没有明文规定，但是一些非政府组织以及总检察长都承认：至少根据宪法，无论任何时候，律师依法有权立即在不受阻碍的情形下探望其委托人。据说，警察和监狱官员都公然不理睬这项保证。例如，在特别报告员打算探访那天(9 月 29 日)以前，据报，被关押在卡米蒂重罪犯监狱的新闻记者 Tony Gachaka 至少已经有两周了，还没有见到律师，并且被单独囚禁了相当时日。据报，也没有人通知被拘留者他们可以聘请律师。特别报告员同被关押在警察拘留所的人以及一些辩护律师面谈所得出的结果证实了这一点。一些非政府组织对缺乏法律援助表示担忧，因为据信，普通罪犯只有 10%聘请了律师，农村地区更少。据说，很少非政府组织从事这方面的工作，而肯尼亚律师协会还不曾提供这种法律援助。只有可判死罪的犯罪嫌疑人才得到这种法律援助。

66. 特别报告员所会见的一些医生说：由于他们没有任何获得明确保证的法律权利可据以探望被关押在警察拘留所的囚犯，他们被允许探望这些被拘留者的机会很少。还押的被拘留者从技术上说，有权向他们选择的医生求医，但是，据说，法官总是命令由官方的医生进行检查。私人医生确认：如果没有得到法院的许可，他们几乎无法见到囚犯，获得这种许可的机会极少一些私人医生说：即使

¹⁶ 《证据法》第 28 条内容如下：

“不能以任何人在警察拘留所招认的供词作为对其不利的证明，除非这种供词是在下列人员面前招认的：

(a) 法官；或

(b) 级别与检察官相同或比检察官高的警官。”

他们持有合法的授权，还是需要得到监狱医官的同意。在这种情形下，随后同委托人的磋商是在监狱医官在场的情形下进行的，也就不再具有机密性质了。

C. 申诉程序

67. 一些非政府来源的资料指出：就许多酷刑和其他形式虐待行为的案件来说，由于据称的受害人或其亲属缺乏法律常识，不是不知道要求进行调查和提出申诉，就是担心如果申诉就会受到报复，都不曾向司法部门报案。的确，有许多骚扰事件报了案，据说，有一些维护人权的人成了骚扰的目标。一些非政府组织指出：它们的监督网络——尤其处于边远地区的部分——仍然处于刚刚开始的状态，因此，它们的报告未能精确报道酷刑现象。此外，他们还说：许多据称受害的人由于担心受到报复，都不愿意透露自己的姓名。因此，据说大多不曾报案。

68. 阻碍酷刑受害人提出申诉的另一个因素是：目前缺乏一个负责调查据称执法官员施用酷刑案件的独立机构。因此，据称受害的人照说应到他们被拘留而且受到虐待的同一个警察局提出申诉。特别报告员收到的许多证词(见附件)指出：据称受害的人因此无法提出申诉。一些非政府组织要求成立独立机构，由它负责调查执法官员的侵害人权行为，总检察长和公务员首长也认为有此需要。

69. 警政署长向特别报告员指出：警察人员委托书上明文规定了对申诉的处理办法：必须立即就申诉内容进行彻底的调查。这种调查必须一定要由级别比检察官高的警官进行，他认为，这样就保证了一定程度的公平。特别报告员问起与据称应为虐待行为负责的人员属于同一个警察局的警官能否合作，署长说：向派出所所长、甚至分局长、局长或警务处长等更高级的警官提出这种要求总是办得到的。他也指出：他自己的部门设有申诉处，可将申诉的内容转达总检察长办公室。他说：他的下属都很认真对待申诉的内容。因此，他认为，由于有这种等级系统存在，任何案件都不至于被掩盖了。

70. 此外，警政署长解释说：进行刑事申诉调查工作的是向警察局长汇报的刑事侦察人员。刑事侦察人员向警察局长提出调查结论和建议以后，警察局长必须核查调查工作的质量，对需要采取的行动作出决定，遇有疑难，则报请总检察长裁示。因此，警察局长是确保按照《宪法》中禁止酷刑的规定适当进行调查的机构。他认为，由于刑事侦察人员知道他们进行调查的方式会受到上级人员的详

细审查，也就不会滥用权力了。同样，警方检查人员要调查酷刑申诉时，由于同样的上级审查，也无法掩盖任何内容。所有非政府组织都着重指出需要对警察施行人权培训。因此，总检察长表示他打算印发一本用于培训警察的手册。

71. 警政署长也说：必须将所采取的行动通知申诉人。根据非政府组织提供的资料和特别报告员收到的一些证词，许多据称受害的人申诉说：在他们提出申诉以后，当局不曾通知他们到底当局采取了什么措施。警政署长认为，所有横死事件——警察拘留所中的死亡事件，都必须向法官提出报告，他就会主动开始审讯。因此，署长认为，警察不可能掩盖在拘留所死亡的事件。如果有明确的证据存在，就会对负责的警官提出控告，如果没有初步表面证据存在，法院就会作出决定。特别报告员问起一些个人死在警察拘留所的案件——尤其是涉及“警察追捕队”的那些案件，署长拒绝答复，辩称：他不知道这些案件的进行情况，他无权将这种消息告诉外人。他认为，传媒所报道的案件数却是过于夸张的。

72. 同样，首席法官向特别报告员解释说：他认为，控诉警方施用酷刑的申诉案件之所以那么多，有一部分是归因于法院使用其被告人的供词作为判处有期徒刑的依据，而被告人愿意指称曾遭受酷刑来为自己辩护。他着重指出：虽然许多被告人声称受到酷刑，但是，证实受到酷刑的案件极少。总检察长也说：也有人向警察提出子虚乌有的指控，是为了向国家索取补偿金。因此，他指出：必须小心审查这些申诉，以避免被滥用。同时，他强调说：当他甚至从媒体获知指称的酷刑或虐待行为而认为可以相信时，他总是命令进行调查。一些非政府来源的资料显示，总检察长办公室总是对非政府组织的所有申诉提出答复，告诉它们：申诉收到，已经展开调查。但是，一些非政府组织却抱怨说：它们提出申诉以后，不曾收到片言只字，说明当局已经采取哪些措施。

73. 称为 P3 表格的“体检报告”必须由要求检查的警察和医官或着手检查的人员填写。该表载有的资料表明受害人的身份和遭受酷刑以后的情况，并且由医务人员描述受害人据称受到虐待所造成的伤害。在这方面，非政府来源的资料显示：医生常常使用无所不包的“软组织伤害”一词来描述任何种类的伤害，这样的证明一旦向法庭出示，就会引起严重的问题。该表必须由申诉者、其亲戚或律师提交给警察。据一些非政府组织和受害人指称：该表往往“遗失”或没有向法庭出示。而且，由于受害人没有聘请律师，医生们很少获知即将到来的法院诉讼

程序，因此在不是由警察提交原先的 P3 表格的情形下，也无法向法院出示这份文件。还有人指称：警察或公务员常常骚扰或威胁医生，要他们伪造体检报告。

74. P3 表格必须向警方要求核发，据说，警方往往拒绝向患者、甚至医生核发 P3 表格，从而以证据不足为理由而不将案件移送法院。一些非政府组织指出：法官大多只接受 P3 表格作为证据，但是法律并没有规定不采信私人医生开具的体检证明。总检察长确认：据称受害的人可以由私人医生检查身体，并且可以将私人医生随后开具的体检证明提交法庭。他确认：有时候据称的受害人可能在索取 P3 表格时遇到一些困难。特别报告员提请大家注意一些非政府组织的看法：它们认为这些 P3 表格应该在警察局以外的地方填写。但是，警政署长明确指出：P3 表格是警政文件，医生检查受害人时必须使用该表，在这种情况下，必须把 P3 表格留在警察的档案中向法庭出示。

75. 一些非政府组织指称：政府指定的医生常常与警察和检察官共谋伪造体检报告。此外，有人指称：尸体化验报告也有伪造情事。但是，必须指出：私人医生也是肯尼亚医师协会的会员，如果被发现有违背医疗道德的情事，就会受到纪律处分。到目前为止，还没有任何医生受到这种纪律处分。1998 年 4 月在肯尼亚医师协会内部成立了人权事务委员会。该委员会的主要关注事项是：据说对医生进行骚扰，要他们开具不能用于控告警察的体检证明的情事。

76. 一些非政府组织的资料显示：一些法官常常在法庭驳回医疗报告，包括 P3 表格。据报，有些据称受害的人，在出庭受审时健康状况明显欠佳，法院并没有下令对他实行治疗。有时候，据说法官会下令将被拘留者送到医院治疗。警察或监狱的警卫并不总是理睬这些命令。另一方面，首席法官说：肯尼亚法官极其谨慎，不但注意犯罪嫌疑人的健康状况，也注意取得供词的情况，如果发现被告人健康情况不对劲，就会运用其固有权力，下令展开调查。他也着重指出：如果在第一次出庭时没有提起遭受虐待问题，还是可以在诉讼过程的稍后阶段提出申诉。

77. 一些非政府来源的资料显示：减少酷刑事件的主要障碍之一在于寻求救济方面存在困难，即警察拒不核发证明伤害的 P3 表格，公从认为为了填写 P3 表格所进行的体检必须由政府指定的医生进行，耽搁了警官对其同事的调查，使得他们对这种调查采取了半心半意、敷衍塞责的态度。

D. 法不治罪

78. 1998 年 12 月，据报，公安部长 Marsden Madoka 少校要求肯尼亚人民“忘掉”国家公安部队施用酷刑的普遍行为¹⁷。从非政府来源收到的资料显示：针对酷刑提出的申诉极少得到任何充分和公平的调查，涉嫌施用酷刑的执法官员被停职的极少。此外，必须着重指出：由于没有独立机构对申诉酷刑的案件进行调查，调查工作还是由与涉嫌施用酷刑者同一单位的警官负责。因此，内政部长承认：对其同事进行调查的警官有可能掩盖了这种行为。但是，总检察长表示：在特别报告员到访时，正在对 60 多名涉及施用酷刑的执法官员提起诉讼。特别报告员表示希望知道这些诉讼案件的结果。1998 年 10 月 29 日总检察长来信中提到的统计数字显示：已针对执法官员提起的已经移送法办的刑事诉讼有 134 件，正在进行调查的有 2 件，打算进行逮捕的有 8 件，有 63 件已经结案。其中 103 件是攻击人身的犯罪行为。(考虑到下列犯罪行为：谋杀、杀人、强奸、攻击、非法伤害、精神伤害、污辱、猥亵、不自然的犯罪和杀人未遂。)特别报告员也收到一些资料，其中显示：移送法办的极少数案件也只是民事诉讼案件而已。在这些事件中，似乎并没有对执法官员提起任何刑事诉讼，律师们声称不会胜诉。最后，特别报告员从非政府来源获知：目前似乎出现一种作为“惩戒”措施把涉嫌参与施用酷刑案件的警官调差到东北省的倾向，可能这就是该省有关酷刑的指控比率较高的原因。

79. 根据案例法，当被告人声称受过酷刑时，法官应该举行“审判中的审判”。总检察长承认：这种情况常常发生。但是，律师们和一些非政府组织声称：法官很少这样做，只有在辩护方律师坚持的案件中才会这么办。他们认为，法官应该起到比较积极的作用，对出庭受审时有受过酷刑或虐待之迹象的被告人的遭遇进行调查。但是，他们承认，法官工作负担过重，因此并不总是有时间小心核查被告人的健康状态。此外，必须指出，一些非政府组织认为：“这种审判的重点也就在于确定供词或陈述是在强迫之下作出的，因此不能在法庭上当作证据，控方律师则认为证据有效，并且否认关于警察施用暴力的任何指控”¹⁸。如首席法官所述，虽然从法律观点来说，这种“审判”的举证责任在于控方，看来，

¹⁷ 见大赦国际新闻稿(AFR 32/32/98)，1998 年 12 月 4 日。

¹⁸ 大赦国际，“肯尼亚—侵犯人权—大赦国际和肯尼亚政府之间的通讯”(AFR 32/27/97)，p. 12。

被告人必须证明证据不是在自由的状态下以公平方式提供的。最后，一些非政府组织着重指出：无论如何，这种“审判”并不构成某一能够具体证明它正式独立于拘留当局和审讯当局之外的独立机构针对被施用酷刑的申诉进行的一种公平的调查，因此应当说它是对酷刑申诉进行适当和明确调查的一种替代性作法。

80. 总检察长指出：对被提起诉讼的警官已经给予停职处分。但是正在被调查的警官在调查结束之前继续在供职。一些非政府组织认为，历来只对涉嫌施用酷刑的警官提起过 3 件民事诉讼，有两件得到胜诉，不过，据说还没有得到补偿金。

E. 人权问题常设委员会

81. 人权事务常设委员会于 1996 年 5 月根据行政权限设立。委员会的职权范围包括调查指控的侵犯人权事件——正由法院审理的一切事项除外，并就人权问题向公众施行教育。由于公众和执法官员还缺乏人权意识，后一项职能被认为最重要。委员会也受权向政府提供咨询意见，说明如何采取措施确实保护《肯尼亚宪法》和一些肯尼亚参与缔结的国际文书中所体现的人权。委员会必须探访政府所管理的监狱或任何其他关押机构，并且研究拘留的境况，以便就如何改善被拘留者的待遇提出建议。在特别报告员到访时，委员会收到了 418 件申诉，其中 104 件已经完成调查工作。委员会在完成了对一项申诉的调查工作以后，除其他外，它能够对涉嫌侵犯人权的人提起诉讼，或建议请愿人和政府或其他有关公共机构采取其他方法解决申诉或提出补偿要求。¹⁹ 委员会为总统印发了六本机密报告。1998 年 12 月，委员会印发了第一本公开的报告，概要叙述了人权法和一些定义，但只是粗略地提到侵犯人权情事。

三、结论和建议

A. 结 论

82. 特别报告员感谢肯尼亚政府邀请他前往访问，向他提供便利，以确保有效进行访问，包括同国家首脑、部长和高级官员进行面谈。他特别感谢总检察长 Amos Wako 先生，从中进行斡旋，安排多次会议。大体上，这种工作符合这些访

¹⁹ 《人权事务常设委员会法案》(1998)，第 18 段。

问的典型任务，特别是在访问一个警察局受阻时，由他出面相助。未能允许特别报告员访问肯尼亚全国最大和最重要的内罗毕卡米蒂重罪犯监狱还是一个令人关注的事项。但是，他不认为由于错过对这个监狱的访问，就无法对他任务范围内各项问题的严重程度有个合理明确的了解。

83. 肯尼亚在东非地区和国际层面上都扮演着重要的政治及经济角色。1990年代初期肯尼亚处于肯尼亚非洲人民族联盟一党统治时期，它在 1992 和 1997 年选举中保留了总统职位和在国会中的支配地位。但是，政治在地方上受到民族因素和经济上的贪污腐败控诉的影响。团体政治、甚至司法，都是普遍的。的确，国际货币基金组织以政府贪污腐败为由刚刚停止向肯尼亚提供贷款，现任政府最近任命了一个团队，由国际知名的肯尼亚野生动植物事务处前任处长、现任内阁秘书和公务员首长 Richard Leakey 博士领导，具有根除政府官员腐败的广泛权力。

84. 肯尼亚北部地区产生了特殊问题。这个地区是沙漠或半沙漠，西接苏丹，北临埃塞俄比亚，东邻索马里。人员的过境活动频繁，他们往往具有共同的民族背景，但可能不会说在肯尼亚占支配地位的当地语言斯瓦希利语。因此，邻国的脱序和暴乱溢出国界而流入肯尼亚，要在这荒芜的物质环境中维持公共秩序，是一种令人望而生畏的挑战。

85. 不可避免地，这种事态对执法机构谨慎遵守法治原则的能力造成了影响。法律本身就被滥用，包括在特别报告员任务范围的滥用。因此，就犯罪必要条件包括普通暴力抢劫罪行在内的任何死罪来说，警方有权拘留嫌疑人至多 14 天，其他罪行的拘留期间则仅为 24 小时。此外，特别报告员遇到了许多案件，证实了在他访问之前和访问期间所收到的关于警方可能实际上不遵守时间限制的一些指控。被警方拘留的犯罪嫌疑人绝大多数实际上得不到法律援助，这是因为犯罪嫌疑人大多没有能力支付法律援助费用，只有被控犯有可判死罪的犯罪嫌疑人才有资格得到法律援助。由于警方的部署推断公众中的一份子对某一犯罪嫌疑人提出的指控，对于要求拘留该嫌疑人来说，还缺乏充分的证据，这就更加令人感到遗憾了。此外，警方不仅没有负责就指控警察的内容进行法医调查，有时候他们也拒绝核发证明申诉者体格状况的 P3 表格。

86. 特别报告员会晤过的一些官方人士承认肯尼亚警方有粗暴对待犯罪嫌疑人身体的传统。特别报告员清楚地看到：这种对待嫌疑人的方式通常是用棍棒、

金属条和橡皮持续打击身体各部，留下明确的伤痕。这种打击只会引起剧烈的疼痛，通常是为了套取口供。它也似乎时常成为施行法外处罚的方法。有鉴于此，必须将这种显然是普遍、有计划使用的作法²⁰ 视为属于《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》第 1 条所载酷刑定义的范围。

87. 特别报告员倾向于认为：一些部长和高级官员，包括处于警察部队最高阶层的一些官员，可能没有充分认识到这个问题的现实情况。但是，从特别报告员本人和国际及地方非政府组织一再向当局转交的资料看来，缺乏上述认识的确反映了不愿意密切注视这个问题。这是由于缺乏切实的监督程序所致，或许也可归结为认为应予密切注意的认识。但是，这个结果是刑事侦察组成员和负责调查犯罪嫌疑人活动的人员对法不治罪的一种普遍意识。

88. 应该提到一些令人鼓舞的方面。第一、警察局的纪事工作看来普遍尽责。勤勉的监督机构因之得以评定某人被拘留的情况是否符合法律的要求，并且得以追查被拘留者的行踪。第二、声名狼藉的特别组一向负责处理政治和公共秩序案件，老是使用最可怕的酷刑方法，已经被解散了。第三、自由和敢于断言的新闻界已经公开谈论人权问题，包括被剥夺自由的人所受到的待遇问题。第四、常设人权委员会已经表示愿意解决这些问题。

89. 就监狱系统来说，显然它是由最高阶层按照独裁主义的武断路线进行管理的，外界无从获知它的情况，无法加以详细审查。律师们很难会见其委托人，常常必须为此要求法院给予许可，这就是这个论点的证据，另外，在特别报告员到访之前将许多囚犯移送他处、将新闻记者 Tony Gachoka 单独监禁和对他会见律师的机会施加限制，也都是证据。显然，监狱系统遇到过度拥挤和经费不足的困难，使得被拘留者的狱中生活远比光是失去自由还要难受。监狱系统各级人员工资太低、培训不足、有时候由于他们自己处境不佳而消蚀了对归他们照管的人的同情心。

²⁰ 就“有系统的”这个词来说，特别报告员使用禁止酷刑委员会所下的定义：“委员会认为如果据报的酷刑案件不是在某一特定地点或时间突发的，而经常、普遍和蓄意地至少在有关国家大部分地区发生的，即表示存在着一贯的酷刑作法。另一方面，一贯施加酷刑有时并不是政府的直接旨意，可能是由政府难以控制的因素造成的，其存在可能表示中央政府的政策及地方政府在执行这些政策方面有差距。立法不够充分妥善，造成漏洞，使得酷刑得以施行，也促成这种一贯性做法。”(A/48/44/Add. 1, 第 39 段)

90. 虽然法律规定，遇有严重违反规定的罪行，可以施行体罚，但是近年来，不曾施行这种处罚，应该把这个荣誉归给领导阶层。

91. 但是，工作人员必须执行司法部门作为刑事处分而命令执行的体罚。特别报告员认为体罚不人道并且有辱人格，但他没有掌握关于体罚的统计数字。

B. 建 议

92. 因此，特别报告员提出下列建议：

- (a) 政府应确保由负责检控案犯的机构迅速、独立和彻底地调查所有涉及施用酷刑和类似虐待方式的指控。
- (b) 应由至少与助理署长同一级别的警察一贯前往警察局进行彻底的、不事先通知的访问，以核对所有人进行关押的合法性和这些人受到的待遇和拘留条件。如有虐待情事，则要求给予惩戒处分，并应酌情提出刑事控告。
- (c) 人权问题常设委员会等机构应具有权力并配备资源，可随意于必要时在不通知的情形下检查官方承认的或涉嫌剥夺自由的任何场所，定期公布调查结论，并将犯罪行为的证据提交有关检控机构和涉及此类行为的公共当局的行政上级；可以由一些著名的非政府组织担任这种职能的联系机构。
- (d) 按照联合国关于检察官作用的准则 15 和 16,²¹ 总检察长办公室应该特别注意切实检控施用酷刑和类似虐待方式的执法官员，如发现有资料显示执法官员以上述方式取得证据，则应采取适当行动。

²¹ “检察官应适当注意对公务人员所犯的罪行，特别是对贪污腐化、滥用权力、严重侵犯人权、国际法公认的其它罪行的起诉，和依照法律授权或当地惯例对这种罪行的调查。

“当检察官根据合理的原因得知或认为其掌握的不利于嫌疑犯的证据是通过严重侵犯嫌疑犯人权的非法手段，尤其是通过拷打，残酷的、非人道的或有辱人格的待遇或处罚或以其他违反人权办法而取得的，检察官应拒绝使用此类证据来反对采用上述手段者之外的任何人或将此事通知法院，并应采取一切必要的步骤确保将使用上述手段的责任者绳之以法。”

《关于检察官作用的准则》，第八次联合国预防犯罪和罪犯待遇大会，1990 年 8 月 27 日至 9 月 7 日，古巴哈瓦那。

- (e) 如有可信证据显示某人曾遭受酷刑或类似的虐待行为，应该迅速付给充分的补偿金；应该为此制定一个办法。
- (f) 可判死刑的犯罪嫌疑人在警察拘留所的关押期间(14 天)应该与通常适用于其他犯罪嫌疑人的 24 小时期间取得一致。
- (g) 某人在拘留所招供的证词，招供时没有律师在场的，不能当作对他不利的证据。
- (h) 被关押在警察拘留所的人或还押囚犯，凡是没有能力取得法律援助的，应向他们提供这种援助，允许律师立即会见其委托人。法律界应该与政府合作，考虑制定一个适当的方案。
- (i) 拘留某人以后应将拘留的情事立即通知其亲密家属，并允许他们前往近视。
- (j) 应该废弃由警察垄断 P3 体检表的作法。
- (k) 地方官员和法官，和检察官一样，都应该经常询问从警察拘留所出来的人受到了什么样的待遇，要特别注意他们的健康状况。
- (l) 应该审查司法部门的作用制度，以期确保做到真正的司法独立。促请政府考虑邀请法官和律师的独立性问题特别报告员到肯尼亚访问。
- (m) 需要采取欢迎、而不是阻止的方式向公民社会普遍开放监狱系统。尤其应该消除对律师、医生和家属设置的障碍。应该欢迎公民社会作为伙伴帮助一个资源不足、人口过剩的系统实行教化工作。一旦作到这点国际社会也应该乐意提供援助，例如帮助提供教育和职业培训。
- (n) 司法部门应该切实寻访和检查监狱，在准备还押犯罪嫌疑人或作出剥夺罪犯自由的判决时更加慎重。对于非暴力型初次涉案的犯罪嫌疑人和青少年的量刑尤应慎重。
- (o) 作为刑罚之一的体罚应予立即废除。作为监狱违规处分的体罚尽管已经过时也应予以废除。
- (p) 请肯尼亚政府同意发布《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》第 22 条所提到的声明，使禁止酷刑委员会得以接受个别国民针对肯尼亚没有遵守《公约》规定之情事提出申诉。也请肯尼亚政府考虑批准《公民权利和政治权利国际公约任择议定书》，使人权事务委员会得以接受个人的申诉。
- (q) 请联合国支援酷刑受害人自愿基金基于同情心考虑非政府组织为酷刑受害人所需医疗费用和要求予以平反所需法律费用而提出的援助申请。

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.

* 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 then 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 this 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 Napeyok**, 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 Nakuru 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 Yusaf, 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 Shamble 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 Garissa 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 Menengai 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 Otwari 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.
