

Quarterly Human Rights Report

VOLUME 1
NUMBER 4
October
November
December
1999



KENYA HUMAN
RIGHTS COMMISSION

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Number 4

Kenya Human Rights Commission
1999

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ISBN 9966-941-07-X

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Printed in Kenya

Photographs courtesy of *Daily Nation*, *The People Daily* & *The East African Standard*

MISSION STATEMENT

The Kenya Human Rights Commission (KHRC) is a non-governmental membership organization founded in 1992. It has an observer status with the African Commission on Human and People's Rights. KHRC is the 1998 winner of the MS International Award, bestowed in Denmark.

The mission of the Commission is to promote, protect and enhance the enjoyment of the human rights of Kenyans. It does this through monitoring, research and documentation of human rights violations. It organises activist events and undertakes public awareness campaigns on human rights. KHRC is committed to mainstreaming gender in all its programmes and initiatives.

KHRC is committed to the realization of human rights ideals in Kenya by strengthening the human rights movement. KHRC supports social, political, economic, and cultural change aimed at enhancing respect for the rule of law, the development of a society that upholds democratic values, a society aware of its rights and comes to their defense whenever threatened or attacked.

STRATEGIC OBJECTIVES

KHRC strategic objectives are to:

- Reduce human rights violations in Kenya
- Strengthen the human rights movement in Kenya
- Hold state, institutions and individuals accountable for human rights violations
- Raise awareness of human rights in Kenya
- Place Kenya on a truly democratic trajectory

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Acknowledgements

This report was written by Kenya Human Rights Commission program staff. It was coordinated by Njuguna Mutahi and edited by Wambui Kimathi. The publication of this report was made possible by funding from DANIDA. However, it does not necessarily reflect their views.

Executive Summary

Mob Violence

Since we started monitoring mob violence as a human rights violation, statistics have steadily risen. From the 95 cases we recorded in 1996 there has been a 52 % leap to 184 incidents recorded by KHRC in 1999. Tragically, most Kenyans do not recognize mob violence which they call "mob justice" as a human rights violation. This type of violation is normally viewed as an alternative mechanism of dealing with crime and is treated as an alternative to the recognised judicial system. The worsening security situation, the surge in violent crime, corruption and the failure by the government to restore the public's confidence in its ability to protect the people has contributed to the rising incidents of mob violence. In many parts of the major residential areas today, mugging, violent robbery and rape are widespread. The inadequate and sometimes lax security apparatus has led to a state of anger and vindictiveness.

Extrajudicial executions

While Kenya has the legal, judicial and administrative systems for investigating the causes of death in unnatural and suspicious circumstances, government officials charged with the responsibility have been unwilling to invoke them. Most extrajudicial execution cases are rarely fully investigated or remedial action taken. When investigations are done, the police who are the main perpetrators of human rights violations are usually defensive and dismissive.

From 1996, the figures of deaths arising from extrajudicial executions have continued to swell systematically. In 1996 KHRC recorded 130 deaths, 182 in 1997, 222 in 1998 and 233 in 1999.

Violence Against Women

On December 12, the Attorney General received a report by the task force on the laws relating to women. Among the issues the task force focused on was violence against women and recommended the enactment of a domestic violence act. The recommendations are informed by the state of women's rights in Kenya. Statistics collected by KHRC indicate that violence against women is rising alarmingly. In 1999, we recorded 87 cases of deaths arising from violence against women. This represents a 57% rise in the number of deaths recorded by KHRC over 1998. These figures do not represent the true position as they only reflect what has been covered by the media and those reported directly to KHRC. Many other cases go unreported, especially in the rural areas where the media is not represented.

The recommendations are justifiable when one appreciates that with rising insecurity women are exposed to triple jeopardy. They are victims of robbery attacks, rape and exposure to HIV infection. During the last quarter, we recorded five inci-

dents in which eleven women were robbed and raped.

Violence against children

On December 17, 1999, the director of the Children's Department, Sammy Ole Kwallah expressed concern that the Children's Bill was taking too long before becoming law. The Attorney General, Amos Wako promised during a conference on children that the bill would be presented to parliament for debate before the end of the year. Sadly this did not happen.

When it finally becomes an act, it will enable the government to implement the Conventions on the Rights of the Child. Currently, there is no specific law that addresses the rights of the child thereby making it difficult to effectively litigate cases of child abuse. The Commission has continued to document cases of violence against children and notes that cases of defilement and female genital mutilation have been the most prevalent violations of children's rights in the last quarter. Unfortunately, most of the perpetrators are close relatives of the victims, the very people who are supposed to offer protection.

The KHRCZ recorded 15 deaths between October – December, 1999. This is a slight decrease from the 21 we reported during the third quarter. However, the annual tally of 85 deaths from violence against children indicates a 41 % increase over 1998.

Banditry

Violence arising from banditry continued to plague large parts of North Eastern, Eastern and the Northern Rift of Kenya. Among the Marakwet, Pokot and Turkana communities, persistent attacks and counter attacks led to a trail of death and massive loss of property. Worst hit were areas inhabited by the Marakwets which bandits from Pokot have been raiding routinely. Indeed, due to the sophistication of the guns and tactics involved, there are allegations that the raids are by trained private armies operating in the district.

Prison Conditions

During the last quarter of 1999, the Kenya Human Rights Commission recorded 36 deaths arising from poor prison conditions. However, there have been some positive developments in a few cases where the media and some judicial officials have visited prisons. If this trend is sustained, it is likely to put pressure on the government to improve the institutions.

Deaths Sentence

The figure of the people on the death row dropped from 224 in 1998 to 186 in 1999. This drop has nothing to do with any policy changes in the Kenyan judicial system. However, the KHRC is aware that a motion is soon to be presented to

parliament calling for the abolition of the death sentences. In 1985, such a motion was presented to parliament but it was defeated.

Police brutality and arbitrary arrests

During the last quarter, there was one police swoop which was conducted in Eastleigh area. The swoops, which the police and the government justify as intended for wiping out criminals and illegal immigrants end in the harassment and illegal confinement of people in police cells. It has also been alleged that during the exercises some police officers carry away property from the residents claiming that they do not have licences for them. Such property, it is claimed by victims is rarely returned to the owners.

Freedom of speech and of the press

Since the advent of multiparty politics, the press has been central in expanding the space in the emerging democracy. The country has seen the proliferation of newspapers, TV and radio stations leading to a more informed public. The freedom of the press has however not gone down well especially as it continues to expose the weak side of the state.

On many occasions the President Moi has warned that the press is the greatest enemy of democracy. In December, 1999, he described journalists as the worst enemies of this country. It is disheartening to see that even the highest office in the country does not recognise the freedom of the press. This is despite the fact that the President has sworn to protect and safeguard the constitution which guarantees freedom of the press.

Corruption

During this quarter, the few people arrested on corruption-related charges have been low ranking civil servants. The Kenya Anti Corruption Authority (KACA) has not prosecuted anybody on corruption yet and the few arrests recorded have been through the efforts of the economic recovery team headed by Dr. Richard Leakey.

Glossary of Terms, Abbreviations and Acronyms

Askari	Guard/soldier/Police officer
Chang'aa	Traditional illicit brew
Kenya shilling(s)	Ksh
Kiosk	Shop
Matatu	Public service vehicle
Manyatta	Mud dwelling-place
Miraa	Khat
Panga	Machete
Rungu	Club
Shamba	Garden/Farm
Sungu Sungu	Vigilante Groups in Kisii and Tanzania
Wananchi	People
Youth winger	Member of informal KANU security wing

Administrative Officers

AG	Attorney-General
AP	Administration Police (officer)
DC	District Commissioner
DO	District Officer
DCIO	District Criminal Investigations Officer
DSIO	District Security Investigations Officer
GSU	General Service Unit
OCPD	Officer Commanding Police Division
PC	Provincial Commissioner
CID	Criminal Investigation Department

Political Parties

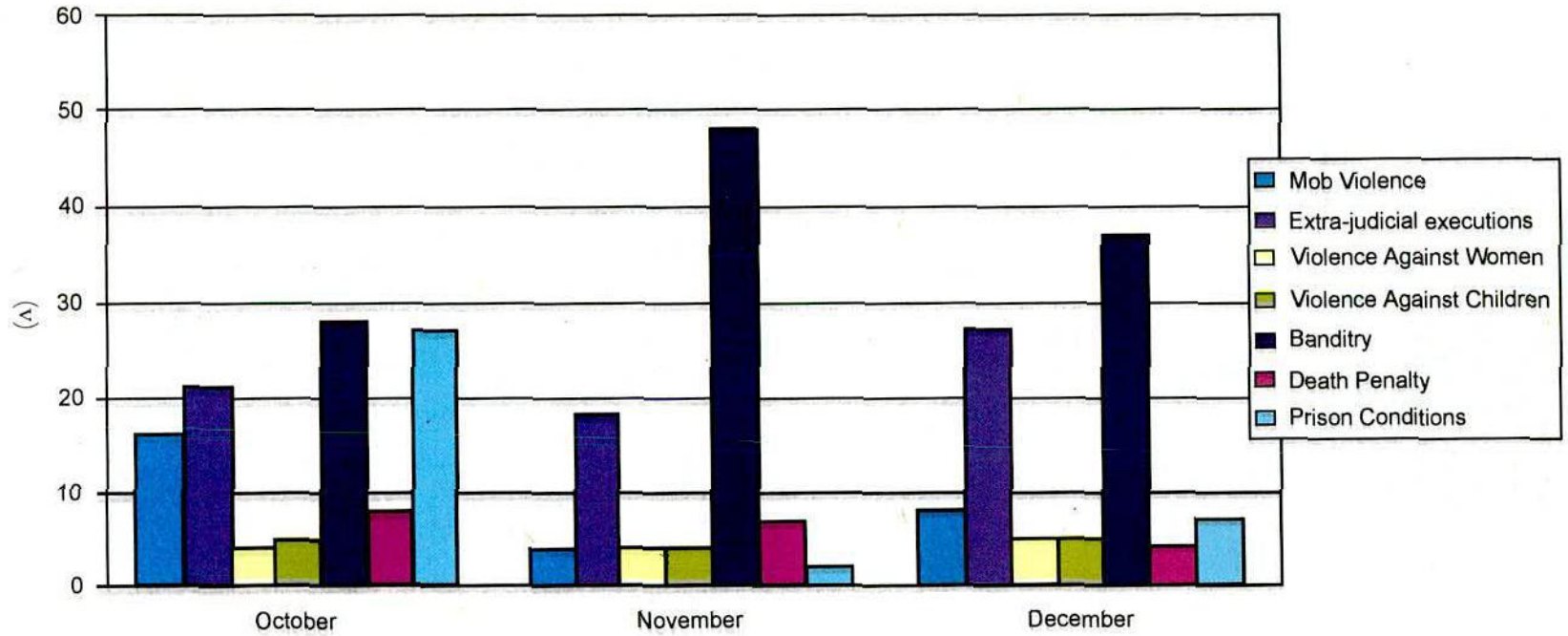
DP	Democratic Party
FORD-KENYA	Forum for the Restoration of Democracy - Kenya
FORD-ASILI	Forum for the Restoration of Democracy - Asili
IPK	Islamic Party of Kenya
KANU	Kenya African National Union
KNC	Kenya National Congress
NDPK	National Development Party of Kenya
SDP	Social Democratic Party
UDM	United Democratic Movement

Others

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and the Welfare of the Child
CEDAW	Convention on the Elimination of Discrimination Against Women
CRC	Convention on the Rights of the Child
EPRDF	Ethiopian People's Revolutionary Defence Forces
FGM	Female Genital Mutilation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights

KBC	Kenya Broadcasting Corporation
KHRC	Kenya Human Rights Commission
KNUT	Kenya National Union of Teachers
KTN	Kenya Television Network
MOH	Ministry of Health
OLF	Oromo Liberation Front
QHRR	Quarterly Human Rights Report
UDHR	Universal Declaration of Human Rights

Right to Life - Deaths (Oct - Dec, 1999)



I. Violations of the Right to Life

A. Mob Violence

Since we started monitoring mob violence as a human rights violation, statistics have steadily risen. From the 95 cases we recorded in 1996 there has been a 52 % leap to 184 incidents recorded by KHRC in 1999. Tragically, most Kenyans do not recognize mob violence which they call "mob justice" as an abuse of human rights. This type of violation is normally viewed as an alternative mechanism of dealing with crime. They treat it as an alternative to the recognised judicial system. The worsening security situation, the surge in violent crime, corruption and the failure by the government to restore the public's confidence in its ability to protect the people has contributed to the rising incidents of mob violence. In many parts of the major residential areas today, muggings, violent robbery and rape are widespread. The inadequate and sometimes lax security apparatus has led to a state of anger and vindictiveness.

With the breakdown in security communities have resorted to forming vigilante groups which are quick to apply mob violence. The *Sunday Nation* of October 17 reported that two suspected gangsters in Kitui were lynched by a mob while a third gangster sustained serious injuries. The incident occurred only one week after Environment Minister Francis Nyenze urged the residents to form vigilante groups to fight crime.

In the absence of police participation in the community policing, individuals are open to risks on their lives as happened

in Kiandutu slum in Thika on October 14. William Etai Eshai, 40 and Michael Ngure who are members of a vigilante group were hacked to death after they responded to a call of distress. Thika OCPD said that the two died when a group of about 60 people attacked them with crude weapons.

According to human rights monitors in Bungoma, Samuel Ochieng' Osewe and another person identified only as Juma were killed by a mob on October 31 at Namasanda village at about 3 pm. The two who were residents of Bungoma were in the company of another person when they allegedly attacked a salesman and a driver with Jiwa bakery.¹

The *East African Standard* of October 21 reported that a man was killed in Murang'a by a mob which accused him of an earlier murder of his friend after a quarrel. The deceased was milking a cow when the assailant slashed him to death. Members of the public then chased the assailant and killed him also.

On November 10, college students of Sang'alo Institute beat their principal Polycarp Wanyela to death. The students beat him using sticks and clubs.

Unusually, two women were killed by a mob during the last quarter. On December 1, the *Daily Nation* reported that two women who attempted to kidnap a schoolboy were lynched in Nyeri.

¹ Reported by Western Kenyan Human Rights Watch.

On December 14, The *Daily Nation* reported that an administration police Officer was killed by a mob and his associate sustained deep cuts after a mob attacked them in Nakuru on suspicion that they were thieves.

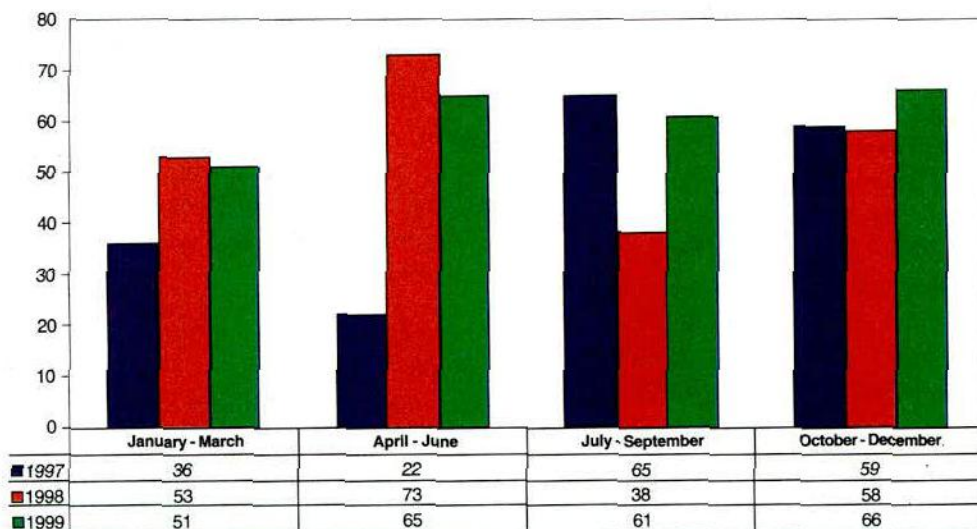
In another incident reported by the *East African Standard* on December 7, Aldai DO Kipkoech Lolo saved a chief from being lynched during a reconciliatory meeting between Christians and traditional circumcisers at Kapkures trading centre in Nandi district. The Chief was accused of refusing to support Female Genital Mutilation.

Some of the most gruesome mob vio-

lence does not always involve theft suspects. In some parts of the country especially in Kisii district and in the Rift Valley province, the burning of people and their property for alleged acts of witchcraft are common. On October 15, two suspected witches received serious burns when their houses were set on fire by villagers in Kibiloni division, Nandi district. The attackers claimed that the suspects were behind the death of a woman from the area. The geographical spread of the violation points to a dangerous trend - that mob violence is increasingly taking root in different parts of the country putting to greater threat the right to be heard.

B. Extra-judicial executions

Extra-judicial Executions in Kenya: 1997 - 1999



While Kenya has the legal, judicial and administrative systems for investigating the causes of death in unnatural and suspicious circumstances, the government officials charged with the responsibility have been unwilling to invoke them. Most extra-judicial execution cases are rarely fully investigated or remedial action taken. When investigations are done, the police who, are the main perpetrators of human rights violations are usually defensive and dismissive.

From 1996, the figures of deaths arising from extra-judicial executions have continued to swell systematically. In 1996 KHRC recorded 130 deaths, 182 in 1997, 222 in 1998 and 233 in 1999.

In most of the reported cases, the victims are robbery with violence and car jacking suspects. Though the deteriorating security situation deserves resolute police action, the shoot to kill policy approach to dealing with crime puts the

police efforts to question and disrepute. We have argued that it can be misused. Like the death sentence, extra-judicial executions are irreversible and deny the victims the chance of standing trial. It also bestows on the police the role of judge, jury and executioner by the stroke of the bullet.

The situations is further aggravated when the policy is given presidential sympathy as happened on December 22 when President Moi directed the police to shoot cattle rustlers on sight. He also ordered communal punishment for communities allegedly abetting cattle rustling.

Extra-judicial executions become especially tragic when unarmed victims have been killed as a result of mistaken or police inefficiency and misuse of fire arms. The killing of 19 year-old David Gakere in October by police officers in Tigoni, Kiambu falls in this category.

According to relatives, the teenager was walking home in the company of three others when they were confronted by three plain clothed officers. Francis Mwangi who was in the company of the deceased said that the police officers inquired where they were coming from but before they could explain, one of the officers drew a gun and shot Gakere. Mwangi was bundled into the car boot and taken to Tigoni police station and later released. Gakere's body was later found dumped near his home with gun shot wounds. A Flying Squad police officer, Constable Raymond Rotichi was later identified as the killer. As far as we know, he has not been charged with any offence.

In another incident reported in November in Kitui police shot dead a suspect who was in handcuffs allegedly after he tried to escape from lawful custody. Paul Kithunu was arrested on November 5 after being suspected of possessing stolen loaves of bread within Zombe township. He was arrested by two administration police officer attached to the area chief gave the following statement.

"On November 6, I was going to the chief's camp. When I got near the gate, I saw Paul standing near the chief's office. One of the chief's police officers whom we know only as Peter entered the office. A few moments later, Paul started running away but he could not run fast since he was in handcuffs. The people who were seated outside the chief's office sounded the alarm and the Police Officer came out running with a gun on the ready. He ran after Paul and

² According to the inter-parties parliamentary group (IPPG) reforms, it is unlawful for a chief to maintain a cell.

after a few steps he stopped, aimed and shot him dead."²

On December 13, the police were yet again on focus after they shot an 18-year-old man as his girlfriend begged for mercy at Huruma, Nairobi. Samwel Njoroge was shot dead inside his house by police officers from Muthaiga police station who immediately run away. Police later claimed that Njoroge was a wanted criminal who had committed a chain of violent crimes.

In a response published in the *East African Standard* of December 12, the Nairobi Provincial Police Officer, PM Mbuvi said that Njoroge was wanted by police for crimes ranging from murder to robbery with violence. According to Mbuvi, police officers from Muthaiga police station visited Njoroge's house on November 13 and knocked at his door. They also identified themselves.

According to the police, Njoroge opened the door and came rushing at the police officers with a panga ready to attack one of the officers. It is at this stage that one of the officers shot him dead.

A similar incident took place in Homa Bay when a chief ordered APs to shoot Peterson Ouma Olela after he asked why the administrator had arrested his uncle (Ouma's). An eye witness gave the following statement to the KHRC monitor in Homa Bay.³

Peterson Ouma was shot dead on December 10 after he went to enquire from the chief why he had arrested his uncle. He was at their home when his aunt informed him about his uncle's arrest. He

³ Reported by Olang Sana, KHRC Monitor, Homa Bay.

ran after the chief, identified as Ochieng Oketch and caught up with him at their (Ouma's) home's gate. When he tried to ask why his uncle had been arrested, the chief directed a spotlight at him and ordered the police to shoot him, which they did. His father, Olela arrived ten minutes later to find his son dead. He went to the police station and recorded a statement.

The chief and the police officers met him while he was writing the statement and ordered him to be arrested for obstructing police officers on duty. The police officers told the OCPD that they had been attacked by the villagers at the instigation of Olela's family hence they had to shoot in self-defence. They presented a panga and a rifle as exhibits of the weapons used against them. In addition, they inflicted minor injuries on the body of one of the police officers as evidence of brutality meted against them by the villagers.

A post mortem done by Doctor Alex Onzere revealed that Ouma died due to firearm injury on the chest. The family has recorded statements with the police but an inquest has not been constituted to establish the circumstances behind the death.⁴

During the three months under review, it is notable that out of the 36 incidents of reported, the regular police have been involved in 28 of them or in 77 % of the cases. The other culprits are the provincial administrators who include chiefs and administration police. Among the five incidents we recorded between

During the three months under review, it is notable that out of the 36 executions reported, the regular police have been involved in 28 of them or in 77 per cent of the cases. The other culprits are the provincial administrators who include chiefs and administration police.

October and December involving the provincial administration, three have resulted in prosecution. Following the death of Joseph Kagiri⁵ in September, a chief and two AP were charged in Thika. In Siaya, an assistant chief who beat a suspect to death was reported to have been arrested on November 5. On November 16, a chief and three youth wingers were jailed for five years for beating a suspect to death.

While this trend is encouraging, there were fewer cases of members of the Kenya Police and especially the Flying Squad being arrested. This gives credence to observations that the police usually protect their own. This anomaly can only be rectified if the duty of investigating extra-judicial executions is removed from the police. It also vindicates the KHRC position on the need of an independent body to deal with the menace.

⁴ Post Mortem report by Dr Alex Onzelle.

⁵ Reported in QHRR 3, July-September.

The South African experience

In South Africa there has been long of mismanagement and lack of accountability within the police leading to the establishment of The Independent Complainant Directorate (ICD). The ICD, which monitors police and investigates the conduct of police officers, has promised to strengthen investigation of the abuse of power by policemen.

Between April 1998 and March 1999, 756 cases of deaths in police custody were handled by the ICD, the civilian-led body which investigates such abuses. Of the 756 cases, approximately 500 were the result of shootings. The rest were related to death by natural causes and suicides.

Advocate Neville Melville, executive director of the ICD, suggests that while there is extensive publicity and awareness of police abuse, there needs to be more regulation of police conduct and greater co-operation between the Safety and Security Departments and the ICD.

Besides a large degree of inefficiency, cover-ups and ineffectual investigations, the police can also be taken to task for perpetuating a 'cop culture' which has made transforming the system difficult.

However, while misconduct was generally under-reported in the past, there are now more people speaking out against police abuse. This raises the question of whether there are now more crimes being committed by the police, or if people are now reporting more cases. Another attempt at cleaning up the police has been through its anti-corruption unit, which specifically investigates police members suspected of crimes.

C. Torture

In the 1980's the name of James Opiyo was synonymous with incidences of torture in Kenya. Opiyo was then in charge of a torture squad that was based at Nyayo House. The Squad was investigating the alleged existence of an underground political group known as Mwakenya. In the 1990's, Inspector Timothy Kamunde of the Flying Squad had gained the notoriety of being the most high profile torturer in the country. Kamunde who is credited with getting quick convictions is also infamous for being a merciless torturer. In this quarter KHRC followed him to Kitui where he was dispatched after a series of robberies occurred in the area.

During the months of September and October, there was a spate of robberies in Kitui district where the victims' houses were burned down and their property stolen. Members of the flying squad, led by Inspector Timothy Kamunde went to Kitui and arrested several people suspected of having been behind the robberies.⁶

One of the suspects, Masila Tumbo said that they were tortured and forced to sign documents implicating them in the robberies. He was arrested on October 11 and taken to C.I.D offices at Kitui police station. While there, he met Inspector Kamunde who told him to give out the names of his accomplices. He denied knowledge of the issues raised by the police.

He was blind folded and had his legs

and hands manacled to a Land Rover. His trouser was removed and his legs were untied and spread apart. Using a pair of pliers he was holding, Inspector Kamunde started to squeeze his testicles. He passed out during the process and only regained consciousness the following morning when he found himself in a chief's camp at Migwani location of Mwingi district. In the same cell, there were 16 other people who had been arrested after being suspected of being behind the robberies.

On October 18, the group was moved to Kitui police station where each was given a written statement and ordered to sign. Their legs were manacled to the table at the CID office before they were given a pen. All signed the statement out of fear of further torture.

When the suspects were charged in court, the complainant in the case, Kilonzo Maingi, learnt that the suspects had been tortured to admit guilt and decided to withdraw the case. He approached Inspector Kamunde with the request but was denied. When the case came up for mention on November 15, the complainant informed the court that he wanted to withdraw the case. The court obliged and released the accused.

Kamunde was also implicated in another incident of torture in Thika. On October 17, at around 10.00 p.m., police officers attached to the Flying Squad arrested Stephen Kungu and his friend Mungai and took them to Kabati police station. There, they beat up the two without asking them any questions until they

⁶ Report by Mutio Ndana, KHRC monitor, Kitui.



A victim of police torture

were unable to walk. They took Mungai away and booked Kungu in one of the cells where he stayed for three days without water or food.

On October 21, Kung'u was taken to the CID offices where he met Mungai together with another man called Jimmy being beaten by Inspector Timothy Kamunde and Maloba claiming that they knew who killed a Githurai Councillor. Kungu denied the charges and Kamunde also started beating him. (See *QHRR Volume 1, NO 3*)

When Kamunde realised that Kungu would not budge, he started accusing him of arson allegedly committed on May 19 at Githurai market. Kung'u refuted the allegations but was however forced to sign a self implicating statement. He was taken to various police stations in Nairobi before being booked at Thika police station on November 7. He was charged with arson and murder

on November 8.⁷

The *Daily Nation* of 19 October reported, that residents of Mang'u location, Thika district called for the closure of a cell in the area where a man was tortured to death. They said Joseph Gitau Kagiri was locked up in the cell and then beaten to death by administration police. (see *QHRR: July-September issue*)

According to the Inter-Parties Parliamentary Group (IPPG) reforms, chiefs were banned from maintaining cells or any other places of confinement. Where a chief arrests a person or directs any person to be arrested, the arrested person must be taken to the police station without any delays. Going by reports from field monitors and press reports these rules were not implemented.

On October 15, Michael Mutuku Solomon, was reported by *The People Daily* saying that he had been tortured by po-

⁷ Statement to KHRC by the survivor and medical report from IMLU

lice at the Industrial Area police station so as to sign a statement implicating him in a Kshs 114 million which had been stolen at the Jomo Kenyatta International Airport. He said he was tied up and beaten with wooden planks.

On October 15, the *East African Standard* reported claims by Kisauni MP Emmanuel Maitha that police officers tortured him when he was arrested in connection with the Likoni clashes. Maitha claimed that he was stripped naked and police pricked his genitals with sharp pins to force him to accept that he was behind the clashes.

On November 2, the *People Daily* reported that six suspects were tortured at the Hola police station for four days after being suspected of being behind the highway banditry attack on the Hola - Malindi road. The suspects said that for the four days they had been in the station, they had been repeatedly battered with batons and gun butts and whipped while naked.

The suspects asked for medical attention through the area administration police boss and the acting Tana River district police boss, a Senior Superintendent Wanzala but were not accorded any. When contacted, the OCS Humphrey Njau said he did not know about the arrest of the suspects or the alleged torture.

Again on November 4, the *Daily Nation* reported that Peter Kibuika and Moses Wainaina were admitted to the hospital after being tortured by police officers so as to confess to crimes that they had not committed.

custody. On November 19, a student at Michinda High School, Samwel Gichuka died after being released from police custody. According to witnesses the student was arrested on November 17 by anti-riot police officers who locked him up at the Elburgon Police Station where he was beaten with runkus, according to a Catholic priest, Father Kevin Sullivan.

The following day, he was released but died during the same night..

The initial post mortem done by a government pathologist indicated that the victim had died of pneumonia and the body was buried. However, the family was dissatisfied and contacted Father Kevin who in turn called in the Independent Medical Legal Unit (IMLU) which facilitated a second mortem after the body was exhumed. The post mortem was done by Dr Kilasi Olumbe who is the chief government pathologist on December 20. It concluded that death was caused by multiple soft tissue injuries.

Summary of the report

- a. Death of Samuel Gichuki Wachira is due to the superficial bruises in the subcutaneous tissues marked in the back and lower limbs. This resulted in extensive blood loss into tissues leading to shock. No significant amount of blood was found in any of the body cavities.
- b. The deceased had one previous autopsy, which since the head, chest and abdominal cavities were not opened.

d. The findings at autopsy are not consistent with the circumstances of death as indicated in Police 23A.

I hereby acknowledge that this report is consistent with the findings of the autopsy.⁸

The *East African Standard* of November 25 reported that a house help, Lilian Njeri, had been tortured by her woman employer who is a National Youth Service (NYS) officer on suspicion that she had stolen Kshs 50,000. Njeri was admitted at Kenyatta National Hospital with serious head and back injuries. Njeri said that when she denied having taken the money, her hands were tied from behind and her employer's daughter and son used a whip and batons to beat her up. Due to the beatings, she started bleeding from the nose and ears and the woman and her children ordered her to lick it up. She was then forced into a pick up truck by the woman and driven to Kabete Police station where she was abandoned. At the police station, her condition deteriorated forcing a senior police station to take her to hospital. In this case, the police were aware of the circumstances and yet no arrests have been made.

On November 27, Police Commissioner Philemon Abong'o warned police officers against torturing suspects or using crude methods to extract information. While the statement was encouraging, he needs to follow it up by putting into place practical safeguards. One area in which the Commission can offer resource is in training police officers in

human rights.

The Commissioner should also start prosecuting cases that have already been reported to him. A good example is the case of one Johnnes Musyoka who was reported on December 2 by *The People Daily* demanding the prosecution of a police officer who tortured him in April last year until he became blind.

Musyoka named the police officer only as Alex who is stationed at Buruburu Police Station. He said the police officer hit him with a whip on the eyes and after his release, he was diagnosed by the doctors to have lost his sight.

In another case reported by the *East African Standard* of November 7, police in Nakuru were accused of trying to cover up their colleagues who had been charged with torturing a suspect to death while in police custody. The Baringo DCIO was accused by Nakuru resident judge Lady Justice Sarah Odenyo of subverting justice by refusing to bond police officers to testify in the case.

The jailing of Kariobangi location Chief David Mweteri Ikiugu for five years on December 17 was however a positive step in the fight against torture. The High Court ruled that the chief abused his authority as he set in motion violent acts which resulted in the death of Omondi Yonga in September 1998. If the recommendations of the Inter-Parties Parliamentary Group (IPPG) banning chief's from holding prisoners in their cells and from arresting suspects without signed orders from a magistrate was implemented, it would be a critical step in the fight against torture. However the failure by the government has allowed the provincial administration to contin-

⁸ Post Mortem report by Dr Kilasi Olumbe, Chief Government Pathologist.

ue arresting suspects and holding them illegally in their cells.

The growing interest of professionals in the fight against torture is also a welcome step. In a seminar held on December 26, 1999, the Law Society of Kenya Nyanza and Western Kenya Chapter Chair, Mr John Alago-Oluoch said that doctors nev-

er bothered to go to police stations to see their registered patients even when the patients needed medical attention. He expressed the concern of the LSK that some doctors colluded with police officers to doctor P3 forms to influence the evidence of the complainants during court proceedings for monetary gain.

D. Violence Against Children

On December 17, 1999, the director of the Children's Department, Sammy Ole Kwallah expressed concern that the Children's Bill was taking too long before becoming law. The Attorney General, Amos Wako promised during a conference on children that the bill would be presented to parliament for debate before the end of the year. Sadly this did not happen.

When it finally becomes an act, it will enable the government to implement the Conventions on the Rights of the Child. Currently, there is no specific law that addresses the rights of the child thereby making it difficult to effectively litigate cases of child abuse. The Commission has continued to document cases of violence against children and notes that cases of defilement and female genital mutilation have been the most prevalent violations of children's rights in the last quarter. Unfortunately, most of the perpetrators are close relatives of the victims, the very people who are supposed to offer protection.

The KHRC recorded 15 deaths between October – December, 1999. This is a slight decrease from the 21 we reported during the third quarter. However, the annual tally of 85 deaths from violence against children indicates a 41 % increase over 1998.

The *East African Standard* of October 15 reported that a 37 year old father of four battered his two sons to death in Kasarani, Nairobi. The man, Francis Obara killed the children after suspecting them of having stolen money to buy a packet of flour.

Francis Ng'ang'a was reported by the *East African Standard* of November 23 having poisoned his three daughters in Lower Matasia in Ngong, Kajiado district. Ng'ang'a was said to have put 'Copper Triatix' insecticide in the children's food. He then hanged himself.

The *East African Standard* of November 15 reported that Nakuru police had arrested a 60-year-old woman who had hacked her grandson to death.

The judicial system appears to be playing a positive role in combating violence against children. During the last quarter, courts handed heavy sentences to child defilers and hopefully this will be deterrent to potential offenders.

The *East African Standard* of November 20 reported that a nursery school teacher who had defiled his five year old pupil was jailed for 14 years by a Mombasa court.

Daniel Mwangi Maina, a father of five was reported by the *Daily Nation* of November 19 having been jailed for seven years for defiling his ten-year-old foster daughter. He was also sentenced to hard labour and two strokes of the cane.

The *Daily Nation* of November 25 reported that Musa Mohammed Mendoh was jailed for 26 years for defiling two minors and infecting them with a venereal disease.

The *East African Standard* of December 23 reported that a seven-year-old girl, Kapingiri Kinanu, had been subjected to a rape and burns ordeal by her father for the previous one year. According to The

KHRC recorded 15 deaths between October—December, 1999. This is a slight decrease from the 21 we reported during the third quarter. However, the annual tally of 85 deaths from violence against children indicates a 41 % increase over 1998.

Childlife Trust, a child rights NGO, Kapingiri is a product of an incestuous relationship between her father and his daughter. The girl told members of the press that in addition to the rape ordeal her father used to assault her using a red-hot knife blade.

The *East African Standard* of December 24 reported that a security guard who defiled 11 primary school children was jailed for 19 years. Joseph Mutuku was ordered to receive 15 strokes of the cane and hard labour.

On December 18, the *Daily Nation* reported that two primary school girls in Meru district had ran away from their homes to evade circumcision. The two, Charity Kagendo and Tritosa Kananu escaped on December 12 and sought refuge at the Family Planning Association of Kenya offices in Meru town.

On December 8, 1999, the *East African Standard* reported that circumcision rites in Nyamira, Kisii and Gusii districts went on peacefully after elders instructed the initiates not to sing songs which might alert the government. According to media reports, the local chiefs and their assistants claimed that for the Abagusii community, it was impossible to discard female circumcision.

The tacit support of FGM by govern-



A child sexually assaulted and burnt by her father.

ment officials within the provincial administration complicates efforts to curb the menace. In Meru, four people including an Assistant Chief were arrested in December in connection with the forced circumcision of primary school girls in Meru. The girls were said to have bled after the operation and when examined, were found with lacerated wounds on their genitals. More alarming were reports that 800 Marakwet girls were initiated in December. The *East African Standard* of December reported that the girls were aged between 8 and 15 years.

E. Violence Against Women

On December 12, the Attorney General received a report by the task force on the laws relating to women. Among the issues the task force focused on was violence against women and recommended the enactment of a domestic violence act. It addressed the problems caused by practices, traditions and policies that violate women's rights and are in conflict with the rights and duties under international law that Kenya is a signatory to. The Federation of International Women Lawyers (FIDA) has specifically



Lilian Njeri: Tortured by her employer.

recommended that Section 140 of the Penal Code be amended to enable courts to sentence rapists to life imprisonment or to at least ensure that they do not serve less than 30 years.

The recommendations are informed by the state of women's rights in Kenya. Statistics collected by KHRC indicate that violence against women is rising alarmingly. In 1999, we recorded 87 cases of deaths arising from violence against women. This represents a 57% rise in the number of deaths recorded by KHRC over 1998. These figures do not represent the true position as they only reflect what has been covered by the media and those reported directly to KHRC. Many other cases go unreported, especially in the rural areas where the media is not represented.

The recommendations are justifiable when one appreciates that with rising insecurity women are exposed to triple jeopardy. They are victims of robbery attacks, rape and exposure to HIV infection. During the last quarter, we recorded five incidents in which eleven women were robbed and raped.

On October 10, a 23-year-old woman was raped by a gang of seven men in Naivasha town. She was also stabbed thrice. The *Daily Nation* reported on October 12 that the heavily armed gang raided the Site estate at around 9.00 p.m. ransacked several houses, took away money and other valuable household items.

On October 24, a British tourist was raped and sodomised in Malindi during a robbery. According to the *East African Standard* of October 30, the woman

was returning home in the company of her husband when they were ambushed by the assailants outside their residence. Three men were charged with the offence on November 15

On October 27, two women were raped by eight suspected gangsters after their vehicle got a puncture along Thika road. The *Daily Nation* reported that the women and a man were changing a tyre when the robbers armed with crude weapons attacked them at around 2.00 a.m. They were transporting bananas from Kirinyaga to Wakulima market in Nairobi.

On November 18, seven robbers raped a woman after commandeering a city matatu. The robbers drove the stolen vehicle to Kiambu where they raped the woman in a coffee plantation and left her for dead.

The *East African Standard* of November 19 reported that a member of a four man gang that gang raped an elderly woman in turns had been jailed for ten years.

The Buru Buru police boss Namwel Mochache reported that five women were raped by a gang of eight in Umoja estate on November 28.

On December 26, a Dutch national was raped by a suspected gangster in the presence of her children in Nairobi. The woman was car-jacked by four armed suspects while in the company of her husband while on their way home after a dinner outing. Three of the suspects drove away with the husband to the town centre where he was forced to withdraw money from an ATM.

The following letter (page 16) was sent to KHRC by a distraught young wom-



Elina Muthoni: Jailed for allegedly stealing her husbands cow.

an from Nyahururu. It illustrates the frustration suffered by many Kenya woman in their efforts to seek redress in a male dominated society. We produce it unedited overleaf.⁹

The fact that property rights are skewed in favour of the men was demonstrated by the case of Elina Muthoni of Thika who had been jailed for allegedly stealing her husbands cow. However it later emerged that she had sold the cow to take care of family matters. She was however released after the intervention of FIDA.

The case of Belinda Adagi who escaped a rape bid explains the no win situation a many of the rape victims and survivors face. On October 27, Belinda jumped from the sixth floor of a build

Dear Sir/Madam,

RE: THE RIDDLE OF A SECURITY BAG THAT CAN'T DELIVER

Women, especially young ones, have been subjected to undue agony for a long time now.

Many do not realize this until they become victims themselves. I am not excluded. I'm 19 years old. My father died when I was a month old so that I didn't have a chance to know him. This partly explains why somebody would like to kill me. NO PARENTAL SECURITY. The day was 15th November 1999. I had gone to our nearby shoe maker for my shoe when on my way home I was grabbed from behind. I turned and screamed. I knew the assailant immediately as Samuel Kamau Maina. One of his hands went for my throat while the other was tearing my skirt and the rest. He squeezed my neck and stuffed my mouth with my own clothes. He then lifted me and knocked me hard on the ground. Two people who had heard my cry for help run to my rescue. The assailant ran away. I was carried home unconscious on a bicycle. My brother took me to OLJOROLOK police station where we were issued with a P three (P3 form). This was the 16 November 1999. I was then taken to Nyahururu District Hospital where I was admitted. My ailing 60-year-old mother was told to arrest the assailant and take him to the police station. Is this really the procedure, Mr. Abong'o?

He was not arrested until my brother trailed him from home and arrested him a few meters from OLJOROLOK town and took him to the police station on 19-11-99. He was booked and locked in the cells. On 21-11-99, he was released from the police station and comfortably went home. Was he prosecuted Mr. Wako? How long are we going to condone moral decays. What are we young girls supposed to do with rapists on one hand and unwilling, unco-operating security officers on the other? Where is the sympathy chord that used to bind civil society? This and many other questions are like salt added to injuries. As I heal my wounds in a hospital bed, can somebody help me please.

Lydia Muthoni Ndegwa

ing to escape being raped by a security guard. She had arrived at Nairobi from Kisumu and was looking for a telephone booth when a security guard said that he would help her to call from a telephone 'in the building'. It was in the building where the rape attempt took place and Belinda jumped out through the window. She broke her jaws, fractured both legs, a hand and her hip. The security guard was arrested and charged with attempted rape. Brenda is hospitalized at Kenyatta National Hospital.

On December 2, it was reported that a senior police officer raped a woman

whom he had given a lift in Kakamega. Another police officer was also reported on December 6 of having raped a mentally disturbed woman at Kabras. A primary school teacher at Amase primary school in Teso district who impregnated seven school girls was reported by the *East African Standard* to have been interdicted after being found guilty of the offence.

On November 2, the *East African Standard* reported that a husband in Migori had chopped off his wife's head after a domestic quarrel.

Discrimination and sexual harassment

For a long time the issues of sexual harassment and discrimination in education institutions in Kenya and working places have been a subject of hushed debate. The real issues have almost always been swept under the carpet. The tendency will definitely continue unless pro-active advocacy around the issues of property rights and sexual harassment and the place of the woman in Kenyan society is improved.

On December 1, a probe committee released a report on the fate of six lecturers accused of sexual harassment at Egerton University. The six were found guilty of sexual harassment by the probe committee. The recommendations of the Committee were adopted by the University Council, the highest decision

making body in all public universities but action was deferred.

During the same quarter, the *East African Standard* of November 12 reported that Ann Ochieng had been sacked by her employer because she could not perform her duties after she got pregnant. FIDA wrote to the employers challenging the decision.

The *East African Standard* of December 12 reported that armed police frog marched two women who were accused of drinking a soda for too long at The Stanley Hotel. They were bundled into the police kiosk cell on Kimathi street. They were not charged with any crime. The KHRC wrote a protest letter to the hotel management.¹⁰

F. Banditry

Deaths from Banditry: 1999

Women	Children	Bandits	Security officials	Civilians
5	18	15	3	118

Violence arising from banditry continued to plague large parts of North Eastern, Eastern and the Northern Rift of Kenya. Among the Marakwet, Pokot and Turkana communities, persistent attacks and counter attacks led to a trail of death and massive loss of property. Worst hit were areas inhabited by the Marakwets which bandits from Pokot have been raiding routinely. Indeed, due to the sophistication of the guns and tactics involved, there are allegations that the raids are by trained private armies operating in the district.

The Secretary General of the National Council of Churches of Kenya, Muta-va Musyimi said that the banditry attacks were being perpetrated by private armies that have been set up in the Pokot, Turkana and Marakwet districts. He said that training camps had been set up in Kaben on the Salat escarpment, Kara Pokot Hills, Kasei and Loima hills. While the claims have not been established, the death toll has kept on rising in the districts. Out of all the deaths from banditry recorded by KHRC between October and December, 49% took place in the Northern Rift – Turkana, Pokot, Marakwet and Baringo. The rest were mainly in the Eastern and North Eastern provinces.

The involvement of politicians and members of the provincial administration in promotion of banditry further aggravates the issues. The *Daily Nation* of October 28 reported that the govern-

ment had suspended three chiefs and two assistant chiefs for aiding suspected Pokot raiders who had killed 12 people in Marakwet district.

The *People Daily* of November 11 reported that about 100 militia men believed to be Pokots had raided Turkwel power project which is ran by KenGen company leaving scores dead and others seriously injured. It is worthy to note that the attack came barely a week after Energy Minister Francis Lotodo had demanded that his Pokot kin be given priority in job recruitment at the project. He threatened that failure to implement the directive would lead to dire consequences.

In December police trailing some stolen cattle traced them to the home of Minister for Home Affairs Francis Lotodo. Though he denied that he was involved in cattle rustling, a Kanu official in Marakwet, Yusuf Chepkole alleged that Lotodo was 'part and parcel of rustling activities'. The police claimed that cattle rustlers had driven the cows through Lotodo's farm to escape a dragnet.

The lackadaisical attitude of some government officials also ameliorates the problem. On December 8, the *Daily Nation* reported that Laikipia DC William Kurumei had termed a raid by bandits in Ol Moran division of Laikipia district as normal thuggery. Eventually more deaths occurred and it took the interven-

tions of the president to quell the killings.

Lack of preparedness by the police also contributes to prevalence of banditry. The police detachments operating in banditry prone areas are not mobile, are ill equipped and at times do not have fuel for their vehicles. On November 2, the Garissa police boss is quoted saying that security officials failed to stop an attack where two people were killed in Garissa due to lack of fuel. He said that police needed fuel for the vehicles that were to transport security personnel to the scene, which is about 200 kilometres from Garissa town. He said that though he had his officers and lorry ready, he had to plead with fuel suppliers who had not been paid for months. The Garissa district treasury has not been paying government departments and suppliers for more than one year.

The internalisation of the bandit problem is also a major complication. This is

The Secretary General of the National Council of Churches of Kenya, Mutava Musyimi said that the attacks were being perpetrated by private armies that have been set up in the Pokot, Turkana and Marakwet districts.

attributable to the breakdown of the government of Somali and the wars in Sudan and Ethiopia. On December 12, the *Daily Nation* reported that about 20 Somali militiamen in military fatigue of the former Somali National Defence forces and armed with AK 47 assault rifles had raided Diff police post in Wajir district. The attack had come just hours after President Moi had ordered members of warring Somali factions in Kenya to go back to Somali.

6. Prison Conditions

Number of Inmates	Prison	Cause of Death	Date
1	Industrial Area	Not disclosed	Reported on 6/10/99
25 ¹¹	Kisii	Hygiene related diseases	Reported on 28/10/99
1	Nyahururu	Not disclosed	Reported on 28/10/99
1	Busia	Not disclosed	Reported on 18/11/99
1	Shimo la Tewa	Not disclosed	Reported on 18/11/99
3	Industrial Area	Not disclosed	Reported on 14/12/99
3	Kakamega	Not disclosed	Reported on 17/12/99
1	Shimo la Tewa	Not disclosed	Reported on 17/12/99

During the last quarter of 1999, there have been some positive developments in a few cases where the media and some judicial officials have visited prisons. If this trend is sustained it is likely to put pressure on the government to improve the institutions. On October 8, Senior Resident Magistrate Francis Kinyajui in Kapsabet declared the Kapsabet GK prison unfit for human habitation and threatened to release the prisoners if the situation did not improve. The magistrate had visited the prison after complains by suspects that they were not allowed to sleep and there was no water to shower.

In addition to being brought to court while sick, the magistrate also found that they were half naked with tattered clothes. The prison, which is supposed to accommodate 56 prisoners, had 316, which was a strain to the resources available. A cell meant for 20 was occupied by 94. One hundred and eighty nine prisoners had no place to sleep and slept in turns for ten minutes. Magistrate Kin-

yanjui's intervention forced the prison authorities to relocate 190 prisoners to Eldoret prison.

However, Eldoret prison is no better as members of the Committee on the Administration of Justice were to learn when they visited the facility in November. During the visit the judges and magistrates found naked inmates as reported by the *East African Standard* of November 4. The committee Chair, Justice Evans Gicheru, attributed the bad conditions to lack of funds since the treasury had allocated low budgets to the prisons department. The committee was looking at prison conditions with the aim of making recommendations on how they can be improved.

Justice Andrew Hayanga also visited Shimo la Tewa prison on November 17. He expressed alarm that some suspects in the jail have been in custody for up to five years. He agreed that keeping somebody in remand for that long was tantamount to denying them justice.

As we have argued before, some of the problems facing prisons in Kenya cannot be resolved without the goodwill of the government. So far, this good will is

¹¹ Based on a response by an Assistant Minister of Home Affairs, Culture and Sports, Elijah Sumbeiywo, in response to a question in parliament from South Mugirango MP, Nyankieya Magara, on October 27, 1999.

not apparent. On November 3, The Minister for Home Affairs Katana Ngala was reported denying that there is congestion in the prisons. The Commissioner of Prisons was also reported by the *Daily Nation* of November 3 warning government officials against divulging any information on prisons to the media. On November 17, the Minister for Home Affairs Katana Ngala promised that he would visit Kamiti Prison to verify claims of congestion and poor prison conditions. He has yet to do that. Proper sanitation has been identified as

one of the main causes of deaths in prisons. Time and again the government has failed to settle water bills in various prisons exposing prisoners to obvious dangers. On November 2, the *Daily Nation* reported that water to King'ong'o prison had been disconnected due to a water bill. This was the second time that the water had been disconnected this year. The prisoners in King'ong'o also complained of being starved. On *Daily Nation* of November 17 reported that the inmates claimed that they were being fed with only one meal a day.

H. The Death Penalty

1999 Death Penalty Sentences				
Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Total
29	69	69	19	186

The figure of the people on the death row dropped from 224 in 1998 to 186 in 1999. This drop has nothing to do with any policy changes in the Kenyan judicial system. However, the KHRC is aware that a motion is soon to be presented to parliament calling for the abolition of the death sentences. In 1985, such a motion was presented to parliament but it was defeated.

Once again, the main arguments will be that the death sentence is inhuman, cruel and a violation of fundamental human rights. Studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. So far, over half the countries in the world have abolished the death sentence in law or in practice.

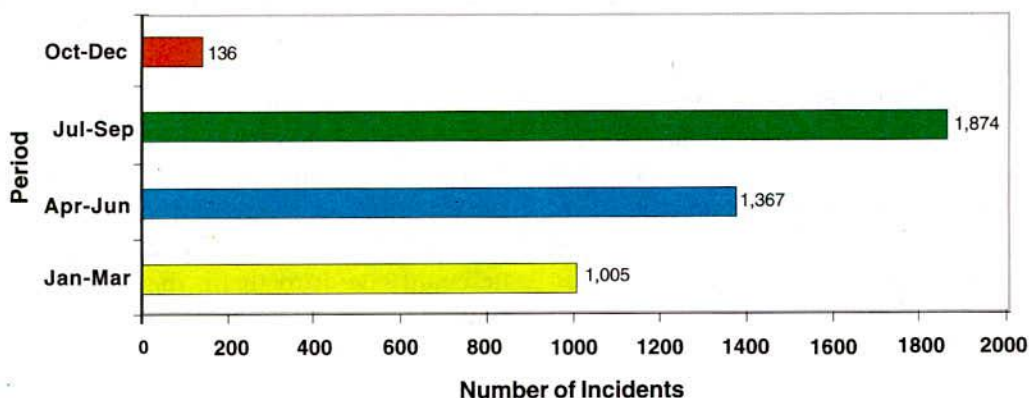
II. Police Brutality and Arbitrary Arrests

Arrest no person unless there are legal grounds to do so, and the arrest is carried out in accordance with lawful arrest procedures.

UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment.

A. Police Swoops and 'Security Operations'

Incidents of Police Brutality and Arbitrary arrests - 1999



During the last quarter, there was one police swoop which was conducted in Eastleigh area. The swoops, which the police and the government justify as intended for wiping out criminals and illegal immigrants end in the harassment and illegal confinement of people in police cells. It has also been alleged that during the exercises some police officers carry away property from the residents claiming that they do not have licences for them. Such property, it is claimed by victims is rarely returned to the owners.

In the swoop at Eastleigh, the police said 32 foreigners were arrested and charged

with being in the country irregularly. The operation came barely two days after President Moi ordered the Commissioner of Police to flush out Somali warlords who were said to be conducting illegal activities in the country. He blamed them for increase in crime and presence of arms in the country.

On October 3, the *Daily Nation* reported that six people were arrested and a number of others injured when police fought a mob protesting the arrest of six suspects in Eastleigh estate. The fighting occurred near Garrisa Lodge which the police commonly raid on the pretext of looking for arms.

The *East African Standard* of November 8 reported that police had arrested more than 10 Akorino faithful for circulating 'seditious' literature.

The People Daily of November 19 reported that five officials of Human Resettlement Disaster Care, an organisation representing clashes victims were arrested by police in Nakuru town a day ahead of their meeting with the head of the civil service Richard Leakey. They were interrogated and later released in the evening.

On November 15, the *Daily Nation* reported that James Gintonto was shot at point range by police who thought he was a member of a gang they were pursuing. A bullet tore through his left knee, shattering the bone and the kneecap. Mr. Farhan Mirza who was standing near him was also shot in the left knee. Sania Hassan, 12, was also caught in the cross-fire and shot in the spine.

The People Daily of November 30 reported that a former Moyale Chief Guyo Karaiyu had been arrested for inciting people against the government. Guyo however was arrested for protesting against land grabbing in the town.

The *East African Standard* of December 24 reported that a police officer shot and seriously injured a matatu tout claiming that he had splashed dirty water on him. The police officer shot the tout at point blank range in the shoulder. The officer was arrested.

The flying squad police officers were reported by the *East African Standard* of having beaten up and arrested a Mombasa polytechnic student after a teenage boy they were chasing escaped. Almasi Shuma was passing by the abandoned car when the police arrested him. They asked for his identity number but before he could give it to them, they started beating him and ransacked his pockets.

III. Civil Rights and Liberties

A. Freedom of speech and of the press

Since the advent of multi-party politics, the press has been central in expanding the space in the emerging democracy. The country has seen the proliferation of newspapers, TV and radio stations leading to a more informed public. The freedom of the press has however not gone down well especially as it continues to expose the weak side of the state. On many occasions the President Moi has warned that the press is the greatest enemy of democracy. In December, 1999, he described journalists as the worst enemies of this country.

The last quarter of 1999 saw various threats to the press freedom and threats on the lives of journalists. However there were positive developments. In November, *Post on Sunday* publisher Tony Gachoka was released from jail after the President pardoned him. Gachoka had been jailed for six months in August for publishing articles in the magazine that accused the late Chief Justice Zaccheus Chesoni and some other senior judges in the judiciary of corruption in handling the Goldenberg case. Gachoka served two months of imprisonment before he was released.

Most of the attacks on media people were by individuals police officers and politicians. *The People Daily* of October 16 reported that their photographer Martin Ndungu was roughed up by plain clothes police officers at the corridors of the high court as he took pictures of exhibits of a robbery case.

On 21 October, *The People Daily* reported that the Thika DC denied local leaders a chance address the people during Kenyatta day celebrations. The DC said that the day was not for politicians but for listening to presidential address only.

East African Standard of November 15 reported that two *Daily Nation* journalists were almost lynched at the home of the late former Kisumu mayor Lawrence Oile. The mourners attacked the two saying that they wrote negative statements of Oile when he was alive. Their camera was damaged and the film confiscated.

Former Town Clerk Zipporah Wandera was reported by the *East African Standard* on November 15 of having roughed up their photojournalist Martha Maingi after she had taken her photograph in church.

University of Nairobi students were reported on December 6 having stoned journalists who had gone to cover a demonstration they were holding. The students later issued a warning that any journalist seen in the campus would be lynched.

The *East African Standard* of December 11 reported that the OCS Kiganjo police station Mr. Mugo had attacked the papers correspondent in Nyeri Paul Mugo, tore up his note book, arrested and confined him in the cells for one and half hours for no reason. He had gone to seek information on a defilement case at the station.

It is disheartening to see that even the highest office in the country does not recognise the freedom of the press. This is despite the fact that the President has sworn to protect and safeguard the con-

stitution which guarantees freedom of the press. On December 13, the *People Daily* reported that the president had described journalists as idiots because of writing stories of a mutiny in the army.

B. Freedom of Peaceful Assembly and Association

The Commission has documented cases where the freedom of peaceful assembly and association has been disrespected though being guaranteed in the constitution of Kenya.

The *Daily Nation* of October 16 reported that police dispersed sugarcane farmers meeting in Sony Out growers Company premises. The farmers had gone for the meeting when they found the gates closed by the police and they threatened to pull down the gates when the police dispersed them.

On November 29, Anti Riot Police were reported by the *Daily Nation* having dispersed students of Maseno University who were protesting against the barring of 43 colleagues from graduating. Police shot about 10 times in the air and lobbed close to 20 tear gas canisters at the students in a situation where several students were injured. The police also threw tear gas canisters into the women's hostels to flush out students who took refuge in the bush while others ran into the halls of residence.

The *East African Standard* of November 9 reported that a play organised by Legal Resources Foundation was interrupted by police in Machakos district. The Machakos Police chief Thomas Makwara ordered the theatre group to accompany them to the police station saying they did not have a permit to perform the civic education play.

The People Daily of November 20 reported that the administration of Moi Uni-

versity had suspended the Moi University students Association.

An opposition meeting was cancelled by the Shauri Moyo OCS just 10 minutes after he allowed it to take place ... he said that he had consulted with his superiors who had ordered him to cancel the rally.

Anti Riot Police were reported by the *East African Standard* of November 28 of having dispersed a crowd that had gathered at Ngong town to listen to Ugenya MP James Orengo. Orengo had presided over a harambee in aid of Kipaiyo Sialala who filed an election petition against the Vice president George Saitoti.

An opposition meeting was cancelled by the Shauri Moyo OCS Tom Omani just 10 minutes after he allowed it to take place, reported the *Daily Nation* of December 3. The OCS told the MPs who had barely left the station that he had consulted with his superiors who had ordered him to cancel the rally. The rally was to take place on December 12, the day when Jamhuri is celebrated. The MPs were later to be threatened that they were to hold the rally at their own risk. This was later to be changed by the head

of public service Dr. Richard Leakey who said that people were free to celebrate Jamhuri day anywhere they liked.

Mungiki followers were reported by the *East African Standard* of December 13 as having been dispersed by police at Thiria village in Ng'arua, Laikipia district where they were holding a religious ceremony.

Cabinet Minister Francis Lotodo was reported by the *Daily Nation* of December 23 as having ordered all Marakwets living in West Pokot district to vacate the district. He accused them of being spies for their Marakwet colleagues. The Marakwet and Pokots have been involved in cattle rustling for a long time but the government has not done anything to stop the menace.

IV. Economic and Social Rights

A. Corruption

The *Daily Nation* of October 6 reported that the Auditor General's report of the year 1998-1999 disclosed that the government had lost Kshs 580.4 billion through irregularities in tendering and procurement. The report named several parastatals and politically correct individuals responsible for these losses.

During this quarter, the few people arrested on corruption-related charges have been low ranking civil servants. The Kenya Anti Corruption Authority (KACA) has not prosecuted anybody on corruption yet and the few arrests recorded have been through the efforts of the economic recovery team headed by Dr. Richard Leakey.

Mrs Kheira Omar Maalim, was reported by the *Daily Nation* of October 7 having being charged together with Captain Issack Noor Aden with forgery and attempting to evade duty on 3,500 bags of rice belonging to the Department of Defence. Mrs Omar is a wife of Assistant Minister Mohamud Mohamed Abdi

The *East African Standard* of October 19 reported that 9 managers and 7 heads of departments at Kenya Tea Development Authority (KTDA) were sent on compulsory leave to facilitate investigations on financial mismanagement at the parastatal.

The Office of the President has featured prominently in the shady deals. The *East African Standard* of October 28 reported that Anti Banking Fraud Unit had raided the Office of the President and ar-

rested six senior government accountants who were questioned over misuse of money meant for training jua kali artisans. Later, three of them were charged with attempting to defraud the government of Kshs 3.3 million. The *Daily Nation* of October 29 reported that three banks had been stopped from paying out Kshs 4.2 million stolen from the Office of the President.

The few people arrested on corruption-related charges have been low ranking civil servants. KACA has not prosecuted anybody on corruption yet and the few arrests recorded have been through the efforts of the 'Economic Recovery Team'.

The *East African Standard* of November 21 reported that the Coffee Board of Kenya had lost billions of shillings through irregular dealings between 1994 and 1998. Senior CBK managers were later suspended. The government came under attack from the Public Investments Committee (PIC) as reported by the *East African Standard* on December 5 for trying to kill debate on its report which implicated top government officials in corrupt dealings. Debate on the report had been deferred twice in what is

seen as move to cover up the mess. The Commission would suggest that the Committee be given powers to prosecute corrupt people as the government seems unwilling to do so. The corruption detailed in its report is immense and if the government is serious on fighting corruption, that is one of the steps it should take. It should also take into account the recommendations given by the committee on eradication of corruption.

The *Daily Nation* of December 6 reported that former Kenya Ports Authority boss Joseph Munene was investigating a Kshs 200 million fraud involving politicians before he resigned. His resigna-

tion was said to be as a result of questioning these shady dealings.

Former Permanent Secretary in the Ministry of Public works and Housing Engineer Samson Akute was charged with corruption as reported by the *Daily Nation* of December 8.

The *Daily Nation* of December 20 reported that the government had paid 16 contractors Kshs 11.2 billion to rehabilitate roads countrywide but the projects were not carried out. This may explain why our roads are in a mess since money meant for their construction goes to the pockets of few people.

B. Land grabbing

In November, the government appointed a Commission of Inquiry to look into issues of land in Kenya. Top on the list is the issue of land grabbing which is rampant in the country. The Commission is headed by former Attorney General, Charles Njonjo. Many people are pessimistic about the Commission arguing that its formation is just another public relations exercise.

Land grabbing has become a major source of frustration for Kenyans many of who are rendered homeless and landless when their land has been grabbed. The government has not done enough or sometimes anything even when an alarm has been blown after land has been illegally allocated. This is the case of Karura forest where even today police are still guarding it to prevent environmentalists and human rights activists from going there to plant trees. The times they have done so, they have been beaten by police and the security guards and some even arrested.

In Mombasa, Mama Ngina gardens have been allocated to private individuals and when the coast people protested the allocation, they were arrested and charged.

The *East African Standard* of October 12 highlighted the plight of the Katalambo squatters. The squatters had travelled from Machakos to Nairobi (around 80 kilometres) to protest the grabbing of their ancestral land. The squatters have been living in the land for the last 50 years wanted to see the Head of Civil Service Richard Leakey who assured them that they would not be evicted.

However, when they returned to Katalambo, Machakos DC 'screened' them and found only three of them to be 'genuine' squatters. The DC ordered them to vacate the land though they had been assured by Dr. Leakey that they would not be evicted.

The *People Daily* of October 19 reported that a piece of land near St. Michael Primary school on Jogoo road had been grabbed.

The *East African Standard* of November 23 reported that an airstrip and stadium in Rumuruti had been grabbed by 'private developers'.

It is worrying that people who are custodians of the law are admitting that they have grabbed and no action has been taken. The *Daily Nation* of October 30 reported that Juja MP Stephen Ndicho had admitted that he together with some other councillors were allocated 15 plots in Thika. The *People Daily* of November 1 reported Councillor Joshua Markinne of Westlands/Parklands admitting that he had grabbed city council houses in Pangani.

KHRC would like to salute the institution of Surveyors of Kenya for the work they have been doing in discouraging land grabbing. The association was reported by the *People Daily* of December 12 saying that it would discipline its officials found having taken part in the grabbing of Ngong forest. The association has also said that it would discipline its members found to have been involved in shady land deals.

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ISBN 9966-941-07-X