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Legal Concern/Fear of Torture

6 September 1990

**KENYA: Israel Otieno AGINA, businessman, former prisoner of conscience
Philip Gachoka GITHAIGA, businessman**

Israel Otieno Agina was arrested in Nairobi on about 16 August 1990. He is the technical director of East African Spectre Ltd, a business owned by Oginga Odinga, a former Vice-President of Kenya and prominent critic of the government. The authorities have given no explanation for his arrest and he has not so far been charged with any offence. His prolonged detention without being presented before a judicial authority beyond the 14 days permitted for even the most serious offences is illegal but, as in many previous political cases, the Kenyan legal and judicial authorities have not criticized or attempted to prevent this police practice. It is believed that his arrest may be connected to the arrest in July 1990 of Raila Odinga, Oginga Odinga's son, who was managing director of the same company and is currently detained indefinitely without charge or trial and adopted by AI as a prisoner of conscience.

Israel Otieno Agina had been previously adopted by AI as a prisoner of conscience when he was detained without trial between August 1986 and February 1988, and again between September 1988 and June 1989. On the first occasion he was severely tortured.

Philip Gachoka Githaiga was arrested in Nairobi on 16 August 1990 by Special Branch police officers. According to his lawyer, he was blindfolded, dumped in a car boot and taken to the Special Branch's Nairobi headquarters in Nyayo House. He was denied access to his legal representative and interrogated for three days about his connections with three political detainees (who have all been adopted by AI as prisoners of conscience) - Kenneth Matiba (for whom he had been parliamentary campaign organizer) Charles Rubia and Raila Odinga (see above).

On 21 August Philip Gachoka Githaiga was brought to court before the Chief Magistrate and charged with possessing a seditious publication - a leaflet of the clandestine opposition organization, Mwakenya. He was allowed legal representation but bail was denied. No date has been set for his trial.

BACKGROUND INFORMATION

In July 1990 several politicians, lawyers, businessmen and others advocating a multi-party political system in Kenya and criticizing the government were arrested. Three (see above) are still detained without charge or trial for an indefinite period under the Public Security Regulations, and several others were charged with possession of seditious publications. The alleged seditious publications included Beyond, a church magazine banned in 1988, the Nairobi Law Monthly, Africa Confidential, a political newsletter published in London, as well as leaflets of Mwakenya calling for the violent overthrow of the government. Church leaders criticising the government have also been accused of "subversion" and one of them, Bishop Alexander Muge, the Anglican Bishop of Eldoret, was subsequently killed in a car crash on 14 August 1990. He had earlier been publicly threatened by the Minister of Labour, Peter Okondo, that he would be killed if he went on the journey he took. His death, as well as the murder of the former Foreign Minister, Robert Ouko, in February 1990, has

been attributed by many to members of the security forces, although the government has denied this.

Amnesty International is concerned that Israel Otieno Agina and Philip Gachoka Githaiga may be being tortured to force them to plead guilty to charges of sedition. Torture methods reported in Kenya in recent years include being held in water-flooded cells without food for up to several days, as well as death threats. Prisoners charged with sedition have also complained of "cruel and inhuman conditions" in prison awaiting trial.

Amnesty International believes that Israel Otieno Agina and Philip Gachoka Githaiga may have been arrested for their non-violent opinions and their connections with other government opponents, including prominent opponents of one-party rule, such as Oginga Odinga and Kenneth Matiba. They could face unfair trials where judicial independence is lacking and under laws which make even non-violent criticism of the government a criminal offence punishable by several years' imprisonment.

RECOMMENDED ACTION: Telexes/telegrams/express and airmail letters:

- expressing concern at the re-arrest of Israel Otieno Agina, a former prisoner of conscience who is being held illegally, and the arrest of Philip Gachoka Githaiga;
- urging respect for their human and legal rights and that they should not be tortured or ill-treated;
- calling for them to be allowed immediate and regular access to their relatives and legal representatives, with medical treatment as needed;
- appealing for them to be released unconditionally if they were arrested solely for their opinions or their connections with critics of one-party rule in Kenya.

APPEALS TO:

Mr Matthew Muli
Attorney General
Office of the Attorney General
PO Box 40112
Nairobi, Kenya

Mr James Kanyotu
Director of Special Branch
Kenya Police Headquarters
PO Box 33308
Nairobi, Kenya

Telegrams: Attorney General Muli,
Nairobi, Kenya
Telexes: 22003 FOREIGNRB
or 22696 FOREIGNRB
(via Ministry of Foreign Affairs)

Telegrams: Police Special Branch
Director, Police HQ, Nairobi, Kenya
Telexes: 22720 COMPOL KE
(Attn: Director Special Branch)

Mr James Mareka
Commissioner of Prisons
Kenya Prison Service Headquarters
PO Box 30175
Mareka,
Nairobi, Kenya

Telegrams: Prison Commissioner
Prison Service HQ, Nairobi, Kenya

COPIES TO:

Mr Wilson Ndolo Ayah
Minister of Foreign Affairs
Ministry of Foreign Affairs

Mr Philip Kilonzo
Commissioner of Police
Kenya Police Headquarters

P O Box 30551
Nairobi, Kenya

PO Box 30083
Nairobi, Kenya

Mr Justice Alan Hancox
Chief Justice Law Courts
PO Box 30041
Nairobi, Kenya

The Chairman Law Society of Kenya
P O Box 72219
Nairobi, Kenya

and to diplomatic representatives of Kenya in your country.

PLEASE SEND APPEALS IMMEDIATELY.

Check with the International Secretariat, or your section office, if sending appeals after 11 October 1990.