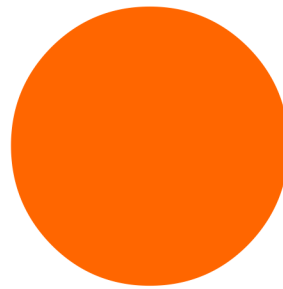


WHO'S NEXT



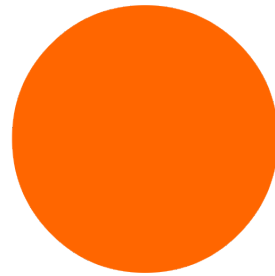
**An Account of Enforced Disappearances
in Kwale County**



Special Report

Abridged Version

**WHO'S
NEXT**



“Who’s Next?”

An Account of Enforced Disappearances in Kwale County.

Special Report

Acknowledgments

The production of this Report would not have been possible without the willingness of the victim's families to lend their voice and allow us to tell their story. We wish to express our gratitude to all the family members and witnesses who amidst threats of retaliation and victimization, bravely consented to the documentation of cases and compilation of this report.

We also wish to recognize the efforts of HURIA's Public Support and Complaints Team in documenting and compiling of reported cases, as well as, supporting families of victims to report and follow up on cases with relevant state agencies. We also wish to thank human rights organizations, and civil society actors in Kwale County who gave important inputs to the development of this report.

We wish to express our gratitude to Amnesty International, Netherlands for their technical and financial support towards development of this report.

Acronyms

AG	Attorney General
CoK	Constitution of Kenya
DCI	Directorate of Criminal Investigations
ED	Enforced Disappearances
EJK	Extra-Judicial Killing
HURIA	Human Rights Agenda
ID	National Identification Card
IG	Inspector General of Police
IPOA	Independent Policing Oversight Authority
KCGS	Kenya Coast Guard Service
KFS	Kenya Forest Service
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Prison Service
KWS	Kenya Wildlife Service
NCAJ	National Commission of Administrative Justice
NPS	National Police Service
OB	Occurrence Book
ODPP	Office of the Director of Public Prosecutions

Published in Kenya by HURIA
December 2023

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Preface

WHO'S NEXT?

It is thirteen minutes passed four o'clock at the Mwembeni Market.

From a distance, women are seen walking briskly holding their children's hands as schools are closed for the day. They rush to buy groceries for dinner. Men are at the Maskani's talking in somewhat high tones; Boda boda riders are seen gazing at the road whilst searching for passengers. It is a normal day at the market.

A sharp voice is suddenly heard from a distance. Everyone is seen running towards the voice. It leads them to a hardware store front. Sounds of gunshots disperse the crowds. And then, silence.

A few minutes later, crowds rush to the hardware store front shouting "What happened?" With anxiety in their voices, onlookers say that another man was taken, "They came in 2 vehicles, their faces were covered with Masks". "Who was taken this time?", someone else asks, "It was Mweusi's son, the Lorry driver".

In shock, gripped with fear and anxiety, two women start running, they say they are going to Mweusi's family compound to report the matter.

Fear has engulfed the air, but business continues as usual at the Mwembeni Market.

The pseudo incident above is one in a series illustrating the repetitive heinous crimes of enforced disappearance cases that occurred in several villages in Kwale county. This report is titled **"Who's Next?"**, alluding to community members fears on who's the next victim of involuntary disappearance? Which family will have to live through the anger and agony caused by extra-judicial killings and enforced disappearances?

¹Informal place of gathering, mostly by men

²Motorcycle taxi's

Definition of Key Terms

Enforced Disappearances

The preamble to the **Declaration on the Protection of All Persons from Enforced Disappearance** enshrines the first internationally agreed definition of enforced disappearance in the following terms:

It occurs when “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”

Pursuant to this definition, there are three cumulative constitutive elements of an enforced disappearance, namely (a) deprivation of liberty in any form against the will of the person concerned; (b) involvement of government officials, at least indirectly by acquiescence; and (c) refusal to disclose the fate and whereabouts of the person concerned. The placement outside the protection of the law of the disappeared person is an inherent consequence, regardless of the duration of the deprivation of liberty or concealment

Extra-judicial Killings

Extra-judicial or extra-legal killing or execution is arbitrary deprivation of life, by government authorities or individuals without the sanction of any judicial proceeding or legal process. These executions include deaths resulting from torture, or ill-treatment in prison or detention; death resulting from enforced disappearances, deaths resulting from excessive use of force by law enforcement officials amongst others.

Victim

For purposes of this document: A victim is, ***the person whose human rights have been violated, or the direct victim;***

Family of the Victim

For purposes of this document: Family of the victim is, ***members of the immediate family; the direct victim’s dependents; and persons who have suffered harm in intervening to aid the victims in danger or to prevent victimization***

³<https://www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf>

⁴See reports by UN special rapporteur on Extrajudicial, Summary or Arbitrary executions

Background

We, Human Rights Agenda (HURIA), a sub-national Human Rights Based non-for-profit organization based at the Coast of Kenya; with a mission to promote people centered justice, human rights and the rule of law; to dignify people's lives and help build more peaceful and resilient communities; at the swahili coast of Kenya;

Cognisant that, Extra-judicial killings and enforced disappearances, constitute gross violations of human rights, notably the Rights to life, Liberty and security of person protected under Article 3 of the Universal Declaration of Human Rights; and other international instruments including International Covenant on Civil and Political Rights that Kenya has ratified.

Concerned that, Extra-judicial killings and enforced disappearances, constitute gross violations of human rights, notably the Rights to life, Liberty and security of person protected under Article 3 of the Universal Declaration of Human Rights; and other international instruments including International Covenant on Civil and Political Rights that Kenya has ratified.

Aggrieved that communities and families at the coast of Kenya have in recent years been adversely affected by enforced disappearances and extrajudicial killings. In Kwale County, for example, CSOs reported 45 cases of extrajudicial killings and 16 cases of enforced disappearances over three years (characterized by inert investigations and minimal action taken against perpetrators⁶;

Hopeful that the prevalence of extra-judicial killings and enforced disappearances, warranted the Senate Standing Committee on Justice, Legal Affairs and Human Rights of the 12th Parliament to conduct an inquiry into the matter. The committee chaired by the then Senator Okongo Mogeni, presented a report dated October 21st 2021 with various recommendations and findings⁷.

Inspired by the legal and institutional frameworks put in place by government to prevent, investigate and prosecute cases of extra-judicial killings and enforced disappearances including;

- i. Chapter 4 of the Constitution of Kenya, the Bill of Rights, that guarantees every Kenyan Human Rights and Fundamental Freedoms such as the Right to Life, the Freedom and security of a person which includes the Right not to be subjected to Torture, or treated or punished in a cruel, inhumane, or degrading manner. The Constitution further requires the state to ensure access to justice for all persons, sets out the rights of arrested persons and grants every person the right to a fair hearing, including the right to be presumed innocent unless proven otherwise. And further sets out the rights of persons detained, held in custody or imprisoned.

⁵See KNCHR Advisory on the petition regarding the enactment of legislation to criminalize and prescribe penalties for the crimes of enforced disappearances

⁶The data is synthesized from the Senate Report; Report on Inquiry into Extrajudicial killings and enforced disappearances in Kenya (dated October 2021 p.12)

⁷See Report on Inquiry into Extrajudicial killings and enforced disappearances in Kenya (dated October 2021)

ii. Parliament has enacted several legislations to address extra-judicial killings and enforced disappearances. These include;

- a. The Independent Policing Oversight Authority Act, 2011
- b. The Prevention of Torture Act 2016
- c. The Witness Protection Act 2008
- d. The Penal Code 2009
- e. The Persons Deprived of Liberty Act, 2014
- f. The National Coroners Service Act, 2017
- g. The Victim Protection Act, 2014

iii. Kenya has put in place several institutions to protect, fulfill and uphold human rights related to extrajudicial killings and enforced disappearances. These include;

- h. The Kenya National Commission on Human Rights
- i. The Independent Policing and Oversight Authority
- j. The Judiciary
- k. The Witness Protection Agency
- l. The Office of the Director of Public Prosecution
- m. The National Police Service that established the office of the Inspector General

Worried that despite the above legal and institutional frameworks, extra-judicial killings and enforced disappearances remain prevalent, with efforts to ensure swift access to justice, and access to remedy and reparations for the victims and their families remaining obscure;

Disturbed about the psychosocial and economic effects of extrajudicial killings and enforced disappearances on families, who unaware of the fate and whereabouts of their loved ones, are often caught between hope and despair. As they endlessly contend with complex institutional settings and legal frameworks to demand for justice and reparations

Encouraged that the Kenya Kwanza Government through its manifesto committed to ending all forms of extra-judicial killings; and amend the National Coroners Service Act of 2017 to establish the Coroner-General's office; Establish a special tribunal for Gross Human Rights Violations and Enforced Disappearances; and Ratify and domesticate the International Convention for the protection of all persons from enforced disappearances and implementing the Victims of Crime Act ;

Aware that the National Assemblies committee on Public Petitions recently embarked on a process to collect public views on the need to criminalize enforced disappearances through a legislation;

⁸<https://uda.ke/downloads/manifesto.pdf>

Now therefore, following our documentation of cases of Extra-judicial killings and enforced disappearances in Kwale County, through the Public Complaints and Response team, HURIA presents this report that highlights patterns of enforced disappearances in Kwale in the period between 2018-2021. This abridged version of the report highlights the impact of serious human rights violations on families with a view to put Government to task, to strengthen legal and institutional frameworks that protect citizens from enforced disappearances, and provide reparations and compensations to victims of gross human rights violations.

Summary of Findings and Recommendations

(a)

The existing legal framework in Kenya lacks a precise definition of enforced disappearance as a distinct criminal offence

The Penal Code (Cap. 63) does not recognize the crime of enforced disappearance. Rather, it prohibits kidnapping and abduction. Kidnapping or abduction however do not capture all the complexities involved in enforced disappearances such as involvement or acquiescence of the Government, and refusal to acknowledge deprivation of liberty and the fate or whereabouts of the disappeared person. These gaps in the existing legal framework obfuscate accountability and deny redress for the victims.

Recommendation: The National Assembly to enact a legislation that will criminalize and prescribe penalties for the crime of Enforced Disappearance in Kenya. The legislation should entail mechanisms towards fostering accountability and reparations for victims of enforced disappearances.

(b)

Obscurity in the reporting and investigation of cases of enforced disappearances

While documenting cases of enforced disappearances it was evident that there is obscurity on reporting and investigation procedures of such cases. A typical criminal case follows the below steps;

- i. Individual reports matter to police station
- ii. Police station issues an OB number
- iii. OCS reviews the OB book on a daily basis, determines cases for investigation and assigns an Investigation Officer
- iv. Investigation Officer visits crime scene to gather more evidence
- v. Claimant/person reporting is summoned to the police station to record a statement
- vi. A case file is opened containing; copy of statement, copy of OB No, charge sheets, photos, and any other evidence as deemed necessary by the investigation officer
- vii. The case file is forwarded to relevant ODPP officer for prosecution

⁹See KNCHR Advisory on the petition regarding the enactment of legislation to criminalize and prescribe penalties for the crimes of enforced disappearances

Challenges documented;

i. In all cases documented by HURIA related to EDs, individuals reporting were issued with OB numbers, and no further action was taken. In most cases, the families of the victims made physical visits to the police station to inquire on the status of investigation, and were informed that the investigations were still ongoing. These include ED cases that were occurred as early as 2019, whose investigations are yet to be concluded (by the time of writing this report).

ii. In cases of ED, the police are normally identified as the “alleged perpetrator”. Due to fear of retaliation and victimization, families of the victims face difficulty in reporting, or following up on previously reported cases at the police station.

Recommendation: Parliament to Amend the National Police Service Act and the Independent Policing Oversight Authority Act to grant IPOA the primary responsibility to investigate crimes alleged to have been committed by police officers.

Recommendation: Parliament to Amend the National Police Service Act and the Independent Policing Oversight Authority Act to grant IPOA the primary responsibility to investigate crimes alleged to have been committed by police officers.

(c)

Obscurity in the Reporting and Investigation of cases of Extra-judicial Killings

The investigation of cases of extra-judicial killings is significantly hampered by the lack of autopsy reports detailing the manner and cause of deaths that can be admissible as evidence in a court of law. This is due to various reasons including;

- i. Community has limited knowledge of the importance of a postmortem report in aiding investigations, and the relevant procedures in conducting a postmortem
- ii. Religious and cultural practices that stipulate the time and manner of burial after death often affects whether a postmortem can be done
- iii. Lack of an independent institution to conduct an autopsies.

Part IV of the National Coroners Service Act provides for the public obligation to report certain deaths and the powers of investigations of the Service on the reportable deaths. Violent deaths, deaths by unfair means, or during pregnancy or sudden deaths, deaths in police or military custody are amongst those that should be reported to a coroner within the respective jurisdiction for investigations. This is provided for under section 24 and 25 of the Act.

Recommendation: The Attorney General in consultation with the National Treasury Expedite the establishment of the National Coroners Service in order to ensure that any investigation into allegations of extra-judicial killing entails independent forensic examination.

¹⁰See KNCHR Handbook on National Coroners Service Act

(d)

To Report or not to; A recurring dilemma for Families of Victims

In Kenya, the criminal justice system places police officers at the primacy of its processes and as the first contact of a victim or defendant. Upon occurrence of an alleged crime, police officers are supposed to gather evidence with a view to identifying suspects and eventually making an arrest. Unless the police were witnesses to an incident, it needs to be reported to the police for them to be aware of it, investigate and pass it along to the next step in the criminal justice process.

Reporting by witnesses or family members of victims is thus a preliminary and crucial aspect in the criminal justice process. In documenting EJE and ED cases we observed community's apathy and unwillingness to report or follow up on previously reported cases at the police station this is because;

- iv.** Families of the victim fear retaliation and victimization, as the person receiving the report is allegedly a member of the same law enforcement agency as the perpetrator
- v.** Family of the victims allude that the actual act of reporting, following up on cases, and where necessary conducting a postmortem is tedious and costly. They therefore opt to utilize their resources in taking care of the victims' dependents and family
- vi.** Cultural and religious beliefs, especially amongst the Muslim community that require them to rush to bury their loved ones disregarding the value of undertaking autopsies
- vii.** Alleged history of police inaction, whereas families of the victims highlight that other families in similar situations have reported similar cases, with little to no effort from the police to conclude the investigations

Recommendation: NPS, IPOA, ODPP and KNCHR lead efforts to educate the community on the criminal justice system and procedures of reporting cases of EJKs and EDs; so as to improve communities' appreciation of the legalistic value of reporting cases, as well as, their willingness and ability to report.

Introduction

This report provides an account of cases of enforced disappearances as documented by HURIA in the period of 2018-2021. Through this report, HURIA seeks to shed light on the twin problem of extra-judicial killings and enforced disappearances that has affected various families in Kwale County.

This abridged version of the report consists of three sections as follows; Section one provides the purpose of the report, and a preview of the methodology and limitations to the report. Section 2, provides an analysis of enforced disappearances cases and impact on families as documented by HURIA; as well as a summary of human rights violations resulting from enforced disappearances. The final section concludes with recommendations to state agencies towards prevention, investigation and prosecution of extrajudicial killings and enforced disappearance cases.

1.1 Methodology

From 2018 to 2022, HURIA recorded 20 cases of Extrajudicial killings and Enforced Disappearances in Kwale County. The victims' families reported these cases directly to HURIA through its Public Complaints and Response Unit. HURIA then undertook home visits to each affected family to document the incidents. To further understand the broader scale of the problem and the impact on families and communities in Kwale, four community awareness-raising forums, and seven focus group discussions were conducted in Msambweni and Matuga sub-counties. Participants for the FGDs were drawn from the National government administration officers, civil society organizations, religious leaders, media representatives, families of the victims, and youth and women from affected communities.

HURIA met with alleged perpetrators of the cases, including the Kwale County Commander and the Kenya Wildlife Services, to get feedback on the status of reported cases. HURIA also wrote letters to the Mombasa Law Courts, Director of Criminal Investigations, and Office of the Director of Public Prosecutions to get updates on the various killings and disappearances cases reported by families of the victims. Further, HURIA held meetings with the KNCHR, IPOA, and ODPP to gain insights on efforts undertaken by the government to investigate and prosecute reported cases of EJE and EDs. In total, 269 individuals were consulted during the data documentation process. Responses from the KIIs and FGDs were transcribed and written into notes, and HURIA analyzed the data. Desktop Research was also conducted to enrich the data further and determine patterns of EJE and EDs in Kwale County.

1.2 Limitations

While we acknowledge that monitoring, documenting, and reporting EJE and EDs requires a multi-level, multi-agency approach, which should be well-coordinated through partnerships with a variety of actors, our approach in monitoring and documenting EJE and EDs in Kwale was victim-centered, with informed consent from families of the victims. Our work methods included interviews, desktop research, focus group discussions, and awareness-raising forums.

Our victim-centered approach was, however, faced with its unique challenges and limitations. Most of the families of the victims were unwilling to give information on the possibility of involvement of the state in the EJE and EDs for fear of retaliation and victimization by state agencies. The deepened apathy and fatigue due to delays in access to justice further limited their willingness to participate in the study and provide information. We noted difficulty in recollection of details regarding the occurrence of incidents from the families leading to somewhat contradictory details. As such, HURIA corroborated information through interviewing non-family members who witnessed the events, and media articles where possible.

Moreover, the documentation was impeded by the lack of feedback on the status of the investigation of reported cases from the National Police Service and the Director of Criminal Investigations despite HURIA's request for this information. As such, HURIA relied on the families' OB number records and post-mortem reports as data sources.

Due to the above limitations, and based on the consent from families, this report gives a general analysis of all the twenty (20) documented cases, and only six (6) are used as 'emblematic' cases.

Findings and Analysis of Documented Cases

This report section provides an overview of 6 documented cases of Enforced Disappearances. The information recorded is based on eyewitness accounts from family members of the deceased or and individuals witnessing the events. Due to the sensitivity of the nature of cases, this report takes caution in naming the witnesses who reported the incidents to avoid potential intimidation and threats to their lives

Enforced Disappearances

This report gives an account of 6 recorded cases of enforced disappearances in Kwale County that occurred as follows: Two (2) in 2019, Three (3) in 2020, and One (1) in 2021. Five of those disappeared were men and one female.

Three (3) out of the six cases took place in Bongwe- Gombato ward, Two (2) in Waa-Ngombeni ward, and One (1) in Ramisi ward. Most of the victims of enforced disappearances were abducted within familiar environments, including nearby shops, cafes, and, in most cases, in their homes. Specifically, 3 of these abductions were carried out in their homes, 1 when the victims were on their way home, and the remaining two were in public cafes close to their homes. The abductions that were done in the victims' homes took place between 2 am-5 am, while those within the home environs took place between 11 am-9 pm.

According to eyewitness statements, it is alleged that police officers were the perpetrators. This is based on the language used and the manner of speech. In all cases, the eyewitnesses claim that the perpetrators had handcuffs and were dressed in plain clothes and black masks. In all documented cases, the abductions were executed by 2-10 men in 3-4 vehicles, where the victims were abducted and forced into the cars. Lorries, land-cruisers, double cabins, and probox were highlighted as the type of vehicles used during the abductions.

According to eyewitness statements, 2 out of the three abductions that took place at home were characterized by physical aggression, humiliation, intimidation, and interrogation of family members. In one instance, it is alleged that seven children (2 male, 5 female) and their mother were slapped by the perpetrators and asked for the whereabouts of their father. The mother was then abducted as she could not provide the whereabouts of the father. In another case, it is alleged that six children (5 male, one female, ages 2 -17 years) and their mother were locked in a room while the father was forced to kneel at gunpoint. In these two abductions that took place at home, victims claim that the perpetrators confiscated their National ID cards and phones.

In 1 of the six documented cases, the body of the disappeared was found at Tsavo National Park and later transferred to Makindu Mortuary 74 days after the incident. In this case, HURIA supported the family to undertake a postmortem. According to the postmortem report, the victim died out of torture and was later dumped under the sun as the body had visible blisters.

Further to this, in one of the six documented cases, an individual who was abducted was later released. In this case, two individuals were abducted, but only one of them was released. It is alleged that the individual was released as one of the family members was an acquaintance of a high-ranking officer at the National Police Service.

In all six cases, the incidents . Three cases were reported at Diani police station, one at Kombani police post, one at Msambweni Police Station, and one at Inuka Police Station. Once the cases were reported at the police station, families were issued with OB numbers. No statements were recorded at the police station.

When writing this report, HURIA wrote formally to the Kwale County Directorate on Criminal Investigations on the investigation status; however, HURIA and the families have not received any feedback.

Impact on Family Members

Families of the victims highlight the following as impacts of extrajudicial killings and enforced disappearances;

a) Psychological Impact: Relatives of disappeared persons, unaware of the fate and whereabouts of their loved ones, are often caught between hope and despair, wondering and waiting . Families of the disappeared narrate the immense psychological torture that affects their lives years after the incident. This is a result of the inhumane treatment they are subjected to at the point of abduction and uncertainty over the whereabouts of their loved ones. In one documented case, the brother of a disappeared victim mentioned that he had to stop searching for his brother as he could no longer stand visiting mortuaries and checking on bodies. Two parents of the disappeared victims have also died, with the families attesting that their deaths were caused by the stress and anxiety over the whereabouts of their beloved children.

b) Social Impact: Families of the disappeared are facing stigma in their communities. The children are particularly affected as they are profiled as children of criminals or terrorists. This has negatively impacted their social interactions in school and at home. The wives have also been secluded, being tagged as “half-widows” due to the uncertainty of the well-being of their husbands. Tagged as “half-widows,” women are often unable to remarry and start a new life. They are, therefore, sidelined in social events, further impacting their ability to run businesses and earn a livelihood for their families. In one of the cases, the wife, who was a madrasa teacher (a school for Islamic instruction), had to close it down due to the high rate of student withdrawals when the husband disappeared. Families of the disappeared have also faced harassment and reprisals in their search for justice. They continuously, contend with complex institutional settings and legal frameworks, with no hope in sight, most of the families pray to get the body of their loved one so that they lay them to rest.

¹¹<https://www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf>

c) Economic Impact: In most of the cases we have documented, the victims (mostly husbands) were the breadwinners of their families; hence, their disappearance left the women bearing the economic burden on behalf of the families. Wives positively mentioned that family members had supported their children and themselves in most ED cases, but the financial support diminished as the years progressed.

Analysis of Legal Framework Protecting Human Rights Violations Emanating from the cases

Enforced disappearance infringes on several fundamental rights and freedoms safeguarded under the Constitution of Kenya;
Right to Life

Article 26, of the CoK (2010) guarantees every Kenyan a Right to Life, and specifically states that 'A person shall not be deprived of life intentionally.

Freedom and Security of the Person

Article 29, of the Constitution guarantees every person the right to freedom and security, part (a, b, e and f) specifically highlights the Right not to be: Deprived of freedom arbitrarily or without just cause; Detained without trial, except during a state of emergency, in which case the detention is subject to Article 58; subjected to torture in any manner, whether physical or psychological; and treated or punished in a cruel, inhuman or degrading manner.

Rights of an Arrested Person

Article 49, of the Constitution of Kenya guarantees the Rights of an Arrested Person, part a, c and f particularly highlight that; An arrested person has the right- to be informed promptly, in a language that the person understands of the reason for the arrest; to communicate with an advocate and other persons whose assistance is necessary; not to be compelled to make any confession or admission that could be used in evidence against the person; to be brought before a court as soon as reasonably possible, but not later than -twenty four hours after being arrested of if the twenty four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day.

Rights of Persons detained, held in custody or imprisoned

Article 51 of the constitution guarantees that a person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.

Right to Access Justice

Article 48, of the Constitution of Kenya guarantees the Right to Access Justice and calls on the state to ensure Access to Justice for all persons.

Right to a Fair Hearing

Article 50, of the Constitution of Kenya, stipulates that every accused person has the right to a fair trial, which includes the right to be presumed innocent until the contrary is proved; and the right to a public trial before a court established under the Constitution.

Right to Investigation and the Obligation to Investigate

The functions of the National Police Service enumerated in section 24 of the National Police Service Act include (e) investigation of crimes; (g) prevention and detection of crime; (h) apprehension of offenders; (i) enforcement of all laws and regulations with which it is charged; and (j) performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time. A reading of the above provisions leave no doubt that the police are legally obligated, once they witness or are informed of a crime, to investigate the offence.

Investigation of the crime is a solemn duty imposed by law on the police officers. The duty of the investigating officer is not merely to bolster up a prosecution case with such evidence as may enable the courts to record convictions but to bring out the real unvarnished truth. It is the duty of the police to investigate the case with utmost impartiality and fairness, both to the suspect as well as to the aggrieved person. If the police adopt an impartial attitude, it will further the cause of justice.

Recommendations

Towards Prevention of Enforced Disappearances

1. The office of the Attorney General and Department of Justice to initiate and conclude the process of ratifying the International Convention for the protection of all persons from Enforced Disappearances in accordance with section 7 of the treaty making and ratification act. Kenya signed the convention on 6th February 2007, Kenya has not ratified it yet, sixteen years later.
2. The National Assembly to enact a legislation that will criminalize and prescribe penalties for the crime of Enforced Disappearance in Kenya. The legislation should entail mechanisms towards fostering accountability and reparations for victims enforced disappearances.

Towards Investigation and Prosecution of Cases of Enforced Disappearances and Extra-Judicial Killings

1. The Inspector General to ensure compliance with section 25 of the IPOA Act requiring notification to IPOA of all suspicious deaths and serious injuries where security agencies are identified as alleged perpetrators.
2. Parliament to Amend the National Police Service Act and the Independent Policing Oversight Authority Act to grant IPOA the primary responsibility to investigate crimes alleged to have been committed by security agencies.
3. Parliament to amend the IPOA Act, the Wildlife Conservation and Management Act, the Prisons Act, the Forest Conservation and Management Act, and the Kenya Coast Guard Act to expand the mandate of IPOA to exercise civilian oversight over and investigative crimes alleged to have been committed by officers under KWS, KPS, KFS and the KCGS.
4. Parliament to ensure provision of adequate resources to IPOA to allow them effectively dispense their mandate
5. The Attorney General to initiate a multi-agency task force comprising of representatives from the NPS, ODP, IPOA, NPSC, KNCHR, and NCAJ to ensure better coordination between the various agencies responsible for addressing extrajudicial killings and enforced disappearances (as recommended by the Senate)¹⁴
6. The Attorney General to expedite the operationalization of the Victims Protection Trust Fund Regulations to facilitate compensations for victims and their families.

Towards Documentation and Reporting of Cases of Enforced Disappearances and Extra-Judicial Killings

1. The AG in consultation with the IG and the Witness Protection Agency to initiate review of the Witness Protection Act and the witness protection program with a view to ensuring protection of witnesses during the investigative stage.
2. IPOA, ODPP and KNCHR to frequently conduct multi-sectoral public Inquiries on alleged police excesses to allow for community to report on such cases.
3. IPOA and ODPP to educate communities on the criminal justice system and the processes of lodging complaints on alleged police excesses and inaction.
4. Human Rights organizations and other civil society actors to support family of victims to access legal, psychosocial, and economic support to cope with ensuing challenges.

¹³See Report on Inquiry into Extrajudicial killings and enforced disappearances in Kenya (dated October 2021)

WHO'S NEXT



Special Report

Abridged Version

