



**BEYOND  
SHADOWS *of*  
JUSTICE**

*Special Report*

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# BEYOND SHADOWS OF JUSTICE

Special Report on Public Complaints over alleged Violations of Human Rights

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# Acronyms

<b>CoK</b>	Constitution of Kenya
<b>CAJ</b>	Commission on Administrative Justice
<b>EACC</b>	Ethics and Anti Corruption Commission
<b>EIA</b>	Environmental Impact Assessment
<b>FKE</b>	Federation of Kenya Employers
<b>HURIA</b>	Human Rights Agenda
<b>IPOA</b>	Independent Police Oversight Authority
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>HURIA</b>	Human Rights Agenda
<b>NGAOs</b>	National Government Administration Officials
<b>NALEAP</b>	National Legal Aid Program
<b>NGEC</b>	National Gender and Equality Commission
<b>NHIF</b>	National Health Insurance Fund
<b>NSSF</b>	National Social Security Fund
<b>NEMA</b>	National Environmental Management Authority
<b>OB</b>	Occurrence Book
<b>OCS</b>	Officer Commanding Police Station

# Acknowledgement

HURIA wishes to specifically appreciate its Public Complaints Response Team under the leadership of the Access to Justice and Public Complaints Response's Project Officer *Stephen Oguna* for his enthusiasm in receiving and following up on the civic grievances filed at the organization. The management wishes to also thank other Staff members including *Tony Jimmy Maganga, Mwinyihaji Chamosi and Alex Mwarua Nziwi* for their devotion in pursuing justice for our communities.

We also wish to acknowledge the efforts of *Linda Wawuda Toni* and *Miyada Yahya* for the compilation and analysis of complaints information for this report. Special thanks goes to *Agnes Mbuhe*, member of HURIA's editorial committee for her invaluable inputs into finalization of this report.

We wish to equally thank our referral partners; the **Kenya National Commission on Human Rights (KNCHR)**, the **Office of the Ombudsman, Mombasa Office** and **Kituo cha Sheria** for their professionalism and invaluable support in the resolution of cases referred to them.

We owe this report to ourselves for the unwavering commitment into protecting the rights of our communities.

**Human Rights Agenda (HURIA)**  
**June 2018**



# Foreword

**F**ollowing the adoption of the 2010 Constitution, Kenyans have become more enlightened on their legal rights and, not unpredictably, more litigious than they have ever been since independence. Although courts in formal justice systems are critical for access to justice, protection of human rights and the rule of law, relatively few legal problems are resolved through the court system or even through formal alternative dispute resolution processes.

When faced with legal problems, people will often turn to non-court based processes, and even non-legal services. Income, distance, personal capability and the manner in which services are made available are key factors that influence people's use of legal and other services. Many economic, structural, and institutional factors hinder access to justice, including the complexity, cost of legal processes, time, geographical and physical constraints. Cost and trust in the justice system are also important factors in determining whether or not people seek legal assistance, or take action at all, to resolve their legal problems.

The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many men and women find themselves unable, mainly for financial reasons, to access justice system. Some of them decide to become their own lawyers. Our courtrooms today are filled with complainants who are not represented by lawyers, trying to navigate the sometimes-complex demands of law and procedure. Many people especially those in vulnerable and marginalized groups neither recognize their problems as legal ones, nor identify the potential legal remedies for those problems. As the majority of injustices faced by people today involve civil rather than criminal matters, focus of justice must go beyond criminal justice and explore innovative and affordable ways of realizing justice for all.

**This report therefore, underpins the role of human rights organizations in protecting the rights of vulnerable communities through both formal and informal approaches. Without the intervention of human rights organizations like HURIA, people would stand a much higher risk of being wrongfully dismissed, their property and land irregularly taken, family ties disintegrated and exposed to ill-treatment by police, or to corruption in their pursuit for justice.**

Human rights violations left unaddressed can bring about and exacerbate other legal and non-legal problems, and entrench social disadvantage in our communities. Thus the ability of people to understand their rights and use the law for themselves, enables even those who are most marginalized to achieve justice, meet their basic needs, hold authorities to account, protect their interests and participate in economic activities in an inclusive manner.

Against the backdrop of civic ignorance on legal processes, corruption and perceived high costs and technicalities in accessing formal justice, “**Beyond the Shadows of Justice**” is a special report that demonstrates how HURIA has responded to civic grievances and alleged violations, threatening, infringement on human rights of communities at the Coast of Kenya. The report illustrates how the public has navigated against odds to challenge unfair labor practices, family disagreements, land and property disputes, crime and unlawful procedures to pursue justice through non-formal processes outside the court.

**Beyond the Shadows of Justice** suggests the expansion of the traditional legal advocacy paradigm beyond representation in the courts to include broad-based organizing, giving communities the opportunity to learn their rights and assert themselves as rights-holders. The legal empowerment approach develops organizing strategies that parallel legal representation in order to empower communities to define their objectives with their own voices and hold the state accountable to its human rights obligations.

HURIA publishes this report in order to create an understanding of the dynamics and trends in protecting human rights and to inform decision making and policy debate on the most prevalent violations of human rights. We hope that our report helps to achieve that understanding.

**Yusuf Lule Mwatsefu**  
**Executive Director**



# Executive Summary

**T**his is HURIA's special report on its response to alleged denial, infringement, violation and threatening of human rights against members of the public. The report gives an overview of the typical complaints and disputes on human rights violations received in the interest of members of the public who cannot act on their own behalf. It gives an analysis of the complainants and recommendations for improving the organizations response to public complaints drawing from cases filed between 2013 to the first half of 2018.

In its analysis, the report reveals that majority of complaints filed by members of the public were on unfair labor relations followed by criminal and law enforcement cases including complaints over arbitrary and unlawful arrests, enforced disappearances and extra judicial executions. On the other hand, complaints on safety and health hazards caused by environmental pollution comprised the lowest number of grievances received. Due to the convenient location and proximity of the organizations offices, walk-ins were noted as the most preferred channel of lodging complaints by the public against other modes such as letters, emails or through social media platforms.

In another significant revelation, the report notes that most complaints were registered in Mombasa County followed by Kwale and Kilifi counties respectively. Interestingly, Likoni Sub County registered the highest number of complaints against other constituencies in the Coast region and beyond. The report also notes that male complainants between the ages of 30 to 40 years filed a higher percentage of complaints compared to their female counterparts. In its analysis, the report acknowledges some few limitations on the information used where some complainants did not disclose complete information about key variables such as their age and areas of residence.

Oversight in filing of the complaints forms to completion on the part of HURIA staff or reluctance to provide information on the part of the complainants may have contributed to limitation of the information. Consequently, this report suggests the need to embrace innovative methods of receiving and documenting public complaints.

The report correspondingly acknowledges that the organization has faced a number of challenges towards its handling of public complaints including unavailability of resources to assist in undertaking fact finding and following up complaints lodged. The report thus proposes several recommendations including the development of a public complaints response and management policy as well as the reinforcement of the public support desk through engagement of a legal officer. It further recommends the building of capacity for the organizations staff through trainings as well as locating of human rights services closer to the target beneficiaries.

The report is divided into several sections. **Section One** gives an overview of the public complaints response, purpose of report, mandate and approach of the organization in handling public complaints. The **Second Section** reports on the typology of common disputes received while giving a snapshot of alleged complaints of human rights by the public. Anatomy of the complaints received is discussed in **Section Three** of the report giving an analysis of the complaints by gender, age and geography. **Section Four** of the report attempts to make sense of the complaints received and gives interpretation of the complaints while **Section Five** of the report suggests effective ways of handling the public complaints.

Finally and moving forward, it is the view of this report that Employment Justice (labor relations and industrial disputes) and Criminal Justice should additionally form part of the new priority thematic areas for HURIA in the coming years.

**About the Public**

**Complaints Response**





# About the Public Complaints Response

## Introduction

Since inception, HURIA has been running a permanent public interest initiative towards responding and addressing alleged violations, infringement or threats to enjoyment of human rights. The initiative was set up as a response to the day-to-day grievances reported to the organization by members of the public. A team of HURIA staff with over years experience on legal and human rights issues man the initiative, with additional expertise and support occasionally drawn from a team of law and social sciences students from local and international universities. The students work at HURIA under a three to six month's internship tenure to sharpen their skills on public interest litigation. Since inception, HURIA has engaged over 43 associates most of who assisted in handling public complaints.

To this end, HURIA has received a myriad of complaints on alleged violation of human rights from the public varying from unfair labor relations, land and property disputes, criminal and law enforcement, environmental justice disputes as well as family disputes amongst others. Complaints were filed through walk-ins or by making phone calls to the organizations official help and inquiry line. Complaints were also received through email and social media platforms.

# Purpose of Report

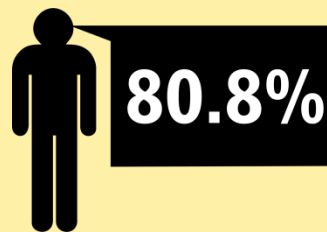
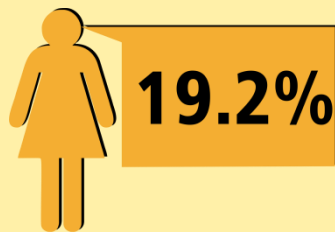
The purpose of this special report is to give an insight of key human rights concerns and complaints that affect the coastal communities as received by HURIA. The report purposes to give a sense of the key issues to be addressed under the human rights discourse at the coast by highlighting the most reported complaints as well as giving geography of the complaints within the three counties of Kwale, Mombasa and Kilifi. The report also attempts to interpret the complaints in the context of HURIA and what and how other organizations can do to respond effectively to similar human rights complaints as well as prioritize their work.

# QUICK HIGHLIGHTS

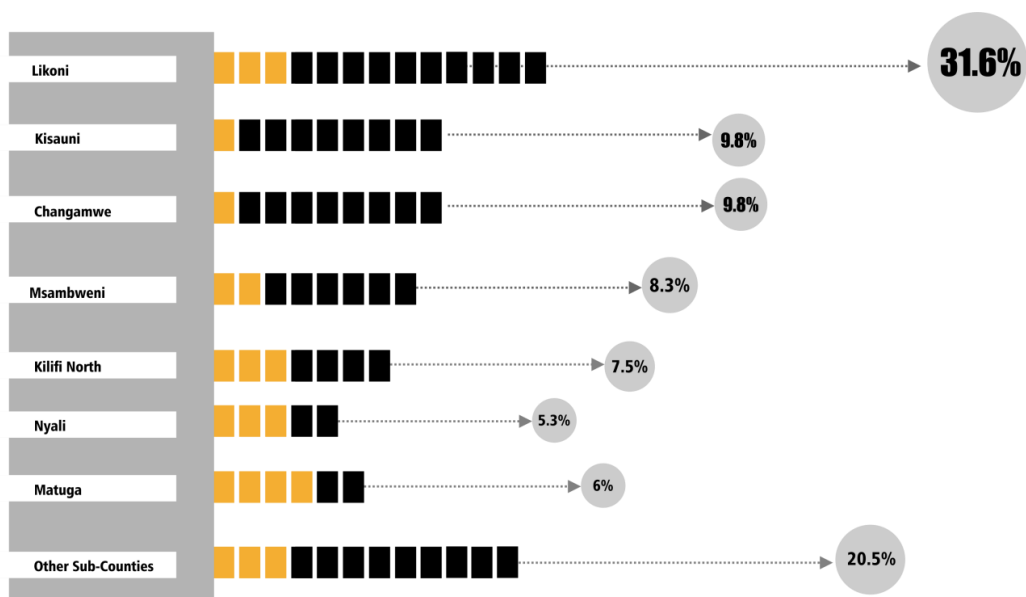
Of Public Complaints on Alleged Violations of Human Rights



## Complaints Registered by Gender

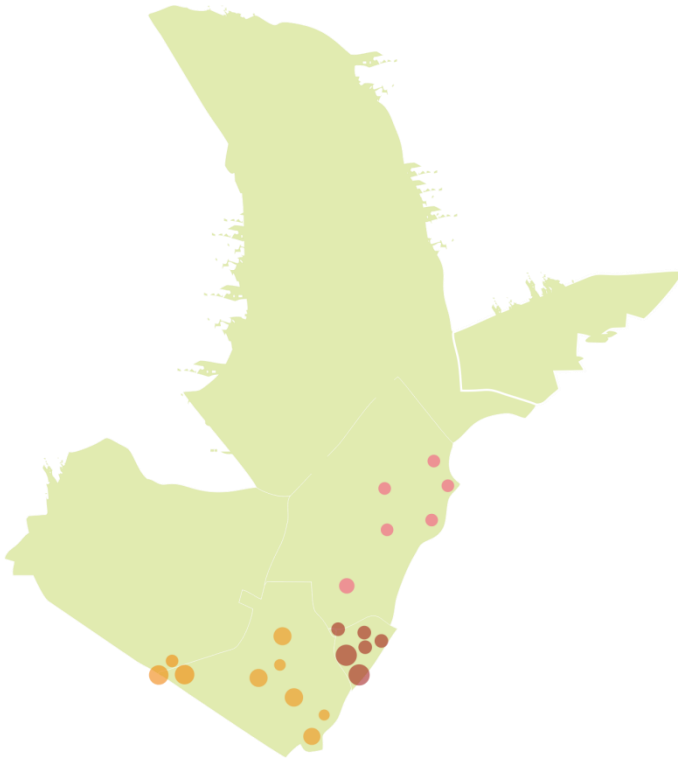


## Complaints Registered by Area of Residence (Sub-County)

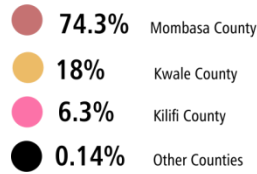


# QUICK HIGHLIGHTS

## Of Public Complaints on Alleged Violations of Human Rights



### Complaints Registered by County



### WALK Ins

Most Popular Mode of Lodging Complaints by the Public

### Complaints Registered by Age



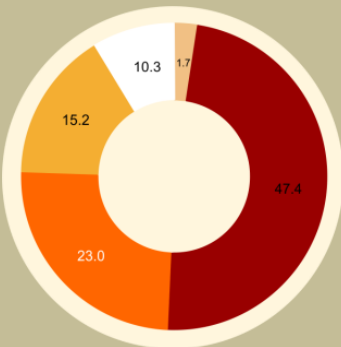
**20.4%** Above 50 Years



**61.6%** 30-40 Years



**18.1%** Below 30 Years



- Percentage of Environmental and Natural Resources Disputes Reported **1.7 %**
- Percentage of Labor Disputes Reported **47.4 %**
- Percentage of Criminal Justice Disputes Reported **23.0%**
- Percentage of Land and Property Disputes Reported **15.2%**
- Percentage of Family Disputes Reported **10.3 %**



**Organizations**

**Approach and Mandate**

**In Public Complaints Response**



# Organizations Approach and Mandate

## in Public Complaints Response

HURIA draws its mandate from the Non Governmental Organizations Coordination Act of 1990 that supports its legitimacy of operation in the six counties of the coast region. HURIA has established itself as a human rights based organization and has to date implemented over 15 different projects that seek to advance human rights and strengthen capabilities of state and non-state actors in advocating for these rights. The implementation of these projects has played a key role in cementing HURIA's credibility and identity as a human rights champion in diverse issues including environmental justice, the right to security and unfair labor practices amongst others.

In dispensation of its mandate as a human rights based organization, HURIA's work is supported through article 22 of the Constitution of Kenya (CoK), 2010. The article gives institutions acting on behalf of or in the interest of the public to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated, infringed or threatened.

**The organizations approach in dealing with public complaints includes Advisory sessions, Mediation, Increasing Visibility of Human Rights Violations and Disclosure of Perpetrators of human rights violations through mainstream and alternative media. The organization also uses Referrals as a way of responding to public complaints and has sought partnership with other local human rights organizations and Constitutional Commissions to address a myriad of human rights complaints from the public**

The referral partners include the Kenya National Commission on Human Rights (KNCHR), Independent Police Oversight Authority (IPOA), Ethics and Anti-Corruption Commission (EACC), National Legal Aid Program (NALEAP) and Kituo cha Sheria amongst others.

Recently, the organization initiated a human rights mentorship program for upcoming human rights defenders and local community activists. The program, dubbed **The Human Rights Lab**, supports upcoming human rights defenders in undertaking research on topical human rights issues in their respective localities. Through HURIA's guidance and mentorship from identified Mentors, the mentees follow up on key public complaints on alleged violation of human rights.



**Typology of Common**

**Disputes Received**





# Typology of Common Disputes Received

## Unfair Labor Relations

The nature of labor relations' issues included **Job security, Employment disputes and Unsafe Working Conditions**. Complainants filed cases involving unfair and summary dismissals, disputes between employees and their employers regarding workplace harassment and

**Unfair labor relations recorded about 47.4 % of all the cases received by the organization**

unfair remuneration and compensation, unsafe work conditions often resulting to occupational accidents or work related diseases. Complainants also protested against **fraudulent individuals and employment bureaus**, which they accused of siphoning thousands of shillings from unsuspecting young men and women in pursuit for lucrative jobs in the Middle East.

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## Land and Property Disputes

While only 15.2% of all cases reported were on Land and Property disputes, Land remains to be an emotive issue at the coast region of Kenya and historical grievances associated with its acquisition continues to be a major source of conflict in the region. The following are some of the typical cases received from the public regarding land disputes:

### Boundary conflicts

The most common form of disputes reported by complainants included conflict between neighboring landowners over the demarcation of boundaries. In most cases, demarcation of individual boundaries was often reported to be unclear while in the case of unutilized neighboring lands, the lack of clarity was unlikely to be contested as neither party has an immediate interest in pursuing it.

### Disagreements between multiple owners of land

Complaints involved multiple parties often members of a large family each of whom claimed to own and have a stake in a piece of land, often as a result of a shared inheritance. Disputes arose as a result of one or more of the parties disagreeing with the others over the utilization of the land over which party has the stronger right to determine how the land should be used.



### Fraudulent lease

Complainants cited cases of employees, neighbors and others taking advantage of an owner's absence in order to make a claim on the land. There were also cases where a third party had claimed to act on behalf of the owner but it later transpired that the owner had no knowledge of this and had not approved any agreements. This occurs when the person claiming to own the land and entering into a lease agreement with a tenant was not in fact the real owner of the land.

### Land Eviction

Complainants reported of being forcefully evicted from community land to make space for investors. In such cases government officials sell community land without informing the public. Recent cases are with reference to road expansion, where complaints received range from the manner compensation agreements are handled, to failure to compensate evicted residents.



A photograph of three men in a rural setting. The man on the right is wearing a green cap with a white 'M' and a white striped shirt, pointing his finger while speaking. The man in the middle is wearing a pink shirt and has a distressed expression. The man on the left is wearing a yellow shirt and has sunglasses on his head. They are standing in front of a background of green trees and foliage.

## Family Disputes

### Marriage and separation

Complainants filed cases on separated spouses conflicting over sharing of matrimonial property. These cases are common among those not legally married, but have amassed wealth through joint business ventures.

### Child rights and their protection

Complaints include parental negligence, with cases on fathers failing to provide basic needs for their children as required by law. Cases received have also been on child custody where one of the parents obtains custody through illegal proceedings. Their also complaints of child defilement, worth noting is despite defilement being a criminal case, families reporting on the matter had previously sought out of court settlement.

### Domestic violence

Cases on domestic violence were on wife and husband buttry. In such instances, cases lodged at police stations were quickly referred to area chiefs despite them being criminal cases.



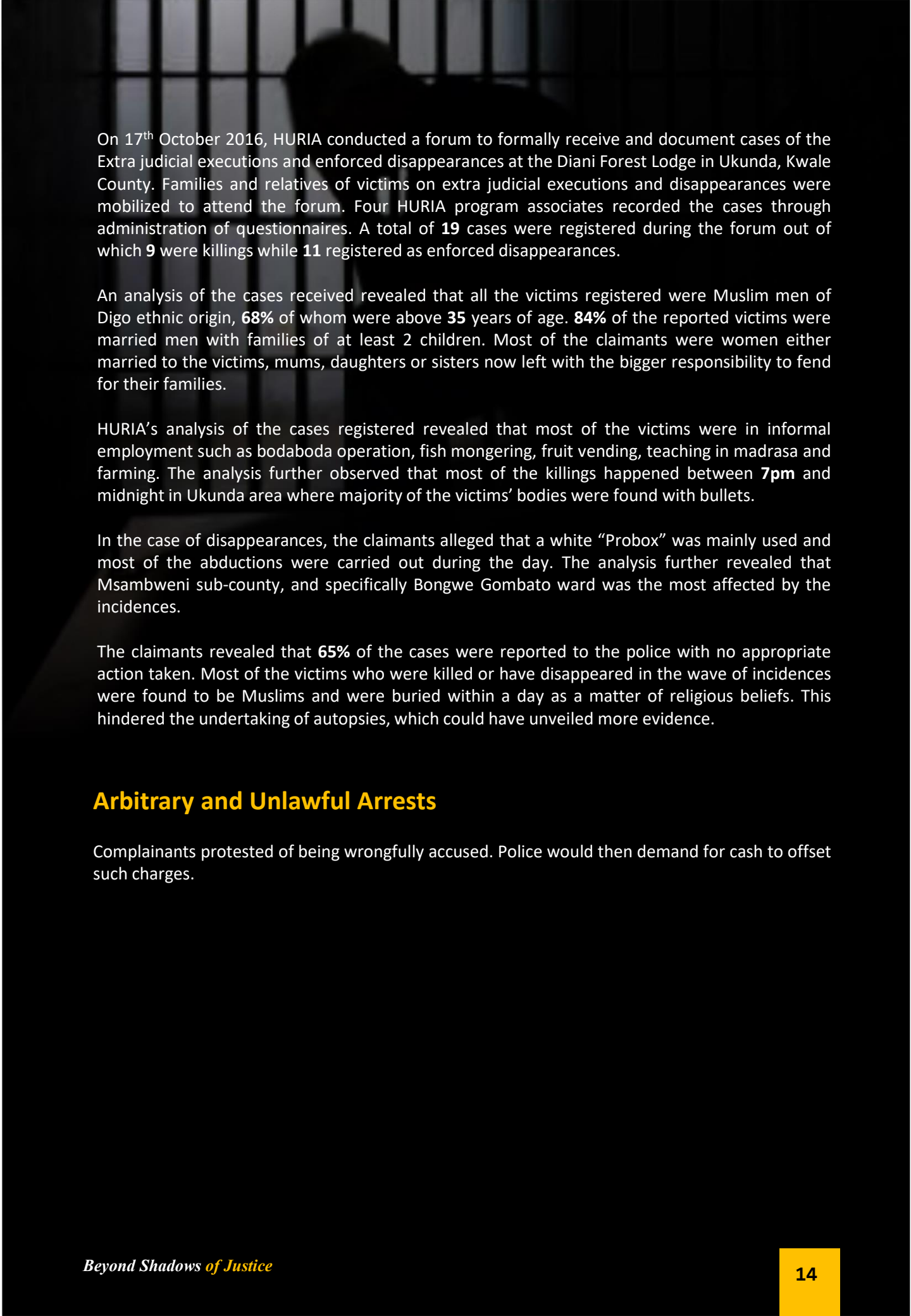
# Criminal and Law Enforcement

## Extra Judicial Killings and Enforced Disappearances

Following alleged cases of killings and enforced disappearances in Kwale County as reported in the media and raised in public *barazas* and community forums, HURIA undertook to document the alleged disappearances with a view to eliciting information about the human rights violations particularly on extrajudicial killings, arrests and enforced disappearances in the County.

HURIA's interest in undertaking the fact finding on the cases of disappearances and extra-judicial executions was borne out of its interaction with the local community within the 3 sub-counties of Kwale County including Matuga, Msambweni and LungaLunga. From 2014, the organization has been implementing a project that sought to strengthen community resilience against extremism amongst residents in the said areas. The project targeted *Nyumba Kumi* and Community Policing Committees with a view to improving their knowledge and skills towards community security. During the implementation, HURIA received complaints from communities living in the 14 villages within Bongwe Gombato ward, Msabweni Sub - County, Kwale County. These complaints varied from extra-judicial executions to enforced disappearances.





On 17<sup>th</sup> October 2016, HURIA conducted a forum to formally receive and document cases of the Extra judicial executions and enforced disappearances at the Diani Forest Lodge in Ukunda, Kwale County. Families and relatives of victims on extra judicial executions and disappearances were mobilized to attend the forum. Four HURIA program associates recorded the cases through administration of questionnaires. A total of **19** cases were registered during the forum out of which **9** were killings while **11** registered as enforced disappearances.

An analysis of the cases received revealed that all the victims registered were Muslim men of Digo ethnic origin, **68%** of whom were above **35** years of age. **84%** of the reported victims were married men with families of at least 2 children. Most of the claimants were women either married to the victims, mums, daughters or sisters now left with the bigger responsibility to fend for their families.

HURIA's analysis of the cases registered revealed that most of the victims were in informal employment such as bodaboda operation, fish mongering, fruit vending, teaching in madrasa and farming. The analysis further observed that most of the killings happened between **7pm** and midnight in Ukunda area where majority of the victims' bodies were found with bullets.

In the case of disappearances, the claimants alleged that a white "Probox" was mainly used and most of the abductions were carried out during the day. The analysis further revealed that Msambweni sub-county, and specifically Bongwe Gombato ward was the most affected by the incidences.

The claimants revealed that **65%** of the cases were reported to the police with no appropriate action taken. Most of the victims who were killed or have disappeared in the wave of incidences were found to be Muslims and were buried within a day as a matter of religious beliefs. This hindered the undertaking of autopsies, which could have unveiled more evidence.

## **Arbitrary and Unlawful Arrests**

Complainants protested of being wrongfully accused. Police would then demand for cash to offset such charges.



**Anatomy of**

**Complaints Received**





# Anatomy of

# Complaints Received

The following analysis gives a preview of the nature of complaints received, mode used to lodge complaints and geography of complaints received over the last five years.

## Geography of Complaints Received

HURIA observed that persons from Mombasa County recorded most complaints followed by Kwale County. In Mombasa County, residents from Likoni sub-county filed most cases compared to Kisauni and Changanwe sub-counties, which registered less number of cases. The highest number of complaints registered by Likoni residents was on labor and land disputes. Likoni sits on the mainland, south of the city's center, accessible from town only by ferry. It is mostly residential, with a rapidly growing population of about 200,000 people. The Mijikenda are indigenous to the area and make up about half the population. Migrants from other parts of the country, and other ethnic groups, make up the second half. Likoni is the poorest area of Mombasa. The largest sectors of employment are informal street vending, stone quarrying and day labor at the port. Most incomes are between USD 2 and 4 per day, enough to afford food and rent for one room but not medical bills and school fees. As a result, Likoni residents are under-educated and under-represented in Kenyan universities Source: [www.hatualikoni.org](http://www.hatualikoni.org)

## Analysis of Complaints by Gender and Age

Male complainants translated to about **75.9%** compared to **24.1%** female complainants.

Complainants between the age brackets of **30-40** years recorded **61.6 %** of complaints. Young persons below the age of **30** years recorded the lowest number of complaints translating to about **18%**.

## Complaint Referrals

About **57** out of **291** cases received were referred to other institutions for redress. Notably the complaints involved succession, land and property disputes, complaints against advocates and cases that required legal representation in court. In most cases the referral institutions were better placed to handle the cases due to their mandate and expertise in dealing with such cases. Due to their complex nature, most of the land and succession cases lodged required a lot of time to follow up.

List of Referral Organizations is annexed.

## Common Mode of Complaints Receipt from the Public

In its analysis, HURIA observed that most of the complaints registered at HURIA were made in person by the complainants or relatives through physical visits to the organizations offices. This section of report gives an analysis of the different modes used by the public to file complaints at HURIA.

### ***Walk-ins***

*Analysis revealed that most complaints filed at the organization were mostly received in person (walk-in). In this case, complainants walked into the organizations offices to tell their story and had their cases taken up or referred to other organizations or institutions for support.*

Source: [www.hatuallikoni.org](http://www.hatuallikoni.org)

List of Referral Organizations is annexed.





### **Complaints sent by letter or email**

*Complaints were also brought to the organizations' attention through letters and emails addressed to the organization. Most of the complaints filed through this mode were normally referred to HURIA by other institutions.*

### **Complaints received through Telephone**

*Several cases were also reported to the organization through phone calls made to the organizations official telephone line or the executive director's and HURIA Staff personal phone numbers. Phone calls were also made as follow ups for cases lodged earlier to the organization.*

### **Complaints received through Organizations Facebook Page**

*HURIA's active management of its social media page has provided an avenue for the members of the public to file complaints to the organization. Several complaints were thus received through the organization's Facebook Account. Complainants protested on varied violation of their rights through messages, and commenting on posts on organization timeline related to their complaints.*



## Knowledge of HURIA

In its receipt of complaints from the public, it has been the organization's interest to find out how members of the public got to know about HURIA and its work on public complaints response. From the five years data analysis, the organization learnt that friends referred most complainants to HURIA. Other complainants knew about HURIA through avenues such as radio, newspaper and social media platforms. Friends in this context refer to complainants whose grievances were successfully attended to at the organization





**Making Sense of the  
Public Complaints**

# Making Sense of the Public Complaints

This section gives meaning to the complaints received by HURIA by analyzing the perpetrators of human rights violations and detailing typical conditions conducive to continued violation of human rights.

## Perpetrators of Human Rights Violations

Analysis of the complaints revealed that most complainants identified the County labor officers, Employers from the Private Sector, Trade Unionists, Small-Scale Enterprises and Law Firms as the main perpetrators of Human Rights violations against members of the public.

**County Labor Officers:** Analysis of the complaints revealed that most complainants identified the County labor officers, Employers from the Private Sector, Trade Unionists, Small-Scale Enterprises and Law Firms as the main perpetrators of Human Rights violations against members of the public.

**Employers from the Private Sector (Hotels, Schools, Security Guard etc):** Complainants accuse private company owners of unfair termination, dismissals and breach of contracts of service. The employers are also accused of creating an unfair working environment where workers are exploited to work for long hours without proper work implements. The private sector employers were also accused of not allowing their employees to take leave days or compensate them in lieu of leave.

The companies are also accused of failing to meet statutory obligations for their staff such as remitting NHIF & NSSF even after making deductions on the employees' salaries. Employer's negligence to cater for their employees who get injured while working (vicarious liability) was also cited.



## Trade unions

Trade union officials were accused of failing to bargain for their member's interest, increments in salary and conducive working environment. Officials are also blamed for being bribed by the employers to neglect their mandate.

## Small-scale enterprises

Complainants also accuse officials from small-scale enterprises for low wages and delayed salaries.

## Law Firms

Complainants allege that advocates fail to consult with them before agreeing to take orders on their behalf. They also fail to make appearances in court even when paid, thereby weakening their cases and as a result cases are over postponed or *heard experte*.<sup>3</sup> Firms are also accused of delaying to remit damages or compensation to their clients. Advocates are also accused of conniving with fellow advocates in seeking out of court settlement of dispute where the client is denied the rights to be heard. Complainants further claim that advocates bill their clients more than is required by the Remuneration orders for their legal service. Case is concluded without the other party present

## Police Officers

Complainants accuse Police Officers of arbitrary arrests, brutality and at times taking bribes from the accused in order not to effect arrest. Police are also accused of assaulting/infringing the rights of arrested persons and conducting half-baked investigations causing many cases to be squashed from court. Complainants accuse Police officers for breaching confidentiality between them and their informers or those or who have reported hence putting claimants at risk. The Police are also accused of poor filing or receiving of complaints, where complainants are not given OB numbers at the police station, or accorded multiple OB numbers.

## Male Parents

Complainants aver that their husbands keep away from their responsibilities of child support. Families are also accused of cases on intestate succession, where family members contest for the demised husband's property that is without a will.

-----  
*Case is concluded without the other party present*



## Environmental and Land Regulatory Agencies

Complainants accuse NEMA officials of approving many projects without clear consideration of Environmental Impact Assessments (E.I.A's) and other due procedures. Land regulatory agencies such as county land officers, are said to connive with willing buyers to procure title deeds, leading up to forceful evictions. Land and environment courts take long to listen and finalize on complaints due to backlog of cases.

## Local administrators

Complaints received accuse local administrators of corruption and not practicing impartiality in handling cases. A huge number of complainants accuse them of selling community land to private investors and failing to follow up on cases lodged in their offices.



# Typical Conditions Conducive for Perpetration of Human Rights Violations

## Location and Proximity of Human Rights Organizations

Proximity and location of HURIA's office in Kizingo may explain why residents of Likoni Sub County may have registered more complaints with the organization. It is the view of this report that both non-governmental organizations and constitution commissions mandated to address human rights violations and access to justice, locate their offices closer to places where their services are most needed.

## Capacity of Local Organizations to respond to human rights infringements and complaints

Local based organizations may lack technical and legal expertise to undertake investigations and advocate for justice especially in land and labor related cases. This could explain the response gap in addressing human rights violations in the area.

## Non-Compliance to existing legislations

Employer's failing to adhere to existing legislations governing labor relations and environment protection, due to unwillingness or lack of information; and Duty bearers lack of commitment to fulfill, protect, and promote the rights of Kenyan citizens as articulated in the Bill of Rights, CoK 2010 promotes violation of human rights.

## Ambiguity of Labor Laws

The ambiguous nature of laws governing employment and labor relations cause misinterpretation of said laws thereby conditioning the non-adherence to set up standards. This leads to further violation of human rights.

## Corruption

Gross corruption of some government and private agencies/ officials both local and national, mandated to enforce legislation enhances the scope human rights violations. High handedness of public officials has contributed to violation of human rights.



## **In-efficient local mechanisms of monitoring compliance, addressing and reporting Violations**

Most people rely on existing local mechanisms such as village elders, chiefs and Nyumba kumi's to handle cases. However, some areas are ridiculed by inactive Nyumba Kumi structures, and those active at times have members lacking capacity to investigate and solve cases amicably. These local structures also fail to monitor company's compliance to environment and labor laws, and are further ill equipped to address and report on these violations.

## **Delayed Justice**

Judiciary experiences a large number of case backlogs, thereby hindering complainants from accessing timely justice to complaints lodged. Violations reported to the courts continue to be enforced, as perpetrators of these injustices are not criminalized and punished under the law.

## **Expensive Legal services**

Due to the expensive nature of filing cases in court and getting legal representation, individuals shy away from reporting violations meted against them, thus providing opportunity for perpetrators to continue infringing on their rights. This coupled by inadequate community legal centers further exacerbates the situation, as people lack a cheaper and efficient avenue to address complaints.





A large, bright yellow number '6' is centered on a solid black background. Two text boxes are overlaid on the number. The first is a white horizontal bar with the text 'Major Breakthroughs' in bold black font. The second is a yellow horizontal bar with the text 'On Complaints Received' in bold black font.

**Major Breakthroughs**

**On Complaints Received**

## Closure of Green

### Earth limited

Residents of Rabai power lodged a complaint to HURIA alleging that, Green Earth Limited had been emitting poisonous fumes that would likely cause respiratory diseases. The residents averred that their houses had all been covered with black greasy dust that had been caused by smoke from the factory. The crops had turned black out of the smoke and infants experienced continuous coughing.

HURIA made a public inquiry and it was observed that the proponent had disguised his intention canvassing his plan for the tire-burning factory for a juice and biscuit factory. HURIA then made an abrupt visit to the factory only to confirm that there had been air pollution being caused by the smoke from the factory. The proponent was then made to sign an agreement to shut down the factory.



## Complaint by Schulze Klaus Jürgen Herman Walter Regarding Summary Dismissal

Schulze Jürgen a German Citizen, working for Dandrose as a construction engineer alleged that he had summarily been dismissed from duty on account that there had been a reduction of work at the site. This came up when he failed to show up for work after the vehicle meant to ferry staff to work left him behind. Having no means of transporting himself to work, he resorted to return home. He then received communication from the office with instructions not to continue working at the site pending further notification.

Jürgen was then advised by her Kenyan female friend to report the matter to HURIA. Upon receiving his complaint, HURIA wrote a letter of inquiry, then followed up the matter by paying the company's Human Resource Manager a visit. Following further deliberations on the complaint, HURIA observed that Dandrose had been in breach of his employment contract and hence demanded for damages from the company. Since the company had failed to demonstrate reason for summary dismissal, HURIA also demanded for payment in lieu of notice and the complainant's compensation of his leave days. Arbitration was then conducted between representatives of Dandrose and HURIA on behalf of Jürgen resulting to the complainant being compensated for summary dismissal.

## Complaint by Mjomba Mwawuganga Regarding Summary Dismissal

The complainant alleged that he had been working for Rukhsar Enterprise Ltd as a sales representative for a period of 16 years. Mjomba averred that for the longest time he served at the second hand clothes go down; his tenure of service had not accrued any in-disciplinary cases neither had he received any verbal nor written warnings for gross misconduct.

Mjomba lodged a formal complaint stating that the brother to his employer instructed him, not to resume work since him and the brother together with other employees had been asking for their delayed salaries.

HURIA formally made an inquiry that was responded by Advocate Gikandi acting on behalf of Rukhsar Enterprise Ltd. HURIA mediated the matter with the advocate maintaining the client's position that there had been a breach of contract since the complainant had not been given sufficient notice before his dismissal and the employee was entitled to his leave days and gratuity for the sixteen years of service.



### **Complaint by Rehema Wairimu Jabir Regarding Visa & Passport**

The complainant alleged that she had received a five years employment opportunity in Qatar; and thus contracted the services of Al-Muumin Agencies Co. LTD to enable her acquire a good VISA and Passport for value. She was asked by Juma an employee/ servant/ agent of the aforementioned agency to pay Ksh. 85,000 to cater for her traveling expenses. Rehema paid the amount in full.

A different competing agent then contacted Rehema alleging to have received her VISA and Passport and hence demanded an equal sum of money before releasing her VISA. The alleged firm, not mentioned herein, also suggested to cancel the traveling arrangements and make contacts with her new employers to terminate her employment.

On following up the matter, HURIA contacted Juma who confirmed that Rehema had approached their agency seeking for a VISA and Passport, he however declined to explain their position now that Rehema was hardly left with a day before her travel. HURIA then contacted the agencies directors by way of a demand letter committing them to facilitate the release of Wairimu's passport and VISA. The directors acting with speed confirmed receipt of the quoted some of monies and out of HURIA's intervention, the agency handed Rehema's VISA and passport and facilitated her travel from Kenya to Qatar.

### **Complaint by Bahati Nyevu Kenga regarding parental negligence**

Bahati Nyevu alleged she had cohabited with one John Shao only to later separate with him before giving birth. Upon making request for child support John Shao resorted to violence and sent goons to her residence. Bahati reported the matter at Kiembeni police station acquiring eight OBs from the station with no arrest of John shao. John Shaos other wife pressed charges alleging that Bahati had physically assaulted her. Officers from Kiembeni roughed up Bahati Nyevu. She was later released on cash bail and acquitted by the court for insufficient evidence. Bahati Nyevu reported the matter at HURIA, who upon making a formal complaint with Kiembeni police station's OCS, John shao was arrested and presented before The Tononoka Children's Court.



# **Challenges** and **Risks Associated with** **Public Complaints Management**



## Receipt of Complaints already filed in Court

A significant number of complaints filed at HURIA were also filed in court by the complainants awaiting either hearing or judgments. Due to varied reasons, the said cases would at times take very long to be concluded making the complainants impatient. For fear of contempt of court for *sub-judice*<sup>4</sup>, most of the said cases end up at the advisory sessions. Under judicial consideration and therefore prohibited from public discussion elsewhere

## Threats and Intimidation

Management of the public complaints response desk has attracted threats and intimidation of HURIA staff by perpetrators. In several instances, perpetrators have visited the organizations offices or called staff to threaten them not to continue handling their cases.

<sup>4</sup> Under judicial consideration and therefore prohibited from public discussion elsewhere



## **Documentation and Analysis of Complaints**

Documentation of complaints and referencing has been part of the challenges facing the organization. Occasionally, complainants would give incomplete information on their grievances making it difficult to document and analyze the complaints.

## **Lack of Funds to support Investigation, Follow-ups and Litigation**

The organization does not have a specific budget to support investigation and follow up on complaints lodged by members of the public making it difficult to build up concrete cases against alleged perpetrators. Further, the lack of finances hampers the organizations ability to undertake public interest litigation.

## **Management of Public Expectations**

Members of the public file complaints at the organization with very high expectations that their grievances will be addressed quickly. For complex complaints that require investigations and several follow ups, complainants get disappointed and at times stop being cooperative or drop the complaints completely.

# Way forward

## **Locating Human Rights services closer to beneficiaries**

Moving forward, HURIA will seek to move its human rights services closer to its target beneficiaries in the three counties of Kwale, Mombasa and Kilifi. HURIA will undertake Human Rights and Legal Aid Clinics in the areas that registered higher number of complaints on different human rights issues.

## **Partnership with local organizations**

In its quest to take its services closer to its beneficiaries, HURIA will forge partnerships with local community based organizations at the ward level. The organization will undertake a mapping exercise to identify potential partners who can work with HURIA in sustaining the efforts of addressing the complaints from the areas that registered higher number of complaints.

## **Mentorship of local community activists**

Through its Human Rights Lab, a mentorship program for upcoming Human Rights Defenders, HURIA will purpose to identify local community activists interested in human rights work with a view to mentoring them to increase visibility of the human rights issues as well as sustain the efforts at the local level.

## **Investment in more friendly and effective ways of receiving public complaints**

HURIA is known for its strong social media messaging and advocacy in platforms such as Facebook, Twitter and Instagram. However, the organization has not capitalized on this strength as a mode of receiving and responding effectively to public complaints. Investment in Social media will thus provide the organization with better opportunities of transforming its public complaints response.

## **Need for a Legal Officer**

Following the overwhelming number of complaints received and the complexity of the cases, the organization may need to hire a permanent legal officer. The current team of young lawyers has not been admitted to the bar and is thus limited in their pursuit for justice.

## **Capacity Building of staff on Public Complaints Management**

There is need to build capacity of the organizations staff on technical and complex issues related to Land, Labor and Industrial Relations amongst others. This will not only boost the organizations responsiveness to public complaints handling but also increase its legitimacy.



### **Development of Public Complaints Response and Management Policy**

HURIA will develop a policy to guide its response to public complaints. The policy will guide the organization on the management of the complaints with a view to ensuring accessibility, responsiveness and efficiency.

### **Digitalization of Public Complaints Handling**

To improve documentation and analysis of the complaints received, HURIA will develop an integrated public complaints management system that will also enhance ease referencing and follow up of all complaints registered by members of the public.

### **Initiation of a project on Labor Relations and Employment Justice**

Due to the high number of labor relations and industrial disputes recorded as complaints, the organization will specifically sought to initiate a project on Labor relations and employment justice in order to design long term solutions to the grievances.



## Conclusion

Abuse or violation of human rights often leads to conflict, and conflict typically results in human rights violations. It is not surprising, then, that human rights abuses are often at the center of disputes and that Protection of Human Rights is central to conflict resolution. It is urgent therefore that the public's most prevalent complaints as reported herein are addressed. Unfair labor practices, criminal and land disputes have a direct impact on the livelihoods of communities. Unaddressed human rights grievances may degenerate into serious conflicts in a community already angered by successive perceived and real feelings of alienation.

This report opines that sustainable improvement in the lives of such vulnerable communities requires empowering them to wage their own fight against the unjust structures that perpetuate human rights violations. Legal empowerment therefore will give people the power to know and use the law, and could be one of the most effective and responsive methods for achieving access to justice.

Legally empowered, even poor and marginalized people are able to make the law work in their own interests, achieving meaningful solutions to gross injustices. This approach emphasizes a people-centric approach to justice by highlighting the priorities of individuals and communities in using the law to advance and protect their interests. While traditional legal aid works within the confines of a lawyer-client relationship, legal empowerment includes victims of human rights violations as partners in advocacy for the enforcement of their rights.

The victim-centered approach to human rights advocacy will strive to valorize the struggles of the poor and marginalized communities while arming them with the language of rights to bring their voices into the political dialogue. As opposed to viewing those communities as passive recipients of legal assistance, human rights advocates should employ a rights-based model that blends traditional litigation with broad-based organizing strategies to empower and mobilize communities to engage directly with the state and pursue their basic human rights.

## Annexes

**Table 1: Typology of Complaints Received**

NATURE OF COMPLAINTS	TOTAL	PERCENTAGE
Unfair Labor Practices and Employment Justice	138	47.4%
Criminal Justice and Law Enforcement	67	23%
Land and Property Disputes	44	15.1%
Family Disputes	30	10.3%
Environmental Justice	5	1.7%
Other Complaints	7	2.4%
<b>TOTAL</b>	<b>291</b>	<b>100%</b>

**Table 2: List of Referral Organizations**

No.	Name of Organization	Contact
1	Kenya National Commission on Human Rights (KNHRC)	Coast Regional Office- Mombasa Along Panal Freighters Lane, Off Haile Selassie RD P.O. Box 90171-80100- Mombasa Email; coast@knchr.org
2	National Legal Aid Awareness Program (NALEAP)	Department of Justice Co-operative Bank House, Haile Selassie Avenue P.o. Box 56057-00200 Email ; legal@justice.go.ke
3	Commission on Administrative Justice (CAJ)	Mombasa Trade Centre (Former Ambalal Building), 2 <sup>nd</sup> FLR, Nkrumah Road, P.o. Box 80979-80100- Mombasa Email; mombasa@ombudsman.go.ke

4	Independent Police Oversight Authority (IPOA)	Jubilee Insurance Building (arcade) along Moi Avenue, P.o. Box 99758-80107 Email; Mombasa@ipoa.go.ke
5	Federation of Women Lawyers in Kenya (FIDA Kenya)	Ganjoni Estate, Machakos Street, Off Moi Avenue, Opposite AAR Medical Clinic( Lulu Center) P.o. Box 80687-80100 Email; ajmombasa@fidakenya.org <a href="mailto:info@fidakenya.org">info@fidakenya.org</a>
6	Ethics and Anti Corruption Commission (EACC)	Lower Coast Region office 3 <sup>rd</sup> FLR, ACK Mombasa Cathedral Complex, Nkrumah Road P.o. Box 82351- 80100 Email; eaccmombasa@integrity.go.ke
7	Law Society of Kenya- (Mombasa Branch)	German Language Building, 1 <sup>st</sup> FLR, Mnazi Moja Road, OPP.DT.DOBIE, P.O. Box 89928-80100 -Mombasa Email; mombasalawyers@gmail.com
8	National Gender and Equality Commission (NGEC)	Solution Tech Place, Longonot Road, Upper hill, 1 <sup>st</sup> FLR, P.O. Box 27512-0056 Nairobi Email; info@ngeckkenya.org
9	Advocates Complaints Commission	SHERIA HOUSE, HARAMBE AV P.O. Box 40112-00100 Email ; communication@ag.go.ke
10	Kituo Cha Sheria	Kaunda Avenue, P.o. Box 89065- 80100 Mombasa –Kenya Email; msa@kituochasheria.or.ke



