

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief

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Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 27/1, 26/12, 25/5 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a **persisting trend of extrajudicial executions and excessive use of force by Kenyan police and other security agencies in the context of the fight against criminality and terrorism, or as a result of excessive use of force when dealing with demonstrations. People living in slum areas, often young men, and Muslims, including ethnic Somali individuals are particularly affected.**

On 4 March 2016 and on 9 June 2017, the UN Working Group on Enforced or Involuntary Disappearances sent two general allegations to the Government of Kenya concerning cases of enforced disappearances in the context on the fight against terrorism in Nairobi, Mombasa and the Coast region. The Government has not responded to any of the communications.

According to the information received:

Investigations identified a persistent pattern of extrajudicial executions by the National Police Service (NPS) and other security agencies, notably in the context of the fight against criminality and terrorism or as a result of excessive use of force when dealing with demonstrations. In accordance to data collected by civil society, out of 489 killings by police between 2014 and 2016, over 80% were extrajudicial-executions. Only in 2016, organizations allege having recorded 122 extrajudicial executions.

Measures taken to prevent and respond to police violence are reportedly inadequate. Reports indicate that the Independent Police Oversight Authority (IPOA) is not adequately resourced to operate and counts with limited cooperation from the NPS. The same reports note that NPS Internal Affairs Unit (IAU) is also insufficiently resourced to accomplish its oversight role. Often, victims and witnesses do not come forward to press charges or to cooperate with investigations for fear of retaliation by security agencies. As a result, most cases remain unaddressed.

Authorities often dismiss the reports of civil society on the scale of extrajudicial executions and claim that these are isolated incidents committed by rogue officers. In some occasions, senior officials have publicly condoned extrajudicial executions. In February 2017, for example, the Deputy President of Kenya, William Ruto, reportedly gave ‘shoot to kill’ orders to police engaged in security operations in the North Rift against armed bandits.

One recent case of a killing documented by video raised particular public attention. On 31 March 2017, the film of a summary execution of a young man in Nairobi’s Eastleigh by an officer believed to be attached to the Pangani Police Station was circulated in the Kenyan social and mainstream media. According to reports on the video, a plain-clothed police officer is seen holding a young man, whom he turns around and shoots several times until the victim’s head falls lifelessly onto the pavement. The lifeless body of another young man in a pool of blood who apparently was shot earlier can also be seen in the same video. Reportedly, Commander Japheth Koome, commented on the videos to the media defending the killings: “The same gangsters shot dead an officer yesterday. Tell all gangsters out there that when they kill an officer, I am ruthless and they will get it from me.” Mr. Koome has not been reprimanded for his alleged statement.

Extrajudicial executions by the police are reported to have been particularly prevalent in the slum areas, such as Mathare, Dandora and Korogocho, and predominantly affect young men between the age of 13 and 25. Most victims were unarmed and shot in the course of arrest. In Mathare alone, 156 cases of extrajudicial executions allegedly committed by police officers attached to the Pangani, Huruma and Muthaiga police stations were recorded between 2013 and 2016. Reportedly, many of them were shot at close range. In December 2016, on separate incidents, the police allegedly killed seven young men, including a 14-year-old boy, in Kitari.

Most of the killings are reportedly carried out by officers from special crime divisions, not attached to the local police divisions based in the areas where the extrajudicial executions take place. In this context, grassroots organizations find it difficult to document and follow-up on cases due to intimidation from police officers as well as the lack of action from most of the national human rights bodies.

Extrajudicial executions in the context of the fight against terrorism are reported to have occurred in Nairobi, at the Coast region and in North Eastern Kenya. In 2015, the Kenya National Commission on Human Rights (KNCHR) documented 25 cases of extrajudicial executions and 81 cases of enforced disappearances. Several other reports have suggested the regular use of unlawful methods against terrorism suspects. It is alleged that in addition to NPS, other security agencies notably the Kenya Defense Forces (KDF) and the Kenya Wildlife Services (KWS), have been responsible for extrajudicial executions.

It was also noted that cases of extrajudicial executions have particularly affected Muslim minority individuals, including muslim youth, Sheiks and Imams, as well as ethnic Somali individuals. They often occurred in the context of house raids or arrests, with search or arrest warrants hardly being displayed by arresting officers. The latter often did not wear uniforms, did not identify themselves and used unmarked vehicles, making it difficult for families to follow up on cases. Where security agents were identified as responsible for the killings, they allegedly justified their acts saying they occurred in shootouts, where a suspect failed to surrender and was armed. In other cases, security agents have denied their involvement, claiming that terrorist suspects were murdered or disappeared as a result of Al Shabaab in-fighting or personal disputes.

Deaths have also occurred as a result of excessive use of force by police officers and security officers in the context of demonstrations. For instance, the anti-IEBC (Independent Electoral and Boundaries' Commission) demonstrations in May and June 2016, which occurred amidst threats by senior Government officials and Police that demonstrators would be met with force, ended with four deaths in Kisumu and Siaya counties and injuries by gunshot by police (victims included bystanders and a 6-year-old child); scores of protesters were beaten, kicked and whipped.

In response to the increasing number of extrajudicial executions, in April 2017, several organizations have urged the establishment of a judicial commission of inquiry to investigate allegations of extrajudicial executions and to examine the procedures ensuring accountability for these crimes. The Government has not responded to this call.

Grave concern is expressed about several cases of killings due to alleged excessive use of force by law enforcement officials from the Kenyan police. Serious concern is raised about the persisting trend of alleged extrajudicial executions by Kenyan police and other security agencies. Further concern is expressed on the fact that people living in slum areas, often young men, and Muslims, including ethnic Somali individuals, seem to be disproportionately affected by police violence.

While we do not wish to prejudice the accuracy of these allegations, they indicate a prima facie violation of the right of every individual to life and security and not to be arbitrarily deprived of his or her life, as set forth in the article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide statistical information on the number of cases of alleged extra judicial killings officially recorded, on the number of investigations initiated on potential extra judicial killings and on the number of perpetrators involved in these cases which were identified and tried over the last four years.
3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out concerning the above-mentioned allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Has any officer been dismissed from NPS or prosecuted due to commission of human rights violations?
5. Please inform on measures taken to instruct police and other security officers involved in anti-terrorism and anti-criminality operations to strictly comply with their human rights obligations, including by using officially recognized detention centers and by allowing unhindered access to KNCHR monitors, including to KDF camps.
6. Please inform if security agents have adequate equipments and training to provide public security in the context of public demonstrations and what measures have been taken to instruct them to use force in strict accordance with the law.
7. What are the measures taken by your Government to guarantee the right to an effective remedy, especially a serious, impartial, independent and effective criminal investigation in cases of enforced disappearances?
8. What are the measures taken by your Government to determine the fate and whereabouts of disappeared persons?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Houria Es-Slami
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Rita Izsák-Ndiaye
Special Rapporteur on minority issues

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and while we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer to articles 3 and 6 (1) of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), ratified by Kenya on 1 May 1972, which guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary.

In addition, in its General Comment No. 31, the Human Rights Committee observed that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents. A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR. These obligations arise notably in respect of criminal acts under international law, such as summary and arbitrary killing.

Moreover, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, stress the obligation to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

In relation to the allegations according to which the fate and whereabouts of 81 individuals are currently unknown, we would like to draw your Excellency's Government attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we would like to recall the prohibition to practice,

permit or tolerate enforced disappearance (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention, and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

Furthermore, we deem it appropriate to make reference to the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1) states that: "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]".

Finally, we would also like to bring to your Excellency's Government attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the ICCPR and the 1992 Declaration on the Rights of Persons Belonging to national or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).