



Press Release

15th September 2015

“The Error of Fighting Terror with Terror”

The Kenya National Commission on Human Rights has called you today to share with Kenyans our progress report on our Investigations into Human Rights Abuses in the ongoing crackdown against terrorism.

As you all know the Commission is a national human rights institution established under Article 59 and Chapter 15 of the Constitution of Kenya and subsequently operationalized through the Kenya National Commission on Human Rights Act, 2011. Specifically, the Commission is mandated by Article 59 (1) (d) (e) of the Constitution of Kenya:

- (d) to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs;*
- (e) to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;*

Further, Section 8 (e) of the Kenya National Commission on Human Rights Act, 2011 mandates the KNCHR to; *“on its own initiative or on the basis of complaints investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State organs;”*

The Commission is currently investigating allegations of human rights violations by security agencies in the ongoing crackdown on terrorism and general insecurity in the country. In conducting this exercise, the Commission is guided by Article 238(2) b of the Constitution which provides that *“national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.”* The key object of the exercise is to ensure that all efforts by government to contain terrorism as a threat to national security are conducted in accordance with the rule of law and in compliance with human rights standards and principles.

Preliminary evidence gathered by the Commission establishes a pattern of conduct by the Kenya security agencies amounting to grave violations of the law and human rights against individuals and groups suspected to be associated with terror attacks in various parts of the

country mainly in Nairobi, Wajir, Mandera, Garissa, Lamu, Tana-River, Kwale, Kilifi and Mombasa Counties. Over 100 people have disappeared, several killed and scores of others tortured in the ongoing operation. The counterterrorism operations are being conducted by a combined contingent of Kenya Defense Forces (KDF), National Intelligence Service (NIS), Kenya Wildlife Services (KWS), County Commissioners, Deputy/Assistant County Commissioners, Chiefs and various units of the National Police Service including the Anti-Terrorism Police Unit (ATPU), Kenya Police Reservists (KPRs), Rapid Deployment Unit (RDU) of the Administration Police, Border Patrol Unit (BPU) and the General Service Unit (GSU).

This report documents over one hundred and twenty (**120**) cases of egregious human rights violations that include twenty five (**25**) extrajudicial killings and eighty one (**81**) enforced disappearances. As detailed in the report, these violations are widespread, systematic and well-coordinated and include but are not limited to arbitrary arrests, extortion, illegal detention, torture, killings and disappearances. KNCHR has heard multiple narratives of suspects being rounded up and detained for periods ranging from a few hours to many days in extremely overcrowded and inhumane and degrading conditions. Many have been tortured while in detention sustaining serious physical injuries and psychological harm as a result. The torture methods include beatings, waterboarding, electric shocks, genital mutilation, exposure to extreme cold or heat, hanging on trees, mock executions, and exposure to stinging by ants in the wild, denial of sleep and food.

The families of the disappeared have complained that they have received no assistance from government and continue agonizing as they desperately search for their kin. KNCHR has further confirmed the existence of suspicious graves in Wajir County, Lanbib location containing remains of dead persons whose circumstances of death remain unexplained raising further concerns. The commission is concerned that the ongoing crackdown continues to disproportionately target certain groups of people particularly ethnic Somalis and members of the Muslim faith. This profiling of people along ethnic or religious lines constitute discrimination and is therefore unconstitutional and against international norms.

The Commission is alive to the immense challenges that the government faces in combating terrorism and insecurity. While supporting ongoing efforts by the state to combat terrorism, the commission maintains and insists that security policies and practices must be legal and consistent with human rights standards and principles. Combating terrorism through official terror is counterproductive and only serves to foment further resentment, increase radicalization and fertilizes the breeding grounds of future terrorists.

Given the extremely serious nature of the foregoing violations, the Commission, as the principal organ of the State in ensuring compliance with human rights obligations, has deliberately dubbed this report *“The Error of Fighting Terror with Terror”* to express our grave concern. The security forces must forthwith stop the abuses and an independent and expeditious investigation carried out to bring the perpetrators to account, offer reparations to victims and provide an account of the missing persons.

The Commission's work in the ongoing investigations has been inhibited by various challenges key among them intimidation of victims and witnesses who are afraid of disclosing information for fear of reprisals by security agencies. Some Commission staff have also received threats due to their role in monitoring the violations. The Commission is unable to obtain information from relevant security agencies thus preventing us from finalizing the investigations. This is tied to denial of access to the places of detention particularly those controlled by KDF.

The Commission seeks a guarantee from the government in respect of the security of witnesses, victims and family members who are willing to give information on the violations but are afraid to do so for fear of reprisals. The Commission calls for unconditional and unfettered access to information crucial to its investigations and to all places where the detainees were/are being held to enable us fulfill our constitutional and statutory obligations.

Even as we continue with the investigations the Commission makes the following recommendations arising from the preliminary findings:

1. The President should acknowledge and condemn the abuses by security agencies and call upon them to ensure respect for the rule of law and human rights in the fight against terrorism. He should issue an official public apology to the survivors and families of victims of the abuses.
2. The Independent Policing Oversight Authority (IPOA) should investigate the foregoing abuses that touch on their mandate and take action against responsible police officers.
3. The Director of Public Prosecutions should direct the inspector general of police to ensure prompt and comprehensive investigations are conducted into the ongoing abuses by security agencies and ensure that those responsible are prosecuted.
4. The Inspector General of Police should immediately instruct, through an official circular, all police stations to accord the KNCHR the requisite assistance and cooperation to enable it execute its constitutional and statutory mandate.
5. The NPSC and the office of the IG and the Ministry of Interior prioritize resourcing and tooling of security officers to ensure effectiveness and efficiency in addressing terrorism and other forms of insecurity.
6. To Chief of KDF-
 - a. Issue clear instructions to all military personnel that abuse of civilians/suspects, including torture, extra judicial killings and arbitrary arrest are illegal and will not be tolerated.
 - b. Direct that the military police conduct investigations of crimes committed by military personnel and hold those responsible to account.
 - c. Issue clear instructions to all military personnel that the detention of civilians in military custody is illegal and will not be tolerated, and display an order to this effect publicly in all military camps. The Chief of Defense Forces (CDF)

should instruct his commanders to grant KNCHR unfettered access to information and facilities crucial to its investigations in line with Art.59 2(d) of the Constitution.

- d. Investigate the role of military commanders in Lamu, Garissa, Wajir, and Mandera where most of the abuses have reportedly taken place under their command to see if they ordered or were otherwise implicated in the abuse, or should have known about the abuse and failed to prevent or investigate it.
7. The Parliamentary Committees on Defense and National security should conduct an independent probe on the abuses committed by KDF particularly relating to reported existence of torture chambers in the military bases in Wajir, Mandera and elsewhere.
8. Parliament should restrict the involvement of the military in internal affairs given the refusal by KDF to be held accountable for their actions. The amendments to the KDF Act that attempt to oust the parliamentary oversight on KDF should be removed.
9. International partners should ensure that their support to Kenya security forces is conditional to their adherence to the rule of law and respect for human rights.
10. Independent forensic analysis of shallow graves found in Lanbib location of Wajir County, should be undertaken immediately. The KNCHR is concerned that security authorities in Wajir have made no efforts to-date to secure and preserve the graves despite repeated requests.
11. The government should desist from criminalizing legitimate human rights/civil society work unless it has proper evidence of misconduct and breach of the law by Public Benefit Organizations.
12. The Government has announced a Security Operation in Boni forest. The KNCHR urges that this operation and all others be conducted in accordance with the rule of law and respect for human rights. KNCHR has received complaints from the forest dwellers that they have been ordered by the government to vacate the area without alternative housing and means of livelihood. The Commission urges the government to provide the residents with urgent and adequate humanitarian support during the duration of the security operation until they are able to resume their normal lives.
13. Partner governments and donor agencies supporting Kenya's security sector must insist and condition their assistance on compliance with the rule of law, respect for human rights and accountability for abuses during operations by the security forces

Thank you

Signed:

George Morara Monyoncho
VICE CHAIRPERSON