



“The Error of Fighting Terror with Terror”



**Preliminary Report of KNCHR Investigations on Human Rights Abuses in
the Ongoing Crackdown against Terrorism**

September 2015

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INTRODUCTION

This is a report of the Kenya National Commission on Human Rights (KNCHR) continuous monitoring of human rights violations by security agencies in the ongoing crackdown on terrorism by the Kenya government. 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.”*

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 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.

BACKGROUND

Kenya, like many countries in the world, is grappling with the complex challenge of terror attacks perpetrated by a mix of international, regional and local terror networks including the Al Qaeda, ISIL, Boko Haram and Al Shabab. As a frontline state in the war against terrorism in the horn of Africa, Kenya continues to bear the greatest brunt of terrorism amongst countries in the region. The attacks have dramatically spiraled after Kenya deployed its military to Somalia in October 2011 in the hope of diminishing the capacity of Al Shabab to launch attacks in Kenya. Since then hundreds of people have been killed and many more injured and property destroyed in multiple terror attacks mainly in Nairobi, the Coastal and Northern Kenya regions. Notable attacks include; the September 2013 Westgate mall attack in which 67 people were killed, June 2014 attack in Lamu, Mpeketoni which led to 68 deaths, November bus attack in Mandera killing 28 people, December 2014 attack in Mandera in which 36 quarry workers were killed and the April 2015 attack on Garissa University College in which 148 students died.

The frequency, audacity and magnitude of the terror attacks has exposed Kenya's vulnerability and the impact has been grave. Kenyans are desperate for security and key pillars of the economy such as tourism have almost grounded. Education and health provision in some areas in Northern Kenya has been gravely affected due to flight of teachers and health workers leading to closure of schools and health facilities. Faced with this daunting challenge the government of Kenya has adopted high-handed and extralegal security measures in containing the threats posed by terrorism which have resulted in multiple human rights violations of citizens and terror suspects.

In April 2014, the government carried out a security operation dubbed '*Usalama Watch*' which ostensibly aimed at flushing out foreigners linked to terrorism in targeted locations mainly in Nairobi and Mombasa. The operation was preceded by two major terrorist attacks in Mombasa (23rd March) and Nairobi (31st March) which killed 11 people and left scores of others injured. The attack in Mombasa targeted worshippers in a church in Likoni while the one in Nairobi targeted customers in several food cafes in Eastleigh Estate.

On 26th March 2014, the government through the then Cabinet Secretary for the Ministry of Interior and Coordination of National Government, Mr Joseph Ole Lenku issued a directive¹ through a press release ordering all refugees residing outside the designated refugee camps of Kakuma and Dadaab to immediately return to their respective camps failure to which they would face the law. He further ordered the immediate closer of all refugee registration centers in urban areas including Nairobi, Isiolo, Nakuru, Mombasa and Malindi. In the same press release he announced that the government would deploy an additional 500 police officers in Nairobi and Mombasa to enhance security and surveillance.

On April 5, The Interior Cabinet Secretary announced that 6,000 additional security officers had been deployed to Nairobi's Eastleigh neighborhood to arrest foreign nationals who were in the country unlawfully and anyone suspected of terrorism. The operation began in

See attached directive.

Eastleigh Estate in Nairobi where it remained largely concentrated but later spread to other parts of Nairobi and later in Mombasa, Nakuru, Thika, Eldoret, Lamu, Malindi, Garissa, Mandera, and Kitale. At the close of the operation, at least 4000 people had been arrested across the country majority of who were ethnic Somalis. Many more had evaded arrest after bribing the police.

The KNCHR documented² multiple human rights violations and breaches of the law committed by security agencies against innocent civilians particularly members of the Muslim Somali community. The violations included arbitrary arrests, extortion, theft and looting of businesses and homesteads, sexual harassment, arbitrary detentions, illegal deportations, torture, inhuman and degrading treatment.

In December 2014, the National Assembly passed the controversial Security Laws (Amendment) Act, 2014 (SLAA)³ which amended sections of twenty (22) security related laws aimed at giving the security agencies more powers in combating terrorism. Human rights groups and the opposition group (CORD) moved to the High Court to challenge the constitutionality of the law and successfully managed to have some sections of the law declared unconstitutional as they violated the provisions of the bill of rights and international law. The offensive clauses touched on the freedom of the media, rights of refugees, right to privacy, fair trial and arbitrary detention among others.

Following the terrorist attack on Garissa University in April 2015, the Inspector General of Police (IGP), Joseph Boinett, issued a gazette notice⁴ on 4th April 2015 listing a number of individuals, businesses and organizations that he intended to classify as specified entities associated with terrorist groups. Of particular concern was the inclusion in the list of several human rights organizations that have been active in seeking accountability for human rights violations by security agencies in the war against terror. The groups included Muslims for Human rights (MUHURI) and HAKI Africa. The government proceeded to freeze their bank accounts thus halting their operations without affording them adequate opportunity to be heard. The two organizations have filed a petition in the High Court which the Commission has joined as *Amicus Curiae*.

KNCHR views the actions by the State against the two organizations as offending the provisions of Article 47 (1) of the Constitution on the right to fair administrative action and section 3 (1) and (2) of the Prevention of Terrorism Act No. 30 of 2012 which obligate the IGP to provide reasonable notice including reasonable hearing before recommending the declaration of individuals or institutions as specified entities. The Commission is of the considered view that publishing the two organizations in a gazette notice amounts to condemning them unheard and therefore unconstitutional and abuse of the stipulated law. The law cited by the gazette notice does not confer the IGP the authority to publish the gazette notice. This authority vests on the Cabinet Secretary as per Section 3(3) of the Prevention of Terrorism Act. Further requiring that the organizations demonstrate why they

² See KNCHR report on *Operation Usalama Watch*

³ See SLAA 2014

⁴ See Gazette Notice Number 2326 of 7th April 2015.

should not be classified as specified entities amounts to shifting the burden of proof which squarely lies on the state.

Recently in June and September 2015, the government has pushed for legislative amendments that impacts on the appointment, financial and operational accountability of the Kenya Defence Forces (KDF). The first amendments of the Public Audit Act in which the Auditor General's authority to review and audit national security budgets has been limited, and the proposed amendments to the KDF Act which seeks *inter alia* to restrict the financial and reporting oversight by parliament; increase the operational powers of the cabinet secretary; and include the Kenya Wildlife Service, National Youth service and Kenya Forestry Service as permanent reserves of the KDF.

The Commission has continued to receive and pursue complaints of arbitrary arrests and detention, enforced disappearances, killings and torture whose investigations form the core of this report.

METHODOLOGY

In conducting this exercise KNCHR investigation teams conducted interviews with victims, their friends and relatives from various regions including Nairobi, Coast and Northern Kenya. The teams also held key informant interviews with residents, opinion leaders, and relevant state agencies. This was complemented by secondary data gathered from media stories, reports and internet sources among other sources. The teams also visited several sites in Wajir and Garissa Counties suspected to be mass graves connected to the crackdown on terror. The team visited several police stations to inspect records and follow up the allegations with police authorities. The Commission further visited Kamiti, and Shimo la Tewa prisons to interview some of the terror suspects who had been remanded or imprisoned after being charged with various terrorism offences. To ensure the security of interviews, interviews were conducted in confidence, in safe places and their identity concealed in the report where requested.

FINDINGS

The Kenya security agencies have continued to conduct abusive operations against individuals and groups suspected to be associated with terror attacks in various parts of the country. 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 foregoing, 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 Commission has received the following narratives which it continues to investigate and corroborate:

WAJIR

1. **Affey Ali Abdullahi** (48 years) was on 4th May 2015 at around 9:00 pm seated outside his house in Shalatey village, Wajir County when he saw men in military fatigue knocking at the house of Maalim Ismail, his neighbor. They then approached him and ordered him to lie face down. They asked him to produce his National Identity Card which he produced in a wallet. One of the men took Kshs 3000 which was in the wallet and threw the wallet away. They asked him whether he knew Hussein Ali Abdullahi, to which he replied yes and told them that Hussein was his brother and neighbor. They asked him to take them to Hussein's house which he did. Hussein was not in his house and they instead arrested his wife Ebla Abdullahi Abdirahman. He was taken to Wajir Police station where he spent two nights. He was then taken from the police station on Wednesday, 6th May 2015 at around 9:00pm. He was blindfolded and taken into what seemed to be a pick-up vehicle. He says he heard about four people in the car speaking in Swahili. He was made to lie downward on the floor of the car as their legs stepped on him. He was then transferred to an aircraft, ordered to lie face down and taken away. After about an hour, he was taken somewhere into a tiny room while still blindfolded and ordered to sit down. He was woken up the following day and served with bread and tea. He was told that he was accused of having links with Al shabab which he denied. He was subjected to a series of torture sessions for days in a bid to confess that he had links to Al Shabab. The torture included severe whipping, kicking with boots, electric shocks, mock execution and denial of food. He says that on 9th May 2015, he became mentally unstable due to the severe beatings.

The beatings subsided due to his sickly state. The officers in the place offered him treatment for the severe wounds he had sustained during the torture before returning him to Wajir Police Station on 18th May 2015 where he was released and warned against disclosing what he had gone through. When KNCHR visited him in his home, he had severe torture marks and bruises all over his body consistent with his narrative. He further stated that he heard his brother Hussein Ali screaming in an adjacent room as a result of similar beatings by the security agencies.

2. **Ebla Abdirahman- Hussein Ali's Wife.** Ebla was arrested from her house on 4th May 2014 at around 10:00pm by three men who were in military uniform. They initially asked her to tell them where her husband Hussein Ali was and she told them that he was at his other wife's house, in Kulaaley location. The men did not believe her and insisted that she discloses the whereabouts of her husband. She was arrested together with her daughter Maryan, a minor and escorted to a waiting vehicle where she also found her brother in law Mr Affey Ali Abdullahi and another man who was not known to her. She described the car as a double cabin, green pick-up with red markings in the front doors. Maryan was released while Ebla, Affey and the third suspect were blindfolded and driven to Wajir police station. Affey and Ebla were booked in the Occurrence Book (OB) and locked up in the police cells. The other man was driven to another destination. On 5th May at around 1:00 pm a short and dark Somali officer who was among the men who initially arrested them took a picture of Affey and left. Ebla was kept in Wajir police station until 8th May at around 4:00 pm when she was released while Affey was taken from the police station on 7th May at around 9:00 pm. After she was released Ebla went back to her business premises in Wajir town where she was informed by colleagues that her husband was arrested earlier in the day moments after he had gone to visit her at the police station. Her husband has since gone missing.
3. **Halima Yusuf Sheikh- Eyewitness to Hussein Ali's Arrest.** Halima runs a fresh milk shop adjacent to Ebla and Hussein Ali's shop in Wajir town. She witnessed the arrest of Hussein from her business place located about 20 meters away. She told KNCHR that on 8th May 2015, Hussein Ali came from the mosque at around 1:30 pm to open his shop and was selling food stuff to some women when a black lorry with the government coat of arms on the right side stopped next to the shop. Halima got curious and approached Hussein's shop to observe the happenings. She saw three men alight from the lorry, one of them a short, black Somali man. The Somali man came to Hussein's shop and asked for a turban. The other two non-somali men stood strategically at both sides of the shop as if taking guard. The Somali man went to one of the men and had a brief discussion with him. He then came back to Hussein's shop, asked Hussein to produce his Identity Card and told him that he was the man he has been looking for. He instructed Hussein to come out. Hussein requested the Somali officer to allow him close shop. They refused but some women who have business around his shop shouted urging them to allow Hussein close his shop. Hussein closed his shop and handed over the key to Abdia one of the women. Hussein was taken to the lorry where he sat at the front and the vehicle was driven off. Halima says she can identify the men who arrested Hussein. Hussein has since gone missing. Affey Ali who was later interviewed by KNCHR said that while being held at a military camp, he heard Hussein Ali crying and writhing in pain while being tortured in

an adjacent room. KNCHR has since established that the man who Halima and Ebla described as a Somali is known as Corporal Abass Idle who works with Border Patrol Unit (BPU) which has a camp at L.M.D, Waberi location in Wajir. A certain Police Sergeant Koech is in-charge of Border patrol unit in Wajir.

4. **Hassan Derow.** His disappearance was reported to KNCHR by his mother Adey Adan. She told KNCHR that Hassan was as at 9th June 2015 missing for 46 days. Hassan was arrested with his brother Adan Derow. His brother Adan was arrested at Orahey grounds in Wajir town and coerced by the security agencies to assist them in tracing Hassan. The two were then taken to their house in Shalatee location where the arresting officers conducted a search. The mother told KNCHR that the men who arrested Hassan and Adan were using a Toyota Probox and a Toyota Hilux vehicle and were approximately ten. She said the officers were accompanied by two persons with concealed faces who she suspected to be the area chief and a local Kenya Police Reservist who have been working together with the police in identifying terror suspects. Adan Derow was later released but Hassan is still missing. A local community leader told KNCHR that Derow was later handed over to KDF for interrogation. The elder also said that t another person youth Mahat Issack was also missing.
5. **Maalim Ali Warsame and Hassan Adan Maalim.** KNCHR interviewed a business man, from the Rahawein clan which has been heavily targeted in the ongoing operation launched after the terror attack on Garisa University. The business man told KNCHR that he knows two men who have been taken by security agencies, namely; Maalim Ali Warsame and Hassan Adan Maalim. Maalim Ali Warsame was teaching a Quran school at Barwaqo village. He was living with his mother and wife. When he was taken his mother went to Somalia while his wife relocated to Mandera. His nephew who was in Nairobi during his arrest came to Wajir to search for his uncle. He learnt that Warsame was taken to Nairobi and went back to Nairobi to continue with the search. Mohamed Omar Issack, a local human rights defender told KNCHR that he witnessed two men being arrested by a Mr Bashir Antoop, a KPR officer near the Nyayo Monument in Wajir town. Mohammed followed them to the Wajir county commissioner's office where the two were made to lie down, blindfolded and taken in a car belonging to Rapid Deployment Unit (RDU). Mohamed said he later learnt that the two men were from the Rahawein clan. KNCHR is still following up to establish whether the two men he saw might be Maalim Ali Warsame and Hassan Adan Maalim.
6. **Mahat Issack.** His disappearance was reported by his relative, who visited KNCHR offices in Wajir on 9th June 2015. He told KNCHR that Mahat was as at 9th June missing for 49 days. He was reportedly arrested by KDF officers together with one Dagane Hire who was later released after being held in the Wajir military camp for 12 days. He explained that after KDF arrested the two, they were driven to the military base in Wajir. On their way to the camp, they met Noor, a KPR officer and stopped to talk to him. He informed KNCHR that Noor told him that the military men who had the two men in their custody, told him to keep vigil and inform them of any insecurity related problem. He identified one of them to be Major Mwangi, the in charge of the camp. Mahat's wife Quresha Abdi told KNCHR that before Dagane Hire was released, the military called his

father to tell him that they were bringing back his son home soon. When Dagane was released, he informed them that they were together for the twelve days that they were being detained in the military. KNCHR made efforts to get Dagane Hire's statement as an eye witness but he declined to be interviewed for fear of reprisals from the security forces. Mahat was still missing at the time of compiling this report.

7. **Ali Duale Keynan** was arrested and shot in the leg on 14th April 2015 at around 3:00 pm by police officers in Waberi area of Wajir town. According to his cousin Ali was at the time of his arrest at a cyber café near Waberi primary school when he saw suspicious men following him. He ran and jumped over the fence of Farah Ahmed's compound which is about 200 meters from the cyber. The men pursued him into the compound during which one person drew a gun and shot him in the leg, handcuffed him and took him in a waiting vehicle and drove away. His whereabouts were unknown at the time of compiling this report. Ibrahim said he reported the matter in Wajir Police Station on 16th April 2015 and recorded a statement with the Criminal Investigation Department (CID). The family followed up the matter with the Wajir County Commissioner who told them that Ali was under the custody of the government and he was being investigated. The County Commissioner made similar remarks over the issue in an interview with the standard newspaper. Another relative of Ali Duale told KNCHR that on 14th April 2015, he was seated outside Ahmed Farah's compound when heard gun shots. He then saw a man in civilian clothes chasing Duale and then shot him in the leg. Duale was then arrested and put in a white land cruiser belonging to ATPU. The officers also had a white Hilux Toyota pickup with no registration numbers, belonging to the Border Patrol Unit. He told KNCHR that a Mr Mohamed Sheikh a Senior Superintendent of Police (SSP) attached to RDU was part of the team. Mohamud presented to KNCHR two bullet cartridges which he collected at the scene. The two bullets had bullet serial numbers KOFC 5DP13 and KOFC 1TMOE .
8. **Mohamed Muhumed.** His arrest was reported to KNCHR by his employer Abdinaim Ahmed Hassan on 30th June 2015. He reported that Mohamed Muhumed was working at his shop on 29th June 2015 morning when he was arrested by officers in a Toyota Probox who took him away leaving the shop unattended. When he came to the shop, Abdinaim found his shop vandalized during which he lost Kshs 215,000 in cash and goods worth 15,000. He reported the matter to Wajir Police Station Vide OB No 28/29/6/15. Mohamed Muhumed was released at 11:00 pm on the same day. The police said that he had been mistaken for another person who the police were pursuing.
9. **Mohamed Adan & Maalim Farah.** The two were reportedly picked by security officers at a Mosque near Public Works area in Wajir town on Monday, 29th June 2015 at around 3:00pm. According one of the worshippers in the Mosque, the two and another unidentified person have since gone missing. A witness told KNCHR that he visited the ATPU offices after the arrest of the three persons to inquire on their whereabouts. He said while outside the offices, he heard a man being beaten inside the ATPU office amidst loud screams. He suspects the loud screams could be of Mohamed Adan which he could not ascertain as he was immediately chased away from the place.

10. **Ibrahim Bishar Omar** (17 years) a form three student at Iftin Secondary Wajir in Bula Halane village in Wajir Town was arrested on 28th July 2015 at around 8.00pm and severely tortured by KDF officers on patrol while heading home on a motorcycle (boda boda) taxi with two other colleagues. He suffered serious injuries on his jaw bones and was taken to Wajir County referral hospital before being referred to Kenyatta national hospital for further management. He was then referred to Kijabe Mission Hospital for specialized treatment where he was awaiting treatment at the time of compiling this report on 9th August 2015.

Visits to reported shallow graves in Lanbib and Dasheg, Wajir County.

KNCHR conducted site visits to Lanbib and Dasheg locations of Wajir county following reports that decomposing bodies had been found in shallow graves in the areas. Prior to visiting the sites, KNCHR obtained video clips and photographs from the local journalists depicting human skulls in Lanbib. (Insert pictures). Lanbib is approximately 13 kms from Wajir town (insert map). During the first visit KNCHR team was, was stopped at a military roadblock a few kilometers from Wajir town. The army officers who were approximately seven flagged the KNCHR vehicle down from a distance of approximately one hundred meters through repeatedly flashing of their vehicles' headlights. Two officers were lying on both sides of the road with machine guns mounted on the ground. An officer who seemed to be in charge of the team beckoned at the KNCHR team to drive slowly to towards their vehicles. The officers then ordered the KNCHR team to lower their vehicle windows while the officers on the ground aimed their mounted guns on the KNCHR vehicle. Two KDF officers then approached the team and ordered them to identify themselves by producing their National Identity cards. Upon identifying themselves the military asked the KNCHR team where they were headed to and they informed them that they were headed for routine work in Wajir Bor Area. The KNCHR avoided disclosing their exact mission so as to avoid being stopped from proceeding. The military informed them that another of their vehicle was in Wajir Bor for 'a routine operation'. Before proceeding the KNCHR noted that there was a group of seven young men who had been arrested and bundled in one of the military vehicles. Two of the suspects at the back of the truck had their hands tied on their back and were blindfolded using headscarves.

The team proceeded to Lanbib where they found torn clothes scattered over the area which was oozing of deep stench similar to that of decaying bodies. The team found three shallow graves two of which were approximately 3 x 2 Meters while the third one was approx. 8 x 2 Meters. There were six trousers, three shorts (underwears), a turban, a T-shirt and a shirt most of which had blood stains. There were also numerous pieces of human skulls, ribs, dry intestine and jaw bones on the surface of the graves indicating that wild animals had dug out and devoured some of the bodies. There were blood stained bandages strewn in the graves indicating that the victims had been wounded and treated before being killed. Attempts to get information from the residents of the area were unsuccessful as the residents seemed so scared and declined to divulge anything regarding the graves. A few however mentioned that there was heavy military movement in the area in the recent past. The team managed to meet with the area Sub-Chief Mahmoud Yusuf who reluctantly said that the military rarely patrolled the area and that he had not received

any complaints from his people. He denied having received or heard of any cases of disappearances or any killings by security agencies. When pushed further he noted that he had been on leave hence did not have any information. The team asked him to state the most common complaints that people in his area had. He said that most of them complained of lack of National Identity cards (IDs) and long delays in receiving such cards after applying. He noted that lack of IDs was of major concern since those caught without IDs are usually arrested and taken away by the security agents for suspicion of being terrorists.

KNCHR then visited Dasheg where scores of bodies had allegedly been secretly buried by the military. The team however found no indication of shallow graves after several hours of searching with the help of community members. However the KNCHR was informed by locals that a while ago, a military helicopter had crash-landed in the area prompting a heavy mobilization of military officers in search of the aircraft which was later taken away.

Interview with Wajir County Commissioner

KNCHR met the county commissioner and informed him of the shallow graves and the complaints of disappearances and sought to know whether he was aware of the incidences. He noted that he was aware of the graves but some elders had asked him to allow them dispose the bodies decently and according to the Somali culture which he agreed to. The elders were to work with the Assistant County Commissioner from the region. He further noted that had the bodies been discovered dumped somewhere the police would have collected them. In the case of buried bodies however, he noted that a court order would be needed for exhumation. He said that he had directed the county CID officer to open an inquiry file for people to make complaints of disappearances. He asked KNCHR to follow up with him. He stated that he did not know who was responsible for the killings and the identities of the victims were unknown. He suggested that criminals like Al-Shabaab could also be executing informers and burying them secretly without the knowledge of the government. He informed KNCHR that the terrorists were targeting people who were revealing information about them notably chiefs and sub-chiefs who had complained to him that their lives were in danger. He explained that the military, Anti-terror police unit (ATPU) and Rapid Deployment Unit (RDU) were working together in the operation and whenever they make arrests, some of the suspects are taken to Nairobi for further interrogation.

Interview with the Wajir Police Station OCS

The OCS is new in the station and was only three days old at the time of the interview with KNCHR. He informed KNCHR that he had heard the County Commissioner mention the shallow graves during his briefings to security team. He said that there were people being held at the station on request of 'other units' and as such only the Officer Commanding Police Division (OCPD) could comment on the same. KNCHR raised with him the issue of detainees being held beyond the legally stipulated period. He responded that it was likely that people were kept at the station awaiting investigations or possible transfer to Nairobi. KNCHR inquired specifically on the case Ebla Abdullahi Abdirahman

(see above) who had been in custody for four days without charges being preferred against her. He said that Ebla was being held on behalf of the Border Patrol Unit who had arrested her. The OCS told KNCHR that he did not know when the officers would come back for her and even if he was to release her, deciding the terms would be difficult since she was not recorded to have committed any offence.

Interview with the Wajir OCPD

The OCPD who has been in Wajir for almost a year told KNCHR that there were many different security agencies operating in the region. He said he needed more time to verify from his OCS's whether there were people reported missing, held under instructions from others units or held for more than is legally provided for.

Interview with local media personnel

KNCHR interviewed local journalists who had highlighted the issue of the shallow graves. They said they visited the area on 26th April 2015 after receiving information from area residents. They said they found two bodies which had been dug up from the heads as if in an attempt to identify them. They took photos and video clips of the decomposing bodies, filmed the scene and photographed spent bullet cartridges which they found on the scene. They noted that they were unable to get further information on the graves from residents and local leaders.

MANDERA

11. **Abdiwelle Ibrahim Sheikh:** Abdiwelle's disappearance was reported to KNCHR by his mother Fatuma Yussum. They live in Bulla Jamhuri within Mandera town. She stated that on 23rd April 2015 at around 2:00 pm while in her compound she saw a white Toyota Probox saloon car approach her homestead. Three men alighted and proceeded towards her house. She had never seen the men before. She followed the men to find out their mission and met them at the doorstep holding her son Abdiwelle who was handcuffed. Her son had been sleeping in his bedroom. She sought to know the reason for his arrest but was pushed into her house and the door locked from outside by the three men. There were children playing outside and she shouted for them to open the door. They did and she saw the white car speed towards the military camp which is located a few meters from her homestead. She went to the police station to report and went back home. The next morning there were reports that three other young men from her village had been arrested by military officers that same night. She went to the police station to follow up but was informed by the OCS that his officers (police) had not been involved in the arrest and there was nothing he could do. She went back home and kept following with the police in vain. Up to date, the OCS maintains that he is not aware if any arrests were made by the military officers and if they did, only they can release her son. She further stated that there had been rumors that her son had been taken to Nairobi by the military. At times she gets information that her son is unwell and gets treatment at the military hospital. She cannot confirm the information since the military camp is inaccessible to civilians.

Interview with Anonymous Abdi (person agreed to the interview on condition of anonymity)

Abdi, businessman in Mandera town agreed to be interviewed by KNCHR on condition that his name was not disclosed. He stated that on 12th May 2015 at around 11:00 am while at his business place at Suqa Saraf within Mandera town, he saw a white Toyota Probox vehicle pass by the market place. He did not bother to check on the vehicle but it turned back after a few meters away and he went to inquire if there were customers who needed his services. Three men alighted from the car and approached a shop opposite his business place. Outside the shop there were five men seated drinking tea. The three, who he came to learn were military officers, proceeded where the men were seated and held one young man by the collar of his shirt. He could see what appeared to be a pistol tucked in one of the man's trouser. The military officers took the young man to the white Probox car and sped off. People milled around the shop to find out what had happened and he heard one man say "huyo amechukuliwa na jeshi." (He has been picked by the military). Abdi stated that he did not wish to have his identity revealed for fear of reprisals from the military. He stated that his family depended on him and they would suffer if he was to be arrested.

12. **Hassan Mohamed.** The matter was reported by his mother Hawa Ibrahim from Mandera town. She informed KNCHR that on 18th April 2015 at around 6:30 pm, she received a call from her son Hassan who informed her that he had been arrested by Kenya Police Reservists (KPR). He specifically mentioned one Hassan Jabat who had arrested him. She asked her son to hand over the phone to Jabat so that she could speak to him but the son told him Jabat was not willing. She called another KPR by the name Al Jazeera who informed her that he was in Bulla Mpya which is some distance from where Hassan had been arrested, he then hanged up the phone. She later came to learn that Al Jazeera was actually at the scene with Jabat when her son was arrested. Her daughter also confirmed seeing Al Jazeera with Jabat that fateful evening. The next day in the morning she called her daughter Zeinab to find out if Hassan had been released. While weeping, her daughter informed her that he had not been released. Hawa went to Mandera police station the next day at 7:00 am to secure his release. She spoke to the officer in charge (OCS) who asked her whether her son was a 'gaidi'(terrorist).The OCS also asked her why her son had stoned a police vehicle. The OCS told her the stoned vehicle belonged to one Siyad and the driver was Jabat (the KPR). He told the mother that until the permission of the two was sought Hassan would not be released. She went and spoke to Siyad who stated that his vehicle had hit a wall and was not aware of any stoning incident. She went back to the OCS who at the intervention of a senior police officer released Hassan on a police cash bail of Ksh 4,000. This was around 4:00 pm. He was in great pain and had difficulty walking. Hassan said he had been assaulted by the two KPRs upon arrest. The mother took Hassan to the Mandera County Referral hospital on 20th May 2015 where they were referred to Blue Light Hospital for some medical scan tests. Hassan was pronounced dead at the County Referral Hospital after the scans. He was buried an hour later in keeping with Muslim burial customs.

13. **Hassan Ali** told KNCHR that he witnessed the arrest and beating of Hassan. On the fateful evening, he went to the mosque for evening prayers at 6:30 pm with Hassan. While leaving the mosque, Hassan opted to get mobile phone airtime at a shop opposite their home. Mohamed sat at the gate waiting for his cousin to get airtime. While seated a Toyota double cabin Pick-up full of KPRs driven by one Hassan Jabat pulled over. The said driver was shouting that his car had been damaged and he would spare no one. The KPRs alighted and seemed to take positions on the road. His cousin who was coming from the shop was arrested and being beaten by the KPRs. He was screaming for help and he called his mother on phone. He heard Hassan ask Jabat to speak to his mother on phone but he (Jabat) refused. Hassan then called him (Mohamed) and asked him to bring his school leaving certificate and results slip. He was afraid of leaving the house and stayed in for a few minutes. After about five minutes he left the house thinking the KPR had left. Immediately he stepped out of the house he was arrested by one KPR by the name Al Jazeera. He tried to inquire the reason for his arrest but was told "*hio utajulia mbele*" (you will know later). The KPRs were assaulting Hassan outside the vehicle and he was writhing in pain. They were kicking and punching him. Mohamed was also assaulted by the KPRs. A few minutes later two military Armored Personnel Carriers arrived and the military officers joined in assaulting them. They were then bundled into the KPR vehicle and taken to the police station where they were locked up. Hassan was in deep pain by then. They were released the next day. Since it was late in the evening, Hassan was taken to the hospital the next day where he died.
14. **Adan Mahat**. His case was reported to the KNCHR by three relatives who requested that their identities being protected. He is a Kenyan aged 40 years. He is married to three wives and has three families, two in Mandera and one in Elwak. On 16th June 2015 as Adan was taking lunch in one of his homes in Mandera, three vehicles pulled up in his compound. The three were a white land-cruiser, a military jungle green land-cruiser pickup truck and a white probox. About seven men alighted and confronted Adan. They handcuffed him using two sets of handcuffs and bundled him into one of the trucks. The following day on 17th June 2015, the relatives reported the matter to Mandera police station vide OB number 15/17/6/2015. At the time of reporting, the police in Mandera denied any involvement either in the arrest or in having Adan in custody. On checking with the DCIO, the response was the same. At the ATPU Mandera office, the family members were advised to check with the Alshaabab. The family members are convinced that the Probox vehicle used in the arrest belonged to the OCS Mandera at the time. On or around the 12th August 2015, the family sought the services of Gitobu Imanyara who filed a *habeus corpus* application on their behalf. When the matter came up for hearing under a certificate of urgency, the AG requested the court to grant him seven days to conduct investigations. The request was granted. When the matter came up for hearing after the initial seven days on 25th August, the AG again requested for a further 30 days for further investigations. As at the time of talking to the family the 30 days period was yet to lapse. According to Adan Mohamed Rahid, another family member, Adan Mahat was an Alshaabab adherent who had surrendered to the Government after denouncing his loyalty to the group. According to a handwritten letter addressed to the Chairman Mandera Security Committee and dated 17th December 2012, elders from Elwak had requested the Government through the Security committee to grant Adan an amnesty since he had pledged to lead a normal life.

15. **Maulid Hassan Adan** (40 years) was prior to his arrest operating a small shop in his compound in Mandera town. On 21st April 2015 at around 9.30 pm as he was relaxing outside his house, about sixteen armed men dressed in plainclothes stormed into his compound. They told him they were from AMISOM. They blindfolded him and tied his hands behind him before beating him up with what felt like plastic tubes. They took him outside his compound and told him 'panda ndege'. The 'ndege' turned out to be a military tank. They drove in rounds and eventually took him to the military camp in Mandera. They packed the vehicles among them the tanker by the tents near the gate. Adan struggled and removed the blindfold and took in the environment. He says he knows the Mandera military camp very well since he has worked there as a waiter before. On realizing that he had removed the blindfold, the officers blindfolded him again this time tightening the blindfold. They also tied up both the hands and legs and made him lie facing down on the floor of the tank. At one point he was taken into what felt like a house. They dipped him in what felt like a drum with ice-cold water immersing him completely. When he gasped for breath they removed him and put him into what felt like a drum full of hot water. They would then continue beating him up for the next two days. As they were beating him they would ask him why and with whom had they killed John. John was a barber operating a barber shop in Metameta estate of Mandera town. According to Maulid, John was shot and killed over a year prior to the date of his arrest. The officers would also demand to know his other 'accomplices' in the Mandera-Arabiya bus attack in which 34 people including teachers were killed. The officers got more agitated when they discovered the telephone numbers of the OCS, DCIO, OCPD and County Commissioner in his phone. He explained that he was a member of the Nyumba Kumi committee and used to communicate with these officers whenever need arose. On 22nd April 2015 at around 10:00pm, the officers drove him to Soko ya mbuzi area of Mandera town where they put him in what turned out to be the OCS's Probox vehicle. The OCS who was driving told him that he was lucky to return home alive. Like the military officers, he also warned him not disclose his ordeal to anyone. Upon his release, Maulid could not stand on his own feet. His family took him to the Mandera County Hospital where he was admitted for three days. Since his ordeal, Maulid walks with difficulty and has torture marks in his hands, the back and the bottom. He has not reported the matter to the authorities for fear of reprisals. According to Mr. Hussein Olpale, a neighbor to Maulid and who was seated outside Maulid's home on the night of his arrest, the arresting officers came in two tanks, two military Land Cruiser Pickup trucks and a white Probox believed to be owned by the OCS.
16. **Abdinassir Ahmed** (30 years) was arrested on 20th May 2015 at around 3.00 pm from the Maka Bus Service yard in Mandera town. At the time of his arrest, Abdinassir used to work as a tout with the Maka buses. According to his father, Mr. Ahmed Mohamed, a teacher in Mandera County, Abdinassir was arrested by four men in a white Land Rover which appeared quite new. Mr. Ahmed had gone to visit a sick friend who was admitted at the Blue Light Hospital which is directly opposite to the Maka bus yard. At around 3.00pm, he heard noise coming from the Maka Bus yard direction and went to the hospital ward's window to check. The ward is on the second floor of the hospitals building and gave him a good view of the happenings in the bus yard. He told KNCHR that he saw his

son Abdinassir being dragged to a waiting Land Rover by four men. A group of young men mostly people who worked with Abdinassir were confronting the arresting officers and hanging on the Land Rover in an attempt to stop it from moving. One of the officers shot in the air and the people scampered for safety. Abdinassir's friends immediately boarded a Probox and pursued the Land Rover. They were later to tell Mr. Ahmed that they had followed the Land Rover up to the Mandera military camp gate beyond which they could not go. About thirty minutes later Mr. Ahmed left the scene towards his home. On his way he saw military men coming in two Land Cruisers and a tank. They descended on the people who had gathered on the scene beating them up and forcing them to scamper. A week after the arrest Mr. Mohamed approached the law firm of Omwonyo, Momanyi and Gechuki who filed a *habeus corpus* application in Nairobi. The County Commander has since been summoned to court and admitted that Abdinassir is in the custody of an independent arm of the police which was not under his command. Mr. Ahmed further told KNCHR that he continues to receive information from people he did not wish to name to the effect that his son was alive and well. He says that his son has been moved from one military camp to another and in various police stations and that he was in the company of six other people also suspected to be members of the Alshaabab.

17. **Hassan Ahmed** (43 years) is an administrator at the Mandera Islamic centre in Mandera town. At around 5.00pm on 17th April 2015, Hassan Ahmed entered a shop in Mandera Town's 'Forex' area to buy water. Six men entered the shop after him and started handcuffing him. On his insistence one showed him an ID from a distance confirming that they were police officers. They moved him to a waiting Hilux D4D double cab pickup truck registration KBP 083P. In the vehicle were a number of guns in a basket. As he was led to the military camp in Mandera he noticed there were two other vehicles one in front and another behind them. The one in front was a white 3-door Land Cruiser Station Wagon registration number KBU 261P while behind was a white Probox registration number KBZ 910R. Both the vehicles were heavily tinted. At the military camp the arresting officers asked Hassan whether he knew where he was and he answered to the affirmative. They then blindfolded him using a soft cloth which severely hurt his eyes. Upon complaining they removed the blindfold. They asked him about Wajir and why he had left Wajir. He explained that it was about finding greener pastures in that he still continued working as a teacher. They asked whether he was a member of the Al Shabab and if he had ever visited Somali or Ethiopia to which he replied to the negative. As evening prayers approached he asked to be allowed to pray. He was told to go pray at the Mosque in the military camp but declined saying that he was a prisoner. He his prayed outside a double cabin packed outside the officers' mess. After the prayers he went back to the vehicle. At around 8.00pm he was driven outside the camp in a convoy of four vehicles. At an open field along the Mandera – Rhamu road the officers stopped and alighted. He counted about eight men talking in low tones outside the parked vehicles. He overheard one of the men say "jamani kuna curfew, si tufanye kazi ama turudi?" (The curfew is still on, let us finish our business or we go back). He understood this to mean they had brought him here to kill him. One of the men came to him in the car and asked how he felt and whether he was scared. He responded that he was least concerned. He overheard the men say they take him back to the camp and put him on a plane to Nairobi the following day. After sometime they drove back to the camp, packed the vehicles on

the same spot and proceeded to eat at the mess. After eating they came and moved him to the 3-door Land Cruiser station wagon. Heavily armed men, about five of them, joined and they drove towards town. Hassan recollects that there were military tanks all over town. On reaching town they told him to alight and go home. He declined telling them to take him back to the camp because it was safer there or else they take him to his other home near the County Hospital. They took him near the hospital and left. They advised him to 'forget that the arrest ever took place for his own life's sake'. Hassan also informed KNCHR that his colleague Sheikh Ahmed Hassan was arrested on the same day. With the help of Mandera's political leadership they were able to establish that Sheikh Ahmed was with the ATPU. After holding him for a month or so, Sheikh Ahmed was charged in Nairobi and has since been cleared.

18. **Omar Yussuf Maalim** (32 years) was arrested on 26th April 2015 from a shop in Mandera town by men who identified themselves as CID officers. An eyewitness later identified them as Propeller and Juma. The witness was later threatened by the men and he had to go in hiding for some time. Maalim's family filed a *habeas corpus* application in court. The OCS Mandera swore an affidavit in court denying knowledge of anyone who had disappeared from his area. The court ordered the military to also give their position on the matter. The family has been intimidated after pursuing the matter and are since reluctant to pursue the matter further. He is still missing.

19. **Musa Daud Hassan-23yrs,**
20. **Maslah Daud Hasssan-16yrs,**
21. **Shukri Abdi Salat-17yrs and**
22. **Abubakar Salim Kitonga**

The four are co-accused in a criminal charge of committing a terrorist act C/S 4(2) of the Prevention of Terrorism Act. Musa, Maslah and Shukri were arrested by Kenya Police Reservists (KPRs) in Qabarqule in Mandera in relation to a terrorist attack that happened at Koromey Quarry 2/12/2014. They were handed over to the Mandera police, then taken to Wajir before being flown to Nairobi to the ATPU. They state that they are herders and their cattle have since been stolen. Maslah and Shukri were allegedly tortured by the police using batons and gun butts while at Mandera Police station. They are currently at Kamiti maximum prison.

23. **Philip Ochieng Omondi** was arrested in Mandera on 6th February 2015 and taken to Mandera Police Station by officers from the ATPU. He alleges that while in the hands of Mandera Police, he was physically and psychologically tortured and treated in inhuman, degrading treatment or punishment. He stated that in a bid to make him confess to the alleged crimes, the Police tortured him with pliers on his private parts occasioning him serious injuries. He was not accorded medical attention and was charged with throwing a grenade at Yahya Hotel in Mandera and being member of the Al Shaabab. He is currently at Kamiti maximum prison.

24. **Ahmed Mohammed Abdullahi**, was arrested while travelling in a bus from Mandera to Nairobi together with another suspect. He was charged with being in possession of

explosives with the intention of carrying out terrorist activities in Criminal Case 611 of 2015. He alleged that he was blindfolded and taken to Nairobi by the ATPU where he was repeatedly tortured in a bid to make him confess to the offence. He explains that his private parts were pulled towards his back and his testicles pressed using pliers while also being subjected to electric shocks. At some point, the ATPU officers wrapped his body with explosives and threatened to kill him. He lost six teeth as a result of the torture. He further alleged that the ATPU confiscated the money he had with him (Ksh. 7000) together with his National ID card, driving license and phone. He is currently at Kamiti maximum prison.

25. **Hassan Adan Hassan** was arrested in Mandera on 2nd April 2015, his shop vandalized and his property confiscated. He was then brought to Nairobi and repeatedly tortured by the ATPU who also denied him contact with family members. He is still unwell due to the injuries sustained during his interrogation and is currently remanded at Kamiti maximum prison.
26. **Noor Abdi Diis** (35 years) was reportedly arrested by KDF officers on 15th May 2015 at Omar Jillo Location in Mandera. His decomposed body was later discovered in a thicket on 21st May 2015 with five bullet wounds at the back of the head. He was buried on the same day
27. **Feisal Mohamed Ibrahim** (23 years) was reportedly arrested on 22nd April 2015 by unknown men in Mandera town travelling in four cars; armored military vehicle, lorry, a probbox and a land cruiser. He is still missing.
28. **Said Hassan** was arrested on 5th April 2015 from his shop in Mandera town by police officers who booked him at Mandera police station. He was then transferred to the Mandera military Base and thereafter flown to Nairobi for further interrogation. On 11th May 2015 he was released at dropped at Eastleigh estate.
29. **Hassan Dimbil Issack** was arrested on 8th July 2015 from his house in Mandera with another person Yussuf Issack. His body was found half buried in Omar Jillow location. Police took the body to the hospital where the family identified and subsequently buried him.
30. **Ibrahim Sheikh** (27 years) was reportedly arrested on 22nd April 2015 by KDF in Bula Jogoo location, Mandera town. He has since gone missing.
31. **Mohamed Mahmoud Musa** (23 years) was reportedly arrested on 9th March 2015 by KDF in Suqa Saraf location, Mandera town. He has since gone missing.
32. **Bashir Jabane** (55 years) was reportedly arrested on 18th June 2015 by KDF in Mandera town. He has since gone missing.

Interview with a senior security officer on condition of anonymity

The officer decried the poor working relationship between security agencies and the local community which has affected the war against terror. The Nyumba Kumi concept according to him, had totally failed to kick off in Mandera. Concerning the missing persons, he stated that he was not aware of any missing persons and that all suspects are presented to court if there is sufficient evidence. However, all suspects arrested but lacking enough evidence to sustain charge are released from custody. He informed KNCHR that there are two *habeas corpus* applications in courts regarding missing persons. He admitted the presence of several security units whose command structure remains a top secret. Some of the officers are sent from Nairobi with specific missions and once that is achieved they return to their locations leaving the officers on the ground to take the blame. He mentioned some officers who arrive and hire cars mostly Probox and conduct covert missions without the knowledge and authority of the local police including the County Commander. On the same note he stated that the military actually conducted most of the heinous acts but their role in counter terrorism remained a mystery even to the police. He explained that the military are secretive and operate within their own command structures which are impossible to penetrate. This makes it difficult to hold the military accountable for their actions.

Interview with the Acting County Police Commander, Senior Superintendent of Police Wafula.

The officer had been at the station barely four months. The officer stated that he was not aware of any disappearances and indicated that all questions relating to the work of the police would better be answered by the County Commander upon his return to the station in mid June 2015. Despite persistent efforts to get information from the officer, he remained obstinate that he was new to the station and the County Commander would be the best person to respond to the questions.

Interview with the Mandera East Deputy County Commissioner (Acting County Commissioner) Mr. Elvis Koris.

In the same fashion as the Acting County Police Commander, the officer was very reticent in providing information to KNCHR. He explained that he had been on leave but at the moment was the acting county commissioner. He stated that he was not aware of any reported missing persons and had not heard of it from the media. However, he noted that such incidences were normally reported to the police and his office would only rely on briefs from the police. Upon inquiry if he had received such concerns during the Sub County Security and Intelligence Committee meeting, he remained adamant that no such reports had reached his office.

Interview with Mandera County Referral Hospital Manager.

He confirmed that the hospital had received two male adults with a history of torture allegedly in the hands of security agents. He informed the team that one had actually been taken away by his family and did not know his whereabouts. The other one had died at the hospital and buried the same day. KNCHR requested for medical records of the two

persons. He called in the nurse-in-charge to avail the medical records who agreed to avail the same the next day. However, KNCHR could not immediately obtain the records since the nurse had travelled with a patient who required emergency medical attention to Nairobi.

Interview with the Mandera Peace and Development Elders Chairperson Chief (Rtd) Mohamed Ibrahim.

The retired chief highlighted their efforts to bring sustainable peace in the county particularly working with their counterparts across Somalia and Ethiopia. He noted that the actions of the security agents particularly enforced disappearances eroded the gains made by the elders. The elder recalled an incidence where a Marka bus conductor was arrested by the military officers at the bus park opposite Equity Bank in broad daylight and has not been found to date. He further noted that many young men had disappeared in the hands of security agents particularly the military and the trend was worrying. He expressed concern that the manner in which the security agencies were conducting the operation was taking the wrong turn which was counterproductive in the fight against terror. He stated that most of the arrests by the military are not pursued by the immediate relatives because the military camp is not open to civilians. Further the officers at the camp are not answerable to the local security apparatus which makes it impossible to hold them accountable. He regretted that the peace elders have been working hard to sensitize the local communities on the need to have a better working relationship with the police yet the military were rolling back the gains.

GARISSA

33. **Abdirahman Ahmed Dakane** a Kenyan national of Somali origin who is approximately 30 years old and who resides in Garissa, Kenya, was arrested on Saturday, 22nd August 2015 reportedly by plainclothes police officers, attached to the ATPU. His disappearance was reported to KNCHR by Advocates for Human Rights, an organization based in Minnesota, USA. Mr. Ahmed Dakane works as a teacher at a school in Garissa called Dugsi. Dakane was reportedly at the School at the time of his arrest on Saturday and that teachers and students witnessed his arrest. The men who arrested him arrived in a car, were dressed in plain clothes, and hauled him away. After the arrest on Saturday, Mr. Ahmed Dakane's relatives went to all police stations in the Garissa area but were unable to locate him. Dakane has been working with Advocates for Human Rights to seek justice for victims of disappearances in Garissa County. Earlier this year, The Advocates received several reports from the Somali diaspora in Minnesota about allegations that the ATPU was conducting enforced disappearances and extrajudicial executions of people of Somali origin living in Northern Kenya. Some of the victims of these disappearances and executions are family members of Somali diasporans living in Minnesota. Responding to requests from the diaspora, The Advocates retained pro bono counsel to gather additional information about these alleged human rights violations. Over the past several weeks, those attorneys have been interviewing Dakane via telephone about the alleged human rights violations. Dakane reported the arrest and disappearance of his elder brother Mr Mahad since April 2015. Dakane also obtained a video from a shop surveillance system

in Garissa showing several plainclothes Kenyan police officers arrest another suspect who has also gone missing since April 2015. A relative of Dakane who says she witnessed his arrest, stated that the officers told Dakane that they had been listening to his telephone calls with human rights attorneys in the United States and they knew about the shop surveillance video and about the other things he had been telling the attorneys. She said the arresting officers said he was being arrested for cooperating with the enemy outside Kenya, and that it was illegal for him to be communicating with human rights lawyers in the United States. The police also demanded that Dakane hands over the video to them. Before his arrest, Mr. Dakane also told a member of the Somali diaspora in Minnesota that government officials had been looking for the video. The relative added that the arresting persons beat him before placing him in the car and taking him away.

34. **Ahmed Farah.** The case was reported to KNCHR by his wife Fardowsa Bashir. She informed KNCHR team that sometime in July 2014 at around 9:00 pm, she was with her husband who had just returned from the mosque for the 8:00 pm prayers. They heard a commotion outside and then a man dressed in jungle (military) uniform entered their house. He was followed by another person dressed in the same manner. They lifted her husband by the shoulder and took him outside in a car with his two other neighbours and taken away. The two neighbours were being beaten by the security officers. She could not see the car registration numbers because the officers broke the security lights bulbs before they started the operation. Ahmed is still missing.
35. **Mr. Ali Kheyre** (40 years) a Sheikh and a Duqsi teacher in Garissa, was in the company of his friend Omar Mahat when he was arrested on 25th December 2014. The two were headed to a shop near Garissa post office to buy water. A few meters to the shop, two men in plain clothes violently separated them and handcuffed Mohamed. On insisting that the two identify themselves, they drew guns and threatened to shoot Mahat in the mouth if he continued talking. Mahat then proceeded to the shop and bought airtime and started mobilizing friends and relatives in an attempt to track his friend's movements with the arresting officers. The police denied having arrested Mohamed when Mahat and family members went to the Garissa police station shortly after the arrest. On Saturday 27th December Kheyre's family received information from one of them who was operating a utensils kiosk in Garissa town market to the effect that Mohamend Ali's body had been found in Embu. The family immediately left for Embu where they identified and took the body for burial in Garissa. According to the family, a Somali taxi operator in Embu helped track the family on finding a Duqsi receipt on the pocket of the late Mohamed. The body had bruises on the upper back indicative of electric torture before death. His hands were still tied from the back with a new sisal rope. His neck was also tied with a rope.
36. **Hamza Mohamed Bare.** The case was reported to KNCHR by his brother Ibrahim Mohamed Bare. He told KNCHR that his brother Hamza was arrested and taken away by men in plain clothes from his M-Pesa shop in Garissa town on 8th February 2015. He went to the scene after being called by his other brother Mukhtar Mohamed Bare. He found his brother being led to a dark green car (Toyota land cruiser registration number KCA 260 P) parked at a nearby petrol station with his hands tied together from the back. He approached the men and asked them why they were handling his brother in such a

brutal manner and the offence he had committed. They told him to mind his business. When he pressed them further, one of the men removed a pistol and threatened to shoot him in the mouth. Hamza's shop has a CCTV camera which captured the incident. The family has since made several fruitless attempts to trace Hamza. At some point Ibrahim called and traced the location of Hamza's phone to the CID headquarters in Nairobi. He travelled there and informed the police that his brother's phone was ringing from that location. He was detained for two hours and warned not to go there again. Some local leaders who have been following up the issue told the family that the military told them Hamza was not cooperating with them and they are undertaking further investigations. He is still missing.

37. **Abubakar Abdi Ismael** was arrested in Madogo area of Garissa town on 4th September 2015 by plainclothes officers believed to be from the ATPU in Garissa. He is still missing.
38. **Sheikh Mahat** was arrested in April 2015 from his house in Garissa Ndogo area of Garissa town by officers suspected to be from the ATPU in Garissa. He has since gone missing.
39. **Haretho Mahat** is the wife to Sheikh Mahat. She was picked by officers suspected to be from the ATPU based in Garissa from her house in Garissa Ndogo area of Garissa town. At the time of her arrest, Haretho was breastfeeding and the baby is since then being taken care of by relatives after she went missing.
40. **Hussein Ibrahim Adon** was picked from his home in Garissa Ndogo area of Garissa town in 2015 by officers believed to be from the ATPU Garissa. His body was found dumped in the outskirts of the town a week later. The body had wounds indicating prolonged torture and rope bruises pointing to having being tied up before being killed.
41. **Abdiraham Abdi Dagane** was picked from his house in ADC area of Garissa town in 2010 by people believed to be police officers. He is still missing.
42. **Imran Abdi Hassan** was picked from his home in Bulla Adan in Garissa town in 2015. The arresting officers are believed to have been ATPU officers, military officers and a local informer. He was released days after his arrest. He was severely tortured during his arrest.
43. **Abdifadhin Soyana** was reportedly arrested from a commuter bus at the Garissa Tana River police barrier. Police have since denied arresting him or any knowledge regarding his whereabouts. He is still missing.
44. **Hassan Abdullahi Adan** was shot and injured by KDF officers in Garissa town sometimes in April 2015. According to Hassan, a brother to Hassan Abdullahi, Abdullahi was walking along Maalim Aden Street in Garissa town when a shooting by KDF officers ensued. In its wake KDF officers had killed two people from a restaurant. Hassan Abdullahi was a bystander and was hit by a bullet as KDF killed two people in the targeted restaurant. But to the family's surprise, the KDF officers took Hassan Abdullahi with them. He was injured and bleeding. He has not been seen since then.

45. **Khalif Abdullhai Madone** was picked from his house in Garissa Ndogo estate, Garissa town. According to sources, he was picked by plainclothes officers believed to be from the KDF. He was released two months later. He said he was not beaten but was put in a refrigerated room for long. He appeared seriously traumatized and was unwilling to talk to KNCHR.
46. **Omar Hared** was picked from his house in Garissa town by officers believed to be from ATPU. He was released five months later, a day after Garissa residents conducted demonstrations against his arrest among others.
47. **Hussein Mustafa** a refugee at Hagdera Camp in Garissa was arrested by the police in October 2013 and later brought to Nairobi where on 4/11/2013 he was charged together with three others with aiding/supporting terrorists in the Westgate Mall terror attack. He alleges that he was subjected to torture by the ATPU including denial of food and deny of his right to freedom of worship. He is currently at Kamiti maximum prison.
48. **Abdirizack Mukhtar Edow** a business man in Narok, was arrested in Narok after presenting himself to the Administration Police on 02/06/2014 in Masai Mara upon being notified that he was being sought by the police. He is charged with giving support for commission of a terrorist act. He told KNCHR that two persons who were using his Toyota Probox vehicle in Mandera, Hussein Hassan (Sheikh Blacky) and Hassan Mohammed were removed from the car and shot by KPR officers. Edow says that he was viciously tortured by the ATPU in Nairobi during interrogation including being subjected to electric shocks. He is currently at Kamiti maximum prison.
49. **Omar Athman Muchiri and**
50. **Stephen Macharia**

The two were arrested in Dandora and charged with assault causing grievous harm in Criminal Case No. 1464 of 2011. The two individuals complained of torture and harassment by the police who had threatened them that they would not survive once they are set free. Their family members have allegedly been intimidated and cannot visit them or attend to their matters as they fear that they too may be arrested and later disappear. They are currently at Kamiti maximum prison.

51. **Liban Abdulle Omar**, a refugee in Kakuma camp was arrested on 7/10/2013 in Nairobi's Eastleigh estate at his shop. The ATPU police allegedly informed him to accompany them and would return later. The ATPU subjected him to repeated torture including beatings and strangling till he lost consciousness. He was later charged with harboring terrorists and planning the Westgate Terror attack in Criminal case 1750 / 2013. He is currently at Kamiti maximum prison.
52. **Abdullahi Ibrahim Ali** was arrested with another suspect Isaack Hassan for being in Kenya illegally although he says he has a Kenyan ID 29366460. He alleges that he was repeatedly tortured by the ATPU through electric shocks and beatings. He complained to

KNCHR that he suffers lack of sleep due to the torture requires treatment which has not been facilitated by the prison authorities. He is currently at Kamiti maximum prison.

53. **Omar Abdi Ali** was arrested while still a minor in 2012 on terrorism related charges and has never managed to get an ID. He stated that his teeth have been weakened after torture by the police and also alleges that he has developed stomach ulcers. He is currently at Kamiti maximum prison.
54. **Mr. Muktar Isaack Shide** (deceased) hailed from Iret Keli vilage, Hulugho, Garissa. He was reportedly shot and killed on 24th July 2015 by KDF officers who found him herding his animals in the forest in Hulugho area.
55. **Abdullahi Maalim** (deceased was) reportedly shot and killed on 24th July 2015 by KDF officers who found found him herding his cattle in the Boni forest.
56. **Mr. Siyaad Hussein Doyo** (deceased) from Garabe location, Hulugho region of Garissa County was reportedly shot and killed in 2012 by KDF officers in Sinai village of Hulugho region as he walked home.
57. **Mr. Abdi Adan Kabashir** from Danyere area of Garissa County was reportedly shot and killed in 2014 by KWS officers who found him herding his animals in Rahole game reserve in Garissa County. Abdi was shot and killed in the encounter
58. **Adan Bille Sheikh Abdi** from Danyere village of Garissa county was picked by people suspected to be KWS rangers in 2013 from his hotel room in Maua. He is missing since then.
59. **Bakal Bundid** from Danyere village in Garissa County fell into river Tana while running from KWS rangers in 2014. His body was never found.
60. **Gedi Issack Ibrahim** from Danyere area of Garissa County was reportedly shot and killed by KWS officers while he was herding his herd in Rahole village.
61. **Ismael Abdulahi Abdi** from Danyere villege in Garissa County was shot and killed by KWS rangers in Rahole game park while herding his animals.
62. **Abdiwahab Yanohila** from Danyere village in Garissa County was shot and killed by KWS rangers in Rahole Game Park while herding his animals.
63. **Omar Sheikh Hussein** from Danyere village in Garissa County was shot and killed by KWS rangers while herding his livestock in Rahole game reserve.
64. **Guhad Bille Daar** from Balambala Village of Garissa County was shot and killed KWS officers while herding his livestock.

65. **Dabor Gamadid** from Balambala Village of Garissa County was shot and killed KWS officers while herding his livestock.
66. **Tawane Muhumed** from Balambala Village of Garissa County was shot and killed KWS officers while herding his livestock

MOMBASA

67. **Hassan Mohamed** (25 years). The case was reported by the mother who alleged that her son Hassan Mohamed went missing on the morning of 1st August 2015. Hassan left his house headed for his electrical work at Bamburi, as it was routine, but apparently never made it to work or back home. Efforts to contact Hassan by the Petitioner were futile as his phones were unavailable. The Petitioner reported the case at Nyali Police under OB NO. 48/4/8/2015 after an unsuccessful three day search for Hassan in all other police stations within Mombasa County. Hassan's close ally, one Omar Awadh Omar, was also allegedly picked up the same day by persons believed to be police officers and his whereabouts are also unknown. He is still missing.
68. **Awadh Omar Awadh** (24 years) The case was reported by the father who reported that his son Awadh Omar was arrested by persons believed to be police officers on the 1st August 2015, while working in Majengo. The arrest was witnessed by Omar's colleague who was warned by the said arresting officers not to interfere. The Petitioner immediately reported the case at Makupa police station vide OB NO. 53/1/8/2015 and thereafter proceeded to search for his son at other police stations within Mombasa County, including the police headquarter, but to no avail. To date the petitioner has not received any update from the police yet whereabouts of his son still remain unknown.
69. **Abeid Swaleh** (19 years). The case was reported to KNCHR by his brother. He stated that on 4th July 2015 at around 5:45 pm his neighbor came to their home and informed them that his brother, Abeid Swaleh, had been arrested at Guraya by persons believed to be police officers. The petitioner immediately called his brother, Abeid, but there was no response from his phone. The petitioner subsequently rushed to the alleged scene of arrest where eye witnesses confirmed that Abeid had been arrested by gun-wielding men who the suspected to be police officers. Abeid was reportedly on his way to sell fish together with his friend, one alias 'Biggy' when they were arrested handcuffed and whisked away in a white Land Cruiser, which is commonly used by the Anti-Terror Police Unit. The Petitioner reported that efforts to trace his brother in all police stations within Mombasa County were unsuccessful. A report was thereafter lodged at Makupa police station vide OB NO. 65/4/7/2015. Later that day, the Petitioner mentioned that Biggy, who had been arrested together with his brother, came back home and alleged to have been abandoned somewhere in a thicket in Nyali. Abeid is still missing.
70. **Yusuf Madi Ali** (40 years) a resident of Likoni Constituency, Mombasa disappeared on 4th April 2015 at dawn when he had gone for the morning prayers at the mosque before proceeding to work in a madrasa in Sparki where he is a teacher. The petitioner (his wife) stated that the husband maintains this routine. She added that the husband always goes

home by 8:00pm apart from Saturday. Mrs. Ali stated that she got concerned and decided to call him but he was unavailable. At 9:00 pm, the petitioner called his family that resided in Kisauni who told her that Yusuf Madi Ali had not visited them the previous day. The petitioner added that since it was late, the uncle stated that they would help her follow up the issue the next day. The next morning, the petitioner stated that she together with the husband's family went to the Madrasa and upon enquiring from the neighbourhood, they were informed that Yusuf was arrested by people in a black car, handcuffed and taken away as he was leaving the previous evening (4th April 2015). They reported the matter at Changamwe police station vide OB 45/5/4/2015 and no action has been reported to date. Yusuf is still missing.

71. **Athman Ali Omar** (32 years). The Petitioner Muna Ali Omar (his wife) alleges that her husband, Athman Ali Omar, ID No. 11641849, a mechanic by profession and residing in Malindi, disappeared on the 7th April 2015 at Kwa Hola area in Changamwe. She stated that her husband left the house at 5:45am after the morning prayers in the company of his friend, alias Doctor, whom he was to help purchase spare parts for his vehicle. Before purchasing the spare parts, they were to pick a friend from the Moi International Airport. She narrated that on the same day, she called her husband severally from 10.00am to 4.00pm in the evening but there was no reply, and the phone went off after 4.00pm. At around 6:30pm the same day, Doctor came back with news that they had been arrested. Upon further enquiry, she was informed that her husband together with his two friends had been ambushed and arrested en-route from Kwa Hola by persons believed to be security agents. Upon arrest, they were handcuffed, masked with sacks over their heads and bundled in different vehicles. Thereafter, the suspects were abandoned in an unknown location and instructed to kneel down and open their eyes after 20 minutes. After the 20 minutes, the victims opened their eyes and realized that Athman Ali Omar was missing. The two walked for some time before reaching the main road where they enquired from a Matatu and were informed that they were in Kibaoni. They boarded the matatu to Total Petrol Station, where they had been instructed to pick their car. On arrival at Total Petrol Station, they were informed that the car was towed to Changamwe Police station by their boss. At this point, due to trauma, none of them was willing to go to the police station so Doctor called the owner of the vehicle and told him what had happened. The owner of the vehicle called his brother-in-law who went to collect the vehicle from Changamwe police station and also reported the incident. The petitioner went to report the disappearance of her husband to the police on the same day but the police advised her to record the statement after seven days when she was sure that the husband was missing. On the 8th day, the petitioner went to record her statement in the company of her relatives vide OB 8/4/60/2015 at Changamwe police station. The petitioner also said that she together with her relatives have looked for Athman Ali in several police stations and mortuaries in the Coast region to no avail. She also noted that to date, the police have not given her any feedback on her case.

72. **Fahad Hemed Thuei** (25 years) and

73. **Faiza Abdulaziz** (27 years) who are distant cousins were last seen on 20th May 2015. They both lived in Majengo estate in Mvita constituency. Relatives reported the disappearance to Makupa police station on 29th May 2015 Vide OB number 35/29/5/2015. The family

members reported that they have searched for the two in all police stations in Mombasa as well as in Witu and Lamu in vain. The family members claimed that a friend to Fahad had informed him that he would go to Mpeketoni to collect his certificate from school. This was before Fahad was discovered to be missing. The family members also stated that they were informed that the car (Toyota Fielder) that Fahad and Faiza had hired was hijacked at Witu. They claim that the same car was tagged to former Imam Khalid who was charged with terror offences in June, 2015.

74. **Anthony Mainga Mutete.** On 6th May 2015, KNCHR received a complaint from Mainga's friend (the petitioner). The petitioner alleged that his colleague, Anthony Mainga Mutete (now deceased) was arrested by the police at Nyali Bridge and his body was later found dumped under the Nyali Bridge. He said that he proceeded to Makadara Hospital to view the body of the deceased and noticed that he had been shot severally on his chest. He also informed KNCHR that his friend (Abdallah) told him that there were two other passengers in the vehicle that the deceased was arrested in and that the two also turned up dead. The petitioner surrendered pictures that showed the deceased being arrested. KNCHR further contacted Vicky Anne Mutete (sister to the deceased) who stated that she had communicated to the deceased on Friday 9th May 2015 and he informed her that he would be coming to Mombasa from Nairobi on the following day. She said that the next and last communication with the deceased was on 10th May 2015 when he said that they will meet in Nairobi the following week. Thereafter, efforts to communicate with the deceased were fruitless and she decided to contact relatives and friends. She later learnt that her brother had been arrested by the police on 12th May 2015 at Nyali Bridge and his corpse found dumped under the bridge on the same day. When she went together with other relatives at the morgue in Makadara Hospital, they were met with hostility from the guards. However, a mortuary attendant informed her that the brother together with two other persons who had bullet wounds on their bodies had been brought to the morgue on the previous night. After several hours of persistence, the deceased family was allowed in the morgue to view and identify Anthony's body. They were then asked to report back on 18th May 2015 when the post mortem would be conducted. Since she was making preparations for the burial of the deceased, she requested the cousin, Elizabeth Mathee to be present during the post mortem. Vicky stated that the identities of the two other persons who were killed together with his brother are still unknown. Elizabeth Mathee (the deceased cousin) informed KNCHR that she witnessed the post mortem and she saw three bullets being removed from his chest. She said it appears that the deceased was shot from the front considering the manner in which the bullets were lodged. Elizabeth told KNCHR that efforts by the family to obtain the post mortem report have been unsuccessful.

75. **Farah Abdi Farah and Ahmed Islam.** The case was reported to KNCHR by Abdi Farah (petitioner and father to Farah Abdi). He stated that on 3rd July 2015 at around 5:40 pm, he was informed by a neighbor that his son Farah Abdi Farah (21 years) had been arrested by police officers at the fire station which is near the municipal yard in Mvita constituency. Farah Abdi Farah was with his friend Ahmed Islam standing along the road. The petitioner stated that he rushed to the scene and was informed by eyewitnesses that the police had already left with both Farah Abdi Farah and Ahmed Islam in a Toyota land

cruiser of registration number KBR 524T . Thereafter, the petitioner together with his relatives started searching for both Farah Abdi Farah and Ahmed Islam. They went to all police stations in Mombasa County without success. The petitioner further alleged that on 4th July 2015, he reported the matter to the Council of Imams who contacted the County Commissioner of Mombasa. The County Commissioner assured them that both Farah Abdi Farah and Ahmed Islam were alive and in case of anything, the Council of Imam will be contacted. On the same day at around 2:00pm, the petitioner alleged that a young man by the name Bashir was arrested by the same police officers who arrested Farah Abdi Farah and Ahmed Islam at the same spot with the same car registration number KBR 524T. However Bashir was released after two hours after intervention of some influential relatives and friends. The petitioner also informed KNCHR that sometime back in the 2013, Farah Abdi Farah was arrested together with some of his friends at Hindi while they were on their way to Lamu. They were all taken to Kiunga Police Station and later charged of being in possession of an article in support of terrorism under section 30 of the Prevention of Terrorism Act of 2012. The police also accused Farah and other accused persons of wanting to join Al-Shabab. They were released on bond and the case pending in Court in Lamu and the next hearing is on 8th August 2015. The two were still missing at the time of compiling this report.

76. **Swale Shebe Auni** told KNCHR that he was arrested on 23rd July 2014 by KDF officers in the aftermath of the Mpeketoni terror attack. He complained that during the period for which he was detained, he was repeatedly brutally beaten by the security forces in a bid to confess that he was a terrorist. At some point he was taken to an anthill in the forest where he was subjected to attacks by ants as the KDF officers watched. His testicles were repeatedly pulled and pressed by the KDF soldiers. Swale alleges that all these acts were done to him so that he would say that he had played a role in the Mpeketoni attacks. He was released on bond on 18th December 2014.
77. **Ali Mugo** a village elder was arrested on 31st July 2014, together with other people in Witu and were taken to Mpeketoni police station. While on transit to Mpeketoni, he reported that they were badly beaten by the security officers. He states that he was severally kicked and hit by the butt of a gun on his chest. The operation was a joint operation involving KDF, regular police, GSU, RDU and RPBU. He said he knew some were KDF because of the jungle green uniforms that they wore. On reaching Mpeketoni, he stated that the 31 suspects that had been arrested together with him were forced to sleep on top of each other while facing downwards. They lay in six rows and about five columns on the floor after which KDF officers then stepped on them while hitting their heads and kicking their private parts. They were then forced into a cell where they met other 10 people who had been arrested earlier. The 41 suspects were crammed in a tiny cell as a result of which they had to remain standing for two days in order to fit. They were not allowed to go outside to the toilet and were instead given two buckets to relieve themselves. Due to the huge number of the detainees, the buckets would quickly get filled with human waste and spill in the floor. After three days he was arraigned in court and charged with three counts: (i) Murder of 95 people in Hindi, Mpeketoni and Gamba, (ii) Forcefully evicting people from Hindi, Mpeketoni and Gamba; and (iii) Destruction of public property. He pleaded not guilty and was later released after eight days for lack of evidence. While in remand, they

were not being given water to drink or bathe. The prison in Hindi was also heavily congested and the overflowing waste buckets made the conditions unbearable. Upon release, he went to Witu Health Center to seek treatment for the torture injuries. It took him about two weeks to start walking. He complained to KNCHR of persistent pain in chest and legs.

78. **Mohammed Jara Bae** was arrested on 31st July 2014 in Witu on his way to the mosque. He said that he was guided to a vehicle full of other suspects. He said that the officers demanded that the suspects move to create more space but there was no more space. As a result, he was ruthlessly beaten and pushed into the vehicle. He said that they were beaten all the way to Mpeketoni police station. Further, he said that on arrival to the police station, they were forced to sleep on top of each other while facing downwards. He added that thereafter, the officers stepped on them and ruthlessly kicked their heads and private parts. He said that an approximate number of 41 suspects were forced into a small room such that some of them had to stand on the buckets that were provided in the room for answering long and short calls. He stated that he was taken to court after five days when the prosecution asked for more time to conduct investigations. A week later, he was returned to court and thereafter released after the prosecution said they had no evidence against him. He further stated that his body hurt for several weeks as a result of the torture. He however did not go to the hospital but instead used self-medicated drugs as he owned a pharmacy.
79. **Omar Faraj Omar Mbiki** (a nurse currently working at Lamu District Hospital and previously worked at Mbwayumwali Dispensary, Witu) was arrested on 27th July 2015 when officers of the RDU raided his house at around 9:06pm. He stated that he together with his wife and children were ruthlessly beaten as the officers asked him to show them where his Al-shabaab patients were. He spent the night at Witu police station where he met with other people who had been arrested. He was then taken to Lake Kenyatta Farmers Training Center (LFTC), Mpeketoni for interrogation. He said that LFTC was the station that was being used by the CID officers. Before alighting at LFTC, He stated that his face was covered with a cloth which was not removed until after they had gone back to Mpeketoni Police Station. The security officers claimed that he was the doctor who used to look after the wounded Al-shabaab. He said he could tell from the uniform that the officers interrogating and torturing him were from KDF. Back in Mpeketoni Police Station, he was held separately in a container that had various compartments. Apart from the beatings, he said that he was severally harassed when he asked to visit the toilet. He noted that it was very difficult for him to pray in the cells due to the conditions therein. He was released after two weeks. He asked to be transferred to Lamu District Hospital due to fear of further torture in Witu. He told KNCHR that besides the physical injuries, the arrest has tarnished his image in the community.
80. **Jamal Athman Mohamed** stated that some time last year when he was repairing his motor cycle, officers from KDF ambushed him and took him to Witu police station. Before boarding the land rover pickup, he was blindfolded with a cloth and his hands were cuffed. The officers severely beat him up on his way to the police station. They did not inform

him of the reason of arrest and that for the nine days that he spent in the cells, his family had not been informed of his whereabouts. He was released without charge.

81. **Mohammed Ware Galgalo** a resident of Chomo stated that some time last year, a helicopter landed near his compound and some officers alighted, arrested him and blindfolded him with a cloth before whisking him into the helicopter. He was informed that the reason for his arrest was due to the role that he had played during the Mpeketoni Massacre. He told KNCHR that he has been farming and living with his wife and children in Hindi for a period of 13 years and that he did not play any role in the massacre. He was taken to an unknown destination where he was viciously tortured for three days while still handcuffed and blindfolded. He was given very little water in the evenings. He further stated that on several other occasions his arms were tied and water was poured over his face to give him a feeling of drowning. The officers also used a piece of cloth to strangle him and forced him to drink drops of water. His feet were burnt with hot metal bars and that his testicles were severally squeezed with pliers and his face severally cut with a razor blade. He later learnt from his relatives that he had been taken to Nairobi for interrogation. The family informed him that they had visited him in Nairobi but they were not allowed to see him. During the torture, he severally passed out and the officers resumed torturing him when he regained consciousness. He was released after twenty five days without charge. He says the officers who arrested him were KDF due to the jungle green uniform they were wearing. Due to his impecunious state, he has not been able to seek proper medical attention and as a result has resorted to traditional medicine.
82. **Faraj Abdalla Ali** a resident of Lamu told KNCHR that sometime in July, 2014 at around 6:00 pm some officers dressed in KDF uniform arrived at his place and arrested him without informing him of the reason. The officers beat him all the way to Witu police station. He remained in custody for nine days and was later informed that the reason as to why he had been arrested was because he had aided or taken part in organizing the Lamu attacks. He explained that he did not play any role in the massacre but the officers refused to hear him out. He was repeatedly beaten in an attempt to make him confess to the offence. He was given very little food and water and was made to shower in public. His family was not allowed to see him. He informed KNCHR that he was very scared for his life and that he did not want to pursue the matter to avoid any more trouble with the government.
83. **Mohammed Abdullahi Lugumba** a resident of Baragoni told KNCHR that on 29th October, 2014, when he was leaving for home from the mosque at around 7:00pm when he was stopped by persons who were dressed in civilian clothes. However the vehicle that they had was a land cruiser GK which he recognized as the one used by KDF used to patrol the area. He said that the vehicle was on full lights and as such he was unable to identify who or how many people were in the land cruiser. He also said that there were others who were not in the land cruiser since there was one who attacked him from behind and pushed him on the ground and started beating and asking him what he was doing outside during the curfew hours. He also said that most of the persons who attacked him were drunk. He was let go after the beatings and proceeded Witu Health Center to seek medication.

84. **Abdirazak Abdulrahman Said** a resident of Witu and a driver at the Lamu County Government informed KNCHR that sometime in July, 2014 he was in Lamu heading to Nairobi, State House with a delegation comprising of the County political leaders and village elders. He was driving the escort vehicle that had some of the delegates. He stated that the bus (Simba Coach) that had most of the leaders was ahead of him. While at Voi he stopped so as to allow some of the passengers, aboard the vehicle that he was driving, to buy some medication as they claimed that they were unwell. During the stop-over, the bus left them and they did not catch up again. On their way to Nairobi, near the Athi River junction, he stated that he was stopped by armed persons who blocked him with their vehicle, Mitsubishi Pajero model. The armed persons were not in uniform and did not identify themselves or their mission. The armed persons blindfolded, handcuffed them and separately drove them to Nairobi CID headquarters. They were then all flown back to Mpeketoni where all but him were released. He was informed that he was being held as a suspect in the Lamu killings. He spent twenty seven days in solitary confinement at Mpeketoni police station and released without charge. His elderly mother died while he was in detention allegedly out of depression caused by his arrest.
85. **Hassan Haji** a resident of Lamu (the then acting secretary of Lamu County) stated that sometime in July 2014, the Lamu Governor asked him to accompany a group of elders who were going to Nairobi to pay a visit to the president. When they reached Voi he requested the driver to stop so that he would get some medicine for himself as he was unwell. When they stopped, the bus carrying other delegates left them and they were unable to catch up. On their way to Nairobi near the Athi River junction they were stopped by several GK vehicles. The people who were in the vehicles jumped out and started shooting in the air while ordering them to come out and lie down to which they complied. Their faces were thereafter covered and their hands were cuffed. They were beaten for more than eight hours before they were put in different vehicles and taken to Nairobi, CID Headquarters. They were detained for two days as a result of which he became very ill since he is hypertensive and did not have his medication with him. After the two days, they were taken back to Lamu and released. He went to a private hospital in Mpeketoni due to his ailing condition (his blood pressure was very high). He complained that that for the two days that they had been held in confinement, no food was given to them. He told KNCHR that since 1977 he has been working for the government and is seriously at a loss at how he was treated.
86. **Abdul-Aziz Yussuf** (27 years) disappeared on the evening Monday 17th August 2015 and his body found in Murang'a County Hospital Mortuary where it was taken by police after it was reportedly found dumped along Maragua River together with two other bodies. The KNCHR interviewed his brother-in-law Hassan Mohamed who was with Abdul-Aziz on the day of disappearance. Abdul-Aziz was at home in Eastleigh estate with his family after the 4:00 pm Muslim prayers when a friend of his came to pick him for a routine evening walk. At around 10:00 pm Abdul-Aziz hadn't returned home which got the family worried since he always comes early. Abdul-Aziz's phone went answered and as such the family decided to go search for him in police stations. Hassan went out with his wife Fardousa Yussuf (Abdul-Aziz's Sister) and met Mohamed Yussuf (Abdul-Aziz's

brother) on the way. Mohamed called his friend a (a police officer) to assist them search for Abdul-Aziz. The police officer told them that he had seen Abdul-Aziz and two other youth being arrested earlier in the day but did not know the arresting officers. They went to Pangani Police Station but Abdul-Aziz was not in the police register, Occurrence Book (OB). They proceeded to Shauri Moyo Police station but didn't trace him and went home at around 1:00 am. The next day Tuesday they went to Nairobi ATPU headquarters, Kilimani, Buruburu, Kileleshwa police stations and still didn't find him. On Wednesday they went to Embakasi police station to no avail. On Thursday, they searched him at Nairobi City mortuary, Gigiri and Muthaiga Police Stations with no success. When they went back home they saw a news item on the Daily Nation newspaper reporting that three bodies had been found dumped at Maragua river in Murang'a and taken to Murang'a County Hospital Mortuary. They immediately rushed there and positively identified Abdul-Aziz's body which was together with two other bodies including the one of Hassan's friend who came to pick him on the day of disappearance. According to Hassan the deceased had their hands and legs tied tightly together with nylon ropes. They had what seemed like strangle wounds and bruises on the necks. Hassan had very severe knife injuries in the head and eyes. Hassan recorded details of Abdul-Aziz in the mortuary register. On Friday they went back to Murang'a Police Station and Hassan recorded a statement on the disappearance and death on Abdul-Aziz. They then proceeded to the Mortuary where an autopsy was conducted on Abdul-Aziz's body before the body was released for burial. Abdul-Aziz was buried same day at Lang'ata cemetery, Nairobi. Hassan and Mohamed then left for Mandera to condole with the extended family of Abdul-Aziz. Hassan informed KNCHR that Mohamed later received a call from a police officer warning him against returning to Nairobi.

87. **Abshir Abdow Abdilahi** (19 years) disappeared on 17th August 2015 and his body later found on 21st August 2015 at Murang'a County Hospital mortuary. Abshir who cleared his secondary school studies education last year left his home in Eastleigh estate at around 9:00am to run some personal errands in the town but did not return home. While in the process of searching for him the family learnt that some three bodies had been found dumped at Maragua River in Murang'a County and taken by the police to the Murang'a County Hospital Mortuary. He was buried at Kariokor Muslim Cemetery on 22nd August 2015. His disappearance and death was reported by his father Abdow Abdilahi
88. **Imran Said Mmaka** (29 years) disappeared in April 2015 in Malindi after he was reportedly arrested and taken away by the anti-terrorism police. He has not been seen since. His National ID number is 24788588. Matter reported by the guardian Mr Bo Van Den Sum

Other reported violations that the Commission is following up

	Name	Date of arrest/Killing/Disappearance	Age	Circumstances	Current status
1.	Hassan Suleiman Mwayuyu	5 th December 2013	60 years	The Imam was shot dead while travelling in a mini bus at Tiwi area. He was on a wanted police terror list.	Dead
2.	Hamadi Juma Boga	18 th December 2013	36 years	Was shot on the neck in the evening by assailants who were on a motor bike.	Dead
3.	Said Salim Mwasalim	25 th December 2013	60 years	The madrasa teacher was shot dead at close range by three men who were on a motor bike. He was on his way home from the mosque in Mwamanga - Ukunda	Dead
4.	Ali Mohammed Delawa	29 th January 2014		Was shot dead by the police in Malindi. The police suspected that he killed police spy Ahmed Abdalla Bakhswain.	Dead
5.	Swalehe Kombo Mvumbo	31 st January 2014	53 years	He was shot dead by unknown assailants at Bongwe village in Diani after he came from evening prayers.	Dead
6.	Omar Maarifa and Sudi Omar Mwakuona	15 th February 2014		The two were shot dead outside their house at Harmony Ukunda as they were chewing miraa	Dead
7.	Hamis salim Likongo	20 th February 2014	40 years	The carpenter was hijacked after he was handcuffed by three men armed with AK-47 at his place of work, Mombasa.	Still missing to date
8.	Asha Abdisalan Abdullahi	20 th July 2015		Tea Girl Picked from 13 th street Eastleigh, Nairobi	Still missing
9.	Yahya Abdikadir Adan	9 th July 2015		Taxi Driver, picked from 7 th Street Eastleigh, Nairobi	Still missing
10.	Abdikadir Sheikh Mohamed Dahir	9 th July 2015		Masters Student At JKUAT	Still missing
11.	Jamal Muktar Ali	10 th July 2015		Salesman, picked from Garissa Lodge, Eastleigh	Still missing

	Name	Date of arrest/Killing/Disappearance	Age	Circumstances	Current status
12.	Ibrahim Birkan Lio	10 th July 2015		Imam picked from Tasia estate Nairobi.	Still missing
13.	Abdikadir Mohamed Nobi	5 th April 2015		Not clear	Still missing
14.	Ali Hassan Mohamed	5 th April 2015	15 years	Picked from Jam Street, Eastleigh	Still missing
15.	Mahad Ahmed Dagane	5 th April 2015		Madarasa Teacher Picked from Garissa Town	Still missing
16.	Abdirahman Mohamed Dakane	22 nd August 2015		Picked from Garissa Town	Still missing
17.	Abdirahman Mohamed Barre	May 2015		Picked from Garissa Town	Still missing
18.	Mohamed Abdullahi	2 nd July 2015	35 years	Picked from Embakasi	Still missing
19.	Daud Osman Jimale	15 th May 2014		Not clear	Still missing
20.	Mohamed Abdi Sabur	27 th May 2014		Not clear	Still missing
21.	Abdifatah Othoway Adan	17 th May 2014		Not clear	Still missing
22.	Mohamed Abdi Mohamud			Not clear	Body Buried in Wajir
23.	Hassan Ahmed Ali	6 th September 2014		Not clear	Still missing
24.	Hassan Said Musa	June 2014		Not clear	Still missing
25.	Mohamed Ali Mohamed	5 th April 2015		Not clear	Still missing
26.	Omar Farah Adow	5 th April 2015		Salesman, picked from Jam Street Eastleigh, Nairobi	Still missing
27.	Ali Hassan Mohamed	5 th April 2015		Not clear	Still missing

	Name	Date of arrest/Killing/Disappearance	Age	Circumstances	Current status
28.	Abdisalan Abdikadir Adaan	29 th November 2014		University Student, Picked from Juja Road	Still missing
29.	Ali Omar Hassan	10 th May 2015		Salesman, Picked from Garissa Lodge, Nairobi	Still missing
30.	Noor Mohamed Diriye	8 th December 2014	24 Years	Student at Methodist University, picked from 12 th Street, Easleigh	Still missing
31.	Ismail Nazir Osman	8 th December 2014	23 years	University Student, Picked from Juja Rd, Nairobi	Still missing
32.	Abdiaziz Issack Mohamed	8 th December 2014		Student , Picked from Juja Rd, Nairobi	Still missing
33.	Seyid Jamac	20 th May 2015		Arrested by ATPU	Still missing
34.	Osman Shire	18 th May 2015		Was arrested by ATPU while processing bail for a relative Hassan Mahat who was being held at Kamiti Prison.	Still missing
35.	Omar Abdullahi	August 2014		He had been arrested, charged and acquitted for terrorism offences in August 2014 but arrested immediately and has since disappeared.	Still missing
36.	Abdikadir Abdi Ismail	4 th September 2015		Arrested at Madogo, Garissa	Still Missing
37.	Said Ufe			Arrested at Central Location, Mandera	Still missing
38.	Moulid Sanweyn			Arrested at Meta Meta, Mandera	Still Missing

VIOLATIONS OF THE LAW AND HUMAN RIGHTS

From the foregoing, the Commission is gravely concerned that the Kenyan security forces continue to violate the law and provisions of the bill of rights with pernicious impunity in the ongoing crackdown against terrorism.

Arbitrary arrests and violations of the rights of arrested persons:

The above conduct by the security agencies constitute grave violation of the Kenyan law and regional and international human rights principles and standards that protect people from arbitrary arrests and detention. Art. 29 of the Kenya Constitution provides that every person has the right to freedom and security of the person, which includes the right not to be *(a) deprived of freedom arbitrarily or without just cause*. Art 9(1) of International Covenant on Civil and Political Rights (ICCPR), which Kenya has ratified, provides that; *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

The security apparatus are also in severe breach of the rights of the arrested persons as enshrined in Art.49 (1) and Art.51 of the constitution. Many detainees described here-in were incarcerated beyond the 24 hour limit provided for in the Constitution without being presented to a competent judicial authority. Further they were been held incommunicado without access to means of communicating with their next of kin or legal counsel.

The Conduct of the security agencies violates Article 244 of the Constitution which requires that the National Police Service shall:

- a) Strive for the highest standards of professionalism and discipline among its members.*
- b) Prevent corruption, promote and practice transparency and accountability.*
- c) Comply with constitutional standards of human rights and fundamental freedoms.*
- d) Train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and*
- e) Foster and promote relationships with the broader society.*

Torture, Cruel, Inhuman and Degrading Punishment

The Commission has received credible allegations of torture cruel, inhuman and degrading treatment meted against majority of the terror suspects arrested by the security agencies. Torture is absolutely prohibited under Kenyan, regional and international legal and human rights regime. Art 29 of the Constitution Provides that

Every person has the right to freedom and security of the person, which includes the right not to be-

- (c) Subjected to any form of violence from either public or private sources;*
- (d) subjected to torture in any manner, whether physical or psychological;*
- (f) treated or punished in a cruel, inhuman or degrading manner.*

Kenya has ratified the UN Convention against Torture, Inhuman, Cruel and Degrading treatment or Punishment (UNCAT), The International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR) all of which equally outlaw torture in all circumstances. Art. 2.2 of UNCAT provides that-

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”

The KDF Act Article 27 provides torture, inhumane and/or degrading treatment and punishment by military officers an offence punishable to 25 years in prison.

Discrimination

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 in the coastal region. This the profiling of people along ethnic or religious lines constitute discrimination and is therefore unconstitutional and against international norms.

The constitution provided in Art. 27. That

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.*
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.*
- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.*

Article 2 (1) of ICCPR provides that;

‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’

The right to life

Numerous people have been killed or disappeared after being arrested by the security agencies without due process in complete contravention of the law.

The Constitution provides in “Art 26 that (1) Every person has the right to life... (3) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.”

The right to life is also guaranteed under various international human rights instruments, including article 3 of the UDHR which states that “everyone has the right to life, liberty and security of person”, and article 6.1 of the ICCPR which provides that “every human being

has the inherent right to life, [which] shall be protected by law and [that] no one shall be arbitrarily deprived of his life.”

The right is often described as a fundamental human right, is a rule of customary international law and has been described as *jus cogens*. Although the right is not absolute and only arbitrary deprivation of life constitutes a violation of the right, it is non-derogable and must be respected at all times. States are under an obligation to prevent arbitrary killings by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

Enforced Disappearances

Kenya has signed the International Convention for the Protection of All Persons from Enforced Disappearance which acknowledges the ‘extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity’. The Convention classifies the right not to be subjected to an enforced disappearance as non-derogable which means it cannot be restricted or suspended, even in times of war or other public emergency. Art (1) (2) states that “*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance*”

Enforced disappearances impacts negatively on the enjoyment of other fundamental human rights given that victims have already been removed from the ambit of legal protection. The families of the disappeared have narrated to the commission of immense psychological torture that they continue to suffer as they search for their disappeared kin. Most of the disappeared were the sole breadwinners in their families thus impacting heavily on socio-economic rights of their dependants. The plight of women and children is immeasurable as they continue bear the greatest brunt of the enforced disappearances.

CHALLENGES/LIMITATIONS

The Commission’s work in the ongoing investigations have been inhibited by various challenges notable among them insecurity in some of the areas which has hindered mobility and access to victims of abuses by security agencies. Another key challenge intimidation of victims and witnesses who are afraid of disclosing information for fear of reprisals by security agencies. The Commission staff especially from the Northern and Coast regional offices have also received threats due their role in monitoring violations and as such the Commission has had to evacuate the affected staff to safety. The Commission has been unable to obtain information from relevant security agencies thus preventing the commission from finalizing its investigations. This is tied to denial of access to the places of detention particularly those controlled by KDF.

RECOMMENDATIONS

In view of the foregoing findings, KNCHR makes the following recommendations to government and its agencies which we hope shall be implemented in order to redress the violations that continue to be perpetrated in the ongoing operation:

- 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.
- The Independent Policing Oversight Authority (IPOA) should investigate the foregoing abuses that touch on their mandate and take action against responsible police officers.
- The Director of Public Prosecutions should instruct 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.
- 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.
- 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.
- To Chief of KDF-
 - 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.
 - Direct that the military police conduct investigations of crimes committed by military personnel and hold those responsible to account.
 - 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 CDF should instruct his commanders to grant KNCHR unfettered access to information and facilities crucial to its investigations in line with Art.59 (d) of the Constitution.
 - Investigate the role of military commanders in Lamu, Garissa, Wajir, and Mandera where most of the abuses have been reported took 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.
- 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.

- 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.
- 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.
- The government should henceforth 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.
- 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.
- 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 agencies.