

WHAT DO WE TELL THE FAMILIES?

KILLINGS AND DISAPPEARANCES IN THE COASTAL REGION OF KENYA, 2012-2016



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Humanity | Activism | Knowledge | Integrity

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FOREWORD BY HUSSEIN KHALID, DIRECTOR, HAKI AFRICA

HAKI Africa is actively engaged with members of the Coastal communities, and regularly chronicles constituents' views and concerns about security, development and human rights.

Over the past several years, HAKI Africa's time has been increasingly monopolised by what now feels like an epidemic of extrajudicial killings and disappearances perpetrated against Coastal Muslims. We have documented the best evidenced of these cases – 81 at the last count – in this report. There were several cases reported to HAKI Africa that due to lack of sufficient evidence, were not included on the list. Nevertheless, it is reasonable to believe that some cases of unlawful killing and enforced disappearance go unreported due to families' fear of reprisals from state security forces and the stigmatising effect of it being known that a relative has been targeted by police.

Although most victims on our list are youths, there are also sheikhs, imams and preachers, some of them well over 50 years old. The common thread is that all victims are Muslims, all fall into a category of being perceived by authorities to be actual or potential terror suspects – a label increasingly nebulous and ill-defined, given that every killing and disappearance has been carried out outside of any known legal framework.

The extrajudicial killings and disappearances documented in this report must be understood as coming within a wider set of “iron fist” tactics long deployed by counterterrorism entities in Kenya. The combined effect of these tactics has resulted in many Coastal Muslims perceiving themselves to be victims of a form of collective punishment meted out by police and security agencies on behalf of the government. This has eroded trust between community members and authorities, meaning that affected communities increasingly view those whose official function is to protect them from harm, as those who are most likely to flagrantly violate their rights.

Rule of law and due process appear to have been replaced by extrajudicial shootings of suspects, religious leaders and youths. Communities now live in fear of being raided and killed or arrested by security agencies at any time. Most individuals HAKI Africa has interacted with share similar perceptions of the causes of insecurity, extremism and radicalisation. While they believe that the situation is not unsalvageable, they feel much needs to be done. Many Muslims in Kenya are increasingly caught between two fires: the violence meted out indiscriminately by the security agencies, and the threat of violence by extremist groups. While it is not an element documented within this report, there have over the past several years been an increasing number of attacks by extremists in Kenya on Muslims who they believe to be apostates.

It is my belief that effective counterterrorism practice must involve truly supporting the wider Muslim community to deal effectively with the causes of radicalisation. This cannot involve systemic mistreatment and “othering” of an entire community

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by those with power. This is, I believe, both a moral and empirical fact. The rule of law and the rights enshrined in our Constitution must extend to all Kenyans, not simply because that is the right thing to do, but also because ultimately that will help ensure true security for all.

Hussein Khalid

December 2016

EXECUTIVE SUMMARY

This report presents documentation compiled by HAKI Africa of ongoing killings and disappearances of terror suspects in the Coastal region of Kenya between 2012 and November 2016.

The organisation present strong evidence that at least 81 extrajudicial killings and enforced disappearances of Muslims have been carried out in the Coastal region of Kenya between 2012 and the present. Although there are many other cases that have been reported to us or that we have come across, it is these cases that we are able to confirm details of. This means that there are, in all likelihood, many other such killings and enforced disappearances that remain undocumented for one reason or another.

Available evidence on extrajudicial killings and disappearances on the Kenyan Coast suggests that the vast majority of likely perpetrators are officers from counterterrorism or other specialised police units. In particular, the Kenyan Anti-Terror Police Unit (ATPU), a unit that operates outside regular police command hierarchies, is implicated. However, in further contravention of its obligations under domestic, regional and international law, Kenyan authorities have to date failed to conduct adequate investigations into these killings and disappearances. This means that there is no official confirmation of the identity of the perpetrators.

These extrajudicial killings and disappearances amount to systemic violations and are being carried out in clear contravention of domestic, regional and international law.

Whilst HAKI Africa has focused its research primarily on the Coast of Kenya, other groups have documented similar cases elsewhere in Kenya, in particular Nairobi¹.

KEY FACTS

In our research and analysis we have found:

- 22 deaths as a result of excessive use of force during policing operations. These cases involve disproportionate and unnecessary use of force by police during policing operations, including arrests of terrorism suspects and the breaking up of gatherings deemed by the police to be threatening public safety. This section includes “encounter killings”, which are extrajudicial executions subsequently described by police as “shoot-outs” in an attempt to justify their excessive use of force.

¹ Kenya: Killings, Disappearances By Anti-Terror Police. *Human Rights Watch*, 2014. <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police> (accessed 25 November 2016). Deaths And Disappearances: Abuses In Counterterrorism Operations In Nairobi And In Northeastern Kenya. *Human Rights Watch*, 2016. <https://www.hrw.org/report/2016/07/19/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and> (accessed 25 November 2016).

- 4 deaths in police custody
These cases also include a disproportionate use of force by police, however these have been given their own category to emphasise the enhanced duties of the state towards prisoners in the custodial setting.
- 31 extrajudicial executions
These are cases where police or unidentified assailants reasonably believed to have been acting on behalf of the state (or where the likelihood is strongly arguable) have targeted particular individuals and carried out killings, without then staging it as an “encounter killing”.
- 24 enforced disappearances
These are cases where individuals have disappeared and were last known to have been in the custody of the police or other agents of the Kenyan state.

ACCOUNTABILITY AND THE STATE'S DUTY TO INVESTIGATE

Kenya has breached its obligations under domestic, regional and international law to investigate allegations of police killings and enforced disappearance, with its failure to adequately investigate any of these cases.

In light of the submissions in this report, Kenya must urgently clarify:

1. Exactly who has been killed and/or disappeared by Kenyan police or government agents since April 2012.
2. What was done to all of these individuals by Kenyan state personnel, where the bodies of disappeared individuals are, and what steps have been taken by the Kenyan government to conduct human rights compliant investigations into deaths and disappearances.
3. The Kenyan government must furthermore clarify whether there is or has ever been in existence a “shoot to kill” and/or political assassination counterterrorism policy - formal or informal - amongst Kenyan police and security operatives.
4. The Kenyan government must confirm that any such policies and practices will immediately cease, with all perpetrators investigated and held to account, and with apologies and reparations for the families of victims.

RESEARCH METHODS

HAKI Africa conducted primary research between September 2013 and November 2016, interviewing relatives of those killed and/or disappeared, witnesses to the killings and disappearances, government officials, and senior police officers. Further data was collected by reviewing secondary source material including reports by other credible human rights organisations, other bodies, and the media.²

2 A number of cases were investigated by MUHURI as documented in Open Society & MUHURI's "We're Tired Of Taking You To The Court": Human Rights Abuses By Kenya's Anti-Terrorism Unit. New York: *Open Society Foundations*, 2013. <https://www.opensocietyfoundations.org/sites/default/files/human-rights-abuses-by-kenya-atpu-20140220.pdf> (accessed 29 November 2016). Human Rights Watch have also documented cases of Coastal extrajudicial killings and disappearances in their 2014 report Kenya: Killings, Disappearances By Anti-Terror Police <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>. (accessed 25 November 2016) and 2016 report Deaths And Disappearances: Abuses In Counterterrorism Operations In Nairobi And In Northeastern Kenya <https://www.hrw.org/report/2016/07/19/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and> (accessed 25 November 2016).

BACKGROUND AND CONTEXT

Kenya has a well-known and longstanding culture of politically-motivated extrajudicial killings, not restricted solely to the counterterrorism arena. Most recently, the 2016 torture and suspicious death of Willie Kimani, a well-known human rights lawyer, with his client and driver, shortly after emerging from a court hearing into alleged Kenyan police brutality, confirms that the practice continues essentially unchecked.³

These tactics of extrajudicial killings and disappearances have transferred easily to Kenya's 'War on Terror', where anti-terrorism police have for many years been given paramilitary training and high-tech arms and equipment from various quarters.⁴ Documentation showing unlawful operations by these police units goes back at least to 2005.⁵

The first prominent Muslim victims of apparent extrajudicial execution on our list are two clerics from the Coastal Region: Samir Khan and Mohamed Kassim were picked up within Mombasa island on 10th April 2012. 3 days later the severely bruised body of Samir Khan was found in Tsavo National Park (about 200km from where he was picked up). Mohamed Kassim has not been found to date and his whereabouts remain unknown. The killings then swiftly increased, beginning to occur as a pattern during 2012. The common thread in these cases is the Muslim faith of the victims, and the labelling of targets and victims as terror suspects and/or risks to national security.

Following the tragic massacre at Westgate Mall, Nairobi, in September 2013, there occurred a sharp increase of extrajudicial killings and disappearances of Muslim men in the Coastal Region of Kenya.⁶ Between September 2013 and November 2014, on average, at least three cases of disappearances and/or killings were reported to and investigated by HAKI Africa every month. Alongside the Coastal Region incidents documented in this report, other parts of Kenya have also seen a rise in occurrences of counterterrorism related killings and disappearances. Human Rights Watch has documented at least 34 cases in North-eastern Kenya between 2013 and 2015.⁷

The rise in these killings has coincided with Kenya's enhanced role in the Somali conflict after Kenyan troops entered the Somali warzone in October 2011 under Operation Linda Nchi. As a direct result of the enduring Kenyan military presence in Somalia, there has been a massive increase in terrorist attacks by Al-Shabaab within Kenyan borders in the years since 2011. Consequently, Kenya's perception of the threat of terrorism is perhaps more than ever immediate.

3 Kenya: Investigate Killings of Lawyer, Two Men. *Amnesty International*, 2013. <https://www.amnesty.org/en/latest/news/2016/07/kenya-investigate-killings-of-lawyer-two-men> (accessed 25 November 2016).

4 Kenya: Killings, Disappearances by Anti-Terror Police. *Human Rights Watch*, 2014. <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police> (accessed 25 November 2016).

5 Police Reform in Kenya: "A Drop in the Ocean". *Amnesty International*, 2016. https://www.amnesty.nl/sites/default/files/public/kenya_afr_32_001_2013.pdf (accessed 25 November 2016).

6 Although similar cases were reported before the Westgate Mall attack, there has been a noticeable increase in cases since September 2013.

7 Deaths and Disappearances: Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya. *Human Rights Watch*, 2016. <https://www.hrw.org/report/2016/07/19/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and> (accessed 25 November 2016).

Additionally, the United States and other partner states continue to provide direct funding to the Kenyan security sector, without there being any publicly known monitoring systems in place to ensure funds are not used to carry out human rights abuses, or indeed any meaningful performance assessments. One such example is the security governance initiative announced in August 2014 by the US government in cooperation with Kenya.⁸ As part of this initiative, the Kenyan government will be among six African nations⁹ to receive millions of dollars in financial assistance to strengthen its security sector¹⁰. Without serious checks and balances in place, we believe such assistance will simply embolden the Kenyan government to continue a “business as usual” approach when it comes to killings and disappearances of terror suspects. Until there are serious legal, political and economic consequences for the abuses committed by Kenya’s security agencies, there will be little incentive for the government and its security organs to make genuine reforms.

A third factor involves the relationship between paramilitary Kenyan police forces and the law, and a longstanding paramilitary and extra-legal approach to dealing with so-called counterterrorism concerns. Kenyan police and other counterterrorism actors have a longstanding tenuous relationship to the law. A key reason for the multiple violations of international law that characterise Kenya’s counterterrorism practice is the failure of the United Nations (UN) Security Council and African Union to require that when member states adopt specific counterterrorism measures, those states must comply with pre-existing human rights obligations.¹¹ Several pieces of terrorism legislation have now been enacted by the Kenyan parliament, some of which have been criticised for their conflict with Kenya’s international and constitutional legal obligations.¹²

Alongside these violations, essentially permitted and enabled by domestic security laws, a set of strategies are being used that have no basis in any law, whether human rights compliant or not. Such violations include Kenya’s past use of unlawful detention and renditions, well documented by human rights organisations¹³. In the present case, no existing legislation purports to allow for extrajudicial executions or “death squads”. Kenya’s programme of extrajudicial executions and disappearances is therefore being carried out in parallel to, and is perhaps emboldened by, activities governing legislative provisions purporting to govern counterterrorism operations. These provisions already give powers to counterterrorism actors well beyond normal constitutional and international legal limits.

8 Fact Sheet: Security Governance Initiative, 6 August 2014. *The White House*, 2014. <http://www.whitehouse.gov/the-press-office/2014/08/06/fact-sheet-security-governance-initiative> (accessed 17 November 2014).

9 Other nations are Ghana, Mali, Niger, Nigeria and Tunisia as reported in Remarks by President Obama at a Press Conference after US-Africa Leaders Summit, <http://www.whitehouse.gov/the-press-office/2014/08/06/remarks-president-press-conference-after-us-africa-leaders-summit> (accessed 17 November 2014).

10 See, in particular, the ‘Leahy Laws’, which require counterterrorism assistance to foreign security forces to be cut off when there is credible information that those forces committed gross human rights violations. <http://fas.org/sgp/crs/row/R43361.pdf> (accessed 17 November 2014).

11 The history of this issue as a key factor in earlier Kenyan counterterrorism practice is set out in Kenya and Counterterrorism: A Time for Change. *Redress and Reprieve*, 2009. http://www.voltairenet.org/IMG/pdf/Kenya_and_Counter-Terrorism.pdf (accessed 29 November 2016).

12 Kenyan MPs Back Security Law After Heated Debate. *BBC News*, 2014. <http://www.bbc.co.uk/news/world-africa-30447088> (accessed 29 November 2016).

13 See, for example, “Why Am I Still Here?”. *Human Rights Watch*, 2016. <https://www.hrw.org/report/2008/10/01/why-am-i-still-here/2007-horn-africa-renditions-and-fate-those-still-missing> (accessed 1 December 2016).

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The Kenyan military involvement in Somalia; terrorist attacks by Al-Shabaab against civilians within Kenya; Kenya's bilateral relationships; and the longstanding contemptuous attitude of Kenyan security organs to the Kenyan constitution and international legal obligations, are all elements that have interacted explosively, and increasingly serve to define Kenya as an informal extension of the Somali warzone.

THE LEGAL FRAMEWORK

This section deals with the constitutional and human rights violations implicated in the systemic killings and disappearances of alleged terror suspects.

A. LIFE, LIBERTY AND SECURITY OF PERSON

The extrajudicial killing of people by security forces without due process of the law is in contravention of the Kenyan Constitution. Article 26 stipulates that every person has the right to life and that they shall not be deprived of life intentionally, except to the extent as authorised by the law. The right to life is also enshrined under various international instruments including the Universal Declaration of Human Rights. ***“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.”***¹⁴

The excessive use of force and killings deprives the victims of their personal liberty and the right to a fair trial, in violation of Articles 6 and 7 of the African Charter. The right not to have one's freedom curtailed without a justifiable cause is guaranteed by Article 29(a) of the Kenyan Constitution, which provides that every person shall have the right to freedom and security and shall not be deprived of freedom arbitrarily and without just cause. Furthermore, Article 4 of the Maputo Protocol stipulates that ***“every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.”*** The Maputo Protocol goes on to oblige States Parties to identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence. The same Article 4 goes on to make special mention of women refugees and the protections they enjoy under international law.

B. DISCRIMINATION

These killings are almost exclusively targeted at Muslims. Profiling of victims based upon on race, ethnicity, religion, nationality, political affiliation or other similar distinctions is a discriminatory practice that violates domestic constitutional law, the protections of the

¹⁴ See the report of the KNCHR (2015), The error of fighting terror with terror: Preliminary Report of KNCHR Investigations on Human Rights Abuses in the Ongoing Crackdown against Terrorism. <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>

African Charter and other international treaty obligations that Kenya has undertaken to observe. Article 27 of the Kenyan Constitution guarantees the right to equality and freedom from discrimination. These extrajudicial executions of alleged terror suspects, targeted as they are exclusively at Muslims, a vulnerable group within Kenyan society, are discriminatory, involving an unfair application of the law, in violation of Articles 2, 3 and 18 of the African Charter. Furthermore, article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), to which Kenya is State Party, 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.”*** In addition, Article 2 of the Maputo Protocol tasks States Parties to combat all forms of discrimination against women.

C. TORTURE, CRUEL, INHUMAN AND DEGRADING TREATMENT

The documented killings involve cruel, inhuman and degrading treatment and often torture, and an unlawful and painful deprivation of life, in violation of Articles 4 and 5 of the African Charter, and Articles 26 (right to life) and 27 (equality and freedom from discrimination) of the Kenyan Constitution. Article 25 of the Constitution also provides that freedom of torture is a non-derogable right that cannot be limited in Kenya. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kenya is a signatory, defines torture as an act ***“by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person... by or at the instigation of or with acquiescence of a public official or other person acting in an official capacity”*** (Article 1).

The Constitution of Kenya embodies the standards set forth in the CAT: Article 25, freedom from torture and cruel, inhuman or degrading treatment or punishment is unlimited. Further, Article 29(f) states that no person shall be treated or punished in a cruel, inhuman or degrading manner. This means that the prohibition is absolute and torture cannot be justified under any circumstances under Kenyan law. The KDF Act Article 27 provides torture, inhuman and/or degrading treatment and punishment by military officer an offence punishable by up to 25 years in prison.¹⁵

¹⁵ *Ibid.*

D. FAIR TRIAL RIGHTS AND HABEAS CORPUS

The failure to conduct an inquiry and provide victims' families with an explanation of the excessive use of force and killings is in violation of Article 9 of the African Charter, which protects the right to receive information, and a breach of Articles 47 and 48 of the Kenyan Constitution, which protect the rights to fair administration and access to justice respectively. Further, it violates Article 46 which provides that the state shall allow access to justice for all persons.

The killings and enforced disappearances also infringe upon the right to be brought promptly before a judge or other judicial officer. The Kenyan Constitution grants an unlimited right to an order of habeas corpus (Article 25, Article 51(2)). The procedures governing the application and issue of an order of habeas corpus are set out in the Criminal Procedure Code Sec. 389 and the accompanying Rules. Under the CPC, the High Court may, in exercise of its supervisory powers, order that any person illegally or improperly detained in public or private custody be set at liberty. For an order to issue, the applicant must "show cause and demonstrate that other ordinary remedies are either inapplicable or inadequate" (See *Paul Mburu Kamau & Another V Provincial Criminal Investigation Officer, Coast Province & Another* [2006] eKLR).

E. THE DUTY TO PROMOTE HUMAN RIGHTS

The excessive use of force and killings, unlawful acts by state law enforcement functionaries that remain uninvestigated by the state, also violate Article 25 of the African Charter, the state's duty to promote human rights. Further, Article 21(1) of the Constitution of Kenya provides that ***"it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights"***.

F. WOMEN AND THE RIGHT TO PEACE

Women in particular have been accorded the additional protection of their right to peace and protection in armed conflict. Article 10(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) protects the rights of women to a peaceful existence and the right to participate in the promotion and maintenance of peace. Furthermore, under the provisions of Article 11, States Parties undertake to protect asylum seeking women and refugees against all forms of violence and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

CASE STUDIES AND ANALYSIS

We set out below an analysis of the incidents we have documented. The cases can be loosely divided into the following categories:

- A. “Excessive use of force” cases - those involving excessive use of force during routine policing operations, sub-categories of which include:
 - “encounter killings” - extrajudicial killings staged retrospectively as shoot-outs by police in an attempt to claim that the killing was a proportionate and necessary response to alleged actions by the victim;
 - “assembly killings” - involving excessive use of force by police during either the policing of protests or attending locations of religious assembly;
- B. deaths in police custody;
- C. extrajudicial executions - this section deals with deaths that can be described as directly targeted killings that have not been framed as “encounter killings”;
- D. enforced disappearances.

We have included, in each category, a legal analysis specific to this type of incident, and case studies by way of example. We have also included separate sections on:

- accountability and Kenya’s duty to investigate; and
- the gender dimension.

A. EXCESSIVE USE OF FORCE DURING ROUTINE POLICING OPERATIONS

In this section, we detail deaths that have occurred in the context of what should be routine work of police in arresting suspects or attending incidents such as protests and other forms of assembly. 22 of the cases on our list fall within this category. Where there is credible evidence suggesting the identity of perpetrators, all of these killings involved police personnel. A sub-category of these killings, “encounter killings”, are extrajudicial executions of suspected criminals subsequently staged by police as shootings carried out in self-defence. 16 A further sub-category of these cases is “assembly killings”, pertaining to those involving excessive use of force by police during the policing of demonstrations or around gatherings of people.

16 Cambridge University Centre for Governance and Human Rights (CGHR) has noted that this type of killing has been documented in diverse locations around the world: “These were prevalent in India during the 1990s and mid-2000s, especially in Mumbai. According to the National Human Rights Commission (NHRC), 2,560 deaths during encounters with police were reported between 1993 and 2008. Of this number, 1,224 cases were regarded by the NHRC as “fake encounters”. On the other side of the world, the analogous practice of so-called “false positives” (falsos positivos) – unlawful killings of civilians, staged by the security forces to look like lawful killings in combat of guerrillas or criminals – are well known to Colombians. See Christof Heyns *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (26 April 2013) [A/HRC/23/47/Add.1] ¶ 12; Philip Alston *Report on Mission to Colombia* (31 March 2010) [A/HRC/14/24/Add.2] ¶ 10.” Unlawful Killings in Africa, CGHR, 2014, p13.

Under Kenyan and international law, police may use lethal force only when necessary for self-defence or to save a life. Section 4 of the Sixth Schedule of the National Police Service Act of 2011 requires police officers who use lethal fire to report to their immediate superior explaining the circumstances that necessitated the use of force. Section 5 of the Act requires officials to report any use of force that leads to death or serious injury to the Independent Police Oversight Authority for investigation.

The UN Special Rapporteur on Extrajudicial Killings has stated that under human rights law, a state killing ***“is legal only if it is required to protect life (making lethal force proportionate) and there is no other means, such as capture or nonlethal incapacitation, of preventing that threat to life (making lethal force necessary). The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimise the level of force used, regardless of the amount that would be proportionate, through, for example, the use of warnings, restraint and capture.”***¹⁷

The international standards on the use of force are established in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990): ***“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”***¹⁸ The principles also require governments to ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

Unlawful killings such as those documented in this report occur when law-enforcement actors overstep these guidelines while carrying out policing functions. The cases outlined below, when considered in context with the other killings and disappearances detailed in this report, strongly suggest that both the frequent use of lethal force against Muslim men during routine police operations, and the Kenyan government’s failure to investigate these killings, are occurring as the result of deliberate policy decisions by parts of the Kenyan state.

A breakdown of Kenyan domestic and African Charter violations is included below:

- Such excessive use of force including killings, targeted as they are exclusively at Muslims, a vulnerable group within Kenyan society, are discriminatory, involving an unfair application of the

http://www.cghr.polis.cam.ac.uk/research-themes/right_to_life/unlawful_killings_in_africa/unlawful_killings_report/Unlawful_Killings_Africa.pdf

17 Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (28 May 2010). *Ibid.*

18 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), Principle 9. The right to peaceful assembly also imposes upon states an additional responsibility to facilitate assemblies and demonstrations.

law, in violation of Articles 2, 3 and 18 of the African Charter, and Article 27 of the Kenyan Constitution (equality and freedom from discrimination).

- The excessive use of force and killings involve cruel, inhuman and degrading treatment and often torture, and an unlawful and painful deprivation of life, in violation of Articles 4 and 5 of the African Charter. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kenya is a signatory, defines torture as an act “by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person... by or at the instigation of or with acquiescence of a public official or other person acting in an official capacity” (Article 1). The Constitution of Kenya embodies the standards set forth in the CAT: Article 25, freedom from torture and cruel, inhuman or degrading treatment or punishment is unlimited. Further, Article 29(f) states that no person shall be treated or punished in a cruel, inhuman or degrading manner. This means that the prohibition is absolute and torture cannot be justified under Kenyan law.
- The excessive use of force and killings deprives the victims of their personal liberty and the right to a fair trial, in violations of Articles 6 and 7 of the African Charter. The right not to have one’s freedom curtailed without a justifiable cause is guaranteed by Article 29(a) of the Kenyan Constitution, which provides that every person shall have the right to freedom and security and shall not be deprived of freedom arbitrarily and without just cause. Furthermore, the Kenyan Constitution grants an unlimited right to an order of habeas corpus (Article 25, Article 51(2)). The procedures governing the application and issue of an order of habeas corpus are set out in the Criminal Procedure Code Sec. 389 and the accompanying Rules. Under the CPC, the High Court may, in exercise of its supervisory powers, order that any person illegally or improperly detained in public or private custody be set at liberty. For an order to issue, the applicant must “show cause and demonstrate that other ordinary remedies are either inapplicable or inadequate” (See Paul Mburu Kamau & Another V Provincial Criminal Investigation Officer, Coast Province & Another [2006] eKLR).
- The failure to conduct an inquiry and provide victims’ families with an explanation of the excessive use of force and killings is in violation of Article 9 of the African Charter, which protects the right to receive information and a breach of Articles 47 and 48 of the Kenyan Constitution, which protects the rights to fair administration and access to justice respectively.

- The excessive use of force and killings are carried out in a discriminatory fashion against Muslims as an alternative to moderate, proportionate policing of assemblies, protests and gatherings, in violation of Articles 10 and 12 of the African Charter, and Articles 36 and 37 of the Kenyan Constitution; and with the effect of limiting victims' rights to religious and self-expression, in violation of Article 9 of the African Charter, and Articles 32 and 33 of the Kenyan Constitution.
- These killings are purported to be carried out in pursuit of counterterrorism objectives, yet in fact the climate of state-sanctioned violence and impunity merely adds to national insecurity, in violation of Article 23 of the African Charter.
- The excessive use of force and killings create a climate of fear for all Muslims, in particular young Muslim men, in violation of Article 24 of the African Charter, the right to a general satisfactory environment, and Article 27 of the Kenyan Constitution, the right to equality and freedom from discrimination.
- The excessive use of force and killings, unlawful acts by state law enforcement functionaries that remain uninvestigated by the state, also violate Article 25 of the African Charter, the state's duty to promote human rights.

ENCOUNTER KILLINGS

12 of the cases documented in this report are "encounter killings": extrajudicial killings staged retrospectively as shoot-outs by police in an attempt to claim that the killing was a proportionate and necessary response to alleged actions by the victims. Despite these claims by police, none of these cases have yet been subject to a government initiated independent investigation that, as well as being required under law, could support these claims. In many of the cases, investigations conducted by human rights organisations (including HAKI Africa and Human Rights Watch) have found no evidence of the shoot-outs claimed by police.

CASE STUDY: IDRIS MOHAMED



Nadia Ahmed with a photo of her son, Idris Mohamed. Photo credit to Boniface Mwangi.

The alleged killing by police of Idris Mohamed, a case documented by HAKI Africa, is eloquent testimony for the importance of proportionality in the use of violence by police during routine operations. 26-year-old Idris Mohamed is believed to have been killed by police in the early hours of 14 September 2014, in circumstances strongly suggestive of a case of mistaken identity. Kenyan police have not formally accepted responsibility for Mr. Mohamed's death. However police officers brought his body to a mortuary, and they concede that officers were present at the time

WHAT DO WE TELL THE FAMILIES?

of Mr. Mohamed's death, claiming that he was "gunned down" by an unknown perpetrator (see figures 1 and 2 below).

Prior to Mr. Mohamed's post-mortem, the deceased's family and HAKI Africa personnel noticed that official papers brought to the mortuary by police referred to Mr. Mohamed incorrectly as "Ismael Mohamed alias Idris Mohamed." "Ismail Mohamed" and "Idris Mohamed" were in fact brothers, with Ismail Mohamed being the brother of the deceased, Idris. This fact was brought to the attention of police in attendance at the post-mortem, with Mr. Mohamed's family and HAKI Africa officials insisting that the papers be amended before continuing with the post-mortem. The police officers then called their seniors through their mobile phones and upon senior orders, duly crossed out the name "Ismail Mohamed" and signed next to the alteration (see figures 1 and 2 below).

THE KENYA POLICE
Form 30 (CP)
POST-MORTEM FORM
Reference No. 0634/619/2014
Police Station: COASTAL WCA

To: The Post-mortem/Mortuary Officer
COAST GENERAL HOSPITAL

For the purpose of the post-mortem, the name of the deceased is **ISMAEL MOHAMED ALIAS IDRIS MOHAMED** (No. 0634/619/2014) whose body is sent herewith under escort of **THE ASSEMBLY** (No. 0634/619/2014)

The information received is able to identify the body as **ISMAEL MOHAMED ALIAS IDRIS MOHAMED** (No. 0634/619/2014)

The body was found at **Place Bondeni** on **14/7/2014** at **Time 4:00 AM**

Date and Time of Death of Inmate: **14/7/2014** at **4:00 AM**

The circumstances of the death are as follows:—

(i) Natural causes is probable, give also a brief medical history, including the name and address of any medical officer consulted.

POLICE OFFICERS ON TIP OFF THAT THERE WERE GANGSTERS WITHIN BONDENI AREA VISITED THE SCENE AND ONE OF THE SUSPECTS WAS GUNNED DOWN BY THE SUSPECTS. THE SUSPECTS WERE LATER CONFIRMED TO HAVE BEEN A WANTED CRIMINAL. THE CASE WAS HANDLED BY THE POLICE AND A WARRANT OF ARREST IN FORCE.

(ii) Cause of death from poisoning is suspected, the officer reporting the examination should also give the following details (see also page 6):

(a) Date and time of onset and duration of symptoms

(b) Signs and symptoms, please give a tick against any of the following symptoms that apply:—

Convulsion	Stomach	Diarrhoea
Swelling	Chest	Weakness
Blurred vision	Eye and throat	General prostration
Other	Other	

(c) Details of food, drink or drugs taken before and after onset of symptoms (including time and quantity) and any medicine given while under treatment

(d) Were other persons affected? **NO**

(e) Signature of Medical Officer: **DR. J. M. M. M. M.** Date: **14/7/2014**

MINISTRY OF HEALTH
PATIENT DEATH FORM
THE KENYA POLICE
Form 30 (CP)
POST-MORTEM FORM
Reference No. 0634/619/2014
Police Station: COASTAL WCA

To: The Post-mortem/Mortuary Officer
COAST GENERAL HOSPITAL

For the purpose of the post-mortem, the name of the deceased is **ISMAEL MOHAMED ALIAS IDRIS MOHAMED** (No. 0634/619/2014) whose body is sent herewith under escort of **THE ASSEMBLY** (No. 0634/619/2014)

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(a) Date and time of onset and duration of symptoms

(b) Signs and symptoms, please give a tick against any of the following symptoms that apply:—

Convulsion	Stomach	Diarrhoea
Swelling	Chest	Weakness
Blurred vision	Eye and throat	General prostration
Other	Other	

(c) Details of food, drink or drugs taken before and after onset of symptoms (including time and quantity) and any medicine given while under treatment

(d) Were other persons affected? **NO**

(e) Signature of Medical Officer: **DR. J. M. M. M. M.** Date: **14/7/2014**

Figures 1 and 2: official police papers pertaining to the death of Idris Mohamed

The police report provided for Mr. Mohamed's post-mortem states that **"police officers on tip-off that there were gangsters within Bondeni area visited the scene and one of the suspects was gunned down who was later confirmed to have been a wanted criminal... and a warrant of arrest in force."** It later emerged that Ismael Mohamed, the deceased's brother, was indeed involved in legal proceedings and had a live warrant of arrest out against him. The deceased Idris Mohamed, however, had no criminal record or outstanding warrant of arrest.

The facts strongly suggest a case of mistaken identity; moreover the police report provides no real explanation of how Mr. Mohamed was killed. HAKI Africa has on several subsequent occasions sought further information from police regarding this incident, however the response remains that "the police have no leads", and the investigation files remain open. HAKI Africa has referred this case to the Kenyan Independent Policing Oversight Authority (IPOA).

ASSEMBLY KILLINGS

10 of the cases documented in this report involved excessive use of force by police during either the policing of protests or attending locations of religious assembly. Clearly, law enforcement agencies may find policing mass demonstrations or gatherings a challenge. However the cases in this section suggest that anti-terrorism police in Kenya have resorted to the use of excessive force in circumstances where it was not justified, without following any prescribed procedures, and without using non-violent means first. Furthermore, the unlawful failure to conduct inquiries into these cases serves to foster a climate of impunity, further ensuring that the use of unwarranted lethal force by Kenyan anti-terrorism police is likely to happen again in the future.

CASE STUDY: THE MASJID MUSA RAID

Aram Alan Olch (Ali Chechniya), Abdul Rashid (Ndayayisenga), Omar Mustapha (Muadhin), Ramadhan Mwagudzi, Salim Khamis Mwamleo, Suleiman Ali and Fuad Abdallah Ali, all young Muslim men, were killed by police on 2 February 2014 when officers raided the Masjid Musa Mosque in Mombasa. Research by HAKI Africa suggests that heavily armed counterterrorism police were dispatched to the mosque to confront a large and initially peaceful crowd who had gathered to hear talks and have lunch. Police reportedly used non-lethal weapons and firearms arbitrarily and without warning, without using initial non-violent means, in an attempt to close down a gathering in circumstances where there was no imminent threat of death or serious injury.

Police claimed that the raid was carried out following reports that a “radicalisation session” was taking place. Following the raid, Mombasa police chief Geoffrey Mayek told reporters that police recovered a pistol, eight grenades and a flag associated with al-Shabaab at the mosque and that only one man was shot dead during the raid, after he “attempted to hurl” a hand grenade at police officers.¹⁹ Key elements of this account have been denied by eyewitnesses.

Given the conflicting accounts of events inside Masjid Musa on 2 February 2014, many questions remain unanswered. The initial level of force used by Anti-Terrorism Police Unit officers from the outset in the Masjid Musa raid was, according to the reports of witnesses in the mosque, neither necessary nor proportionate, resulting in an escalation of violence in the mosque, tens of injuries and at least eight deaths, including a policeman.

As the incident escalated, it is at least arguable that some use of force by the police may have become necessary and proportionate. At this point, without a full and frank inquiry into the incident, it cannot be determined what level of force by the police would have been justified in the case of each death (indeed, it is not even known how many of the deaths have been conceded by the police to have been at their hands). This has unfortunately not yet happened: in contravention

¹⁹ Kenya Police Seize Weapons in Mombasa Mosque Raid, *BBC*, 17 November 2014 <http://www.bbc.co.uk/news/world-africa-30078973> (accessed 25 November 2016).

of Kenya's domestic and international legal requirements, no adequate inquiry has yet been carried out by either the police or the Kenyan government into the proportionality of police use of force during the raid of Masjid Musa, or into the deaths of **Aram Alan Olch (Ali Chechniya)**, **Abdul Rashid (Ndayayisenga)**, **Omar Mustapha (Muadhin)**, **Ramadhan Mwagudzi**, **Salim Khamis Mwamleo**, **Suleiman Ali** and **Fuad Abdallah Ali**.

B. DEATHS IN POLICE CUSTODY

4 of the deaths in this report involve individuals who were last seen alive in police custody. Philip Alston, the UN Special Rapporteur on Extrajudicial Executions, has stated that ***"what makes 'custodial death' a useful legal category is not the character of the abuse inflicted on the victim but the implications of the custodial context for the State's human rights obligations... When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies in State custody, there is a presumption of State responsibility. These interlocking implications produce the legal specificity of custodial death as a human rights violation."***²⁰

These cases involve a range of violations under Kenyan and international law:

- These custodial deaths in the context of counterterrorism operations, targeted as they are exclusively at Muslims, a vulnerable group within Kenyan society, are discriminatory, involving an unfair application of the law, in violation of Articles 2, 3 and 18 of the African Charter, and Article 27 of the Kenyan Constitution (equality and freedom from discrimination).
- The custodial deaths involve cruel, inhuman and degrading treatment and often torture, and an unlawful and painful deprivation of life, in violation of Article 5 of the African Charter. Article 51 of the Kenyan Constitution provides that "a person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned". The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kenya is a signatory, defines torture as an act "by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person... by or at the instigation of or with acquiescence of a public official or other person acting in an official capacity" (Article 1). The Constitution of Kenya embodies the standards set forth in the CAT: Article 25, freedom from torture and cruel, inhuman or degrading treatment or punishment is unlimited. Further, Article 29(f) states that no person shall be treated or punished in a cruel, inhuman or degrading manner. This means that the prohibition is absolute and torture cannot be justified under any circumstances under Kenyan law.

²⁰ Alston, *op cit*.

- The excessive use of force and killings deprives the victims of their personal liberty and the right to a fair trial, in violations of Articles 6 and 7 of the African Charter. The right not to have one's freedom curtailed without a justifiable cause is guaranteed by Article 29(a) of the Kenyan Constitution, which provides that every person shall have the right to freedom and security and shall not be deprived of freedom arbitrarily and without just cause. Furthermore, The Kenyan Constitution grants an unlimited right to an order of habeas corpus (Article 25, Article 51(2)). The procedure governing the application and issue of an order of habeas corpus are set out in the Criminal Procedure Code Sec. 389 and the accompanying Rules. Under the CPC, the High Court may, in exercise of its supervisory powers, order that any person illegally or improperly detained in public or private custody be set at liberty. For an order to issue, the applicant must "show cause and demonstrate that other ordinary remedies are either inapplicable or inadequate" (See Paul Mburu Kamau & Another V Provincial Criminal Investigation Officer, Coast Province & Another [2006] eKLR).
- The failure to conduct an inquiry and provide victims' families with an explanation of the excessive use of force and killings is in violation of Article 9 of the African Charter, which protects the right to receive information, and a breach of Articles 47 and 48 of the Kenyan Constitution, which protects the rights to fair administration and access to justice respectively.
- These killings are purported to be carried out in pursuit of counterterrorism objectives, yet in fact the climate of state-sanctioned violence and impunity merely adds to national insecurity, in violation of Article 23 of the African Charter.
- The excessive use of force and killings create a climate of fear for all Muslims, in particular young Muslim men, in violation of Article 24 of the African Charter, the right to a general satisfactory environment, and Article 27 of the Kenyan Constitution, the right to equality and freedom from discrimination.
- The excessive use of force and killings, unlawful acts by state law enforcement functionaries that remain uninvestigated by the state, also violate Article 25 of the African Charter, the state's duty to promote human rights.

CASE STUDY: SAMIR HASHIM KHAN AND BEKHIT KASSIM

According to the Open Society Justice Initiative and Muslims for Human Rights, **Samir Hashim Khan**, a Muslim preacher, was reportedly killed by police on 13 April 2012 after being pulled off a public bus in Mombasa by officers from the Anti-Terror Police Unit. A few days later his remains were found in Tsavo National Park. Mr. Khan's friend **Mohammad Bekhit Kassim** was also pulled from the bus at the same time. Mr. Kassim had previously been abducted in 2011 and was

told by his abductors at that time that they would come back for him. At the time of his first abduction the Anti-Terror Police Unit reportedly released a statement saying they had arrested him, but later denied doing so.

Some reports indicate that Mr. Kassim's whereabouts remain unknown. It has also been reported that his remains were found in a Kilifi mortuary. The Anti-Terror Police Unit had arrested Mr. Khan in 2010 on weapons charges and again in 2011, alleging that he was a member of Al-Shabaab. The cases against him were pending at the time of his second abduction and murder. To date, there has been no human rights compliant investigation by the Kenyan state into Mr. Khan's death.

C. EXTRAJUDICIAL EXECUTIONS

This section deals with deaths that can be described as directly targeted killings that have not been framed as "encounter killings"; 31 of the cases on our list fall into this category. In the cases on our list, these killings are reported to have been carried out either by individuals recognisable as police or members of Kenyan security, or by unidentified, non-uniformed individuals. Where the killings were reportedly conducted by unidentified individuals, the possibility remains that they have been carried out by a proxy rather than police officers or government agents proper. However, the existence of a motive and in some cases other evidence suggests an answerable case of proximate state involvement in all of these killings.

A breakdown of African Charter and Kenyan domestic law violations is included below:

- These extrajudicial executions of alleged terror suspects, targeted as they are exclusively at Muslims, a vulnerable group within Kenyan society, are discriminatory, involving an unfair application of the law, in violation of Articles 2, 3 and 18 of the African Charter.
- The extrajudicial executions involve cruel, inhuman and degrading treatment and often torture, and an unlawful and painful deprivation of life, in violation of Articles 4 and 5 of the African Charter, and Articles 26 (right to life) and 27 of the Kenyan Constitution (equality and freedom from discrimination). The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kenya is a signatory, defines torture as an act "by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person... by or at the instigation of or with acquiescence of a public official or other person acting in an official capacity" (Article 1). The Constitution of Kenya embodies the standards set forth in the CAT: Article 25, freedom from torture and cruel, inhuman or degrading treatment or punishment is unlimited. Further, Article 29(f) states that no person shall be treated or punished in a cruel, inhuman or degrading manner. This means that the prohibition is absolute and torture cannot be justified under circumstances under Kenyan law.

- The excessive use of force and killings deprives the victims of their personal liberty and the right to a fair trial, in violations of Articles 6 and 7 of the African Charter. The right not to have one's freedom curtailed without a justifiable cause is guaranteed by Article 29(a) of the Kenyan Constitution, which provides that every person shall have the right to freedom and security and shall not be deprived of freedom arbitrarily and without just cause. Furthermore, the Kenyan Constitution grants an unlimited right to an order of habeas corpus (Article 25, Article 51(2)). The procedure governing the application and issue of an order of habeas corpus are set out in the Criminal Procedure Code Sec. 389 and the accompanying Rules. Under the CPC, the High Court may, in exercise of its supervisory powers, order that any person illegally or improperly detained in public or private custody be set at liberty. For an order to issue, the applicant must "show cause and demonstrate that other ordinary remedies are either inapplicable or inadequate" (See Paul Mburu Kamau & Another V Provincial Criminal Investigation Officer, Coast Province & Another [2006] eKLR).
- The failure to conduct an inquiry and provide victims' families with an explanation of the excessive use of force and killings is in violation of Article 9 of the African Charter, which protects the right to receive information, and a breach of Articles 47 and 48 of the Kenyan Constitution, which protects the rights to fair administration and access to justice respectively.
- These unlawful killings are purported to be carried out in pursuit of counterterrorism objectives, yet in fact the climate of state-sanctioned violence and impunity merely adds to national insecurity, in violation of Article 23 of the African Charter.
- The unlawful killings create a climate of fear for all Muslims, in particular young Muslim men, in violation of Article 24 of the African Charter, the right to a general satisfactory environment, Article 27 of the Kenyan Constitution, the right to equality and freedom from discrimination.
- The excessive use of force and killings, unlawful acts by state law enforcement functionaries that remain uninvestigated by the state, also violate Article 25 of the African Charter, the state's duty to promote human rights.

CASE STUDY: ABUBAKAR SHARIFF (MAKABURI) AND HAFIDH BAHERO

Sheikh Abubakar Sharif Ahmed (also known as Makaburi) and Hafidh Bahero were killed by unidentified gunmen in a drive-by shooting around 6.30pm on 1 April 2014. The incident took place outside Shanzu Law Courts in Mombasa, roughly 150 metres from Mtwapa police station. Eyewitnesses report that the shots came from a passing vehicle which was heading towards Mtwapa. The two were following up on the release on bond of some of those who were arrested during the Musa mosque raid.

Prior to his assassination, Abubakar Shariff had on several occasions been arrested and charged with terror related crimes. Shariff was a controversial figure associated with Masjid Musa, a mosque said to have links to Al-Shabaab, and was on international sanctions lists for supporting terrorist groups. At the time of his death, he was required to report to Makupa police station every Tuesday and inform the police whenever he wanted to travel out of town. Shariff was a close friend and ally of Sheikh Aboud Rogo who was killed in August 2012 by unknown gunmen. On several occasions, Shariff had complained of his life being in danger and had stated that he would be killed by police/government. He told Human Rights Watch and journalists that police had told him to his face that they would kill him.

Hafidh Bahero was a youth who prayed at Musa mosque and was a friend to Abubakar Shariff. It is not clear if the killers were also targeting him or whether he was caught in the crossfire targeting Shariff.

HAKI Africa assisted the families of the two in getting the bodies from the police. Soon thereafter, the bodies were taken to Musa mosque for an Islamic burial for martyrs. The men were buried next to each other near the graves of other slain Muslim preachers Sheikh Aboud Rogo and Ibrahim Ismail. Mombasa County Criminal Investigation Department opened an investigation into the killings, however to date their killers remain unknown.

D. ENFORCED DISAPPEARANCES

24 of the cases on our list can be described as “enforced disappearances”. The International Convention for the Protection of All Persons from Enforced Disappearance, which Kenya has not signed, defines an enforced disappearance as ***“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorisation, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of the liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”***

- These enforced disappearances of alleged terror suspects, exclusively involving Muslims, a vulnerable group within Kenyan society, are discriminatory, involving an unfair application of the law, in violation of Articles 2, 3 and 18 of the African Charter, and Article 27 of the Kenyan Constitution, which provides for equality and freedom from discrimination.
- These enforced disappearances involve the unlawful break-up of families, in violation of Article 18 of the African Charter.
- The enforced disappearances involve cruel, inhuman and degrading treatment and often torture, and an unlawful and painful deprivation of life, in violation of Articles 4 and 5 of the African Charter, and Articles 26 (right to life) and 27 (equality and freedom from discrimination) of the Kenyan Constitution. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kenya

is a signatory, defines torture as an act “by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person... by or at the instigation of or with acquiescence of a public official or other person acting in an official capacity” (Article 1). The Constitution of Kenya embodies the standards set forth in the CAT: Article 25, freedom from torture and cruel, inhuman or degrading treatment or punishment is unlimited. Further, Article 29(f) states that no person shall be treated or punished in a cruel, inhuman or degrading manner. This means that the prohibition is absolute and torture cannot be justified under circumstances under Kenyan law.

- The enforced disappearances deprive the victims of their personal liberty and the right to a fair trial, in violations of Articles 6 and 7 of the African Charter. The right not to have one’s freedom curtailed without a justifiable cause is guaranteed by Article 29(a) of the Kenyan Constitution, which provides that every person shall have the right to freedom and security and shall not be deprived of freedom arbitrarily and without just cause. Furthermore, the Kenyan Constitution grants an unlimited right to an order of habeas corpus (Article 25, Article 51(2)). The procedure governing the application and issue of an order of habeas corpus are set out in the Criminal Procedure Code Sec. 389 and the accompanying Rules. Under the CPC, the High Court may, in exercise of its supervisory powers, order that any person illegally or improperly detained in public or private custody be set at liberty. For an order to issue, the applicant must “show cause and demonstrate that other ordinary remedies are either inapplicable or inadequate” (See *Paul Mburu Kamau & Another V Provincial Criminal Investigation Officer, Coast Province & Another* [2006] eKLR).
- The failure to conduct an inquiry and provide victims’ families with an explanation of the enforced disappearance is in violation of Article 9 of the African Charter, which protects the right to receive information, and a breach of Articles 47 and 48 of the Kenyan Constitution, which protects the rights to fair administration and access to justice respectively.
- These enforced disappearances contribute to a climate of state-sanctioned violence and impunity, merely adding to national insecurity, in violation of Article 23 of the African Charter.
- The enforced disappearances create a climate of fear for all Muslims, in particular young Muslim men, in violation of Article 24 of the African Charter, the right to a general satisfactory environment, Article 27 of the Kenyan Constitution, the right to equality and freedom from discrimination.
- The excessive use of force and killings, unlawful acts by state law enforcement functionaries that remain uninvestigated by the state, also violate Article 25 of the African Charter, the state’s duty to promote human rights.

CASE STUDY: HEMED SALIM

Hemed Salim went missing after he was arrested on 2 February 2014 during the Masjid Musa raid by police. According to his lawyer, at the time of his arrest Hemed had been accused by the police of being in possession of a firearm inside the



Saada Hemed, wife of Hemed Salim. Photo credit to Boniface Mwangi.

mosque at the time of the raid. Media coverage including videos and pictures showed him being arrested, tortured, handcuffed and put in a police car with officers guarding him. Hemed has not been seen since.

In a habeas corpus case, Hemed's family and HAKI Africa demanded that the police present him before the court dead or alive. After evidence of Hemed's arrest was presented to the court, police claimed that he and others escaped from the police vehicle while being transported to the police station, and that they had never reached the police station after their arrest. In judgment on the matter, the court ordered the Chief Magistrate's Court in Mombasa to conduct an inquest into the circumstances of the death of the subject of the proceedings on the basis that he is now designated "a missing person presumed dead".

CASE STUDY: JEREMIAH ONYANGO OKUMU AND THREE OTHERS

Jeremiah Onyango Okumu (alias DudaH Black) and Stephen Mwanzia Osaka (alias Dudah Brown), both in their mid-20s, were among the six men facing terrorism-related charges for the March 2012 Machakos bus station bombing. They vanished on the evening of 26 June 2012, along with two other young men, Salim Abubakar Hamisi and Omar Shwaib (alias Justo), a day before the two were due back from a shopping trip to Mombasa. Human Rights Watch interviewed witnesses in Mombasa who saw the four men being kidnapped at around 5:30pm by several armed men in civilian clothes near the Likoni ferry. Several of the witnesses said they recognised the armed men as ATPU officers.

Dudah Black and Dudah Brown had told family and associates several weeks before they disappeared that the ATPU was threatening them. The Likoni Ferry Police Post officers did not respond, even though the men were abducted nearby, and appeared unconcerned when relatives reported their disappearance. A duty officer at Likoni Ferry Police Post advised the family to look for their bodies in the mortuary, as police had shot them.

The families of the four men never found their bodies. On 30 June, they gave statements about their missing relatives at Nyali police station, near Kisauni, where the four had been staying in Mombasa, but police did not respond.

During court proceedings in the Machakos bus station bombing case, the prosecutor told the court that Dudah Black and Dudah Brown had both fled Kenya to avoid prosecution and that the authorities had not pursued any further investigations.

ACCOUNTABILITY AND KENYA'S DUTY TO INVESTIGATE

None of the cases documented in this report have been adequately investigated by the Kenyan authorities, despite the fact that accountability mechanisms do exist on paper and, in some cases, official figures have publicly acknowledged the need for an inquiry. After the killing of Mombasa-based Abubakar Shariff ("Makaburi"), the Cabinet Secretary for Internal Security Joseph Ole Lenku stated, ***"Kenyans are concerned about their security and rightly so. The criminal or terrorist who injured Baby Satrin, orphaned him, is no different from that one who killed Makaburi. As a government, ours is to investigate and deal with the same according to the law..."***²¹

The taskforce that was charged with investigating the murder of high profile Muslim cleric Sheikh Aboud Rogo reported to the Kenyan Director of Public Prosecutions in August 2013 that although it had "no doubt" that Aboud Rogo had been murdered, a contaminated crime scene and witnesses who feared giving



Khubaib Aboud Rogo, holding the Qu'ran of his late father Sheikh Aboud Rogo. Photo credit to Boniface Mwangi.

evidence meant that it had failed to identify the killers. The taskforce instead recommended a public inquest to uncover the truth of what happened to Aboud Rogo. However to date, no such inquiry has happened.

HAKI Africa routinely engages the Kenyan police to report and follow up on investigations into killings and disappearances, but on not one occasion has it received a satisfactory response to a report or request for information. Family members of the dead and disappeared have also encountered challenges in reporting

incidents. Amir Salim, brother of Suleiman Salim Swalleh, reported to HAKI Africa that following the abduction and disappearance of Mr. Swalleh, he was chased from the police station when he attempted to report the abduction:

"After the two Subaru vehicles sped away with my brother having been forced into one of them (the one with registration plate no. KBT 530T), I hurriedly asked my relative to take a family car which was nearby and trail the vehicle that my brother was put in. At that same time, I rushed to Makupa Police Station to report the matter. Throughout, I kept in touch with my relative who was tracking the Subaru vehicle. When I reached the police station, I went straight to the Officer in Charge (OC) and reported the matter to him and asked if it is the police who were involved in the incident. He confirmed that it was not the police so I informed him of the whereabouts of the vehicle which my brother was in. I told the Officer that I had a relative who was trailing the Subaru and the abductors were now approaching Mariakani on Nairobi – Mombasa highway. I requested him to radio call his fellow officers who were based in those areas so that they can mount a road block to stop the vehicle. However, to my surprise, instead of the OC assisting me, he chased me out of his office and told me to simply file a report at the

²¹ Makaburi killers no different from Baby Satrine attackers – Lenku. Capital FM Kenya, 2014. <https://www.youtube.com/watch?v=O-jtJ6ipIBQ> (accessed 17 November 2014). Satrin is the one-year-old boy who was shot during the Likoni church terror attack on 23 March 2014. The bullet was later successfully removed from his head.

complaints desk. I had no choice but to do so and immediately rushed to HAKI Africa to seek their assistance."²²

As well as being unlawful under both domestic, regional and international law, the high incidence of killings of Muslims over the past several years, without adequate inquiries by the authorities, suggests a growing problem of impunity. The Cambridge Centre for Human Rights and Governance has noted in its report *Unlawful Killings in Africa* that ***"impunity [is] a prevailing climate within a particular state or part of a state which takes hold when a particular form of violation is allowed to continue without state response. While not every case of a high incidence of killing necessarily implies a culture of impunity, it would suggest that the state's chosen response is ineffective and ought to be supplemented or revised. One of the clear conclusions of this report is that, because of the irreversible nature of a violation of the right to life, the state's protection role must very often be primarily through the means of strong accountability mechanisms."***²³

- The failure to investigate deaths and disappearances of Muslims, a vulnerable group within Kenyan society, is discriminatory, involving an unfair application of the law, in violation of Articles 2, 3 and 18 of the African Charter, and Article 27 of the Kenyan Constitution, which provides for equality and freedom from discrimination.
- The enforced disappearances and killings involve cruel, inhuman and degrading treatment and often torture, in violation of Articles 4 and 5 of the African Charter, and Articles 26 (right to life) and 27 of the Kenyan Constitution (equality and freedom from discrimination). The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kenya is a signatory, defines torture as an act "by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person... by or at the instigation of or with acquiescence of a public official or other person acting in an official capacity." (Article 1). The Constitution of Kenya embodies the standards set forth in the CAT: Article 25, freedom from torture and cruel, inhuman or degrading treatment or punishment is unlimited. Further, Article 29(f) states that no person shall be treated or punished in a cruel, inhuman or degrading manner. This means that the prohibition is absolute and torture cannot be justified, **therefore must be investigated**, under Kenyan law.
- The failure to conduct an inquiry and provide victims' families with an explanation of the death or enforced disappearance is in violation of Article 9 of the African Charter, which protects the right to receive information, and a breach of Articles 47 and 48 of the Kenyan Constitution, which protects the rights to fair administration and access to justice respectively.

22 Statement of Amir Salim (brother to Suleiman Salim) during an interview with HAKI Africa.

23 Cambridge University Centre for Governance and Human Rights, *op cit*.

WHAT DO WE TELL THE FAMILIES?

- The failure to investigate contributes to a climate of state-sanctioned violence and impunity, merely adding to national insecurity, in violation of Article 23 of the African Charter.
- The failure to investigate creates a climate of fear for all Muslims, in particular young Muslim men, in violation of Article 24 of the African Charter, the right to a general satisfactory environment, Article 27 of the Kenyan Constitution, the right to equality and freedom from discrimination.
- The failure to investigate unlawful acts by state law enforcement functionaries violates Article 25 of the African Charter, the state's duty to promote human rights.

GENDER DIMENSION

While the direct victims of these killings and disappearances are almost exclusively men, the wives and mothers of the victims are seriously traumatised and in many cases never recover from the experiences they go through. In many cases, the men are the primary bread-winners, and their unexpected disappearance or death has obvious ramifications on the welfare of the families they leave behind.

In this regard, HAKI Africa is mindful that questions of legality in relation to the civil and political rights of the male victims should not displace attention to the social, cultural and economic rights and concerns of their family members. In particular, some families suffer from social alienation, as community members become fearful of guilt by association.

Many women have been left destitute not knowing who to turn to for assistance. Aza Yusuf, wife of Salim Khamis Mwamleo, who was killed during the February 2014 Masjid Musa mosque raid, told HAKI Africa:

"My husband was a madrassa teacher and we had two children together. He was the sole bread winner of our family and with him gone, I am left to fend for my children."²⁴

The gendered profiling of these counterterrorism measures leaves many women and families destitute, alienated and cut off from the communities that they relied upon for support.

²⁴ Statement of Aza Yusuf (wife to Salim Khamis Mwamleo) during an interview with HAKI Africa on 11 November 2014.

CONCLUSION AND RECOMMENDATIONS

HAKI Africa does not dispute the need for enhanced security in Kenya. It is a fact that the country requires to put in place strategies to boost public safety and security. However, this must be done in a holistic manner and within a human rights framework that respects democratic principles and rule of law and which does not infringe on civil liberties. The government must address the systemic defaults within the security apparatus such as endemic corruption and poor police welfare, including remuneration and housing. Counterterrorism efforts should be measured, monitored and targeted towards providing long-term stability rather than reactive short-term approaches that lead to more violations and radicalisation.

The government of Kenya must work with local political, religious and civil society leaders in addressing insecurity. Labelling legitimate criticism and democratic dissent as “sympathising with terrorists” violates not only free speech and expression but also closes other spaces for democratic expression. The Kenyan government must understand that it must respect and work with its civil society in ensuring promotion and protection of human rights. The continuing demonisation of human rights organisations is in itself a threat to sustainable security, and being seen to be accountable is key.

Kenya must urgently clarify exactly who has been killed and/or disappeared by Kenyan police or government agents since April 2012, what was done to all of these individuals by Kenyan state personnel, where the bodies of disappeared individuals are and what steps have been taken by the Kenyan government to conduct human rights compliant investigations into deaths and disappearances. The Kenyan government must furthermore clarify whether there is or has ever been in existence a “shoot to kill” and/or political assassination counterterrorism policy amongst Kenyan police and security operatives. They must confirm that any such policies and practices will immediately cease, with all perpetrators investigated and held to account, and with apologies and reparations for the families of victims.

Kenya’s international partners and governments that are supporting counterterrorism projects in the country must demand accountability and adherence to human rights principles. The international community must further understand that assistance for Kenya should not be limited to providing arms, intelligence and police training only. Social and economic programmes aimed at assisting communities out of a perception of hopelessness, can help mitigate the drivers of radicalisation. Investment in education, infrastructure and employment opportunities to improve the lives and living standards of affected communities ought to go hand in hand with counterterrorism efforts.

In fighting terrorism, radicalisation and violent extremism on the Kenyan Coast, the government of Kenya and its allies must desist from “rule of force”. As a people, we owe it to ourselves to be steadfast and guided by the human rights principles of our Constitution. By violating human rights, we become no different from those we are seeking to limit.

LIST OF UNLAWFUL KILLINGS AND DISAPPEARANCES

No	Full Names	Approximate date of Incident	Location	Nature of suspects Human Rights Abuse	Current Status	Summary
1	Samir Hashim Khan	10/04/12	Tsavo National Park	Extrajudicial Execution	Deceased	Samir was pulled off a public bus in Mombasa. A few days later his remains were found in Tsavo National Park
2	Mohamed Bekhit Kassim	10/04/12	Mombasa	Enforced Disappearance	Missing	Mohamed was pulled from a public bus in Mombasa at the same time as Samir Hashim Khan. His whereabouts remain unknown.
3	Jeremiah Onyango Okumu (Duda Black)	26/06/12	Mombasa	Enforced Disappearance	Missing	Jeremiah, in his mid 20's, was among the six men facing terrorism-related charges for the March 2012 Machakos bus station bombing. He vanished on the evening of June 26th, 2012, along with three other young men. The families were advised by a police officer to look for their bodies in the mortuary, as the police had shot them, but their bodies were never found.
4	Salim Abubakar	26/06/12	Mombasa	Enforced Disappearance	Missing	Salim vanished alongside two suspects facing terrorism-related charges for the March 2012 Machakos bus station bombing, and one other man. The families were advised by a police officer to look for their bodies in the mortuary, as the police had shot them, but their bodies were never found.
5	Stephen Mwanzia Osaka (Duda Brown)	26/06/12	Mombasa	Enforced Disappearance	Missing	Stephen was among the six men facing terrorism-related charges for the March 2012 Machakos bus station bombing. He vanished on the evening of June 26th, 2012, along with three other young men. The families were advised by a police officer to look for their bodies in the mortuary, as the police had shot them, but their bodies were never found.

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6	Omar Shwaib (Justo)	26/06/12	Mombasa	Enforced Disappearance	Missing	Omar vanished alongside two acquaintances who were suspects facing terrorism-related charges for the March 2012 Machakos bus station bombing, and one other man. The families were advised by a police officer to look for their bodies in the mortuary, as the police had shot them, but their bodies were never found.
7	Aboud Rogo	27/08/12	Mombasa	Extrajudicial Execution	Deceased	Aboud Rogo was shot dead some meters from Bamburi Police Station on 27th August 2012 as he was driving his family in a van from Kanamai to Mombasa. Aboud Rogo was on a UN watch list for allegedly helping Al Shabab to obtain funding and new recruits. He was also facing various terror related charges in court. His killing sparked major riots in Mombasa.
8	Titus Nabiswa	29/10/12	Mombasa	Extrajudicial Execution	Deceased	During the early hours of the morning, the Anti Terror Police Unit allegedly killed Titus alongside his acquaintance, Omar Faraj.
9	Omar Faraj	29/10/12	Mombasa	Extrajudicial Execution	Deceased	During the early hours of the morning, the Anti Terror Police Unit allegedly killed Omar alongside his acquaintance Titus Nabiswa
10	Badru Mramba	13/11/12	Mombasa	Enforced Disappearance	Missing	Badru Mramba was picked by unknown persons in Majengo Mombasa on 13th November 2012 at his work place where he used to cook and sell snacks. Eye witnesses reported that he was picked by armed individuals who bundled him into a Pajero. He has not been seen since.
11	Shabaan Namusenda Makotse	01/04/13	Mombasa	Extrajudicial Execution	Deceased	Makotse had been named as being wanted for terrorism and had told family and friends for several months that he was being tailed by people he recognized as ATPU officers. He was killed in April 2013.
12	Khalid Ahmed	26/05/13	Mombasa	Excessive Use of Force	Deceased	Khalid was killed in his mother's house at Kwa Bulu in Kisauni, Mombasa county.

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13	Kassim Omollo	12/06/13	Mombasa	Excessive Use of Force	Deceased	Kassim was killed by the Anti Terror Police Unit in the neighbourhood of Kisauni Mlaleo, Mombasa. Witnesses say police shot him whilst he was handcuffed in front of his wife and children.
14	Salim Mohammed Nero	12/06/13	Mombasa	Excessive Use of Force	Deceased	Salim Mohammed Nero was allegedly killed by Anti Terror Police 9 hours after Kassim Omollo, in the Kiembeni area. A witness said he saw Nero in handcuffs moments before he was shot.
15	Sheikh Ibrahim Ismail (Aboud Rogo)	03/10/13	Mombasa	Extrajudicial Execution	Deceased	Sheikh Ibrahim was killed by unidentified gunmen whilst driving in a car with four other men, three of whom also died.
16	Issa Abdalla	03/10/13	Mombasa	Extrajudicial Execution	Deceased	Issa was killed by unidentified gunmen whilst driving in a car with Sheikh Ibrahim Ismail and three other men. He died along with three others.
17	Gadaffi Mohammed	03/10/13	Mombasa	Extrajudicial Execution	Deceased	Gadaffi was killed by unidentified gunmen whilst driving in a car with Sheikh Ibrahim Ismail and three other men. He died along with three others.
18	Omar Abu Rumeisa	03/10/13	Mombasa	Extrajudicial Execution	Deceased	Omar was killed by unidentified gunmen whilst driving in a car with Sheikh Ibrahim Ismail and three other men. He died along with three others.
19	Suleiman Seif Mbaruk	04/10/13	Mombasa	Excessive Use of Force	Deceased	Suleiman was shot dead during the riots after the deaths of Ibrahim Ismail (Rogo), Gaddafi Mohamed, Issa Abdallah and Omar Abu Rumeisa.
20	Katana Gona Gucheha	04/10/13	Mombasa	Excessive Use of Force	Deceased	Katana was shot dead during the riots after the deaths of Ibrahim Ismail (Rogo), Gaddafi Mohamed, Issa Abdallah and Omar Abu Rumeisa.
21	Imam Hassan Suleiman Mwayuyu	06/12/13	Tiwi	Extrajudicial Execution	Deceased	Imam Hassan was killed in Tiwi while travelling in a minibus. He contributed to Muslim's for Human Rights report documenting extrajudicial killings carried out by the ATPU a month prior to his attack.

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22	Hamadi Boga	18/12/13	Diani	Extrajudicial Execution	Deceased	Hamadi was shot and killed as he walked out of a mosque in Diani, by unknown assailants, suspected to have used motobikes to escape.
23	Abdilmunif Swaleh	20/12/13	Mombasa	Enforced Disappearance	Missing	Aram was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
24	Salim Mwasalim	25/12/13	Ukunda	Extrajudicial Execution	Deceased	Abdul was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
25	Ali Mohamed Delawa	01/02/14	Malindi	Extrajudicial Execution	Deceased	Suspected al-Shabab member Ali Mohamed Delawa was killed by police in Ngala estate, Malindi.
26	Aram Alan Olch (Ali Chechniya)	02/02/14	Mombasa	Excessive Use of Force	Deceased	Aram was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
27	Abdul Rashid (Ndayayisenga)	02/02/14	Mombasa	Excessive Use of Force	Deceased	Abdul was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
28	Omar Mustapha (Muadhin)	02/02/14	Mombasa	Excessive Use of Force	Deceased	Omar was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.

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29	Ramadhan Mwagudzi	02/02/14	Mombasa	Excessive Use of Force	Deceased	Ramadhan was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
30	Salim Khamis Mwamleo	02/02/14	Mombasa	Excessive Use of Force	Deceased	Salim was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
31	Suleiman Ali	02/02/14	Mombasa	Excessive Use of Force	Deceased	Suleiman was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
32	Fuad Abdallah Ali	02/02/14	Mombasa	Excessive Use of Force	Deceased	Fuad was killed along side 6 other young men when police officers raided Masjid Musa Mosque in Mombasa. Besides the 7 who were killed by police, 128 others were arrested, including 22 youth aged between 11 and 18 years old.
33	Hemed Salim	02/02/14	Mombasa	Enforced Disappearance	Missing	Hemed went missing after he was arrested on February 2nd, 2014 during the Masjid Musa raid by police. Hemed has not been seen since. During an ensuing habeas corpus case, police claimed that he and others escaped from the police vehicle while being transported to the police station.
34	Omar Maarifa	15/02/14	Ukunda	Extrajudicial Execution	Deceased	Omar was enjoying an evening chat and chewing miraa outside his house with Sudi Omar Mwakuona, when they were accosted by three gunmen who shot them dead.
35	Sudi Omar Mwakuona	15/02/14	Ukunda	Extrajudicial Execution	Deceased	Sudi was enjoying an evening chat and chewing miraa outside his house with Omar Maarifa, when they were accosted by three gunmen who shot them dead.

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36	Hamisi Lukongo	18/02/14	Ukunda	Enforced Disappearance	Missing	Hamisi, 40 years-old, was reported as having been abducted by his father, Salim. Salim claimed that three armed men, identifying themselves as police, handcuffed Hamisi and took him away in a probox.
37	Unknown	23/03/14	Mtongwe	Extrajudicial Execution	Deceased	An unknown man was gunned down by police at Ziwani area of Mtongwe along side one other unidentified man. Police claimed the two were behind the terror attack on Joy of Christ church in Likoni on 23 March 2014.
38	Unknown	23/03/14	Mtongwe	Extrajudicial Execution	Deceased	An unknown man was gunned down by police at Ziwani area of Mtongwe along side one other unidentified man. Police claimed the two were behind the terror attack on Joy of Christ church in Likoni on 23 March 2014.
39	Sheikh Abubakar Sharif Ahmed (Makaburi)	01/04/14	Mombasa	Extrajudicial Execution	Deceased	Makaburi was killed alongside Hassidh Bahero by unidentified gunmen in a drive by shooting outside Shanzu Law Courts in Mombasa, one hundred and fifty metres from the police station. The two were following up on the release on bond of some of those who were arrested during the Musa mosque raid.
40	Hafidh Bahero	01/04/14	Mombasa	Extrajudicial Execution	Deceased	Hafidh Bahero was killed alongside Makaburi by unidentified gunmen in a drive by shooting outside Shanzu Law Courts in Mombasa, one hundred and fifty metres from the police station. The two were following up on the release on bond of some of those who were arrested during the Musa mosque raid
41	Adam Ngao	09/04/14	Bungoma	Extrajudicial Execution	Deceased	Adam Ngao, 44 years old, was shot dead by unknown persons on 9th April 2014, According to a complaint statement recorded at Haki Africa, the wife (Khadija Ali) claims that she was informed that her husband was shot dead by the police in Bungoma on claims of belonging to Al Shabaab

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42	Rashid Tumbo Kufungwa	25/04/14	Kwale	Excessive Use of Force	Deceased	Al-Shabaab suspect, Rashid Tumbo Kufungwa, was shot outside his house in Kwale.
43	Ali Rashid	26/05/14	Mombasa	Excessive Use of Force	Deceased	16 year-old Rashid was killed alongside Ali Awadh Kombo near his home. He had previously given testimony of his shooting by police to a human rights team that was documenting excesses of the Anti Terrorism Police Unit (ATPU). The matter is under investigation by the Independent Police Oversight Authority (IPOA).
44	Ali Awadh Kombo	26/05/14	Mombasa	Excessive Use of Force	Deceased	20 year-old Kombo was killed alongside Ali Rashid near his home. It is not clear whether Ali Awadh Kombo was also a target of the police or whether he was merely with Ali Rashid at the time.
45	Abdulahakim Abdallah Mohamed	02/06/14	Mombasa	Enforced Disappearance	Missing	Abdulahakim was last seen by his family after leaving home following phone calls he received from a female officer at the Mombasa immigration office. His family report that he was assisting an unknown individual to get a passport. The family believes that the person Abdulhakim was assisting may have been linked to terror activities, but that this was unknown to Abdulhakim, who was assisting to get commission.
46	Mohamed Shahid Butt	11/07/14	Mombasa	Extrajudicial Execution	Deceased	Mohamed was shot as he was driving from Mombasa's MOI International Airport after picking his son who had just flown into Mombasa. The incident happened 400 metres from Changamwe Police Station. Innocent bystanders were injured in the ensuing melee, including a baby and his uncle, who claim that police shot at them as they tried to run from the scene.

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47	James Kariuki Wanjohi	25/07/14	Mombasa	Excessive Use of Force	Deceased	James was shot dead by police next to the Mombasa ferry in the evening hours, alongside Benson Mwinyi. Police claim the two were suspected terrorists armed with grenades and were planning to attack ferry users
48	Benson Mwinyi	25/07/14	Mombasa	Excessive Use of Force	Deceased	Benson was shot dead by police next to the Mombasa ferry in the evening hours, alongside James Kariuki Wanjohi. Police claim the two were suspected terrorists armed with grenades and were planning to attack ferry users
49	Suleiman Salim Swalleh	01/08/14	Majengo	Enforced Disappearance	Missing	According to witnesses, Suleiman was forced into a waiting vehicle outside his home in Majengo by at least 8 men appearing to be police officers using 2 different vehicles. He has never been seen since.
50	Idris Mohammed	14/09/14	Mombasa	Excessive Use of Force	Deceased	Idris was shot dead by police during an early morning raid on his house. According to his mother, Idris had surrendered to police before they shot him.
51	Hussein Juma Mwamroji	23/10/14	Ukunda	Extrajudicial Execution	Deceased	Hussein, a young acrobat entertainer, active in the community, was shot dead whilst walking home from Kibundani mosque.
52	Hassan Nasrullah Musa	08/11/14	Mombasa	Extrajudicial Execution	Deceased	Hassan, a known terrorist suspect facing murder charges, was shot in his car on Mwembe Tayari Road by unknown assailants.
53	Ali Awadh	17/11/14	Mombasa	Excessive Use of Force	Deceased	Ali Awadh was shot dead during a raid of Musa mosque. Eyewitnesses said Ali had surrendered to the police but was still shot dead.
54	Abdul-Aziz Ahmed	06/12/14	Mombasa	Enforced Disappearance	Missing	Abdul-Aziz went missing in Kisauni. His friends said that they saw Abdul Aziz being taken from a motorbike; hand cuffed and put in a white probox in the boot, by six people suspected to be police officers.

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55	Jabran Hassan Mbarak	15/12/14	Mombasa	Enforced Disappearance	Missing	Jabran, a student, was forcefully picked by individuals claiming to be police officers outside Masjid Noor Mosque. The police claim to have no knowledge of his arrest. He has not been seen since.
56	Abeid Swaleh	22/01/15	Mombasa	Enforced Disappearance	Missing	Witnesses reported that Abeid, who was on bond after the Masjid Musa Raid, was on his way to sell fish with his friend 'Biggy' when they were arrested, handcuffed and taken away in a white Land Rover by police. Biggy came back home that day and alleged to have been abandoned somewhere in a thicket in Nyali. Abeid is still missing.
57	Hassan Mohamed	03/04/15	Mombasa	Enforced Disappearance	Missing	Hassan, 25 years old, left for work and was never seen again. Hassan's friend, Omar Awadh Omar, also went missing that day. It is alleged that the two were picked up by police officers.
58	Omar Awadh Omar	03/04/15	Mombasa	Enforced Disappearance	Missing	Omar went missing the same day as his close friend Hassan Mohamed. The two were allegedly picked up by police, and have never been seen again.
59	Abdi Farah	03/07/15	Mombasa	Enforced Disappearance	Missing	Abdi Farah was reported missing by his father, who claimed Abdi was arrested near the fire station in Mwembe Tayari alongside Ahmed Salmin, by men brandishing firearms. Neither of the two has been seen since.
60	Ahmed Salmin	03/07/15	Mombasa	Enforced Disappearance	Missing	Ahmed was seen being arrested near the fire station in Mwembe Tayari alongside Abdi Farah by men brandishing firearms. Neither of the two has been seen since.
61	Munir Ali Kibwana	04/07/15	Mombasa	Enforced Disappearance	Missing	Munir was picked up in Mwembe Tayari outside the Golden Eagle Hotel by men alleged to be police officers. He has not been seen since.

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62	Issah Ali	04/08/15	Malindi	Extrajudicial Execution	Deceased	Issah was among the seven most wanted terror suspects in Malindi and was killed alongside four others in a shootout with police near the airport. Police had a Sh2 million bounty placed on Issah.
63	Suleiman Awadh	04/08/15	Malindi	Extrajudicial Execution	Deceased	Suleiman was among the seven most wanted terror suspects in Malindi and was killed alongside four others in a shootout with police near the airport. Police had a Sh2 million bounty placed on Suleiman.
64	Unknown	04/08/15	Malindi	Extrajudicial Execution	Deceased	An unidentified terrorist suspect was killed by police alongside Issah Ali, Suleiman Awadh, and one other unidentified man.
65	Unknown	04/08/15	Malindi	Extrajudicial Execution	Deceased	An unidentified terrorist suspect was killed by police alongside Issah Ali, Suleiman Awadh, and one other unidentified man.
66	Ali Bunu	11/10/15	Mombasa	Enforced Disappearance	Missing	Ali, a 50 year old estate owner in Hindi division and father of nine was picked up from his home in Kwasasi area by unknown people in state owned police and military vehicles. He was went missing along with his nephew, Shuebu Mohamed, and four of his employees.
67	Mbarak Juma Mbarak	18/11/15	Mombasa	Enforced Disappearance	Missing	Mbarak Juma Mbarak and two other colleagues (Hamis Hussein Bakari and Nurdin) were picked at their work place in Majengo, Mombasa by unknown persons. According to the mother of Mbarak Juma Mbarak who recorded a statement at HAKI Africa, the three were forced into a pajero and probbox and were driven away. The three have never been seen since.

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68	Hamisi Hussein Bakari	18/11/15	Mombasa	Enforced Disappearance	Missing	Hamisi Hussein Bakari and two other colleagues (Mbarak Juma Mbarak and Nurdin) were picked at their work place in Majengo, Mombasa by unknown persons. According to the mother of Mbarak Juma Mbarak who recorded a statement at HAKI Africa, the three were forced into a pajero and probbox and were driven away. The three have never been seen since.
69	Nurdin	18/11/15	Mombasa	Enforced Disappearance	Missing	Nurdin and two other colleagues (Mbarak Juma Mbarak and Hamisi Hussein Bakari) were picked at their work place in Majengo, Mombasa by unknown persons. According to the mother of Mbarak Juma Mbarak who recorded a statement at HAKI Africa, the three were forced into a pajero and probbox and were driven away. The three have never been seen since.
70	Mohammed Mwanguze	19/01/16	Msambweni Sub County	Extrajudicial Execution	Deceased	Mohammed, a village chairman, and his close associates Hassan Mwasanite and Juma Mwanyota, were shot dead at different locations of Bongwe village in Msambweni Sub County by unknown assailants. Community members believe that the three were killed because they had brokered reintegration of former Al Shabaab recruits into society.
71	Hassan Mwasanite	19/01/16	Msambweni Sub County	Extrajudicial Execution	Deceased	Hassan, a village elder, and his close associates Mohammed Mwanguze and Juma Mwanyota were shot dead at different locations of Bongwe village in Msambweni Sub County by unknown assailants. Community members believe that the three were killed because they had brokered reintegration of former Al Shabaab recruits into society.

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72	Juma Mwanyota	19/01/16	Msambweni Sub County	Extrajudicial Execution	Deceased	Juma, a village elder, and his close associates Mohammed Mwanguze and Hassan Mwasanite were shot dead at different locations of Bongwe village in Msambweni Sub County by unknown assailants. Community members believe that the three were killed because they had brokered reintegration of former Al Shabaab recruits into society.
73	Ali Haji Kolagwa	08/04/16	Likoni	Enforced Disappearance	Missing	Ali was picked from his place of work. Witnesses saw him being bundled into a blue Subaru registration number KBZ 249X, later spotted at Likoni Police station. He has not been seen since.
74	Omar Hesbon Matheka	28/05/16	Ukunda	Extrajudicial Execution	Deceased	Several sources told the media that Ali Salim was killed in a stationary tuk tuk at a bus stage. It is alleged that a police officer approached the tuk tuk, lifted the plastic back cover and shot him at point blank range.
75	Ali Salim	23/05/16	Kwale County	Excessive Use of Force	Deceased	Ali Salim was shot dead by police in Kwale County, who claimed that Ali was a terror suspect linked to the three Nyumba Kumi members of Bongwe village.
76	Mohammed Tulia	01/06/16	Kibundani	Excessive Use of Force	Deceased	Mohammed was killed by police, who claim he was on a watch list, and had plans to attack officers on patrol. Police sources confirmed that Mohammed threw a grenade at officers, however no police officers were injured.
77	Salim Hanjary Bedzimba	20/06/16	Mombasa	Excessive Use of Force	Deceased	Salim was reportedly shot dead by police officers on terror related suspicions, alongside Kibwana Ahmed Abdalla. Police claim to have found a large weapons cache at his home. However the family deny this and claim the police planted the weapons after the fact.

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78	Kibwana Ahmed Abdalla	20/06/16	Mombasa	Excessive Use of Force	Deceased	Kibwana was reportedly shot dead by police officers on terror related suspicions, alongside Salim Hanjary Bedzimba. Police claim to have found a large weapons cache at their home. However, the families deny this and claim the police planted the weapons after the fact.
79	Mohammed Bakari	16/07/16	Diani	Excessive Use of Force	Deceased	Anti terror police reports state that Mohammed was shot dead while trying to haul a grenade at police. He was believed to be a former recruit of Al Shabaab.
80	Ismail Mohamed (Shosi)	27/10/16	Mombasa	Excessive Use of Force	Deceased	Shosi was a wanted terror suspect for roughly 2 years. It is reported that police raided the house in Mwandoni that he was staying in and shot him dead. Post mortem reports revealed that he was shot 12 times
81	Abdulkarim Mzee Siraj	26/11/16	Kilifi	Extrajudicial Execution	Deceased	Abdulkarim Mzee Siraj was a returnee facing terror related charges. He was presented to the County Commissioner in 2014 and was subsequently charged in court and released on bond. He disappeared on Saturday 26/11/16 and his body with bullet wound was found a few hours later on the same day at Kijipwa area of Kilifi county.