



justice forum



MUHURI
MUSLIMS FOR HUMAN RIGHTS



OPEN SOCIETY
JUSTICE INITIATIVE

29 May 2014

African Commission on Human and Peoples' Rights
Special Mechanisms
31 Bijilo Annex Layout, Kombo North District
Western Region P.O. Box 673 Banjul
The Gambia

Re: Human Rights Violations in the Context of Kenyan Counterterrorism Operations

Dear Special Rapporteur on Human Rights Defenders; Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; Special Rapporteur on Prisons and Conditions of Detention; and Special Rapporteur on Freedom of Expression and Access to Information; Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa; and Committee for the Prevention of Torture in Africa;

We write to publicly express our concerns over reports of a large number of human rights violations by Kenyan security forces in the context of counterterrorism operations, in particular in Eastleigh (Nairobi), Mombasa, and towns in Central Kenya. In committing these violations, Kenya is backtracking on important human rights commitments made in the constitutional, legislative, and institutional reforms after the widespread 2007/2008 post-election violence, and risking further unrest.

These counterterrorism-related violations include credible allegations of unlawful killings of persons suspected of involvement in terrorism by security forces and the government's failure to effectively investigate these killings; murders and abductions of persons suspected of involvement in terrorism which are committed by unknown individuals; enforced disappearances; ill-treatment of detainees; the targeting of Somalis, ethnic Somali Kenyans, and other nationalities through arbitrary detention, physical and sexual abuse, and extortion in exchange for release; threats against human rights defenders; and the arrest, detention, and ill-treatment of journalists.

Amnesty International recently released a brief that documented several of these

violations, titled “Somalis are Scapegoats in Kenya’s Counter-Terror Crackdown.”¹ Human Rights Watch, Muslims for Human Rights (MUHURI), Haki Africa, Justice Forum, Open Society Justice Initiative (OSJI), and others have also documented and made calls for ending abusive counterterrorism operations.²

Kenya’s counterterrorism-related human rights violations have accompanied public statements by government officials who have issued shoot-to-kill orders and denounced Kenya’s judiciary for its alleged ineffectiveness in tackling terrorism.³ At the same time, the Inspector General of Police David Kimaiyo has also publicly threatened and warned off human rights defenders from documenting counterterrorism operations in Nairobi.⁴

In early February 2014, security forces conducted a raid and mass arrests at the mosque formerly known as Masjid Musa Mosque in Mombasa, which the government has claimed was a “base for recruiting Muslim youths to engage in terrorist activities.”⁵ The raid was reportedly carried out using excessive force; seven people were reportedly shot dead (one police officer reportedly died of stab wounds), and 129 arrested, the vast majority of whom have been released without charge. There were reports that security forces beat detainees, and of the enforced disappearance of one man who was last photographed in police custody but in regard to whom the authorities have refused to provide information on his current whereabouts.

In March 2014, in an apparent response to an attack on a Mombasa church that killed six people, Kenyan authorities announced a plan to move 50,000 registered refugees and asylum seekers from cities to overcrowded and underserved refugee camps. This order was given despite a 2013 Kenya High Court ruling on a similar relocation plan, prohibiting the relocation on the basis that the authorities had not

¹ Amnesty International, “Somalis are scapegoats in Kenya's counter-terror crackdown,” 27 May 2014, <http://www.amnesty.org/en/library/info/AFR52/003/2014/en>.

² See, for example, Human Rights Watch, “Kenya: Mass Deportation of Somalis: 359 Deported Without Access to Lawyers, Courts, UN Refugee Agency,” *Press Release*, 23 May 2014, <http://www.hrw.org/news/2014/05/23/kenya-mass-deportation-somalis>; Human Rights Watch, “Kenya: End Abusive Round-Ups: Detainees Describe Mistreatment, Lack of Access to UN Agency,” *Press Release*, 13 May 2014, <http://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups>; Open Society Justice Initiative (OSJI) and Muslims for Human Rights (MUHURI), *We’re Tired of Taking You to the Court*, 20 November 2013; and Muslim Human Rights Forum, *The Horn of Terror*, 2008.

³ In December 2013, a security officer told the BBC: “The justice system in Kenya is not favourable to the work of the police...So we opt to eliminate them. We identify you, we gun you down in front of your family, and we begin with the leaders.” “Kenya’s anti-terror forces face accusations after Westgate,” *BBC News Africa*, 18 December 2013, <http://www.bbc.com/news/world-africa-25436316>. In March 2014, after a bombing in Mombasa, the media reported that the Mombasa County Commissioner gave authorities permission to apply a shoot-to-kill policy against so-called terrorist suspects. He also told authorities they need not resort to courts in their fight against terrorism. Stanley Mwachanga, “Police issue shoot to kill order on terrorism suspects,” *Standard Digital*, 26 March 2014, <http://www.standardmedia.co.ke/the-counties/article/2000107870/police-issue-shoot-to-kill-order-on-terrorism-suspects>. Deputy President William Ruto also criticized the courts for releasing terrorism suspects on bail, despite the constitution allowing judges and magistrates to accept bail applications for all categories of suspects.

⁴ “Kimaiyo Warns NGOs to Keep Off Government’s Crackdown on Terrorists and Radical Muslims – We Will Finish Them,” *Kenyan Daily Post*, 7 April 2014, <http://www.kenyanpost.com/2014/04/kimaiyo-warns-ngos-to-keep-off.html>.

⁵ “Kenya terror charges after Mombasa police raid mosque,” *BBC New Africa*, February 3, 2014, <http://www.bbc.com/news/world-africa-26013964>.

shown that relocation to the camps would help protect national security, and that the move would violate the refugees' dignity and right to freedom of movement and risked indirectly forcing them back to Somalia.

On April 2, the Kenyan government also began a massive counterterrorism operation ("Operation Usalama Watch") beginning in Nairobi's predominantly Somali area of Eastleigh. A government spokesperson said in early April that police had arrested 4,000 people and, in mid-April, said that 1,136 had been screened, of whom 313 would be tried on immigration charges.

Human Rights Watch and Amnesty International documented the actions of Kenyan security forces who conducted arbitrary arrests and detentions, extortion, harassment and other abuses against Somalis, ethnic Somali Kenyans, and other nationalities during this security operation. Security forces beat people and held detainees in overcrowded, unhygienic police cells without access to food or toilets, beyond the 24-hour limit prescribed under Kenyan law, without charging them and taking them to court. The Kenyan authorities have denied the United Nations High Commissioner for Refugees (UNHCR), the constitutional Kenya National Commission on Human Rights, NGOs and lawyers access to most detainees.

As of May 20, 2014, the operation has led to four instances of summary mass deportation to Somalia of about 350 people in total. The Kenyan authorities did not screen the deportees to identify anyone who wanted to claim asylum and denied UNHCR access to all the deportees before they were removed to Somalia.

Late 2013 and 2014 has also seen increasing threats and harassment against human rights defenders covering Kenya's counterterrorism operations. Two human rights defenders who have faced threats and/or intimidation are the high profile Kenyan human rights defender Al-Amin Kimathi, who works to document human rights violations by Kenyan security forces and Francis Auma, the Rapid Response Officer at Mombasa-based Muslims for Human Rights (MUHURI). Soon after Mombasa County Commissioner Nelson Marwa issued shoot to kill orders,⁶ he also announced that Kenyan state security should investigate MUHURI and Haki Africa for alleged incitement of youth to terrorism, and named the director of Haki Africa, Hussein Khalid, specifically.⁷ In the absence of any official investigation of the two organisations, these actions appear to be a form of intimidation against two groups that are highly critical of Kenya's counterterrorism-related human rights abuses.

Journalists covering Kenya's counterterrorism operations have also been subjected to detention, intimidation, and harassment. In April 2014, the media reported that a Somali-Kenyan journalist was arrested for entering a detention camp with a video camera, held *incommunicado* for three days, and subjected to humiliating searches. His equipment, including his video camera, was impounded, but was returned only after the video was deleted.⁸ Police also detained two Somali journalists who

⁶ See footnote 3.

⁷ Harrison Mbungu, "Mombasa NGOs to be Investigated for Inciting Youth," *News24Kenya*, 19 March 2014, <http://www.news24.co.ke/MyNews24/Mombasa-NGOs-to-be-investigated-for-inciting-youth-20140319>.

⁸ Malkhadir Muhumed, "Cracking down on Nairobi's Somalis: Al Jazeera investigation uncovers allegations of beatings and rape in Kenya's ongoing anti-terrorism operation," *Al Jazeera*, 22 April

reportedly presented their identification cards and UNHCR identification documents to authorities but were nonetheless detained as part of the mass arrest of Somalis in Eastleigh.⁹ Non-Somali journalists covering Kenya's security operations have also been arrested and harassed.¹⁰

These counterterrorism-related human rights violations noted above are violations of Kenya's international and regional human rights obligations. These obligations include the requirement that lethal force be used only when necessary in defense against an imminent threat of death or serious injury; and that the state refrain from, and effectively investigate, murder and enforced disappearances. Kenya must respect the prohibition on torture and other ill-treatment and ensure humane detention conditions; fair trial guarantees; the principle of *non-refoulement*; and that human rights defenders and journalists who conduct their work lawfully are not threatened for, or restricted from, conducting their work or expressing their opinions when critical of their government.

For these reasons, the undersigned international and national organizations request that the ACHPR Special Mechanisms engage with the Government of Kenya on these urgent issues. In particular, we call on you to:

1. Engage the Kenyan government in dialogue concerning the multiple credible allegations and issues contained in this communication, including by sending a joint urgent appeal from the Special Mechanisms copied to this letter; and
2. Request an invitation for a country visit to Kenya by appropriate mandate holders to assess the extent to which the Government of Kenya is complying with its regional and international human rights obligations regarding the rights of refugees, asylum seekers, and others in the context of abusive counterterrorism operations.

Sincerely,

Amnesty International
Human Rights Watch
Haki Africa
Justice Forum
Muslims for Human Rights (MUHURI)
Open Society Justice Initiative

2014, <http://www.aljazeera.com/indepth/features/2014/04/cracking-down-nairobi-somalis-201442012628685801.html>.

⁹ "Somali Journalists illegally detained: Kenya," *msnNews*, 2 May 2014, <http://news.ke.msn.com/national-news/somali-journalists-illegally-detained-kenya>.

¹⁰ In April 2014, two Belgian journalists were held briefly at a police station as suspected terrorists and local police extorted money from them after they were cleared for release. Zadock Angira, "Belgium Irked by Mistreatment of its Journalists in Nairobi," *Nairobi News*, 4 May 2014, <http://nairobi.news.nation.co.ke/belgium-irked-by-mistreatment-of-its-journalists-in-nairobi/>. In March, the Kenya Correspondents Association condemned an incident in which an officer arrested and threatened a *Standard* journalist. "Police harass Standard journalist," *Daily Nation*, 5 March 2014, <http://mobile.nation.co.ke/news/Kenya-Correspondents-Association-Police-Standard-Journalist/-/1950946/2232628/-/format/xhtml/-/p6jglq/-/index.html>.

c.c.: Ms. Jane Connors, Chief - Special Procedures Division
Dr. Chaloka Beyani, Chair - Coordination Committee of Special Procedures
Mr. Ben Emmerson, UN Special Rapporteur on the promotion and protection of human rights while countering terrorism
Mr. Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions
Ms. Margaret Sekaggya, UN Special Rapporteur on the situation of human rights defenders
Mr. Juan Mendez, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Mr. François Crépeau, UN Special Rapporteur on the human rights of migrants
Mr. Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association
Mr. Frank La Rue, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Mr. Shamsul Bari, Independent Expert on the situation of Human Rights in Somalia
UN Working Group on Enforced or Involuntary Disappearances
UN Working Group on Arbitrary Detention