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The Shakahola Horror *MaShaka ya Shakahola*

Kenya National Commission on Human Rights (KNCHR) Report on the Shakahola Killings



March 2024

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1. The Mandate Of The Commission

The Kenya National Commission on Human Rights (the Commission) is a National Human Rights Institution established under Article 59 and Chapter 15 of the Constitution of Kenya. The Commission is operationalized through the Kenya National Commission on Human Rights Act, 2011.

1. The Commission is broadly mandated to promote and protect Human Rights in the country. Article 59 (2) of the Constitution of Kenya outlines the functions of the Commission which include:
2. To promote respect for human rights and develop a culture of human rights in the Republic;
3. To promote the protection and observance of human rights in public and private institutions;
4. To monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs;
5. To receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;
6. On its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;
7. To act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights.

The Kenya National Commission on Human Rights Act, 2011 provides similar mandate to the Commission at Section 8.

The Commission is also the national monitoring agency under Article 33 (2) of the Convention on the Rights of Persons with Disabilities¹ and has additional functions to oversight implementation of the Prevention of Torture Act, 2017.²

¹ Article 33(2) of the UN Convention on the Rights of Persons with Disabilities (CRPD or Convention) provides that States should designate or establish one or more independent mechanisms to promote, protect and monitor the implementation of the Convention taking into account the Paris Principles. The Hon Attorney General by letter referenced DOJ/COM/8/21/TY (97) dated 9th June 2017 nominated the Kenya National Commission on Human Rights as the Monitoring Agency under the United Nations Convention on the Rights of Persons with Disabilities.

² Act No 12 of 2017 available at <http://www.kenyalaw.org/lex//actview.xql?actid=No.%2012%20of%202017>.

2. The Shakahola Tragedy

On 25th March 2023, the mainstream media carried a lead story³ on horrifying discoveries of scores of people buried in shallow graves in Shakahola forest, Malindi County. The authorities attributed the unfolding massacre to a religious sect linked to Pastor Paul Nthenge Mackenzie.

As the tragedy unfolded, the Cabinet Secretary for Interior and National Administration:

1. Declared Shakahola/Chakama Ranch a disturbed area vide Kenya Gazette Legal Notices Number 52 and 53 of 2023⁴. The area thus became an active security operation zone with no access by unauthorized persons;
2. Imposed a curfew within the said area between 6pm in the evening up to and until 6am in the morning for a period of thirty (30) days; and
3. Immediately transferred the entire security leadership in Kilifi County including the National Police Service Officers and National Government Administration Officers aimed at inspiring public confidence in the ensuing investigations.

In response to the unfolding events, the Commission in furtherance of its mandate and functions of promoting and protecting human rights, immediately embarked on monitoring the operation. The goal was to ensure transparency, accountability and justice for the survivors and families of victims. The Commission's monitoring exercise was/is to ensure that the Government adopts a Human Rights Based Approach in investigating and taking steps to unravel the Shakahola tragedy.

3. Methodology

The monitoring by the Commission involved a mixed methods approach. The Methodology included:

Site visits: The Commission visited the mass graves in Shakahola; observed the exhumations, processing, management and preservation of the bodies in the mortuary; deployed officers to

³ <https://nation.africa/kenya/counties/kilifi/unmasking-paul-nthenge-the-preacher-linked-to-children-s-death--4171918>

⁴ See Kenya Gazette Legal Notices 52 and 23 of 2023 and the Letter from the Cabinet Secretary: <https://twitter.com/KindikiKithure/status/1651214676833755136?t=FoDk8hnlzGMSSNhOHLJ35g&s=19>

observe the documentation of missing persons; the DNA profiling of the deceased and their families; and the conduct of postmortems to determine the cause of death.

Literature review: The Commission conducted literature review on the various conventions, documented research, national laws, and policies relating to the rights impacted by this tragedy.

Desk research: The monitoring by the Commission was also complemented by secondary data gathered from media stories, reports, and the internet among other sources.

Focus group discussions: The Commission conducted interviews with community members living next to the mass graves as well as some survivors and relatives of the deceased. The Commission teams also visited the survivors at the rescue centers and the suspects detained in Malindi, Kilifi, and Shimo la Tewa Prisons.

Comparative analysis: The Commission studied results of an enquiry conducted in South Africa on Commercialization of Religion.

Stakeholder engagement: The Commission held key informant interviews with opinion leaders and relevant government agencies including CSOs, local Human Rights Defenders (HRDs), the police, the National Government Administration, the Office of the Director of Public Prosecutions, the Judiciary, Prisons authorities, Kenya Red Cross, forensic agencies, Ministry of Health and the Children Department.

To ensure the security of the interviewees, interviews were conducted in confidence, in safe places and their identity concealed in the report where requested or necessary.

The Commission has also in furtherance of its role to secure appropriate redress where necessary, participated in court cases in Kilifi and Mombasa in an attempt to obtain justice for the victims and ensuring the rights of the suspects are respected⁵.

⁵ Shanzu Miscellaneous Criminal Application number E500 of 2023; Miscellaneous Criminal Application number E152 of 2023 as Incorporates with Miscellaneous Criminal Application number E156 of 2023

4. Limitations

1. The Commission's engagement in the ongoing exercise was largely impeded by the security agencies who limited access to the site at will, deciding when to grant access and when to lock out all agencies; withholding crucial information such as results of the DNA profiling; and when exhumed bodies would be released to their kin; on grounds of security.
2. The Commission also experienced challenges in accessing the survivors and suspects. The Commission was prohibited from accessing the survivors and suspects in the rescue centers and Shimo la Tewa prison.
3. Lack of resources was also a great challenge. The Commission has had to rely on well-wishers and development partners to perform this crucial function that forms its mandate. The Commission's reach and intervention was dictated by the available resources.
4. Witnesses and victims were afraid and reluctant to record statements with the Commission due to intimidation and for fear of reprisals. The majority of those who agreed to speak to the Commission requested anonymity and are unwilling to testify against the suspected perpetrators.

5. Findings

The following are the findings from the information gathered from the Commission's investigations;

5.1 Establishment

The Good News International Ministries was established in 2003 by Pastor Paul Nthenge Mackenzie, and was registered as a Ministry by the Registrar of Societies in 2010 with Mackenzie as Chairperson together with five other officials⁶.

⁶ Raphael Riziki Baya, Smart Derry Mwakalama, Lucia Wanjiku Kinuthia, Sebastian Kachero and Alexander Mwema Masango.

In 2015, Mackenzie registered the Good News Media (K) Limited (Times TV) a broadcasting company based in Malindi.

5.2 Arrests

Pastor MacKenzie had been arrested several times, and we set out in the chronology below:

- On 17th March 2017, Pastor Mackenzie was arrested and charged with radicalization, promoting extreme beliefs, and failing to provide children with education contrary to section 76(1)(2) and section 92(a) of the Basic Education Act in Malindi Criminal Case number 182 of 2017 – Republic Versus Paul Nthenge Mackenzie, Winnie Alexander Gandhi and Betty Mwaka. The accused persons entered into a plea bargain with the Office of the Director of Public Prosecution and were discharged by the trial court and ordered to be of good behavior.
- On 17th October 2017, Mackenzie was arrested again and charged with radicalization and offering education in an unauthorized institution in Malindi Criminal Case No.790 of 2017. He was acquitted on 29th October 2021 under Section 210 of the penal code.
- He was arrested again in April 2019 and charged in Malindi Criminal Case No. 366 of 2019 with three counts; Incitement to disobedience of the law, Possession and distribution of unauthorized films and operating a films studio without a valid license. He was granted cash bail of Kenya Shillings 500,000/- and alternative bond of Kenya Shillings 1,000,000/- with one surety, and MacKenzie was released during the trial. On 1st December 2023, MacKenzie and his co-accused were found guilty and sentenced to one (1) year in prison.
- On 23rd March 2023, the prosecution moved court seeking orders to hold Mackenzie for 14 days for being connected to murder of two children found in shallow graves in Shakaola, and suspected to have died from starvation and suffocation. The Court declined to grant orders for holding MacKenzie, and released him on a cash bail of Kenya Shillings 10,000/- and ordered him to report to the police station as and when required to do so. The prosecution sought review of the release orders, but the application for review was dismissed for lack of evidence.
- Mac Kenzie and thirteen others were arrested and presented in court on 17th April 2023, when the prosecution sought orders to hold the 14 for a period of 30 days for being

connected to offences of murder, suicide, manslaughter, conspiracy to kill, criminal recklessness and negligence, abducting in order to confine, accessories to the fact, child cruelty, child neglect, attempted suicide and others. The court ordered the Mac Kenzie remanded in police custody for 14 days.

5.3 Activities

In 2019 Mackenzie relocated his church to Shakahola ranch where he lured his followers with the promise of cheap and affordable arable land. The influx intensified during the COVID period in 2020. Eventually, Mackenzie called on his followers to begin fasting in readiness for the end of the world in August 2023.

Upon relocating his church from Malindi to Shakahola, Mackenzie effected his ideology of indoctrination and radicalization by declaring a fasting regime that would culminate into the ascension to heaven of his followers. The children were to be the first to starve followed by women, then men and finally Pastor Mackenzie who would ascend to heaven from the center of Malindi in August 2023.

Mackenzie also recruited a group of armed militia (both male and female) who were to supervise and enforce the fasting and eventual death of the followers. In the meantime, they dug shallow graves where they buried those who succumbed to the starvation. Those who defied the directive to fast or attempted to escape were either strangled or clobbered to death by the militia.

Witnesses informed the Commission that they were denied food and water, held in very harsh and squalid conditions, and prohibited from leaving the Shakahola ranch by Mackenzie and his militia. Those who hesitated, refused to fast, or attempted to escape were brutalized. The deceased were buried in shallow mass graves in the absence of their relatives and without befitting cultural and religious rites.

The Commission established that Mackenzie exploited people's vulnerabilities and recruited hundreds of followers across the country which peaked during the Covid-19 pandemic. He manipulated the gullible followers to dispose of their earthly possessions and lured them through promises of a serene life in Shakahola as they prepared for the end of the world in August 2023. After dispossessing the followers of their livelihoods and life savings, Mackenzie persuaded his followers to destroy their vital documents such as birth certificates, National Identity Cards, Passports, Title Deeds, academic documents, and marriage certificates. He intentionally isolated

his followers from their relatives and the rest of the society by confining them in the desolate Shakahola wilderness which had no telephone connectivity, transport infrastructure or social services such as schools and hospitals.

To lure more followers, Mackenzie registered a TV company, Good News Media (K) Limited on 19th April 2012 operating from Malindi, Kilifi County. The directors and shareholders as at 16th June 2023 were Shadrack Musau Mutiso and Paul Nthenge Mackenzie each with 50 percent shareholding. Mackenzie also broadcast his sermons through a YouTube channel that had 677 videos and over 7,000 subscribers.

The negligence and failure of the judicial system, which released MacKenzie severally, or failed to expedite hearings against him; and the national security and administration structures left Mackenzie followers in the full control and mercy of Mackenzie and his militia. Many followers faced a slow excruciating death mainly through starvation.

5.4 Discovery of mass graves, exhumations and post-mortems

On 25th March 2023, the mainstream media carried a lead story⁷ on horrifying discoveries of scores of people buried in shallow graves in Shakahola forest, Malindi County. The authorities attributed the unfolding massacre to a religious sect linked to Pastor Paul Nthenge Mackenzie.

One month after the mainstream media carried the story, on 25th April 2023, the Cabinet Secretary for Interior and National Administration gazetted Shakahola and the entire Chakama ranch as a disturbed area, and imposed a dusk-to-dawn curfew for a 30-day period. On the same day, the government launched a search and rescue operation running concurrently with the identification of the mass graves and exhumation of bodies. Leading to exhumation of 112 bodies.

In the period running between 25th April 2023 and October 2023, the government led a search & rescue operation which ran concurrently with exhumation of bodies in several mass graves. At the end of the exercise, a total of 429 bodies were exhumed, 67 adult persons and 25 children rescued⁸. The KNCHR on its part monitored all parts of the operation: search, rescue, exhumation of bodies and the postmortems.

⁷ <https://nation.africa/kenya/counties/kilifi/unmasking-paul-nthenge-the-preacher-linked-to-children-s-death--4171918>

⁸ These were the number of children that the KNCHR interacted with. The numbers could be slightly higher.

5.5 Survivors/suspects and court cases

Sixty-five survivors were rescued from Shakaola and held at Sahajanadi Rescue center in Mtwapa, Kilifi County. They however refused to eat, and were arraigned in court on 12th June 2023 in Miscellaneous Criminal Application Number E500 of 2023 seeking to have them remanded in prison. The Prosecution said that in prison they will undergo mental and medical assessment and be "forced" to eat. The court deferred ruling to 15th June 2023, however the 65 survivors were transferred to Shimo Men and Womens Prisons. They were effectively being held in prison without any charges being preferred against them; for upholding the practices of the deep indoctrination they had been through. These are victims being treated as criminals, instead of being offered psycho-social support towards de-radicalization.

On June 15, 2023, when the Court was due to rule on the issue of holding the 65 survivors in prison for refusing to eat, the Commission submitted an advisory to court on the need to consider referring the victims for psychosocial support and mental assessment instead of incarceration. The Court rendered its ruling on June 15, 2023 and ordered that the victims be returned to the Rescue Centre and accorded psycho-social support, and thereafter undergo a mental assessment. All the survivors except one, consented to go back to the Mtwapa Rescue Center. The Commission undertook to provide a counselling psychologist to assist the victims with their mental health; conduct supervisory visits on behalf of the court; and submit reports to the court on the status of the victims every 2 weeks. It is worth noting that one of the suspects was discharged and placed under Witness protection.

On 31st July, 2023, the ODPP filed another application Miscellaneous Criminal application E152 of 2023 in court seeking to transfer 41 of the survivors to pre-trial detention after determining they were deemed as suspects for multiple crimes including murder, attempted murder, manslaughter, manslaughter (by suicide pacts), aiding suicide, doing grievous harm to another person (minors), radicalization, cruelty and neglect of children, offences under Prevention of Torture Act, failure to provide minors with necessaries without lawful excuse, failure by parent to take child to school and failure to give notice of death and burying without a burial permit. The 41 were detained at Shimo La Tewa Men and Women Prison. The other remaining 24 were taken back to the rescue Centre to be presented in court alongside the 41 on 4th August 2023.

On 3rd August 2023, a day before the 24 survivors held at the Rescue Centre were due in Court, the ODPP filed another application Miscellaneous Criminal Application E156 of 2023 seeking to

have the remaining 24 survivors transferred to prison as they too were now being treated as suspects for offences similar to the offences proposed for the 41 respondents in Miscellaneous Criminal application E152 of 2023. On 4th August 2023, the 24 were presented in court and all were detained in prison.

On 11th September 2023, the court in Miscellaneous Criminal Application number E152 of 2023 as consolidated with E156 of 2023, granted request by the Prosecution to hold the 65 suspects⁹ for a further 130 days pending investigation and formal charge.

On 19th October 2023, MacKenzie who had been arraigned in Court on 17th April 2023, and held pending investigations on suspicion of having committed various crimes¹⁰, was in court for further directions on an application filed by the ODPP seeking for further detention of MacKenzie and the other persons held in relation to Shakaola for another 180 days.

As part of its advisory mandate, the KNCHR sought to be admitted into the matter as an interested party on 3rd November, 2023 with the ruling being delivered on 1st December 2023 where the court dismissed this application.

On 14th January 2024, following complaints by the suspects, the Shanzu Law Courts Senior Principal Magistrate, Y.A. Shikanda made a ruling in Miscellaneous Criminal Application number E077 of 2023, as consolidated with E101 of 2023 and E130 of 2023 where he gave the state two (2) weeks to charge Pastor Paul Mackenzie and all other persons being held in relation to Shakaola, or the court would release them on bail or bond terms. This led to a flurry of charges being brought against the suspects in several different court within the fourteen-day window that had been granted by the Magistrate. A very reactionary move. The cases against them are outlined below:

- On 17th January 2024 Mackenzie and his co-suspects were presented before the Malindi High Court to face 191 counts of murder charges of the minors. The plea-taking was deferred for fourteen (14) days pending a mental assessment of the suspects. Thereafter, the accused persons took plea but one of the accused persons was found to be mentally unstable according to medical reports.

⁹ These are the 41 detained 31st July 2023 in Misc. Crm. Appl. No, E152 of 2023, plus the 24 detained on 4th August 2023 in Misc. Crm. Appl. E156 of 2023.

¹⁰ See para 5.2 (v) above.

- On 18th January 2024, all the 95 suspects¹¹ were jointly charged at Shanzu Law courts for various offences including radicalization and terror in Shanzu Criminal Case Number E85 of 2024. Suspect no 65 in Misc. Cr. Application number E156 of 2023 was discharged and the court ordered that she be transferred to Port Reitz Hospital for mental care as the ODPP traces her family.
- On 23rd January 2024, the state preferred charges against the 95 in criminal case number Mombasa Criminal case number E112 of 2024. The state had made an application to oppose bond and a pre-bail report was requested for all the 95 accused persons. The court ordered the 95 remanded in custody pending the pre bail report.
- On 25th January 2024, forty (40) of the suspects were charged with cruelty against children and other related charges before Tononoka Law Courts in Tononoka MCCHCR/006/2024 Republic versus Felix Katana, Mary Kahindi and 38 others. All the suspects were remanded at Shimo la Tewa Maximum Security Prison pending psychiatrist assessment and hearing of their bail application.

5.6 Proscribing of the Sect

On 31st January 2024 the Cabinet Secretary for Interior and National Coordination, Kithure Kindiki issued a gazette notice declaring Pastor Mackenzie's Good News International Ministries an organized criminal group under Section 22(1) of the Prevention of Organized Crimes Act¹².

6. The Human Rights Impacts

6.1 Right to Life

Over six hundred (600) people¹³ are reported missing while the so far more than four hundred and twenty-nine (429) bodies have been recovered. Their lives were taken away in the most egregious and ghastly manner violating their right to life. Autopsy reports reveal that the main causes of the deaths were starvation, asphyxia, head injury and dehydration. All these are

¹¹ These are the 65 held for refusing to eat, and the 30 including MacKenzie that were initially arrested.

¹² See gazette notice issued on 31st January 2024.

<https://www.facebook.com/photo?fbid=3795351027352426&set=a.1427500604137492>

¹³ Kenya Red Cross support desk recorded 618 reported missing.

consistent with narratives from the survivors and witnesses on the happenings in the Shakahola ranch prior to the discovery of the mass graves.

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

The right to life is also guaranteed under various international human rights instruments, including Article 3 of the Universal Declaration of Human Rights (UDHR) which states that:

"everyone has the right to life, liberty and security of person", and Article 6.1 of the International Covenant on Civil and Political Rights (ICCPR) which provides that "every human being has the inherent right to life, [which] shall be protected by law and [that] no one shall be arbitrarily deprived of his life."

6.2 Right to dignity and freedom from torture, cruel, inhumane and degrading treatment

The deceased and the survivors had their human dignity debased while being subjected to torture, cruel and inhuman treatment contrary to Articles 28 and 29 of the Constitution and the Prevention of Torture Act, 2017. They were denied food and water, held in very harsh and squalid conditions, and prohibited from leaving the Shakahola ranch by Mackenzie and his militia. Those who hesitated, refused to fast, or attempted to escape were brutalized. The deceased were buried in shallow mass graves in the absence of their relatives and without befitting cultural and religious rites.

The right to dignity is safeguarded for all under Article 28 of the Constitution which provides that every person has inherent dignity and the right to have that dignity respected and protected.

Torture is absolutely prohibited under Kenyan, regional, and international legal and human rights frameworks. Article 29 of the Constitution provides that;

"Every person has the right to freedom and security of the person, which includes the right not to be... (c) Subjected to any form of violence from either public or private sources; (d) Subjected to torture in any manner, whether physical or psychological; ... (f) Treated or punished in a cruel, inhuman or degrading manner".

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

6.2 Freedom and security of the person

The negligence and failure of the judicial system, which released MacKenzie severally, or failed to expedite hearings against him; and the national security and administration structures left Mackenzie followers at the full control and mercy of Mackenzie and his militia. Many followers faced a slow excruciating death mainly through starvation.

The security machinery not only failed to be proactive in collecting and acting on intelligence to forestall the Shakahola massacre but also unjustifiably failed to act on credible and actionable reports provided by various sources as highlighted in the section 7 (iii) below.

Article 29 of the Constitution of Kenya provides that every person has the right to freedom and security of the person. The Commission is of the considered view that there was an unacceptable gross abdication of duty and negligence by those charged with providing security and maintenance of law and order in the Country, particularly Malindi sub-county.

6.3 Freedom of conscience, religion, belief and opinion

Mackenzie abused the right to freedom of conscience, religion, belief and opinion. He exploited people's vulnerabilities and recruited hundreds of followers through direct fellowship, television and You Tube broadcasts.

Article 32 of the Constitution confers on everyone the right to freedom of conscience, religion, belief and opinion. This right, however, does not extend to extremist ideologies and practices that would include the destruction of property, violence, killings, and violation of other human rights.

He manipulated the gullible followers to dispose of their earthly possessions and lured them through promises of a serene life in Shakahola as they prepared for the end of the world in August 2023. After dispossessing the followers of their livelihoods and life savings, Mackenzie persuaded his followers to destroy their vital documents such as birth certificates, National Identity Cards, Passports, Title Deeds, academic documents, and marriage certificates. He intentionally isolated his followers from their relatives and the rest of the society by confining them in the desolate

Shakahola wilderness which had no telephone connectivity, transport infrastructure or social services such as schools and hospitals.

6.4 Freedom of expression, access to information and the media

Mackenzie registered a TV company, Good News Media (K) Limited on 19th April 2012 operating from Malindi, Kilifi County. The directors and shareholders as of 16th June 2023 were Shadrack Musau Mutiso and Paul Nthenge Mackenzie each with 50 percent shareholding. Mackenzie also broadcast his sermons through a YouTube channel that had 677 videos and over 7,000 subscribers.

Whereas the freedom of expression, information and the media are protected under Articles 33, 34 and 35 of the Constitution, it does not extend to extremist propaganda, incitement to violence and advocacy to cause harm like was clearly manifested by Mackenzie through his media platforms.

The relevant regulatory authorities ought to have taken timely appropriate action to stop Pastor Mackenzie from abusing these freedoms.

6.5 Economic and social rights

The followers of Paul Mackenzie were subjected to gross deprivation and abuse of their economic, and social rights particularly the right to livelihoods, the right to the highest attainable standard of health, the right to accessible and adequate housing and reasonable standards of sanitation by constraining followers to live in inhuman and degrading housing structures. The followers were denied food and water as a means to facilitate their death.

Article 43 (1) of the Kenya Constitution provides that:

“Every person has the right; (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; (b) to accessible and adequate housing, and to reasonable standards of sanitation; (c) to be free from hunger, and to have adequate food of acceptable quality; (d) to clean and safe water in adequate quantities;”

The majority of the followers had been radicalized to abandon their previous occupations and livelihoods, sold their belongings from their original homes, and gave the money to Mackenzie in exchange for the purchase of land in Shakahola from as low as Kshs 2,000 per acre. They built makeshift grass-thatched mud houses in the bare ranch which has no road network and social amenities such as schools and health facilities. The area has very poor phone connectivity and anyone who needed to make outside communication had to walk for long distances to access a functional mobile network. Those who fell sick were denied access to medication and instead clobbered to expedite their demise.

6.6 Rights of children

The Shakahola tragedy had a devastating effect on children who were starved to death, denied health care, denied education, and emotionally and physically abused by those entrusted with their safety and well-being. KNCHR interacted with twenty-five (25) children who were undergoing rehabilitation at a rescue center in Malindi after they escaped or were rescued from Shakahola on diverse dates.

ID	Age	Ethnicity	State of Parents
001	4 years	Giriama	unknown
002	8 years	Luhya	Father alive, Mother –unknown
003	14 years	Luhya	Both parents dead
004	14 years	Kikuyu	Mother alive, Father-unknown
005	16 years	Kalenjin	Both parents alive
006	13 years	Luhya	Mother alive, Father-unknown
007	7 years	Luhya	Mother alive – Father unknown
008	5 years	Luhya	Mother alive – Father unknown
009	14 years	Luhya	Mother alive – Father unknown
010	13 years	Luhya	Mother alive – Father unknown
011	16 years	Giriama	Father alive, Mother –unknown
012	12 years	Luhya	Both parents alive
013	9 years	Luhya	Both parents alive
014	5 years	Luhya	Both parents alive
015	13 years	Luhya	Status of both parents unknown
016	17 years	Luhya	Both parents alive
017	17years	Kauma	Both parents alive
018	4 years	Kauma	Both parents alive
019	9 years	Kauma	Both parents alive
020	8 years	Giriama	Father died, Mother alive

021	7 years	Giriama	Father died, Mother alive
022	5 years	Giriama	Father died, Mother alive
023	2.6 years	Giriama	Father died, Mother alive
024	1.4 years	Luhya	Both parents alive.
025	3 years	Luhya	Mother alive – Father unknown

They narrated the cruelty and horror they underwent for days and months by being denied food and watching helplessly as some of their siblings and parents perished in a slow and painful death. A number of them said their parents were still alive and in police custody while others were unaware of the fate of their parents and their siblings. The majority who had attained school-going age had been denied access to formal education while in Shakahola and were instead been indoctrinated with religious teachings in makeshift religious classes.

These actions against the children violated Article 53 of the Kenya Constitution which provides that:

“Every child has the right; (b) to free and compulsory basic education; (c) to basic nutrition, shelter and health care; (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment...”

Article 37 of the UN Convention on the Rights of the Child (UNCRC) provides that:

“State Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...”

With regards to children who have been subjected to abuse, Article 39 of the UNCRC provides that:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; ... Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”

The protection of the children is further bolstered by the African Charter on the Rights and Welfare of the Child which provides in Article 16 (1) that:

"States Parties shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child"

6.7 Access to justice and right to a fair hearing

The Commission is alive to the immense challenges that the government faces in unraveling this unprecedented and extraordinary calamity. While appreciating and supporting the ongoing efforts by the State to hold the perpetrators to account and bring justice to the survivors and their families, the Commission is greatly concerned by the inordinate delay in concluding the investigations and the holding of the ninety-five (95) suspects in penal custody for close to nine (9) months before charging them. This delay has caused severe anxiety and distress to the suspects and their families.

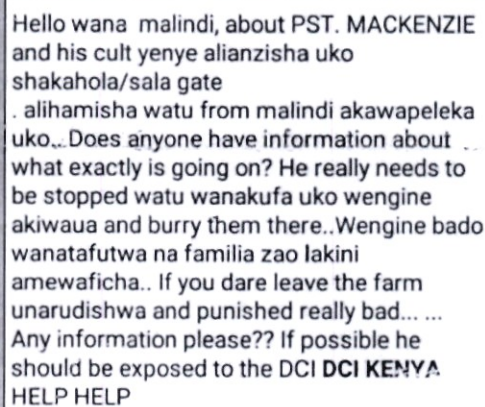
Article 50(2) (e) of the Constitution provides for a fair trial that should begin and conclude without unreasonable delay. It was not until the Shanzu Court Magistrate threatened to release the suspects that the DPP finally preferred charges against the suspects on 17th January 2024. This was almost nine months (271 days) since Mackenzie and the first batch of suspects were arrested on 14th April 2023. As the Magistrate rightly observed in his ruling, the Shakahola suspects were held for the longest pre-trial detention in Kenyan history since the promulgation of the 2010 Constitution.

7. Omissions/Commissions

1. It is deplorable to note that Mackenzie was first arrested in 2017 and charged with radicalization, promoting extreme beliefs, and failing to provide children with education, and finally released under Section 210. **This points to a failure in the investigation and prosecution processes. The arrest should have triggered investigations that would have saved the lives of several people. This also amounted to violating the Rights of Children as enunciated above at paragraph 6.6.**
2. **The Commission faults the then security team in Malindi for gross abdication of duty and negligence.** They not only failed to be proactive in collecting and acting on intelligence to forestall the Shakahola massacre but also unjustifiably failed to act on credible and

actionable reports provided by various sources. Numerous reports had been filed at Lango Baya Police Station, Malindi Police Station and also to the Local National Government Administration officers, from 2017.

3. **The issue of radicalization by Mackenzie featured during the quarterly meeting of the Kilifi County Court User's Committee (CUC) held on 15th November 2019 but was ignored.** A former follower of Mackenzie narrated how she had posted on a social media page in November 2022 in a desperate attempt to draw public attention to the unfolding situation in Shakahola. Her post read as follows:



Hello wana malindi, about PST. MACKENZIE and his cult yenye alianzisha uko shakahola/sala gate . aliamisha watu from malindi akawapeleka uko... Does anyone have information about what exactly is going on? He really needs to be stopped watu wanakufa uko wengine akiwaua and burry them there..Wengine bado wanatafutwa na familia zao lakini amewaficha.. If you dare leave the farm unarudishwa and punished really bad... Any information please?? If possible he should be exposed to the DCI DCI KENYA HELP HELP

Evangelist Titus Muthoka and 79 others

80

140

Instead of investigating the veracity of the issues raised, the lady was intimidated after being accused of making baseless accusations. Mackenzie went to Lango Baya Police Station and filed a complaint (see OB extract below) claiming that his life was in danger as a result of the social media post.

The police summoned the Social Media Platform administrators and reprimanded them for posting defamatory messages. The lady posted once again raising similar alarm about the

deaths in Shakahola but the post was pulled down by the administrator fearing reprisals from Mackenzie and the police.

The Commission regrets that no known sanctions were taken against those officers who abdicated their duty to protect the hundreds of persons including children who are either missing, dead, or deeply traumatized as a result of their acts of gross negligence. Instead, all the members of the area security committee (list attached as annex 1) were transferred to other parts of the country.

The negligence and failure of the security and administration structures left Mackenzie followers at the full control and mercy of Mackenzie and his militia. Many followers faced a slow excruciating death mainly through starvation.

CR 15/8/11/2022. AT 16.05HRS.

REPORT MADE: To the station eno 9/M/A namely Paul Mackenzie c/o Shakahola and of mobile phone no 0710333072 do now submit a report that one person known to him as Brenda Mwaata who hails from Nairobi has been furnishing his name telling the reporter that he migrated people from Malindi to Dadaab to have been killing them. Reporter now fears that his life is in danger since she incites people from Shakahola area since she has furnished his name via Facebook on certain group named as Malindi Kenya. Now to the station seeking for police assistance.

Signed by P. Mamo.

4. The suspects were charged after being held on no charge for approximately nine months, in four different courts with varied offences in a span of eight days, raising questions about their rights to a fair hearing. The Magistrate handling an application by the State seeking to hold the suspects further observed in his ruling giving that: **the Shakahola suspects were held for the longest pre-trial detention in Kenyan history since the promulgation of the 2010 Constitution.**
5. There has been failure to reunite children survivors with family and kin. The Commission came across 25 children aged between 1 year and 17 years being held at a rescue center in Malindi. A number of them said their parents were still alive and in police custody, while others were unaware of the fate of their parents or siblings. **It is important to reunite the children with their kin, so that they can enjoy the rights enshrined in Article 53.**
6. **Some media outlets went overboard while covering the unfolding Shakahola massacre by broadcasting graphic images and misleading information thus creating unnecessary exposure of survivors and distress to family members.** This led to the restriction of media access to the operation area by the Cabinet Secretary for Interior and National Administration.
7. To lure more followers, Mackenzie registered a TV company, Good News Media (K) Limited on 19th April 2012 operating from Malindi, Kilifi County. **Mackenzie also broadcast his sermons through a YouTube channel that had 677 videos and over 7,000 subscribers.**

8. **The relevant regulatory authorities ought to have taken timely appropriate action to stop Pastor Mackenzie from abusing these freedoms.**
9. **A visit to Malindi GK Prison revealed that whereas Mackenzie had a mattress and a blanket, the rest of the suspects were sleeping on bare concrete floors with neither blankets nor mattresses.** The prison authorities told the Commission that the prison was facing various challenges especially supplies which explains why over 30% of the prisoners had no uniforms, mattresses, and blankets. The prison was also overcrowded as it was holding 850 prisoners against a recommended capacity of 650 prisoners. The prison authorities further informed the Commission that they were struggling to ensure all the prisoners are adequately fed with the limited food supplies.
10. **The Commission received credible allegations of torture, cruel, inhuman, and degrading treatment meted out against suspected perpetrators and survivors of the Shakahola massacre while in police and prison custody.**
11. **Shakahola survivors who were rescued, were denied proper psycho-social support, and this was further aggravated by being charged in court with attempted suicide.** This amounts to re-traumatization and victimization of the survivors at a time when they needed intense care and rehabilitation from the State.
12. The Constitution confers on everyone the right to freedom of conscience, religion, belief and opinion. This right, however, does not extend to extremist ideologies and practices that would include the destruction of property, violence, killings, and violation of other human rights. **The State failed to protect its citizens from harm and abuse of their constitutionally granted rights, by failing to ensure that religion is not used to affect public safety, order, health, fundamental rights and freedoms of others.**
13. **The delayed resumption of exhumations by the government for the last six (6) months will negatively impact the DNA sampling through the continued decomposition of the bodies in the shallow graves.**
14. **The slow pace in concluding the DNA processing continues to occasion more delay in releasing of the bodies to their families who have been waiting for the last ten (10) months.** This is not only delayed justice but also violates their cultural rights under Article 44 of the Constitution to bury their relatives in a culturally acceptable and dignified manner.

15. **There has been very limited flow of information and communication from State agencies to the affected.** People are anxious and need closure on the matter. There are those wondering if their kin are in the graves and yet to be exhumed, there are those wondering if their kin are amongst the already exhumed, there are those wondering what the taskforce set up to investigate the tragedy have been up to.
16. **Agencies charged with conducting the DNA tests are hampered by lack of reagents and other necessary materials and equipment.** This has slowed down the process of identification of the bodies, causing their kith and kin a lot of anguish and trauma.
17. **Psycho-social support has not been offered to National Government and Administration Officers who interacted with the tragedy, visiting the graves, witnessing the exhumations, witnessing the post-mortems and interacting with survivors.** These people have suffered trauma, and it is important that they are supported by offering psycho-social programmes.
18. **All the survivors were housed in private rescue centers. The Commission established that there are no Government funded rescue centers in the whole of the Coast region.**
19. **Disaster response systems in the Coast region are poorly resourced and equipped.** The Commission established that the morgues and ambulances in the whole of coast region are very few, and not sufficient to respond in the event of a disaster or tragedy such as Shakaola. Part of the reason the exhumation was suspended, is because of lack of storage.
20. **Mackenzie convinced his followers to burn their Identity Cards.** The survivor's fingerprints were collected for identification purposes, but they are yet to be issued with new identity cards.

8. Recommendations

Based on the foregoing the Commission makes the following recommendations;

8.1 To the cabinet secretary for interior and national administration

1. Immediately order the resumption of the pending exhumations to facilitate the conclusion of investigations and release of the bodies to their next of kin for burial and closure.

2. Bring to account all security officers and National Administration Officers whose acts of commission and omission abetted and aided the Shakahola massacre. This should include charging them with criminal negligence.
3. Direct all security agencies including the police and prison authorities to grant KNCHR access to information relevant to the exercise of its mandate and to accord the Commission unfettered and unconditional access to the Shakahola operation area and to all detainees.
4. Facilitate the survivors to regain their vital documents which were destroyed as result of the indoctrination and radicalization. These include; National Identity Cards, passports, birth certificates, Title Deeds, academic and marriage certificates.
5. Establish a multi-agency/multi-stakeholder de-radicalization and rehabilitation plan to facilitate the reintegration of the survivors to their homes, families and communities.
6. Urgently invest in rescue and rehabilitation infrastructure across the country in readiness for similar disasters in the future. This particular incident exposed a serious lack of preparedness by the government in regard to rescue and rehabilitation in disaster situations. The government is relying on the goodwill of well-wishers to assist the Shakahola survivors.

8.2 To the Inspector General of the National Police Service

1. Conduct thorough investigations to ensure that the perpetrators are brought to justice especially those who bear the highest responsibility. These investigations should be expeditious and concluded in a reasonable time.
2. Refrain from further victimizing the Shakahola massacre survivors by arresting and detaining them for presenting suicidal behavior.

8.3 To the Director of Public Prosecutions

1. Expedite the prosecution of the perpetrators of the Shakahola tragedy
2. Refrain from further victimizing the survivors of the Shakahola massacre by charging them for presenting suicidal behavior.

8.4 To the Commissioner General of Prisons

1. Ensure that the Shakahola suspects held in prison custody are treated humanely and their rights are upheld in line with the law.
2. Facilitate unfettered and unconditional access by the KNCHR to the suspects held in prison custody including information that is necessary in the discharge of its Constitutional mandate.

8.5 To the Minister of Health

1. Deploy mental health experts including psychiatrists and trauma counsellors towards proper and effective de-radicalization and counseling of the survivors. Counselling services should also be availed to all persons engaged in this traumatic tragedy.
2. Expedite the conduct of postmortems on the bodies of the Shakahola massacre

8.6 To the Government Chemist

Expedite the DNA analysis and profiling to facilitate the identification and handing over of bodies to the next of kin.

8.7 To the Witness Protection Agency (WPA)

Offer support and protection to those witnesses and survivors who are willing to testify in the ongoing investigations.

8.8 To the National Treasury and Parliament

Allocate and urgently disburse optimal resources to all the agencies dealing with the various aspects of the Shakahola tragedy. More resources should be allocated to the Correctional Services Department, Probation and After Care Services Department, The Children Services Department, Directorate of Medical Services, Kenya National Commission on Human Rights, the Office of the Director of Public Prosecutions, the Government Chemist and Rescue Centers

8.9 To Parliament

1. Push for the implementation of the National Coroners' Service Act 2017 without further delay.
2. Enact an effective self-regulatory legal regime of the religious sector similar to the Media Council of Kenya and the Law Society of Kenya. Freedom of religion or belief is a fundamental human right, but like all rights, it is not absolute.
3. Call for complete and accurate disclosure and release of information and data relating to Shakahola in the custody of the State.

8.10 To the Attorney General and Parliament.

Review the Prevention on Terrorism Act, which erodes constitutional safeguards on the rights of persons deprived of liberty on indeterminate pre-charge detention.

8.11 To the Presidential Taskforce on review of legal and regulatory frameworks governing religious organizations in Kenya

Release the proposed legal framework for regulating religious organizations for public debate.

8.12 To the Religious Leaders

Work with relevant government agencies to ensure that the freedom of worship does not lead to harm and loss of lives through misguided indoctrination and religious extremism.

8.13 To the General Public

1. Refrain and keep away from all forms of religious fanaticism and extremism and report such practices to relevant government agencies to forestall similar atrocities in the future.
2. Anyone with crucial information relevant to bringing the Shakahola massacre perpetrators to justice should come forth and record statements with the police.

8.14 To the Ministry of Labour and Social Protection, State Department for Social Protection and Senior Citizen Affairs.

Protect and ensure the rights of all Children held in private rescue centers, and ensure they are timeously reunited with their kin unless they are perceived to be in danger of radicalization.

9. Annexes

Annex 1: List of Officers transferred from Malindi

Name of Officer Transferred	Designation
1. Joseph Kemboi	Senior Superintendent of Police (SSP)/Sub-County Police Commander (SCPC), Malindi
2. Charles Kamau Wanguhu	Assistant Superintendent of Police (ASP)/Senior County Criminal Investigation Officer (SCCIO), Malindi
3. Solomon Odera	Superintendent of Police/ Sub-County Police Commander (SCPC)
4. Argamso Guracha	Superintendent of Police/Critical Infrastructure Protection Unit (CIPU), Malindi
5. Augusto Okuna	Officer Commanding Station (OCS), Malindi
6. Hassan Hamara	Officer Commanding Station (OCS), Langobaya
7. Calvin Malowa Otieno	Directorate of Criminal Investigation (DCI), Malindi
8. Daniel Muthusi Muleli	County Criminal Investigation Officer (CCIO)
9. Jecinta Wesonga	County Police Commander (CPC)
10. Paul Maweu	Critical Infrastructure Protection Unit (CIPU)
11. Joseph Yator	Police Officer attached to Directorate of Criminal Investigation

Annex 2: Court Directions

Date	Court Activity
15.06.2023	Matter Came up for Ruling: Shanzu MCCR no. E500 of 2023. KNCHR submitted its advisory to the court. The Court considering the advisory, granted the orders to have the victims released from prison and by consent each one of them agreed to stay at the Sajahanadi rescue centre except for Victim 59 who stated that she wanted to stay in prison. The court also ordered the victims undergo mental assessment and receive psychosocial support. KNCHR and Haki Afrika to supervise their stay at the centre by filing progress reports every 14 days.
20.06.2023	Mention for directions of Suspect 59. KNCHR raised in court that she is mentally unstable and needs assistance. Directions given for her to have a mental assessment and receive medical assistance. Court notified suspect 32 and 64 absconded meals for 5 and 2 days respectively. Orders to have suspect 32 taken to hospital and suspect 64 produced in court. Court orders not complied with.
21.06.2023	Matter mentioned regarding disobeyed court orders of the two victims. Summon issued to the DCIO Kilifi South to produce the two victims. Production done at 5.30 pm, suspect 32 brought on a stretcher. Orders given to have suspect 32 taken to CGTRH by the DCI and suspect 64 committed to Shimo La Tewa Women for Forced feeding.
22.06.2023	Matter mentioned at the rescue centre. Court notified suspect 10, taken to Mtwapa S. County Hospital. ODPP applied for Ruling dated June 15, 2023 amended by having section 10 (b) reviewed. The section reviewed to direct the CDE health Kilifi and MOH kilifi to offer mental assessment to the Victims.
29.06.2023	KNCHR shared 1st progressive report. Court notified that CCI0 Malindi wrote a letter stating that Suspect no. 10 has been placed under witness protection. Court notified that the Suspect 59 and 64 unfit to stand trial after mental assessment and proper medical treatment accorded. Court directs medical status report for suspect 32 to be filed in court.
6.07.2023	Mr. Aboubakar for Haki Africa requested for 2nd opinion on suspect 64 mental assessment. Court directions: Prison to take Suspect 64 to Kilifi County Referral Hospital for mental assessment. Kilifi County Director of health to facilitate the process. KNCHR to file response to ODPP application by July 10, 2023. Production order for suspect 10 issued.
10.07.2023	Filed replying affidavit sworn by the CEO KNCHR
20.07.2023	Mention in chambers regarding suspect 10. Court notified she has been placed under witness protection. Suspect No. 10 Physically present in court proceeding explained to

her in a language she understands. Suspect discharged from the proceedings in E500/2023, placed under care of Witness protection.

Hearing in open court for remaining 64 . Hg of Mr. Aboubakar's Application to have the 64 placed in victim protection, Application by the ODPP, response by the AG on the Victim Protection Board.

KNCHR duly filed submissions in court.

24.07.2023 Hearing of ODPP application, Haki Africa argued application on the Victim protection. AG to respond. KNCHR relied on submissions filed. Court notified ODPP on Mrima J decision on mental health regarding Suspect 59.
ODPP to trace family of Suspect 59.

31.07.2023 ODPP filed an application in court to have 41 victims to be deemed as suspects and therefore be held in Shimo La Tewa Prison. Ruling to have the suspects detained in prison delivered. 41 suspects to be detained at Shimo La Tewa GK prison and Shimo La Tewa women.

1.08.2023 Ruling delivered on the status of the 41. Released under Section 87 (a) of the CPC. Further detention at Shimo GK and Shimo Women prison until 4.08.2023 for further directions on the 41 and the 24 at the centre.
ODPP to amend the chargesheet. File MCCR E152 of 2023 opened.
The remaining 24 to be held at the Sajahanadi rescue centre

4.08.2023 ODPP filed a new application to have the remaining 24 detained in prison. File MCCR E156 of 2023 opened.
Suspects detained in Shimo La Tewa GK prison, Shimo La Tewa Women, Kilifi GK prison and Malindi GK prison.

10.08.2023 Hearing of application in file MCCR E156 of 2023 as the bulk file with more offences. Ruling on 17.08.2023

11.10.2023 The matter came up for mention for directions and confirm status of social inquiry reports by the Probation and aftercare services. The KNCHR requested to be admitted in the matter. The court ordered on the following;
The KNCHR files and serves a formal application seeking to enjoin in the matter within 7 days. To serve all parties in the matter
The probation department to serve the social inquiry reports to all the parties in the matter i.e., KNCHR, ODPP and NLAS and the same to remain confidential
The ODPP to serve KNCHR with the N.O.M dated October 9, 2023 and affidavit filed alongside all the list of authorities and any other document pertinent to the case.
The ODPP to file list of authorities within 7 days

	MN on 23.10.2023 at 2.00 pm for direction on the HG of the application by the ODPP and KNCHR intended application
23.10.2023	<p>Matter came up for mention for directions on KNCHR joinder.</p> <p>Court ordered that;</p> <p>Matter to be dispensed with by way of written submissions.</p> <p>KNCHR to file and serve submissions by 31.10.2023</p> <p>ODPP to file and serve response to KNCHR application by 8.11.2023 plus list of authorities.</p> <p>ODPP to respond to KNCHR N.O.M and supporting affidavit by C.O.B 24.10.2023</p> <p>Mention 9.11.2023 to confirm compliance and pick a ruling date</p>
9.11.2023	<p>Matter came up for mention to confirm compliance and pick a ruling date.</p> <p>Parties complied, ruling date set for 15.11.2023</p>
15.11.2023	Ruling not yet ready. Date to be communicated
28.11.2023	Ruling notice served. Ruling date 1.12.2023 at 2pm
1.12.2023	Ruling delivered in open court on KNCHR application for joinder. KNCHR application dismissed
18.01.2024	<p>All suspects in case Miscellaneous criminal application E152 of 2023 as consolidated with E156 of 2023 and Miscellaneous criminal application E77 of 2023 as consolidated with E101 of 2023 and E130 of 2023 charged before Shanzu Law courts on various charges such as radicalization and terror and file number E85 of 2024 opened.</p> <p>Suspect no 65 in Misc. Cr. Application number E156 of 2023 discharged and court ordered she be transferred to Port Reitz Hospital for mental care as the ODPP traces her family.</p> <p>The accused persons have also been charged with various charges in different courts such as Malindi High Court – Murder, Mombasa Law courts- Manslaughter, Tononoka childrens court – cruelty to a child.</p>
20.2. 2024	<p>The matter came up for hearing for the bail and bond application before Mombasa Law Courts. The accused persons are facing manslaughter charges against 238 victims in Criminal case number E112 of 2024. The state had made an application to oppose bond, the defence responded and a pre – bail report was requested for all the 95 accused persons. The court ordered the pre bail report to be filed.</p> <p>Mention date 15.03.2024 but the accused not to be presented in court.</p> <p>all the accused persons are allegedly fasting since Thursday 15th 2024.</p>

The KNCHR Counselling psychologist offered psychosocial support to 21 victims and confidential individual reports were duly filed in court on June 29, 2023 and July 6, 2023. The remaining victims were handled by 2 Counselling psychologists from MOH Kilifi through Haki Afrika.

Through KNCHR interventions, the victims were mentally assessed by Psychiatrists from the Kenya Psychiatrist association and the MOH Kilifi County. Confidential Individual reports were duly filed in court. The Victims reports indicated they were mentally fit except for Suspect No. 59.

Regarding Suspect No. 64, the 2nd opinion indicated she is mentally fit.

The victims also had sessions with officers from NCTC from July 11, 2023 to July 15, 2023.

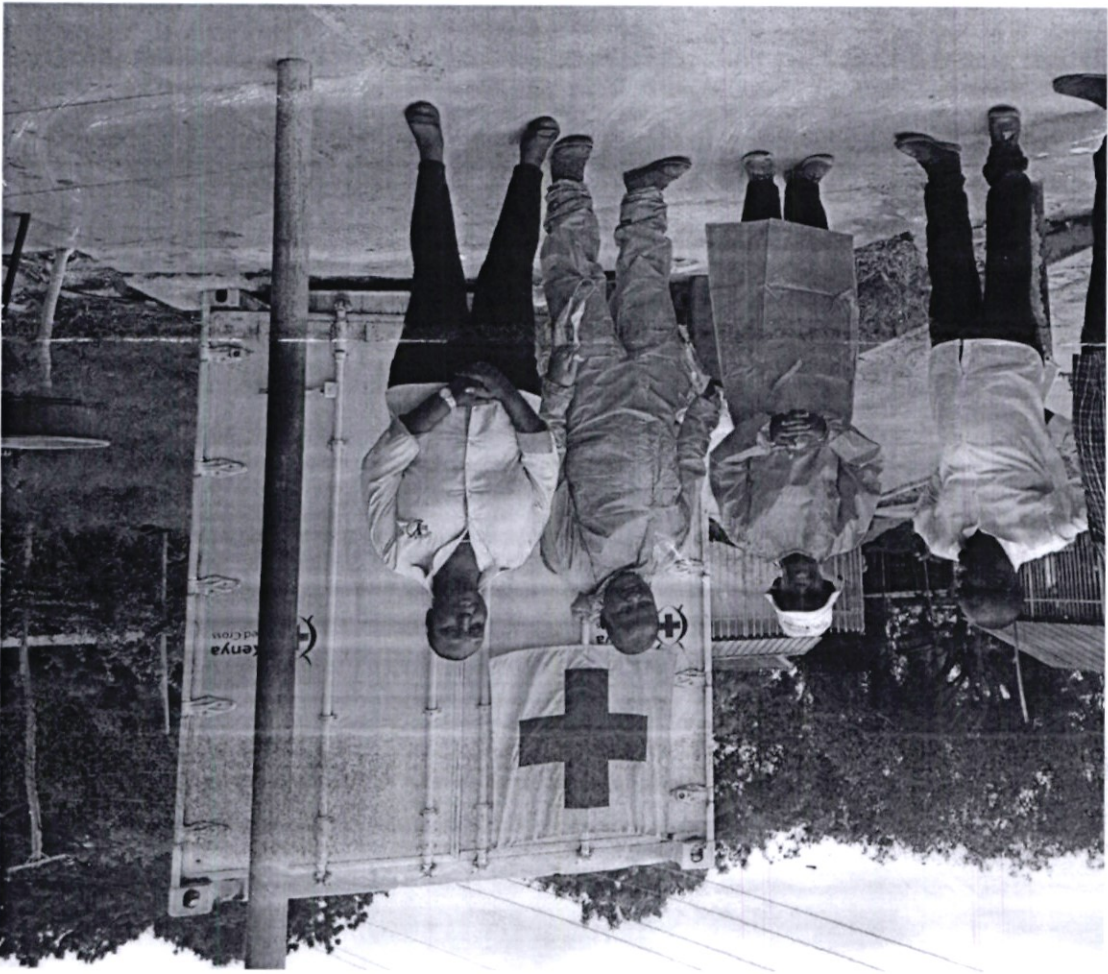
Collection Point of the Exhumed Bodies in Shakahola before transfer to the Mortuary



KNCHR team with officers in Charge of the Command Center in Shakahola



KNCHR Team next to the Refrigerated Container donated by Kenya Red-Cross



Annex 4: Press Statement - Pastor Paul Mackenzie (Next Page)
