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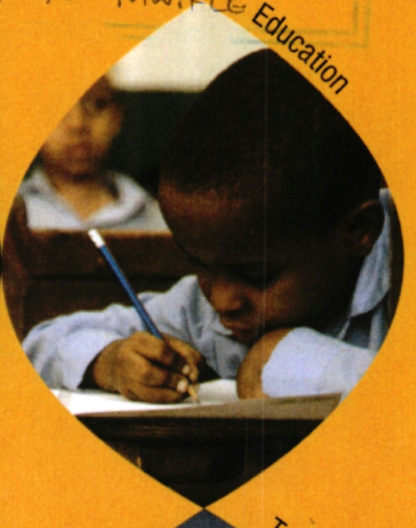







A REPORT OF THE PUBLIC INQUIRY ON INSECURITY & ITS IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS IN THE COASTAL REGION OF KENYA

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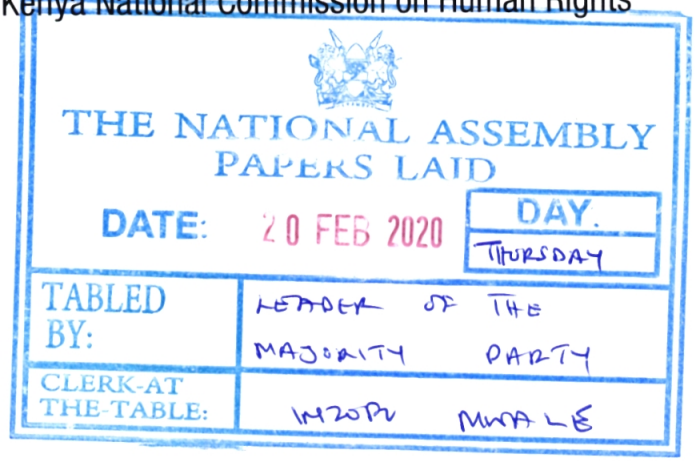
Kenya National Commission on Human Rights





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Fax: 254-20-2716160,
Email: haki@knchr.org

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@hakiKNCHR
KNCHR
KNCHR
complaints@knchr.org
22359
www.knchr.org

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LETTER OF TRANSMITTAL

His Excellency, Hon. Uhuru Kenyatta C.G.H.
President and Commander-in-Chief of the Defense Forces of the Republic of Kenya

Your Excellency, The President,

The Kenya National Commission on Human Rights (KNCHR) extends its compliments to you.

Your Excellency, pursuant to Article 254(1) of the Constitution of Kenya, 2010 and Section 53(1) of the Kenya National Commission on Human Rights Act 2011, I have the honour of submitting to you this report titled:

"Guarding the Coast: A Report of the Public Inquiry on Insecurity and its Impact on the Enjoyment of Human Rights in the Coast Region of Kenya"

Your Excellency, please accept the assurance of our highest regards.

Yours Sincerely,

Kagwiria Mbogori
Chairperson
Kenya National commission on Human Rights (KNCHR)

CC:
Hon. Justin Muturi E.G.H, E.B.S, MP
Speaker to the National Assembly

Hon. Ken Lusaka E.G.H, E.B.S, MP
Speaker of the Senate

Hon. Dr. Fred Matiang'i, PhD, EGH
Cabinet Secretary
Ministry of Interior and Coordination of National Government

Mr. Joseph Boinett,
Inspector General
Kenya Police Service

Hon. Paul Koinange
Chairperson
Parliamentary Committee on Administration and National Security

Sen. Haji Mohamed Yusuf
Chairperson
Committee on National Security, Defence and Foreign Relations

PREFACE

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution (NHRI). In line with its constitutive mandate, the key functions and responsibilities of the KNCHR are the protection, promotion and monitoring of fundamental human rights and freedoms as espoused in the Constitution. It is in the foregoing respect that the Commission commenced a public inquiry from a human rights perspective with the main goal of understanding the impact of insecurity on the enjoyment of human rights for the people living in our Coastal region.

It is vastly documented that the coastal region has had its fair share of intermittent and sporadic cases of insecurity that have regrettably claimed hundreds of innocent lives, led to the destruction of property and investments while notably spreading fear and despondency in the region. This state of affairs emanating from security concerns and challenges has in turn led to a negative impact on development and seriously affected key economic sectors like tourism on the Kenyan Coast. Ultimately, insecurity portends a serious challenge to the optimal realization of human rights in this region.

The Commission conducted the public inquiry on insecurity and the enjoyment of human rights at the coastal region with the aim of unearthing and analysing the impact of insecurity on the enjoyment of human rights in the coastal strip and its environs. Through this Public Inquiry Report, the Commission has brought to the fore the effects of insecurity reported in the affected coastal counties and ultimately made recommendation on some possible interventions that will lead to significant improvements in our national efforts of "Guarding the Coast", as the title of this final report aptly signifies.

Since the promulgation of the Constitution in August 2010, the Commission has closely monitored, investigated and documented human rights violations that have arisen as a consequence of insecurity in the larger coast region. The Commission has undertaken this work through targeted investigations and structured public inquiries such as the one it carried out in the coastal region between October and November of 2016, specially focusing on the Counties of Mombasa, Kwale, Tana River and Lamu.

Key security related themes that emerged and which were articulated during the coast region public inquiry hearings include the following: violation of land rights; extra judicial killings; enforced disappearances; drug and substance abuse; mushrooming of criminal gangs; alleged harassment and assault by security officers; arbitrary arrests; terrorism profiling and intimidation; political interference and electoral violence and inter-ethnic conflict and tension; forcible transfer of vulnerable populations and massive destruction of property. It is important to note that since concluding its Public Inquiry in 2016, the Commission has continued its work on the identified thematic security areas in collaboration with a number of key state and non-state actors. Available evidence from our continued work in these thematic areas indicates that the same remain as relevant, in terms of negatively impacting on the enjoyment of human rights, at the time of launching this report as they were when the Commission concluded its Public Inquiry hearings.

The findings, results and recommendations that have been documented in this report will be shared with key and relevant state and non-state actors for remedial actions. Apart from submitting this report to H.E the President, the Commission shall further submit the report with the recommendations to the Governors of the where the inquiry was conducted and the Bicameral Houses of Parliament: National Assembly and Senate. We urge Parliament and the respective County Assemblies to debate and adopt this report so that it may inform the requisite reforms, especially in the security sector. The Commission calls upon the full public participation of the coastal region local communities and groups, relevant stakeholders and the media in publicizing the findings and recommendations of this final public inquiry report.

Kagwiria Mbogori
Chairperson
Kenya National Commission on Human Rights

FOREWORD

The Kenya National Commission on Human Rights (KNCHR) is an independent Constitutional Commission established by the Constitution of Kenya 2010 under Article 59 (4) and subsequently operationalized through an Act of Kenya Parliament (the Kenya National Commission on Human Rights Act No. 14 of 2011 and revised in 2012). As an independent National Human Rights Institution (NHRI), the Kenya National Commission on Human Rights' mandate includes protection and promotion of human rights in both public and private spheres within the Republic of Kenya.

All human beings are entitled to human rights which are inherent regardless of their religion, nationality, colour, sex, language or nationality. These rights are inalienable, universal, interdependent and indivisible. Human rights should thus be enjoyed equally by all without any discrimination whatsoever. However, certain factors—such as entrenched acts or cases of insecurity—can lead to serious human rights violations. Persistent insecurity negatively affects the enjoyment of basic freedoms and rights that people are entitled to.

When it comes to cases or acts of persistent insecurity, the Coastal Region of Kenya has in recent years experienced acts of terror, coupled with the emergence of criminal gangs. Taken within the context of historical injustices, insecurity has not only served to buttress the region's marginalization in terms of socio-economic development, but rather, it has also contributed to the creation of an environment where the enjoyment of fundamental rights and freedoms for many coastal people continues to remain a mirage.

The endemic nature of insecurity in the Coastal region has had far reaching consequences that have negatively affected the enjoyment of human rights across the whole gamut of economic, social, civil and political as well as group rights. For instance, as the evidence in this Public Inquiry Report points out, the poor transition rates from educational institutions in the region can partly be attributed to the rising cases of insecurity in the region. The perennial problem of insecurity in the Coastal region will only be adequately addressed if there are concerted, broad-based efforts directed at addressing the same. Such efforts must bring together key actors from the local communities, the County Governments as well as the National Government to a common table of dialogue aimed at coming up with a holistically crafted approach on taming insecurity in the region. Unfortunately, the communities and the two levels of government have not done enough to create an environment where insecurity can be robustly confronted and defeated so that the citizens in the region can enjoy their full human rights entitlements. For instance, a number of social factors that have gone unaddressed can be identified as the push factors for the youth who are joining criminal gangs while security operations by government agencies have at times led to the unintended consequences that have seen the shutting down of some learning institutions in the region.

The Coastal region can only regain its former glory as a land of peace, security and immense promise and potential if all actors both understand and appreciate the nexus between security and the enjoyment of fundamental rights and freedoms. This report has attempted to provide that nexus by shedding light on the various aspects that have greatly contributed to insecurity along the Coastal region of Kenya and how the same have had a negative impact on the enjoyment of human rights. Over and above doing the foregoing, the report

offers recommendations directed at both state and non-state actors for the remedial action that should be taken in addressing insecurity at the Coast. It is our hope as a Commission that the recommendations herein will be adopted and fully implemented by all even as we continue walking this journey of guarding the Coast so that it may remain safe and secure for the fullest enjoyment of fundamental rights and freedoms for all.

George Morara
Kenya National Commission on Human Rights (KNCHR)
Vice Chairperson and Convening Commissioner, Coast Region.

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ACRONYMS AND ABBREVIATIONS

ACC	Assistant County Commissioner
ACHPR	African Charter on Human and Peoples Rights
ACLED	Armed Conflict Location and Event Data Project
ACRWC	African Charter on the Rights and Welfare of the Child
AHRLR	African Human Rights Law Report
ANC	Antenatal Care
ANU	Anti-Narcotics Unit
AP	Administration Police
ASAL	Arid and Semi-Arid Land
ATPU	Anti-Terrorism Police Unit
AU	African Union
BOM	Board of Management
BPU	Border Patrol Unit
CAK	Communication Authority of Kenya
CBO	Community Based Organization
CC	County Commissioner
CESCR	Committee on Economic, Social & Cultural Rights
CG	County Government
CGs	County Governments
CID	Criminal Investigation Department
CoK	Constitution of Kenya
CRA	Commission for Revenue Allocation
CRC	UN Convention on the Rights of the Child
CRO	Coast Regional Office
CRPD	UN Convention on the Rights of Persons with Disabilities
CSEC	Commercial Sexual Exploitation of Children
CSO	Civil Society Organizations
CVE	Countering Violent Extremism
DCC	Deputy County Commissioner
ECOSOC	Economic Social and Cultural Rights
EF	Equalization Fund
EFA	Education for All

FGD	Focus Group Discussion
FM	Frequency Modulation
FPE	Free Primary Education
FY	Financial Year
GBV	Gender Based Violence
GER	General Enrolment rate
GoK	Government of Kenya
GR	Group Rights
GSU	General Service Unit
HIV	Human Immunodeficiency Virus
HRBA	Human Rights Based Approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICG	International Crisis Group
ICT	Information & Communication Technology
ID	Identification Card
IEBC	Independent Electoral & Boundaries Commission
IGP	Inspector General of Police
IPOA	Independent Policing Oversight Authority
KDF	Kenya Defense Forces
KDHS	Kenya Demographic and Health Survey
KII	Key Informant Interview
KMYA	Kenya Muslim Youth Alliance
KNCHR	Kenya National Commission on Human Rights
LAPSSET	Lamu Port-South Sudan-Ethiopia Transport
MAT	Medical Assisted Therapy
MCA	Member of County Assembly
MDGs	Millennium Development Goals
MENA	Middle East and North Africa
MEWA	Muslim Education Welfare Association
MoE	Ministry of Education
MoEST	Ministry of Education, Science and Technology
MP	Member of Parliament
MRC	Mombasa Republican Council
MUHURI	Muslims for Human Rights

NACADA	National Authority for the Campaign against Drug Abuse
NER	Net Enrolment Rate
NG-CDF	National Government Constituency Development Fund
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organization
NIS	National Intelligence Service
NPA	National Plan of Action
NPS	National Police Service
NYS	National Youth Service
OCPD	Officer Commanding Police Division
OCS	Officer Commanding Station
PAVP	Protocol on Assistance for Vulnerable Populations
PI	Public Inquiry
PTR	Pupil Teacher Ratio
PWDs	Persons With Disabilities
PWID	People who Inject Drugs
PWUD	People Who Use Drugs
RC	Regional Commissioner
RDU	Rapid Deployment Unit
SCPU	Special Crime Prevention Unit
SDGs	Sustainable Development Goals
SGBV	Sexual and Gender Based Violence
TJRC	Kenya Truth Justice and Reconciliation Commission
TSC	Teachers Service Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
WFFC	World Fit For Children

EXECUTIVE SUMMARY

The Kenya National Commission on Human Rights (KNCHR) is an independent Constitutional Commission established by the Constitution of Kenya 2010 under Article 59 (4) and subsequently operationalized through an Act of Kenya Parliament.[1] The Kenya National Commission on Human Rights is the National Human Rights Institution (NHRI) whose operations are guided by the 1993 United Nation's approved principles on the establishment and functioning of independent Human Rights Institutions referred to as the *Paris Principles*. The Kenya National Commission on Human Rights is an accredited "A" Status National Human Rights Institution. Kenya National Commission on Human Rights broad mandate includes *inter alia*:

The promotion mandate: To promote Constitutionalism by advising and supporting public and private actors in Kenya to promote the respect, protection and realization of fundamental human rights

The protection mandate: To protect the Sovereignty of the People by advising and moving Kenya towards a human rights state; one that respects and promotes the rights of all Citizens and to secure the observance of human rights and freedoms of all State organs, including national security and private institutions.

These mandates are implemented through various strategies including research, advocacy, lobbying, public education and training, outreach, receiving complaints, investigations, issuing advisories and publications and through partnership building and networking.

The functions of the Kenya National Commission on Human Rights are set out in Article 59(2) and 252 of the Kenya Constitution and have been operationalized through Section 8 of the KNCHR Act, 2011. These are to:-

a) Promote respect for human rights and develop a culture of human rights in the republic;
b) Promote the protection and observance of human rights in public and private institutions;
c) Monitor, investigate and report on the observance of human rights in all spheres of life in Republic;
d) Receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;
e) On its own initiative or on the basis of complaints received, investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State and non-State organs;
f) Act as the principal organ of the State in ensuring compliance with obligations under international and regional Treaties and Conventions relating to human rights;

1 See the Kenya National Commission on Human Rights Act No. 14 of 2011 and revised in 2012

g) Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a Citizen under the Constitution;

h) Work in close liaison with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarily in their activities and to establish mechanism for referrals and collaboration; and,

i) Perform such other functions as the Commission may consider necessary for the promotion and protection of human rights and perform such other functions as may be prescribed by the Constitution and any other written law.

In this report, the KNCHR presents the findings of the Public Inquiry on Insecurity and its Impact on the Enjoyment of Human Rights in the Coastal Region of Kenya. The Inquiry was conducted between 2012 and 2016 with public hearings held between 24th October and 11th November 2016. The major trigger to the systematic human rights violations in the Coastal region was a report by MUHURI, *We are Tired of Taking you to the Court: Human Rights Abuses by Kenya's Anti-Terrorism Police Unit*[2] which detailed the specific human rights abuses by the security agencies in the Coastal region, specifically focusing on the ATPU abuses that included 'use of excessive force during house raids; torture and ill-treatment of detainees; arbitrary detentions, including disappearances; and rendering terrorist suspects to countries where they faced a real risk of torture, some which dated back to 2007.[3]

The Coastal region of Kenya comprises of Mombasa, Kwale, Kilifi, Taita Taveta, Tana River and Lamu counties. The Inquiry focused on the four counties because the many reports pointed to a systematic violation of human rights, a manner that excluded Kilifi and Taita Taveta. Significantly Taita had been covered through a report produced by KNCHR on Taita Taveta. The Coastal region lies along the Indian Ocean and is predominantly inhabited by the Mijikenda, (consisting of nine closely related sub-tribes namely Giriama, Digo, Chonyi, Duruma, Jibana, Kambe, Kauma, Rabai and Ribe), Arabs, Swahili, Asians, and other inhabitants from hinterland communities. The Giriama and the Digo are the most populous and therefore, most dominant along the Kenyan coast. The Giriama inhabit mainly Mombasa and Kwale Counties. Taita Taveta is inhabited by the Taita, Taveta, and Sagalla. The Pokomo, Orma, Wardei occupy Tana River county. The Pokomo are agriculturalists while Orma and Wardei are pastoralists. Lamu County is occupied by the Orma, Wardei, Makonde, Amu, Boni, Swahili, Arabs and Asians among others. The county has representation from hinterland communities among them, the Kamba around Shimba Hills and Mpeketoni, and, Kikuyu in Lamu but mainly inhabiting Mpeketoni. While Muslims constitute just under half of all Coastal inhabitants, their distribution is quite uneven, with large majorities in Mombasa, Kwale, Kilifi, Tana River and Lamu Counties with a small minority inhabiting Taita-Taveta county.

2 MUHURI, 2013. "We are Tired of Taking you to the Court": Human Rights Abuses by Kenya's Anti-Terrorism Police Unit. New York: Open society Foundation

3 Ibid. p.13

This report is organized into four Chapters.



- **Chapter one** presents the background information to the Inquiry, the methodology, legal and policy frameworks.
- **Chapter Two** presents the background information on the Coastal region, its peoples and history. It explores, explains, and analyses the historical, cultural and contemporary causes of conflict in the Coastal region with a view to understanding the factors that contribute to insecurity.
- **Chapter Three** presents the impact of insecurity on violation of human rights by focusing on social, economic, cultural rights; civil, political and group rights.
- The Report concludes with **Chapter Four** by presenting the recommendations both general and county specific.

Methodology

The Public Inquiry employed triangulated methodological approach in gathering and analysing the relevant data. The Public Inquiry went through pre-Inquiry hearing forums; desk research that focused on literature relevant to the Public Inquiry, both current and archival; and eventually the final stage, public hearings conducted between October and November 2016 in the four selected counties of Mombasa, Kwale, Tana River and Lamu. The Public Inquiry had both open and *in camera* sessions. The four counties were identified on the basis of frequency of violent insecurity and complaints lodged with the KNCHR.

Findings

On the Causes of Conflict: The Coastal region is home to diverse cultures that make conflict in this region complex in causes, players and manifestation. Historical injustices, religion and land are among the major causes of conflict in the Region. There is a perception that Islam is associated with radicalization leading to terrorist related activities and frequent violence. Some causes are county-specific while others straddle across counties. The historical causes explain the resource based Orma-Pokomo conflict in Tana River and in Lamu Counties. Perceived marginalization of the Coastal region and its peoples has contributed to insecurity that has found expression not only in the MRC but also other organized criminal gang groups that has targeted certain persons and groups perceived to be outsiders and purveyors of the said marginalization.

Violations of Social Economic and Cultural Rights



Education: Article 43 of the constitution guarantees every person the right to education. Article 53 (1) (b) guarantees every child the right to free and compulsory basic education. Whereas this is a fundamental right protected by the constitution, CRC and ACRWC, the Inquiry noted that thousands of children in Coastal Region remain out of school and those who attend school do not receive quality education as was evidenced by the low transition rates and low literacy levels. The local population seems more focused on access to education with little or no regard as to its quality with the dictum *'Bora elimu'*, and not *'elimu bora'* (loosely translated as: it's better to be seen to have some form of education, the quality notwithstanding) being prevalent. The many instances of security operations occasion great interruptions to learning sessions inconveniencing children. According to the Kenya Demographic and Health Survey (KDHS), 26.5% of Coastal inhabitants have no education at all, 39.8% have some primary education, 14.3% have completed primary school, 6.3% have some secondary education 9.0% have completed secondary school, while a paltry 3.8% have post-secondary education (KDS, 2014, p26).



Water: The Constitution of Kenya under Article 43 guarantees every person access to clean and safe water in adequate quantities. The main sources of water are; the Indian Ocean, river Tana, Galana, Goshi, Tiwi, Pemba, Umba and Ramisi, the numerous streams and Lakes Kenyatta and Gambi, as well as underground water sources. Insecurity influences the decision of the water sector actors on where to develop water infrastructure and a tendency to avoid areas prone to conflict. Rampant insecurity has greatly led to the violation of the right to water due to displacement, damage and neglect of water infrastructure.



Health: Article 43 of the constitution provides that every Kenyan has a right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. However, in Coastal region, insecurity has negatively affected the enjoyment of this right as the health institutions are in poor state, underdeveloped and services either not provided or intermittently. Very few health personnel want to work in conflict prone and insecure areas for fear of attacks that lead to loss of life and destruction of property. The Inquiry was informed of high staff turnover in the health sector as a consequence of the harsh terrain and insecurity in the Region. Comparable rating health facilities across the country show that the Coastal counties fall far below the rest of the country in immunization, access to modern methods of family planning, child mortality, child spacing, maternal health, antenatal care among others.

Presence of Police in the Region: The Public Inquiry was informed that there is limited police presence in the region to deal with the vast area and ensure adequate response in the event of attacks. This is in spite of government claims of a police-civilian ratio of 1:380 which is above the UN recommended ratio of 1:450.[4] Over years, the United Nations has continued to provide valuable information on the operations of criminal justice systems through responses from Member States.[5] These include information on resources and on the performance (productivity) and punitivity of criminal justice systems and the challenges that arise with regard to drawing comparisons between countries. Figures on police and criminal justice personnel, national criminal justice budgets may be measured and defined very differently in different countries.[6] Police civilian ratio captures the total size of national police personnel to total available civilians. It should be observed that in some countries, particularly those organized under a federal or quasi federal system, the total number of police officers may be much bigger because sub-national governments employ significant numbers. In Kenya, the County Governments employ county enforcement officers. In 2006, an analysis by the United Nations indicated an approximate median of 300 police officers per 100,000 inhabitants.[7] Few countries disclosed values lower than 100 officers per 100,000 inhabitants, with a median of 400 police officers. These are countries in West Asia, Eastern and Southern Europe.[8] As such, this alone cannot provide an exhaustive assessment of the performance of criminal justice systems from an international perspective. Instead this data should be examined together with in-depth analyses of how criminal justice systems including policing work operate in theory and in practice. This implies the following:



That having more police officers does not necessarily result in a better performing and more productive policing service.

That there is no clear relationship between police effectiveness and the region of policing, although it is generally agreed that most of the regions ranking lowest in terms of police productivity are in tough terrains, with high crime intensity, such as the area covered by the Inquiry.

However, what is of significance is the finding by the Public Inquiry that the population in the coast region counties does not have confidence in the neutrality of security agents because the few available are known for harassing and intimidating civilians who are exposed to a corrupt security system prone to extortion. Witnesses who testified before the Inquiry were of the view that the deployment of security personnel, tools and equipment within the region is done in a discriminatory manner without justifiable causes.

4 https://www.standardmedia.co.ke/business/article/2001251437/ratio-of-kenya-police-officers-to-civilians-overstated

5 Twelfth United Nations Congress on Crime Prevention and Criminal Justice, p17

6 Ibid. p.19

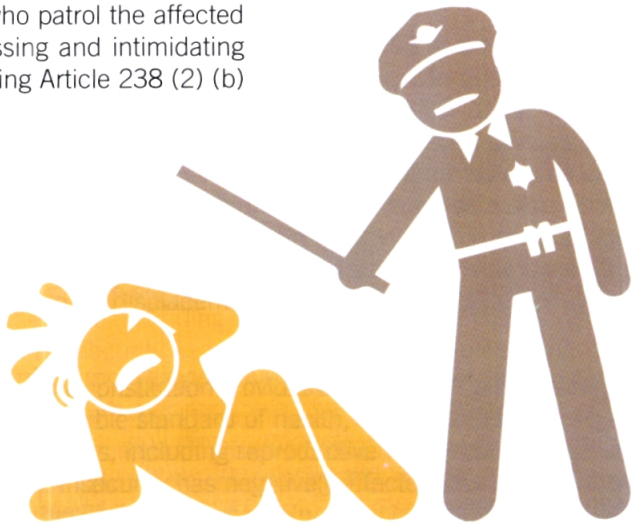
7 Ibid

8 Ibid

Unfavourable work environment for security agents: The security officers in this region operate under difficult circumstances. The terrain is hostile, the population untrusting and danger looms all over. Security officers perceive their promotion and disengagement as unsystematic.

The lack of clarity in the operational command between the security agencies compromises the transmission of intelligence information thereby leading to insecurity. The Inquiry heard that it is possible for the police not to have intelligence information which may be lying in the hands of the executive regional bureaucrats such as the Regional Commissioner (RC), their Deputies and Assistants.

Investigation reports by the KNCHR and IPOA[9] into the Mpeketoni attack revealed that there was poor coordination between the agencies leading to lapses in security. State response to insecurity incidences within the region has been through the deployment of the Kenya Defense Forces personnel who patrol the affected areas which are abandoned, harassing and intimidating civilians indiscriminately thus violating Article 238 (2) (b) of the Constitution.



9 IPOA report following the Mpeketoni Attacks 915 and 16 June 2014' accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/MpeketoniAttackMonitoringReport.pdf on 18th September 2017

Violation of Civil and Political Rights

Right to Life: Article 26 of the Constitution of Kenya guarantees every person the right to life. The Inquiry heard reports of extra-judicial killings, executions and enforced disappearances by state agents and failure by the state to investigate alleged violations of the right to life and to bring those responsible to justice. Families of victims of loss of life through human-wildlife conflict accused the state of having failed to compensate them.



Violation of the right to Property: Article 40 .(1) of the Constitution subject to Article 65 states that every person has the right to either individually or in association with others to acquire and own property. The Inquiry heard evidence of destruction of communal and individual properties. Water infrastructure such as community boreholes were vandalized and houses burnt. Livestock were reportedly hacked to death.



Freedom Conscience, religion, belief and opinion: Article 32 of the CoK guarantees every person the right to freedom of conscience, religion, thought, belief and opinion. Owing to perceived radicalization and terrorism, Muslims and Islamic worship centers within the region are regularly monitored by security agents. The presence of security agents in places of worship who may descend on worshippers at the slightest suspicion instils fear and does not allow the faithful to freely exercise their freedom of worship. Masjid Musa Mosque has been on the radar of security agents and has been raided by security agents on suspicion that it was harbouring terrorist elements and was involved in radicalization. This has created a wedge between Muslims and security agents on the one hand, and Muslims adherents and other religions especially Christians on the other. Incidences of attacks by irate Christians on mosques and Muslims were reported in Mpeketoni area.





Violation of Group Rights: The Constitution of Kenya in Article 27 and 56 provides that the State shall put in place programs that ensure that minorities and other marginalized groups are provided special opportunities in educational and economic fields, including special opportunities for access to employment as well as have reasonable access to water, health services and infrastructure.

Displacements: In Lamu, the occupation of educational and health facilities in Basuba Ward within Boni forest by the KDF and GSU in the fight against terrorism, adversely affected the Boni community's right to education and healthcare. This act of occupation not only violently violated the Boni and many households, but also deprived this minority group of their bee-keeping infrastructure thereby taking away their source of livelihood and ownership of property. The full potential of the benefits of bee-keeping to households deprived has not been realized due to this state of insecurity. In a significant way therefore this displacement deprived them of the only lifestyle they know; hunting and gathering.



Recommendations

The Public Inquiry found out that members of the public felt that the State has not robustly addressed the acts of commission and omission by security agents in the region that have negatively impacted on the enjoyment of their rights. The Commission therefore recommends that the Head of State publicly acknowledges these violations and issues an undertaking of non-recurrence and a commitment to promote and protect the rights of citizens in the region. Article 19 (1) of the Constitution provides that the Bill of Rights is an integral part of Kenya's democratic State. It provides the framework for the enjoyment of social, economic and cultural policies. Human rights are not privileges donated by the State. They belong to individuals and should be respected as being integral to human dignity. The state has a primary duty of honoring, fulfilling, respecting, protecting and promoting human rights in the country in accord with the promise of the Constitution 2010, Article 20 (1) & (2). It was observed that victims of conflict and insecurity are left without remedy. The Commission recommends that a national fund be established to compensate victims of insecurity for the losses suffered.

The Commission recommends that the National Police Service undertakes an audit of security officers deployed in the Coastal region to ensure rationalized and efficient deployment on the ground. The Commission recommends that the NPS should enhance intelligence based policing, that will facilitate their work.

The Commission further recommends that an Honours List be published by the NPS on an annual basis to recognize officers who have fallen in the line of duty so as to stir the national conscience on the impact borne by officers in the quest for security. The Commission recommends that the NPS take measures to strengthen community policing initiatives aimed at nurturing mutual trust between the police and the members of the public.

The Public Inquiry observed that the NPS officials were not fully conversant with human rights principles as these were not reflected in the manner in which they executed their mandate. The Commission recommends that the NPS mainstreams Human Rights Based Approach (HRBA) in all its operations in compliance with Article 238(2) (b) and 244(c) of the COK, 2010. The Inquiry found that the insecurity has negatively impacted on the quality of education in the region. The Commission thus recommends that the national government through the Ministry of Education puts in place measures to ensure uniform application of education standards across the country.

The Inquiry noted the high level of youth unemployment in the region. The Commission recommends that the government engages in economic empowerment activities that targets the youth. The State should consider furthering investment in youth knowledge and skill development in the Coast region through the establishment or revival of vocational training institutions.

Finally, the Inquiry took note of the impact of insecurity on the Coastal tourism sector. The Commission recommends that the government takes steps to beef up security with a special focus on the tourism industry, a commercial activity beneficial to the people of Mombasa, Kwale and Lamu.



KNCHR Chairperson Kagwiria Mbogori (standing) addressing members of the public during the official launch of the Coast region public inquiry at Red Cross, Koblenz hall in Mombasa. She is flanked by members of the inquiry panel and the Member of Parliament for Mvita Constituency Hon. Abdulswamad Shariff (Photo courtesy © 2016 KNCHR)

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction and Background to the Public Inquiry

The Kenya National Commission on Human Rights (KNCHR) is an independent Constitutional Commission established by the Constitution of Kenya 2010 under Article 59 (4) and subsequently operationalized through an Act of Kenya Parliament (the Kenya National Commission on Human Rights Act No. 14 of 2011 and revised in 2012). The Kenya National Commission on Human Rights is the National Human Rights Institution (NHRI) whose operations are guided by the 1993 United Nation's approved principles on establishment and functioning of independent Human Rights Institutions referred to as the Paris Principles. The Kenya National Commission on Human Rights is an accredited "A" Status National Human Rights Institution.

Kenya National Commission on Human Rights broad mandate is as indicated below:

1. Promotion mandate which includes promoting Constitutionalism by advising and supporting public and private actors in Kenya to promote the respect, protection and realization of fundamental human rights;
2. Protection mandate that includes protecting the Sovereignty of the People by advising and moving the Kenya towards a human rights state; one that respects and promotes the rights of all Citizens; and,
3. Observance mandate that includes securing the observance of human rights and freedoms of all State organs, including national security and private institutions.

These mandates are implemented through various strategies including research, advocacy, lobbying, public education and training, outreach, receiving complaints, investigations, issuing advisories and publications and through partnership building and networking.

The functions of the Kenya National Commission on Human Rights are set out in Article 59 (2) and 252 of the Kenya Constitution and have been operationalized through Section 8 of the KNCHR Act, 2011. These are to:-

j) Promote respect for human rights and develop a culture of human rights in the republic;

k) Promote the protection and observance of human rights in public and private institutions;

l) Monitor, investigate and report on the observance of human rights in all spheres of life in the Republic;

m) Receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;

n) On its own initiative or on the basis of complaints received, investigate or research matter in respect to human rights, and make recommendations to improve the functioning of State and non-State organs;

o) Act as the principal organ of the State in ensuring compliance with obligations under international and regional Treaties and Conventions relating to human rights;

p) Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a Citizen under the Constitution;

q) Work in close liaison with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanism for referrals and collaboration;

r) Perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and,

s) Perform such other functions as may be prescribed by the Constitution and any other written law.

1.2 Scope and Relevance of the Inquiry

This fell within the meaning of Section 8 of the KNCHR Act, 2011 inter alia;

1. To promote the protection and observance of human rights in public and private institutions;
2. To monitor, investigate and report on the observance of human rights in all spheres of life in the Republic; and,
3. On its own initiative or on the basis of complaints, investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs.

1.2.1 Rationale and Justification for the Public Inquiry

The Commission observed that insecurity has a long history in the Coastal region. The Public Inquiry focused on the period between 2012 and 2016 when the scale and intensity of insecurity increased to levels never witnessed before. The Inquiry used mixed-method approaches in gathering and analyzing the relevant information.

This report presents the findings of the Public Inquiry on insecurity and its impact on the enjoyment of human rights in the Coastal region of Kenya. The Coastal region is important in Kenya's history. It is through the region that Kenya first had contact with the outside world beginning with Portuguese, followed by Arabs. This encounter with the outside world forms part of the complex issues that have continued to haunt the region to date. But the region's population decries the neglect by the successive post-colonial governments, a phenomenon that has marginalized the region compared to other regions in Kenya.

Through its Coast Regional Office (CRO) the Commission received complaints/reports filed by individuals and groups of human rights violations in Coastal Kenya. The complainants allege human rights violations involving extrajudicial killings, enforced disappearances, torture, and ill-treatment of detainees allegedly committed by security agencies. The agencies implicated include units of the Kenya security forces such as National Police Service, the Kenya Defense Forces (KDF), the Kenya Wildlife Service, (KWS), the National Intelligence Service (NIS), and the Anti-Terrorism Police Unit (ATPU). The reports received by KNCHR revealed a pattern of impunity and disregard for the rule of law and human rights. KNCHR documented cases of families whose quest for justice had been frustrated by non-responsive state agencies.



Officials of Haki Africa and Muslims for Human Rights (MUHURI) follow the proceedings during the public inquiry sessions in Mombasa. The two civil society groups presented their written submission to the KNCHR panelists. (Photo Courtesy © 2016)

Since its establishment the KNCHR has monitored, investigated and documented human rights violations that have arisen as a result of insecurity. For instance, on or about 22nd August 2012, KNCHR became aware of media and other reports concerning the conflict in Tana Delta and surrounding areas which had occasioned egregious human rights violations. In its report[10] the Commission found that this conflict witnessed over 129 deaths, thousands displaced and property destroyed.[11] In an Occasional report on insecurity (2010-2014),[12] the Commission detailed the spiraling insecurity and its impact in Kenya and made far reaching recommendations among them the need to fast-track the security sector reforms with a view to professionalizing the service, and weed out corruption among the security actors. Significantly there were events that informed this Public Inquiry as detailed below.

10 KNCHR, 29 days of terror in the Delta: A KNCHR account into the atrocities at the Delta

11 Ibid, pp. 22-23

12 Are we under Siege? The State of Security in Kenya

On 16th October 2011 the Government of Kenya (GoK) launched *Operation Linda Nchi* (translated as *'Operation Defend the Country'*)[13] in which Kenya Defense Forces were dispatched into Somalia to contain Al Shabaab militants who were alleged to have kidnapped several foreign tourists and aid workers inside Kenya.[14] After this, there were media reports of increased radicalization and violent extremism among the youth who frequently attacked moderate Islamic preachers and Imams as well as anyone who did not agree with their interpretation of the Quran. This violent situation had a serious effect on education as everyone feared for their lives and the possibility of attacks in crowded places increased.

In 2013, the government through the then Coast RC gave a shoot to kill order to anyone suspected of engaging in terrorism related activities. This led to a public outcry where individuals alleged were subjected to extra judicial killings while others disappeared without trace. These were allegedly the work of security agents accused by the public for allegedly violating their rights to life and fair hearing.



In its fight against terrorism the Government imposed curfews in Lamu. These curfews limited enjoyment of socio-economic and cultural rights of the affected population. For example, in Lamu County the curfew affected fishing as residents could not venture out fishing at night. This greatly affected the resident's source of livelihood. The curfew negatively affected Lamu residents businesses and other commercial and economic activities, such as travel between Lamu and Mombasa and Malindi, were hampered by the many security check points along the way.

On 15th June 2014, Mpeketoni, Lamu County was attacked by suspected terrorists who targeted non-muslims and critical government installations such as the Mpeketoni Police Station and several government police vehicles. During the attack, more than 60 people lost their lives. On 5th July 2014, armed gunmen attacked Hindi trading center in Lamu County and burned down Government buildings and a church. They targeted men, tying their victims up before shooting them in the head or slashing their throats with knives allegedly in revenge for the theft of Muslim lands.[15] According to reports from the Ministry of Interior and Coordination of National Government, nine people were killed in the attack.[16]

On 6th July 2014, a separate attack occurred in Gamba in Tana River County where suspected terrorist militants broke into a police station and attempted to free suspects held in connection with Al-Shabaab related attacks. Twenty lives were lost during the attack.[17] On 25th June, the then Lamu County Governor, Hon. Issa Timamy was arrested on charges related to the attack.

13 Nation Television, Retrieved 23 November 2017

14 Kron, Josh; Gettleman, Jeffrey (23 October 2011). "Other Nations Join Somalia Fight, Kenya Says". *The New York Times*. Retrieved 23 November 2017.

15 http://www.bbc.com/news/world-africa-28181246. Retrieved on 15.December 2017

16 Jeffry Gettleman (6 July 2014). "Gruesome Attacks in Kenyan Villages Heighten Fears of a Nation on Edge". New York Times. Retrieved 17 July 2017.

17 Ibid

In its response to terrorist attacks the government resorted to indiscriminate raiding of mosques, arbitrary arrests, and the unfair and blanket profiling and association of members of the Muslim community to violent and terrorist activities.[18] There were reports of human rights violations arising from extra judicial killings, enforced disappearances allegedly by unidentified occupants in unmarked vehicles who many suspected to be security agents, or, voluntary disappearances by individuals worried about the possibility of being arrested over unidentified crimes.

Reports came in of security agents flashing out suspected Islamic radicals and terrorists and their sympathizers from places of worship, with Mosques being mostly affected. The Commission also received reports of attacks on churches by suspected radicalized Muslim youth with the alleged goal of revenging on attacks on Mosques. Police raids on residential places without search warrants intensified. These searches often resulted in arrests but the arrested suspects were never arraigned in courts of law. There were reports of ATPU frequently making arrests, claiming to take the victims to particular police stations, but on inquiring the OCS and OCPD would claim no knowledge of such arrests.



Mombasa County Commissioner Mr. Evans Achoki making his remarks during the public inquiry sessions where he encouraged the local communities to come forth and report cases of insecurity affecting them. Other duty bearers at the national and county governments, ministries, departments and agents, business entities and civil society presented their written submissions (Photo courtesy © 2016 KNCHR)

18 KNCHR 29 Days of Terror in the Delta: A KNCHR account into the atrocities at the Delta

In 2015, the government launched a military operation in Boni forest. The objective was to flush out Al Shabaab terrorist group and their sympathizers who were said to be living in the forest among the local population. The operation ended up being handled in a manner that violated the civil and political rights of the local population, living within and around the forest.

From the foregoing, it became clear that the situation required attention and the KNCHR moved in and set up a Public Inquiry. A national Inquiry is an investigation into a systemic human rights problem in which the general public is invited to participate by providing oral evidence and written submissions, which has investigative and educational objectives and which results in a report with findings and recommendations. A national Inquiry is a good means to address complex human rights situations that are historical and systemic in nature and that require comprehensive examination and reporting. Insecurity in the Coastal counties is complex: it has national and regional characteristics; ethnic tensions and competition for resources intersect with terrorist activities; violence by militia groups both with networks within and outside the country; dynamics in relation to the actors and causes; systemic in terms of non-accountability thus perpetuating a culture of impunity in which the perpetrators continue to thrive. It is therefore a useful subject for an inquiry such as the one that was conducted.

Public inquiries are preferred in cases of violation of social-economic and cultural rights, as well as civil and political rights. In the context of the Coastal region, the challenges facing security machinery in the region have been reported as one of the major problems for successive post-independence governments in Kenya. Historical injustices around land and perceptions of marginalization across the Coastal region have provided a breeding ground for militia groups like the Mombasa Republican Council (MRC)[19] who have a wide appeal among the youth and indigenous Coastal people. The Coastal region of Kenya is a volatile region given claims of historical injustices and neglect by successive governments since independence. In examining events leading to the 2017 elections, Muhammad Fraser-Rahim the then Program Officer at United Institute of Peace in Kenya observed that the region faced a particularly high risk of violent conflict even before the 2017 general elections.[20] Failure to address persistent land issues, to engage with moderate local leaders, and to recognize the county governments as a legitimate authority and partner in addressing security matters could fuel interreligious tensions, extremism, and violent conflict just as it could fuel inter-ethnic conflict.[21] The response to extremism in the area is feared that it may not 'only increase inter-religious tensions, exacerbate polarization, and, contrary to the government's goals, but may also increase the risk of violent extremism.'[22]

19 Explain the MRC rise etc.

20 See https://www.usip.org/publications/2016/08/qa-amid-kerry-visit-kenya-braces-2017-elections

21 Elder, C., Stigant, S. & Claes, J. (2014). Elections and violent conflict in Kenya: Making prevention stick. Washington, DC: United States Institute of Peace

22 Ibid

The United Institute of Peace report concludes that:

> **[I]n the coming months, there is a risk that peace building efforts, democracy assistance, atrocity prevention, electoral violence prevention, countering violent extremism and conflict prevention will remain stove-piped. The forthcoming elections provide an opportunity to convene practitioners from these fields in joint conflict assessments and program design, to facilitate election programs that address root causes of violent political conflict in a way that will be sustainable.**[23]





1.3 Objectives of the Public Inquiry

The overall goal of the Public Inquiry was to come up with key recommendations aimed at promoting the respect and observance of human rights in the Coastal region of Kenya. Specifically, the Public Inquiry's aim was to:

1. Document specific human rights violations in the Coastal Kenya region arising out of cases of insecurity.
2. Determine the underlying causes of insecurity and the human rights violations in the Coastal region of Kenya;
3. Examine the impact of violence and insecurity on the enjoyment of human rights in Coastal Kenya region while at the same time pointing out that human rights ought to be respected even in situations where the State is addressing security issues or concerns;
4. Provide victims of insecurity and human rights violations an opportunity to narrate their experiences and express their opinions while stating their position on what could constitute possible remedial measures for the human rights violations suffered;
5. Create a database of cases of human rights violations resulting from insecurity in Coastal Kenya;
6. Raise public awareness and promote debate on the obligations of the state as to the right to security of the person and property; and,
7. Recommend appropriate redress and victim relief, accountability for perpetrators, and make recommendations on the way forward towards sustainable solutions to the insecurity in the region.

This Public Inquiry was thus undertaken by KNCHR in fulfillment of part of its primary mandate, which calls upon the Commission to conduct investigations into any complaint on violations of human rights in the country.

23 https://www.usip.org/publications/2016/08/qa-amid-kerry-visit-kenya-braces-2017-elections

1.3.1 Introducing Coastal Kenya

The Coastal region (also known as *Pwani* in Swahili) in Kenya lies along the Indian Ocean, and constitutes one of the former eight provinces in Kenya whose capital city was Mombasa. The region is inhabited by the Mijikenda, Taita, Taveta, Sagalla, Pokomo, Orma, Wardei, Amu, Boni, the Swahili, Arabs and Asians among others.[24] The area has representation from upcountry ethnic communities who have settled there on account of work, commerce or migration. Significant upcountry settlers include, the Kamba around Shimba Hills and Kikuyu in Lamu. The region includes all those parts of Kenya whose written history dates back earlier than the nineteenth century, and with its background of early Arab settlement and Portuguese occupation. The religious composition of the present population is of particular interest due to its diversity. The region is divided into six administrative counties, namely; Kwale, Mombasa, Kilifi, Tana River, Lamu in this order from south to north along the coast, and Taita Taveta situated in the hinterland one hundred kilometers from Mombasa. The Coastal region covers an area of 79,686 square kilometers and has a population of 3,325,307 in 2009 (KNBS Census, 2009).

Table 1: Coastal Counties by area and Population size

Code	County	Area (Km²)	Population	HQs
001	Mombasa	212.2	939370	Mombasa
002	Kwale	8270.3	649931	Kwale
003	Tana River	35375.8	240075	Hola
004	Lamu	6497.7	101539	Lamu
005	Kilifi	12245.9	1109735	Kilifi
006	Taita Taveta	17083.9	284657	Wundanyi

Source: KNBS, 2009, Kenya Population and Housing Census

Table 2: Population distribution by sex, number of households, area and density by Counties

County Attributes				Population		
County	**No. of Households**	**Area in Km²**	**Population Density**	**Male**	**Female**	**Total**
Mombasa	268,700	3,079.0	305.1	486,924	452,446	939,370
Kwale	122,047	1,265.0	513.8	315,997	333,934	649,931
Kilifi	199,764	2,348.0	473.6	535,526	574,209	1,109,735
Tana River	47,414	626.0	383.5	119,853	120,222	240,075
Lamu	22,184	265.0	383.2	53,045	48,494	101,539
Taita Taveta	71,090	917.0	293.2	145,334	139,323	284,657
Total	**731,199**	**8,549**	**2,352**	**1.656,679**	**1,668,628**	**3,325,307**

Source: KNBS, 2009, Kenya Population and Housing Census

24 https://softkenya.com/kenya/kenyan-coast/

Coastal Demographic Features

While the population of the Coast region is highly diverse, nearly half (42%) belong to the nine Mijikenda subgroups, and about one-quarter is made up of people with up-country origin. Similarly, while Muslims constitute just under half of all Coastal inhabitants, their distribution is quite uneven, with large majorities in Mombasa, Kwale, Tana River and Lamu, but only a small minority in Taita-Taveta county and Kilifi.

Map 1: Location of Coastal Counties in Kenya



1.3.2 Explaining Violent Conflict in Coastal Kenya

Kenya is a multi-ethnic nation. It has over 40 different ethnic groups and these include: Kikuyu, who make up about 17 percent of the population (6,622,576), Luhya (5,338,666), Kalenjin (4,967,328), Luo (4,044,440), Kamba (3,893,157), Kenyan Somali (2,385,572), Kisii (2,205,669), Mijikenda (1,960,574), and Meru (1,658,108). The country is majority Christian, with a substantial Muslim population at 4,304,798 (2009 Population and Housing Census).

Administratively, Kenya is divided into political and administrative units. Politically, the country has a President as the Head of State and Government, has a bicameral parliament comprising of the Senate and National Assembly, and is divided into 47 Counties with each headed by a Governor, and a Legislative County Assembly. Each of the 47 counties has a Woman Representative in the National Assembly. In both the Senate and National Assembly, the constitution provides for representation for minorities and persons with disability (Kenya Constitution 2010, Articles 97(1), 98(1) and100 respectively). Kenya also has a progressive Constitution and a robust Bill of Rights set out in Chapter Four of the Constitution. The county's political, economic and social architecture thus envisages a nation where human rights are observed and protected for all.

In restructuring the former Provincial Administration, Parliament enacted The National Government Co-ordination Act, (2013) which divided Kenya into administrative units. Section 15(2) (a)-(e) provides that a County shall be presided over by a County Commissioner (CC), a Sub-County presided over by a Deputy County Commissioner (DCC), a Ward to presided over by an Assistant County Commissioner (ACC), a Chief in charge of a location while an Assistant Chief is in charge of a sub-location. Section 15(2) (f) grants the National Government powers to create any other national government administrative office in respect of service delivery established under section 14. It is under this section that Regions (comprising several counties were created to be presided over by Regional Commissioners (RC) and villages headed by village elders. The heads of these administrative units exercise executive authority in the country generally aiming at coordinating the National Government functions. The distinct functions of the units include coordinating security management; coordinating national government functions and delivery of services; facilitating conflict management and peace-building; mobilizing national government agencies for national events, and programs. It is important to note that in effect this means coordinating security functions including that of the police and intelligence units at every level.

The Bill of Rights in Chapter four of the Constitution of Kenya 2010 provides for adequate safeguards against human rights violations.[25] Government institutions are bound by this supreme law. Government institutions besides respecting the constitution are duty bound to respect international human rights law and adhere to due process.[26] The Public Inquiry was informed that the state needs to acknowledge violations when they occur and publicly condemn them as a measure of increasing accountability by security agents and building confidence among the public. However the Public Inquiry was informed that, instead the

25 See Kenya Constitution, 2010 Articles 19(1); 20(2); 21(1-2)

26 Ibid. Article 21(1)-(4)

government routinely denies any human rights violations reported and at times, some government officers harass families of victims for reporting, threaten the media for reporting the abuses, and even put human rights defenders on notice for asking accountability questions concerning these violations.

During the Public Hearings, the Commission was further informed that the range of security units involved and the geographical scope of the abuses had expanded to include not just Mombasa, Kwale and Lamu counties but also a significant area of Tana River. In the latter, the terrorism factor complicates an already volatile region with the perennial Pokomo-Orma/Wardei insecurity occasioned by conflict over resources, in this case, water and land use. The Public Inquiry was informed that various units of the National Police Service, the National Intelligence Service, the Military, and the Kenya Wildlife Service (KWS) officers were actively involved in various forms of security operations in the Kenyan Coast region. The multiple security operations led to a number of human rights violations. However, in view of the fact that multiple security units are involved, the existing accountability institutions need to do much more to ensure that the violations are effectively investigated and that justice is secured for the victims, survivors and their families. This called for a public Inquiry that would serve two basic purposes: to raise public awareness and promote the debate on the obligations of the state as to the right to security of the person and property; and, to make multi-sectoral recommendations on an appropriate platform to provide redress for perpetrator-accountability and victim relief and/or compensation.

Insecurity has thus led to many adverse consequences, including claims of neglect and marginalization, which make Coastal Counties lag behind other regions in Kenya in infrastructural development, health, education and other social services. To address marginalization, the Constitution of Kenya under Article 204 established the Equalization Fund (EF) which stands at 0.5% of total annual government revenue. The Equalization Fund aims at raising the living standards by providing basic services including water, education, roads, health facilities and electricity in the marginalized regions to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation. In Kenya, counties in the Arid and Semi-Arid (ASAL) regions take priority in this kind of socio-economic arrangements. Thus the fourteen counties identified include: Turkana, Mandera, Wajir, Marsabit, West Pokot, Tana River, Samburu, Narok, Kwale, Garissa, Kilifi, Taita Taveta, Isiolo and Lamu. In 2013, the Commission for Revenue Allocation (CRA) developed the Composite Development Index (CDI) as the criterion for qualification for Equalization Fund.[27] The threshold for qualification was 0.52 which is the national average. The qualifying counties for CDI are: West Pokot 0.38, Turkana 0.27, Baringo 0.44, Isiolo 0.52, Samburu 0.38, and Marsabit 0.37. However, since 2012 the Fund is yet to be disbursed to the marginalized counties. Under this criterion the funds in 2016/2017 Financial year budgetary allocation the National Equalization Fund was 12,400,000, 000 (sum of Kshs of twelve billion, four hundred million) and the Equalization Fund Secretariat disbursed the amount as hereunder:

27 The primary criterion chosen for identifying marginalized counties in this policy is the County Development Index (CDI), which is a composite index, constructed from indicators measuring the state of health, education, infrastructure and poverty in a county. The CDI is complemented by two other approaches, namely: expert analysis on historical and legislative discrimination and the results of the Commission's county marginalization survey (CRA, 2013).

Table 3: Allocation of the Equalization Fund 2016/2017 Financial Year

County	Water Subsector	Roads Subsector	Education	Electricity Subsector	Health Facilities Subsector	Total
Garissa	360,980,000	317,520,000	-	70,000,000	35,000,000	783,500,000
Isiolo	144,000,000	450,300,000	-	16,600,000	136,000,000	746,900,000
Kilifi	381,267,859	205,410,713	62,000,000	5,750,000	109,071,428	763,500,000
Kwale	280,000,000	332,475,000	95,000,000	77,000,000	10,825,000	795,300,000
Lamu	337,200,000	180,000,000	-	60,000,000	145,000,000	722,200,000
Mandera	470,000,000	300,000,000	-	27,000,000	170,600,000	967,600,000
Marsabit	494,274,000	148,928,000	-	16,000,000	226,998,000	886,200,000
Narok	226,750,000	284,250,000	-	-	298,500,000	809,500,000
Samburu	746,000,000	123,700,000	-	-	-	869,700,000
Taita Taveta	165,500,000	414,500,000	-	-	171,700,000	751,700,000
Tana River	654,000,000	130,000,000	60,000,000	15,000,000	-	859,000,000
Turkana	605,133,332	320,066,668	-		125,000,000	1,050,200,000
Wajir	580,800,000	-	-	-	349,000,000	929,800,000
West Pokot	284,525,000	419,575,000	-	-	162,000,000	866,100,000

Source: GoK, Special Issue Kenya Gazette Supplement No. 51 (Acts No. 8), Nairobi, 12th April, 2017

The UN developed Human Development Index (HDI) emphasizes that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone as has been the case. The HDI can be used to interrogate national policy choices, asking how two countries with the same level of GNI per capita can end up with different human development outcomes. These contrasts can stimulate debate about government policy priorities. The HDI is a summary measure of average achievement in key dimensions of human development: a long and healthy life; knowledge; and standard of living. The HDI is thus the geometric mean of normalized indices for each of the three dimensions. The health dimension is assessed by life expectancy at birth; the education dimension is measured by mean of years of schooling for adults aged 25 years and more and expected years of schooling for children of school entering age. The standard of living dimension is measured by gross national income per capita.

Under this system, and at time of the PI, Kenya was ranked at number 146 globally with a life expectancy of 62.2; an adult expectancy of 296 per 1000; death due to malaria 49.6; Inequality at 0.391; Gender Inequality Index (GII) of 0.565; female Human Development Index (HDI) of 0.531 and male Human Development Index (HDI) of 0.577.[28] If we compare counties in Kenya, the picture becomes worrying. The challenge is to bring about equitable development between and within the counties for a more effective, steady and predictable national development. Equitable development will secure the interest of the entire country by significantly raising demand and supply of economic goods and services. Although the county is endowed with diverse economic resources, poverty in urban centers stands at 45.24% and it is recorded at 28.8% in rural areas. This is attributed to the under exploitation of the existing economic resources, basic subsistence level economic lifestyles, unemployment, poor recovery from natural disaster occurrences and poor access to finance provided by stakeholders support programmes, under-developed or poorly managed cooperatives and lack of collateral for credit facilities offered by financial service providers. There is also a dearth of planning when it comes to the long-term impact of large infrastructural undertakings. For instance, in Lamu County, the LAPSSET Project is expected to attract a huge migrant population estimated to be over one million. This will certainly overstretch the county's social services necessitating commensurate development planning for adequate service provision. However there are no signs of active planning ahead of this expected population surge, not only on burden to be imposed on the County's social amenities, but also on other socio-cultural, political and economic dimensions and how its [the migrant population's] unintended negative consequences should be mitigated. Population growth is attributed to decline in mortality rate which for the county stands at 76:1000, 22 points above National rate of 54:1000.[29] This category is most vulnerable to life threatening diseases such as malaria other curable diseases including, cholera and malnutrition.

It is instructive to note that the immediate implication of marginalization and underdevelopment for any Country or for any population is low HDI, which in turn means increased poverty, high unemployment, hence high levels of insecurity—all of which have a deleterious impact on the full enjoyment of human rights.

1.3.3 Methodology

The Public Inquiry was inquisitorial and the complete records including Hansard and memoranda submitted have been held in safe custody of the Commission. The Inquiry deployed triangulated methodological approach in gathering and analyzing the relevant data. The Public Inquiry went through the following stages:

1. Pre-inquiry hearing forums where focus was on highlighting specific human rights violations in specific areas of the region in terms of causes, actors, nature and impact as well as identifying possible witnesses and hearing locations;

28 https://knoema.com/atlas/Kenya/topics/World-Rankings/World-Rankings/Human-development-index accessed 12 May 2018

29 http://worldpopulationreview.com/countries/kenya-population/ accessed 12May 2018

2. Desk research was undertaken for review of relevant literature on the history of the conflict, actors, motivators, the role of religion, impact of conflict on the households as well as relations between civilian and security agencies. The relevant legal and policy frameworks at international, regional and national levels were reviewed. Archival materials were reviewed and in the process gaps in existing knowledge were identified;
3. Public hearings were conducted between October and November 2016 in the four selected counties of Mombasa, Kwale, Tana River and Lamu. The target groups in the public hearings were: individual members of the public; children; professional associations; trade unions; interest groups; civil society organizations; county and national government officers and the media. There were a total of 6 hearing locations in the four counties of coast region, namely, Mombasa, Kwale, Tana River and Lamu. During the public hearings a total of 125 individual witnesses (26 female, 99 male) orally presented their witness statements, and an estimated 2,000 members of the public attended the sessions. The Public Inquiry had both open and in camera sessions. Witnesses who had sensitive information were allowed to present their evidence in camera to the panel and 71 witnesses presented in this format;
4. Site visits and observations were made in areas that experienced human rights violations and other notable information relevant to the Public Inquiry;



Members of the public follow proceedings of the inquiry at Lamu Fort.

5. The Inquiry utilized the services of the following experts who were present throughout the process;
    a) Security
    b) Gender
    c) Civil Society
    d) Psycho-social counselling services.
6. The Inquiry engaged the media in the entire process. Media briefings were held in Mombasa, Kwale, Hola and Minjila in Tana River and Lamu Fort and Mpeketoni in Lamu.

The Public Inquiry looked into the impact of insecurity in the Coastal region by sampling incidents in Mombasa, Kwale, Tana River and Lamu Counties that could determine the nature of violations, secure accountability for human rights violations, raise public awareness and promote debate on the obligations of the state to the right to security of persons and property. To ensure an inclusive process, the Public Inquiry used mixed approaches in preparing and gathering data. An external consultant from the civil society in the region was employed to support the pre-Inquiry planning, issue identification, witness identification, witness preparation and preparatory stakeholder forums.

The Commission used a Reference Group (RG)[30] composed of individuals and groups that work, serve and at times risk their lives in defending, promoting and protecting human rights in the Coastal region of Kenya. The RG served as an important reference point that enabled the Commission identify specific human rights violations in the region of inquiry. This Reference Group prepared a pre-Inquiry data matrix that captured the thematic areas/issues. Among these were extrajudicial killings, enforced disappearances, harassment by security agencies, inaction by police, and resource conflicts among others. The RG also looked into locations in which these violations were prevalent and where specific violations took place. Names, bio-data and contacts of witnesses or victims of violations including action(s) if any that the victim(s) took were presented during reporting. The reports were captured and copies of correspondence if any or documents including a summary of violations recorded. This tool helped the team to conduct follow up on witness statements and stakeholder forums.

A Key Informant Interview guide and a Focus Group Discussion Guide were also developed to help the team consult with stakeholders in preparation for the Inquiry (See annex attached).

Following the comprehensive discussions with human rights CSOs in the region, it was possible to place issues against given geographical areas. This process also made it possible to work with the CSOs in respective areas to conduct preparatory stakeholder forums and meetings as well as field interviews to prepare for the main hearings. The Reference Group worked with CSOs based in the region to mobilize the public to participate in the Inquiry.

30 These were mainly Civil society organizations (CSOs) based in and working within the coastal counties of Mombasa, Kilifi, Kwale, Tana River, Lamu and Taita Taveta.

1.3.4 Summary of Recurrent Issues/Thematic Analysis

Ultimately the key issues that were identified in the 4 Counties included but were not limited to: criminal/youth gangs in Mombasa; violent extremism in Mombasa, Kwale and Lamu; extra-judicial executions and enforced disappearances; drugs and possible complicity by some in the officialdom in drug-trafficking; run away drug business and nexus with some politicians, the drug barons of Mombasa, Kwale and Lamu; impact of insecurity on education with Lamu being worst hit but also affecting Mombasa, Kwale, and Tana River counties; land and insecurity; non- compliance with human rights principles and standards by security and law enforcement agencies such as the Police (regular police, CID, ATPU, BPU, RDU) KDF in the execution of their mandate; counter terrorism, torture and its impact on insecurity; civilian-military conflict; military and paramilitary camps and bases in local economies and interface with schools; teachers flight due to insecurity; poverty and insecurity; the national government and its relationship with the Coastal peoples; economic issues and impact of security operations on business, tourism, fishing and transport/high cost of basic commodities especially in the island places leading to food scarcity; mega projects and interface with insecurity; plight of women, children and the vulnerable.

1.3.5 Mobilization of the Public and Identification of Witnesses

The information about the Inquiry was passed through local media houses.[31] The County Commissioners' offices were informed to pass the information to the chiefs to mobilize the victims and all concerned in their respective locations. Chiefs' *barazas* were attended by KNCHR staff to pass the information. Respective county assembly speakers were informed to pass the message to the respective Members of County Assembly (MCA) to mobilize the public. Religious gatherings were also used to publicize the Public Inquiry. Local Civil Society Organizations were encouraged to present written Memoranda to the Inquiry. The pre-hearing visits were conducted. During the Public Inquiry, further publicity was broadcast in Bahari FM a popular station that broadcasts in Kiswahili language with a large following in the Coastal region. A further message was published in the media on 24th October 2016 informing the public about the Public Inquiry and inviting those within the identified Counties as well as other Counties within the Coastal region to participate.

The message to all who had suffered human rights violations either through physical injury, loss of life in the family, loss of property, loss of livestock, and loss of livelihood or business was to encourage them to record statements. The violators were either ordinary members of the community or government officers. Those who had special information but were not victims were also encouraged to record their statements.

During the Pre-Inquiry forums, those whose rights were violated discussed their experiences with the legal officers from KNCHR. On the basis of this, witnesses were then sampled and prepared to present their evidence to the Inquiry panel in terms of how their rights were violated.

31 See http://kenyanewsagency.go.ke/en/?p=91450

The details of the identified witnesses including telephone contacts were recorded. The venues for the public hearings and logistical arrangements were thereafter communicated to the witnesses.

1.3.6 Submission of Memoranda

While publicizing the Public Inquiry the KNCHR made a public invitation to individuals, groups and institutions to submit written memoranda on their experiences of insecurity, causes, actors, impact, human rights violations and recommendations in the Coastal region. This was made through the media to those unable to appear in person for the hearings. The Public Inquiry received a total of 46 memoranda submitted in the form of reports and recorded statements.

1.3.7 Public Hearing, Composition and Procedure

The Public hearings were conducted between 25th October 2016 and 11th Nov 2016. There were twenty two hearing sessions where 11 were public and 11 were in camera sessions. The hearings were held in public places among these churches, social halls, schools, hotels, and training institutes and under acacia trees. Witnesses who had sensitive and confidential information or safety concerns based on the nature of their evidence were given an opportunity to present it in camera. Consequently, a total of 77 witnesses presented their evidence in this format.

The panel sought clarification from the witnesses on the information provided. A total of approximately 2000 members of the public attended the public hearings in the four counties. Before the start of each hearing session, the Chair of the Panel informed the public and witnesses of the following: rules of procedure including the requirement for witnesses to be sworn, rules on unnecessary and interruptive movement, talking and other types of misconduct that was likely to interrupt the sessions, the availability of counseling services, availability of translation services where necessary and provision for in-camera hearings. The official language of the hearing was Kiswahili which is the local language and English with provision for translation where necessary. The time of the hearings was between 8. 00 am to 5.00 pm, although in some cases the hearings went beyond 5.00 pm. The venues of the subsequent hearings were also announced.

The Public hearings were presided over by a panel of between 3 to 5 Commissioners (with at least a representation from KNCHR, one from IPOA, and a Consultant). The Panelists listened to the evidence presented by individual or group witnesses in terms of how they were affected by conflict and the consequent human rights violations they suffered. The target groups for the public hearings were the following:

- Individual members of the public (men and women);
- Children;
- Professional associations;
- NGOs and CBOs based in the Coastal region;

- Religious groups in the Coastal region;
- County Assembly members;
- Opinion leaders including non-elected political leaders, and religious
- Members of Parliament;
- Government Officers (county and national);
- Ministry of Education;
- Ministry of Health);
- National Police Service; and,
- Media.

During public hearings, the panel received and recorded evidence, petitions and memoranda from the affected individuals and groups. After witnesses presented their evidence, they were allowed to attend the ongoing sessions if they so wished. Individuals who were adversely mentioned by some of the witnesses as contributing to the violation of human rights were given an opportunity to provide clarifications on the allegations leveled against them.[32]

1.3.8 Meetings with State and Non-state Actors

State Actors

These included National and County Government officials, elected members of Parliament and Members of County Assemblies (MCAs), County Commissioners, Deputy County Commissioners, Assistant County Commissioners, and Chiefs.

Non-State Actors

The Kenya National Commission on Human Rights (KNCHR) through a notice invited groups of CSOs and CBOs to help understand the status of security situation obtaining in the Coast region. The specific areas of focus included Mombasa, Kwale, Tana River and Lamu counties which have borne the brunt of insecurity in the recent years.

1.3.9 Site Visits and Observations

The panel made site visits to areas where conflict and human rights violations were most evident. During the visits, observations of the facilities and infrastructure and people affected by the conflict were made. A visit at Hola County Hospital witnessed the reconstruction and attempts to improve service delivery in a bid to mitigate the right to health. The MoH complained of failure to attract staff due to the harsh terrain and insecurity in the area.

32 The public hearings were conducted in the following venues: Mombasa County; at Red Cross Hall, and Tudor Catholic Church; Kwale County, at Red Cross Hall and the County Trade Centre board room at Ukunda; Tana River County, at Laza Leisure Lodge in Hola, and YMCA Hall in Garsen; Lamu County, at Lamu Fort in Lamu Island, and Caritas Catholic Church in Mpeketoni

The panel visited the Mau Mau Secondary School in Hola, engaged with the Teachers and the Students and made some donations in support of the School. In Lamu, at Mpeketoni, a visit was made to the Mpeketoni Police Station where the panel witnessed the sorry state of security manpower. In Tana River a visit was made at Gamba Police Station that had borne the brunt of insecurity in form of terrorist attacks that led to loss of life. In all these visitations, pictures were taken of images of various kinds that depicted human rights violations.

1.4 Literature Review

A comprehensive review of the relevant literature on the history of the conflict, actors, motivators and impact of the conflict in the Coastal region focusing on the identified issues, the legal and policy framework was undertaken as shown below. Existing reports on human rights violations were reviewed. The legal and policy framework on social, economic and cultural rights in Kenya was reviewed. This review focused on the provisions of international law on economic, political, social and cultural rights. A review of the key international treaties, conventions, protocols and commitments relating to economic, social and cultural rights to which Kenya is a signatory was carried out. In addition the relevant national laws including the Constitution of Kenya 2010 and policies relating to the full enjoyment of civil and political as well as, economic, social and cultural rights in the country was undertaken.

An analysis of existing literature both current and archival was done to obtain a clearer picture of the history of conflict especially around issues identified as focal including land and resource utilization, religion, community, drugs and contested administrative boundaries and institutions, and general government response in respect to the claims. A contextual interpretation of the conflict with special emphasis to the history of the Coastal region, ethnic composition, religion, links with the hinterland, relation with international borders of Somalia, land tenure system, economic and cultural traditions and the existing explanations of the conflict were explored.

A review of current literature focusing on the efforts by civil society, religious organizations and government was undertaken in order to provide a glimpse of the existing efforts to resolve the conflict. A review of documentary evidence was undertaken to identify existing gaps on the conflict and human rights violations especially the quantitative aspects of the Inquiry areas to be addressed during the public hearings. The areas identified were: history of the conflict, the actors, motivators, loss of property and human life losses, impact on economy, scope of displacement of persons, security deployment, interventions by stakeholders and administrative overlaps.

1.4.1 International Framework

The Universal Declaration of Human Rights (UDHR)

Adopted by the General Assembly of the United Nations on 10th December 1948, the Universal Declaration of Human Rights (UDHR) is a global document that states the basic rights and fundamental freedoms to which all human beings are entitled. Inspired by the

experiences of World War 1 and 2, the Universal Declaration brought together nations of the world in agreeing on a comprehensive statement of inalienable human rights. The UDHR is the foremost statement of the rights and freedoms of all human beings ever crafted to date. The Declaration is based on dignity, equality and fairness. The Universal Declaration, along with two other covenants, namely; International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) make up what is known as the International Bill of Human Rights

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966. The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within States to allow the enjoyment of civil and political rights.[33] Under this treaty, State Parties are obligated to protect and preserve basic human rights and to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy. Kenya ratified the ICCPR on 1 May 1972 and it came into force on 23 March 1976.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the most comprehensive international treaty that ensures the protection of economic, social and cultural rights.[34] It not only addresses these rights, but it is also the most widely-applicable human rights law in this area. The implementation of the ICESCR is monitored by the UN Committee on Economic Social and Cultural Rights (CESCR). The covenant obligates State Parties to undertake steps to progressively achieve the full realization of the rights contained in the ICESCR. Kenya ratified this treaty on 1 May 1972.

Convention on the Rights of the Child (CRC)

The United Nations Convention on the Rights of the Child (CRC) at Article 2(1&2), and 3 is an international treaty that aims at protecting the rights of the child[35]. It is a statement of the civil, political, economic, social and cultural rights of children and is a promise to the children of the world, of the right to be treated fairly, to be listened to, and to have a childhood protected from violence, abuse and exploitation. Kenya signed the treaty on 26 January, 1990 and ratified on 21 October 1991.

Convention for the Protection of All Persons from Enforced Disappearance (CED)

International Convention for the Protection of all Persons from Enforced Disappearance, (ICPED) came into effect in December 2006. Its object is to outlaw all forms of widespread or

33 See ICCPR, Article 1(1) & Article 3

34 See ICESCR Article 1(1)

35 See CRC Articles 2(1&2), 3.

systematic disappearances of suspects through arrest and detention without acknowledging why and where the suspect is being held. Under Articles 1 and 2 the convention makes a declaration that 'no one shall be subjected to enforced disappearance,' and that 'no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.'[36] Borrowing heavily from the United Nations Convention Against Torture Cruel (CAT) in article 2 *enforced disappearance* is defined as the 'the arrest, detention, abduction or any other form of deprivation of liberty by state agents. The Committee on Enforced Disappearances (CED) is the body of independent experts charged with monitoring implementation of the Convention by the States Parties. Kenya has not ratified this treaty.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Torture refers to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession. Under Article 2, the convention makes a declaration that 'each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,[37] that, 'no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture,[38] and that 'an order from a superior officer or a public authority may not be invoked as a justification of torture'[39] As an human rights instrument therefore, CAT is the International Covenant that prohibits any form of inhuman treatment including torture, cruel, inhuman or degrading treatment or punishment meted on human beings. The Convention requires states to take effective measures to prevent torture in any territory under their jurisdiction, and forbids states to transport people to any country where there is reason to believe they will be tortured. Kenya ratified this treaty on 21 February 1997 but it has not ratified the optional protocols. To domesticate this convention, Kenya enacted two laws: Prevention of Torture Act, 2016 that became operational in April 2017, and the National Coroners Service Act of 2017.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Adopted in 1979 by the UN General Assembly, CEDAW is described as an International Bill of Rights for women. Article 1 defines discrimination against women as '[a]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'[40]

36 See CED Articles 1&2

37 See Article 2(1)

38 See Article 2(2)

39 See Article 2(3)

40 UN, Convention on the Elimination of All Forms of Discrimination against Women, Article 1

As an the International agreement it commits state parties to formulate policies, programs and actions that promote women welfare as equal partners in all spheres of development. Kenya ratified this instrument on1984, CEDAW in 1984 and has largely been domesticated. Article 97(b) of the Constitution requires that, during General Elections, 47 Women Representatives be elected to represent each of the 47 counties. Article 98(b) reserves 16 members for women who shall be nominated by political parties.

Convention on the Rights of Persons with Disabilities (CRPD)

Adopted in 2006, the Convention on the Rights of Persons with Disabilities (CRPD) is an effort by the international community for change in attitudes and approaches and how to relate to persons with disabilities. Article 1 spells out the purpose of the Convention: 'the promotion, protection and full and equal enjoyment of all human rights by persons with disabilities and respect for their inherent dignity.'[41] Article 3 provides the general principles of the convention: 'respect for inherent dignity and autonomy of persons with disabilities, non-discrimination, and participation, inclusion, equality, and accessibility guide interpretation of the Convention's obligations.'[42] Finally of relevant to this report is Article 4 which provides for state obligations, that States parties must, inter alia, review and revise legislation, promote universally designed goods, services and facilities, and develop policies and programmes to implement the Convention and that while doing this consult with persons with disabilities.[43] This basic argument within this convention is that persons with disabilities are not objects of charity, medical treatment and social protection; rather they are subjects with rights, who are capable of claiming those rights and making decisions concerning their lives, individually or collectively, based on their free and informed consent. The Convention acts as a human rights instrument with an explicit social development dimension. It adopts a broad categorization of persons with disabilities by affirming that persons with all types of disabilities must enjoy all human rights and fundamental freedoms. Kenya ratified the CRPD in 2008.

1.4.2 Regional Framework

The African Charter on Human and Peoples Rights (ACHPR)

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. The African Charter is a regional human rights instrument designed to reflect the history, values, traditions, and development of Africa. The Charter combines African values with international norms by not only promoting internationally recognized individual rights, but also by proclaiming collective and group rights and individual duties. Although the African Charter makes no reference to "minorities"

41 UN, Convention on the Rights of Persons with Disabilities, Article 1

42 UN, Convention on the Rights of Persons with Disabilities, Article 3

43 Ibid Article 4

it does refer to the principle of non-discrimination and hence the protection of the ethnic, cultural, linguistic and religious identity of all our people, including national minorities, and the creation of conditions conducive to the promotion of this identity.

As with other human rights instruments, there are a number of provisions in the Charter that may be of particular significance to members of minority groups. Article 2 is the basic non-discrimination provision, stating that rights under the Charter must be guaranteed 'without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'[44] In interpreting this article therefore, it is essential to include the elimination of all forms of discrimination and to ensure equality among all human beings. Consequently, a country that subjects its own indigenes to discriminatory treatment only because of the colour of their skin or ethnic affiliation is an unacceptable discriminatory attitude and a violation of the very spirit of the African Charter and of the letter of Article 2. Article 3 provides that everyone is equal before the law and is entitled to the equal protection of the law.[45] Article 17 states that everyone "may freely take part in the cultural life of his community" and goes on to provide that "[t]he promotion and protection of morals and traditional values recognized by the community shall be the duty of the State."[46]

African Commission on Human and Peoples' Rights

The African system for the protection of human rights consists of the African Commission on Human and Peoples' Rights, (which serves as a complaints and reporting mechanism) and the African Court on Human and Peoples' Rights, whose decisions are legally binding on the State Parties. Established by the African Charter, and inaugurated on 2 November 1987 with its headquarters in Banjul, Gambia the African Commission on Human and Peoples' Rights (ACHPR) is mandated with the protection and promotion of human and peoples' rights in Africa. It is also responsible for the interpretation of the African Charter on Human and Peoples' Rights taking into consideration the Constitutive Act of the African Union, the Universal Declaration of Human Rights and other United Nations and African instruments in the field of human and peoples' rights.

Under the Commission, State Parties have a duty to protect the human and peoples' rights of their populations, under the African Charter. Complaints may only be filed where a State has failed to protect particular rights under the Charter. A State may also be held responsible for human rights violations perpetrated by third parties in that have no stake, such as corporations, if it can be proven that the State has failed to protect its citizens from the acts of private actors. The rights that are most relevant in cases of corporate misconduct include the: Civil and Political Rights;[47] Economic, Social and Cultural Rights;[48] and Peoples' Rights.[49]

44 See AU, ACHPR, Article 2

45 Ibid Article 3

46 Ibid Article 17

47 See AU, ACHPR. Retrieved 31.05.208, Articles 4-1;

48 Ibid Article 15-17

49 Ibid, Article 19-24

The African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child is a statement regarding conception of the rights and welfare of the child. The Charter conceives the rights and welfare of the child as being inspired and characterized by the virtues of African cultural heritage, historical background and the values of the African civilization. Following the CRC, the Charter recognizes that though deriving from universal sources, it must be alive to the realities of African children, the cultural and other sociological environment within which their rights are enjoyed. It is thus an attempt to bridge between international law and local factors which are critical because children's rights seem not to enjoy sufficient cultural legitimacy within the various African cultures and respect for children's rights is yet to firmly gain ground.[50]

The charter thus recognizes all rights of the child as universal requirement. It binds state parties to certain obligations including recognize the rights, freedoms and duties enshrined in this Charter as well as an obligation to undertake actions necessary for promoting and protecting theses rights and freedoms in accordance with their constitutions.[51] Specifically the charter warns against harmful custom, tradition, cultural or religious practice that is inconsistent with the rights, and freedoms of the child[52] and to promote the right to education as a way of promoting and developing the child's personality, talents and mental and physical abilities to their fullest potential.[53] The overriding philosophy is that of best interest of the child. Kenya ratified this instrument on 25 July 2000.

1.4.3 National Legal and Policy Framework



Constitution of Kenya

The Kenya Constitution, 2010 is the supreme law of Kenya. It not only provides for the architecture of governance in Kenyan, but also defines the relationship between the government and the citizens of Kenya. The Constitution is the social contract which sets the parameters of governance for the leaders and the citizens. Article 1 (1) states that all Sovereign power belongs to the People of Kenya and shall only be exercise in accordance with the Constitution. Article 3 (1) calls upon all Kenyans to respect, uphold and defend the Constitution. Article 73 (1) (b) states that authority assigned to a State Officer vests in the State Officer the responsibility to serve the people rather the power to rule over them. Article 2 (6) provides that any treaty or convention ratified by Kenya shall form part of Kenyan law in accordance with the Constitution. A key feature of the Kenyan Constitution lies in the devolved government system and a highly progressive Bill of Rights.[54]

50 Thoko Kaime, 2009. Foundations of Rights in the African Charter on the Rights and Welfare of the Child: A Historical and Philosophical Account. In African Journal of Legal Studies, 120-136.

51 Articles

52 Articles

53 Articles11

54 See CoK, Chapter 4



National Policy and Action Plan on Human Rights

The National Policy and Action Plan on Human Rights of 2014 gives effect to Chapter Four of the Constitution, which is the legal and constitutional framework on human rights in Kenya. It provides an overarching and coherent policy framework for the implementation of the Bill of Rights as envisaged in the Constitution, 2010.



The National Police Service Act

The National Police Service Act 11A, 2011 provides for a legal framework for the implementation of Articles 243, 244, 245,246 & 247 with regard to the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders, and the enforcement of all laws and regulations with which it is charged.



Kenya Defense Forces Act

The Kenya Defense Forces was constituted through the Kenya Defense Forces Act, 2012. Article 3 of the Act states that in fulfilling its mandate, the KDF is responsible for the defense and protection of the sovereignty and territorial integrity of the Republic of Kenya. In performing its duties the KDF is bound by the Bill of Rights, values and principles under Articles 10(2), 232(1) and 238(2) of the Constitution, 2010. In exceptional circumstances the KDF Act allows its personnel to assist and cooperate with other authorities in situations of emergency or disaster.



The Children's Act

The children's Act 2001 is a law that addresses provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children, and the administration of children's institutions. The main aim of the Children's Act was to put together the provisions of the various laws that affected children and significantly give effect to the principles of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Violent insecurity is a threat to the enjoyment of the various rights children are entitled to, among these; right to life, right to parental care, right to education, and the right to health.



National Plan of Action for Children in Kenya 2015-2022

Developed by the National Council for Children's Services, the National Plan of Action for Children in Kenya 2015-2022 commits the country to endeavor to fulfill the rights of children in spite of the many challenges. It is a promise to strengthen efforts to establish a mechanism for coordination throughout the country and, trigger further allocation of adequate resources to support children rights at both national and local levels.

Education Act

In this report, the relevant legislation and policy framework is the Basic Education Act 2013. In this legislation, the country sought to realign the education sector with the Constitution 2010. This legislation has restructured the management of education in the country and importantly, anchored free and compulsory primary education into law (FPE). It also lays heavy penalties and punishment for parents and other defaulters who neglect or violate rights of children to access education.

Prevention of Torture Act

The Prevention of Torture Act, 2017 provides a clear legislative framework to actualize several fundamental human rights provisions in the Constitution of Kenya 2010 including Article 25 with regards to freedom from torture and cruel, inhuman or degrading treatment or Punishment, Article 28 on respect and protection of human dignity and Article 29 on freedom and security of the person. The law brings all state agencies and officials under the ambit of accountability for torture and cruel, inhuman or degrading treatment or punishment, and provides clear penalties for such atrocities. Prior to this law torture was expressly outlawed under different pieces of legislation covering only members of the National Police Service, the National Intelligence Service and the Kenya Defense Forces. But other law enforcement agencies were involved in perpetuating torture and cruel, inhuman or degrading treatment or punishment like council askaris, Kenya Wildlife Services and Kenya Forest Services since there was no legal provisions prohibiting them from perpetuating these heinous atrocities.

The National Coroners Service Act

The National Coroners Service Act, 2017 has established a legal framework for reporting, investigating and documenting unnatural deaths in Kenya. It establishes the office of the National Coroner, who has the jurisdiction to conduct independent investigations into suspicious deaths and as well as investigate the cause of death in cases where people die in law enforcement custody, as well as sudden or unnatural deaths which findings will be forwarded for to the ODPP and the DCI for action.

Vision 2030

The Kenya Vision 2030 is a national long-term development policy that aims at transforming Kenya into a newly industrialized, middle-income country providing a high quality life to all the citizens by 2030 in a clean and secure environment. The Vision comprises three pillars: Economic; Social; and Political. The Economic Pillar aims to achieve an average economic growth rate of 10 per cent per annum and sustaining the same until 2030. The social pillar seeks to engender just, cohesive and equitable social development. The political pillar aims to realize an issue-based, people-centered, result-oriented and accountable democratic system. The three pillars are all anchored on the foundations of macroeconomic stability; infrastructural development; Science, Technology and Innovation (STI); land Reforms; human resources development security and public sector reforms.

Water Policy

Article 43(1) (d) of the Kenya Constitution 2010 provides the right to clean and safe water in adequate quantities. Water governance involves upholding policies, strategies and legislation where water service providers have to develop and manage water resources in an efficient and effective manner while being accountable to the recipients of the services. Effective management and access to water resources is vital to sustainable development. Kenya's water policy was formulated in 2012. The policy states that all water resources are vested in the National government through the Ministry of Water and Irrigation. The Ministry provides a framework for the creation of water institutions and limits the Ministry's role to policy formulation; overseeing the implementation of the policies; and resource mobilization. In line with devolution provision of water services is the decentralization as prescribed in the 2010 Constitution of Kenya. In 2013, 47 county governments with affiliated county water ministries were established. The Ministry however remains responsible for irrigation, drainage, and land reclamation.



The Kwale County Secretary Mr. Martin Mwaro giving his opening remarks during the launch of Kwale County hearings on behalf of the County Governor Hon. Salim Mvurya. The County secretary said that insecurity in the county has affected tourism which is the mainstay of the Kwale locals. (Photo: Courtesy © 2016 KNCHR)



National Land Policy

Land in Kenya is an emotive issue. It is a commodity for trade and a principal source of livelihoods for many in Kenya. The mandate of the National Land Commission (NLC) is drawn from the National Land Policy of 2009, Constitution of Kenya 2010, National Land Commission Act, 2012, the Land Act 2012 and the Land Registration Act of 2012. Kenya's National Land Policy (NLP) is statement that defines the country's roadmap to sustainable and equitable use of land. It calls for immediate actions to addresses the issue of ownership and use, but also environmental problems that affect land such as degradation, soil erosion and pollution. The policy calls for an extensive overhaul to current policies and institutions in an attempt to address the chronic issue of land tenure and inequity. The National Land Policy categorizes all land in Kenya as public, private (freehold or leasehold tenure), or community/trust land, which is held, managed and used by a specific community.

CHAPTER TWO

CONTEXTUAL ANALYSIS OF VIOLENT CONFLICT IN THE KENYAN COAST

2.1 Introduction and Historical Context

The Coastal region of Kenya has a long history of interacting with the outside world. Even as Arabs, Swahilis and various Coastal communities resided in the 10-mile Coastal strip, the Mijikenda, who are farmers, fisher-folk and traders constituted the majority of the local inhabitants.

Oral traditional accounts suggest that the Mijikenda and other Coastal communities arrived in their current places of habitation from Shungwaya, their sacred homeland and capital, before their dispersal south in the fifteenth or sixteenth centuries.[55] This explains their current claim to land ownership in the regions they occupy.

Frederick Cooper traces the gradual process that led to the end of slave trading and slave-owning at the Swahili Coast.[56] Cooper argues that the British imposed laws that outlawed sea-borne and over-the-land slave trades in the 1870s, leading local elite economies to shift to plantation agriculture which utilized slaves still in their possession for short-term profit. This sets the stage for understanding the region's land and labour practices that involves contradictions that started during the colonial administration, extending into the post and even into the independent Kenya era.

The close social and historical ties between Kenya's Mijikenda and Swahili peoples were disrupted, inverted and at times severed as the Swahili, largely due to their Islamic orientation, gained partial or full access into the new elite community of land, slave and plantation owners. At the height of the Coastal slave plantation system, the Mijikenda were forced to retreat into the hinterland hills to escape the predation of raiders and subsist without their former trading partners at the coast. Although this lasted only some sixty years, the colonial era did not allow a full resumption of historical ties, but generally cemented and exacerbated this ethnically defined social cleavage that survived into the present, albeit with newly imposed elites, this time mostly from the hinterland.

Britain obtained, on lease, the Coastal strip from the Sultan of Zanzibar and thus gained full authority to deal with among others, all matters affecting land and minerals, executive and judicial administration as well as the right to levy customs and regulate trade. Thus, the Mijikenda settlement was either with the knowledge that the land belonged to someone else or under the assumption that since it was their ancestral land, it still belonged to them. The British then propped up the former plantation elites and made them local allies and together with upwardly mobile Swahili and Arab elites, they took over the land adjudication process that unfolded in the early 1920s along the Coast.[57]

55 Spear, Thomas, 1978. The Kaya Complex. Kenya Literature Bureau.

56 Frederick Cooper, From Slaves to Squatters: Plantation Labor and Agriculture in Zanzibar and Coastal Kenya, 1890 – 1925 (1980).

57 Ibid

The divisions that haunt Coastal region to this day are to be found in this adjudication process where Swahili and Muslim merchants were privileged over the Mijikenda and other descendants of slaves, leading to what many popularly refer to as the 'squatter-problem'. Under the Muslim land tenure system, there is a distinction between ownership of land and ownership of chattels or crops. It is this system which allowed Arab owners to grant permission to anyone to cultivate and even build a house but such person would be a tenant at best and not land owner, hence could be evicted within one month's notice. The 1908 Land Titles Ordinance determined the extent of private possessions before alienating land to the Crown and giving grants to individual settlers. Arab and Swahili titles were recognized, while Africans were considered to only have user rights.

Joseph Kieyah, a land policy and law expert, observes that the squatter problem in Coastal Kenya can be traced to the occupation by Persians, Arabs and Britons. The problem was exacerbated by the British land acquisition to facilitate the construction of the Kenya-Uganda Railway in the beginning of 1900. The British Protectorate took pre-emptive action of acquiring land without compensation outside the ten miles Coastal strip, which was subjected to a different legal framework. Under the framework, the strip's property owners were obligated to claims of ownership through a tribunal.[59] Upon successfully proving ownership, the claimants were issued with various documents of title depending on the nature of their ownership. Due to information asymmetry and high level of illiteracy, most Africans never participated in the process of protecting their land ownership rights through the registration. This failure condemned Africans to become squatters in their own land within the ten-mile strip that covers 1,128 parcels of land on over 80,000 hectares in Kwale, Mombasa, Kilifi, Malindi and Lamu.[60]

Historically, the Coastal region has a long history of calling for secession from Kenya based on distinct ethno-regional identities and claims of socio-economic marginalization.[61] These claims of marginalization are of particular concern especially where they overlap with religious narratives used by supposed Muslim militants.[62] The violent conflict in parts of Coastal region is characterized by 'relatively high volatility, reflected in sporadic spikes in violence, followed by relative lulls.'[63] Until recently, street protests were the most common form of political action on the coast.[64] Beginning 2008, the Mombasa Republican Council regained momentum in its calls for secession, with a focus on land issues and economic frustration.[65]

58 https://www.businessdailyafrica.com/analysis/How-to-resolve-the-squatter-problem-/539548-2941792-yxlyv6/index.html

59 https://www.businessdailyafrica.com/analysis/How-to-resolve-the-squatter-problem-/539548-2941792-yxlyv6/index.html

60 https://www.businessdailyafrica.com/analysis/How-to-resolve-the-squatter-problem-/539548-2941792-yxlyv6/index.html

61 Dowd & Raleigh, 2013, p. 7; Mwakimako & Willis, 2014, p. 16

62 Dowd & Raleigh, 2013, p. 7; Lind et al., 2015, p. 19; Botha, 2013, p. 14

63 Dowd & Raleigh, 2013, p. 7

64 Mwakimako & Willis, 2014, p. 14

65 Botha, 2014, p.3, 15

2.2 A Contextual Analysis of the Drivers of Insecurity in Coastal Region of Kenya

Kenya was listed as the seventh most violent country in the ACLED (Armed Conflict Location and Event Data Project) dataset, with reportedly just over 3,500 recorded cases of politically instigated violent events between 1997 and September 2013.[66] Several regions of the country experience some levels of violence. Traditional cultural activities like cattle rustling and ethnic flare ups are treated casually. Rampant theft and robbery is just ordinary and a burden that defines who you are as a citizen.[67] Violence and human rights violation in parts of the Coastal region peaked during the period of January to March 2008 which recorded 341 incidents of violence.[68] In the country in general, Kenya has from time to time experienced violent cases of insecurity in various parts that peaked in terrorist attacks in the capital, Nairobi[69] and during the 2007/08 and 2017 general elections. The rise, frequency, intensity and gravity of violence since 2008 includes 'terror attacks, inter-community conflicts and violence targeting law enforcement officers as well as a big number of extra-judicial executions.'[70] The increased and quickly spreading insecurity is known to 'foment fear and stoke ethnic and regional divisions, precipitating security crackdowns adding to the country's infamously tumultuous politics.'[71] These incidences have caused untold suffering and loss of life, human rights violations, from displacement to the disruption of provision of education and health services. This is particularly true for certain counties including Tana River, Lamu, Baringo, Turkana, Wajir, Mandera, and Isiolo.[72]

Drivers of violent conflicts and insecurity in Coastal Kenya are multiple, overlapping and complex. They can be attributed to a range of factors including: ethnic intolerance; border conflicts; political party zoning; competition over land and other resources in Tana River and Lamu; rise of criminal gangs; run-away drug trafficking, peddling and abuse compounded by the possible complicity by some government officials, politicians and security personnel in Mombasa, Kwale and Lamu; civilian-security conflict in Lamu and Tana River; counter terrorism measures and their impact on civilian relationships with the security agencies; torture and its impact on victims and survivors; radicalization and violent extremism in Mombasa, Kwale and Lamu; extra judicial executions and disappearances in Mombasa and Lamu; civilian-military conflict and the militarization of Boni forest; the national government and its relationship with the Coastal region; uncoordinated security operations; poverty, underdevelopment, and marginalization; mega projects and their interface with security, and, the plight of women and children in a conservative culture.

66 Dowd & Raleigh, 2013, p. 1

67 Scott-Villers et al., 2014, p. 2; Gibbons, 2014, p. 4, Ombaka, 2015, p. 13

68 Dowd & Raleigh, 2013, p. 1

69 Lind et al., 2015, p. 4

70 KNCHR, 2014, p. 9

71 Ombaka, 2015, p. 11; Lind et al., 2015, p. 4

72 KNCHR, 2014, p. 9

It is thus possible to argue that Kenya's internal context raises a number of factors that influence and drive violent conflict leading to insecurity and human rights violations. Key among them is community identity that is closely related to land and borders. The foregoing, coupled with suspicions and dissatisfaction on modalities of resource allocation and management have provided the contexts within which to interpret violent conflict in Coastal Kenya. Some of the factors contributing to conflict and insecurity in the Coastal Region of Kenya are discussed below:

2.3 Land Ownership Context

Land ownership in Kenya is a highly emotive matter. This is because land, not only contributes to the definition of one's identity but also informs many aspects of the Kenyan society.[73] This makes local communities to view land as their own, and define their identity based on specific parcels of land. A report by Ujamaa Centre in 2003 observed that:

> **"For most Kenyans, land evokes passions and deep-rooted feelings. It enjoys a divine and glorified position and is a central force around which spiritual and cultural lives of many local communities are organised. In Kenya the land resource is the most contentious resource...it has become the preferred weapon of power and political influence and is often used as a token of reward."**[74]

Consequently, Communities express dissatisfaction with the way the government manages allocations and certification of land, particularly when these communities are not adequately informed, engaged and involved in decisions about land use. Even though the Ministry of Land has land certification policy and mechanisms, these from most communities' perspective trample on the right to land. Consequently, there are a number of individuals and local community entities that continue to agitate for land rights in the Coastal region, arguing that both pre and post-independent historical land injustices have not been addressed. A witness in Kwale lamented before the Public Inquiry that:



"When Kenya became independent in 1963, the coast never attained independence."

73 Social identity theory originated from British social psychologists Henri Tajfel and John Turner in 1979 who argue that part of a person's concept of self comes from the groups to which that person belongs. In this case, land seems to be the overriding and attachment to it defines who an individual is and how they relate to the environment both social and natural. See Tajfel, H. (1959). 'Quantitative judgment in social perception.' In *British Journal of Psychology, 50,* 16-29. Tajfel, H. (1969). 'Cognitive aspects of prejudice.' In Journal of Social Issues, 25, 79-97. Tajfel, H. (1974). 'Social identity and intergroup behaviour.' In *Social Science Information, 13,* 65-93.

74 See Ujamaa Center, 2003. A Situational Analysis

This was supported by another witness from the same county who pointed out that:



"There had been conflict over land between the Duruma people and the Maasais in which lives were lost. In the conflict between the Duruma and Maasai the government official always seemed to side with the latter who, through ownership of livestock, could sell and afford money to bribe the local administration including chiefs and the police."



These incidences of violent conflict and insecurity revolve around land and identity. One of the reasons for struggle for independence in Kenya was the land question. The British had hived off most of the fertile land thus depriving the local ethnic communities of land ownership rights. This way, many became landless. On attaining independence, the government prioritized the issue of resettling the landless. The caveat in this policy was that in the new settlement schemes, a percentage of those to be settled should come from areas other than the local population. This explains the significant presence of members of the Kamba and Kikuyu communities in Shimba Hills which is at the heart of Digoland. The same account for members of the Kikuyu community's presence in many parts of the Coastal region, in particular Mpeketoni area of Lamu.



Lamu County Governor receives in his office KNCHR Chairperson Kagwiria Mbogori, Vice Chair George Morara & Onno Koopmans of Embassy of Netherlands (Photo: Courtesy © 2016 KNCHR)

The analysis above bears witness to the historical fact that from the colonial era, people considered as 'foreign settlers or outsiders' by the local communities laying ancestral land rights have claimed large tracts of fertile land in parts of Coastal Kenya. With the arrival of more communities from the hinterland, successive post-colonial governments have not addressed this condition to the satisfaction of the local communities. Instead the practice has been that land is allocated to members of communities from the hinterland that has close ties to government officers and influential personalities. This practice has since either led to the further displacement of peoples from who consider the land in the Coastal region as their ancestral land or has left them exposed to evictions by returning absentee landlords. These historical injustices have not been addressed and continue to cause concern and anxiety to this day. As much of the land in Coastal region is owned by a few wealthy individuals, the indigenous communities have been left vulnerable to land dispossessions since many of them reside on land without owning formal title deeds.

The TJRC Report discusses the Arab invasion and establishment of control over indigenous people along the Coastal Kenya whose land they acquired and occupied.[75] The report considered and reflected on whether the Arabs, seen as original landlords, are still in control and occupation of the Coastal lands. If not, who assumed ownership? And how was the land transferred to the current owners? The report further raises issues on how the local indigenous population was rendered landless by activities of Arabs and their successors.[76] The report concludes that the squatter problem in Coastal Kenya is characterized by large numbers of families and communities occupying land for which they have no title, and therefore do not own, with the consequence that many indigenous peoples are exposed to forceful and unexpected evictions by those who hold titles to the land they occupy.[77] The Commission believes that Kenya must robustly deal with this part of the region's history as a starting point to providing durable solutions to violent conflicts and insecurity over land in the Coast region.

2.4 Political Context

Transition to multi-party politics and later to a new constitutional dispensation, though greatly desirable, have through unintended consequences created new avenues of conflict. Whilst Kenya's Constitution of 2010 defines the governance structures and devolution, there are still challenges on the implementation of the devolution governance within the framework of the national laws and policies. This has resulted in varying interpretations and counter-interpretations by different political, governance institutions including parliamentary platforms. These include issues of security agencies and the role of the county governments in these; and the relationship between NPS and national government functionaries in terms of command and possession of sensitive intelligence information and how these is to be utilized.

75 TJRC. Vol IIB, pp104-5

76 Ibid, p104

77 Ibid

There have also been challenges of inclusion in the County Governance units with most Counties leadership positions being dominated by the dominant ethnic communities in the said Counties to the exclusion of the minority communities. The foregoing factors have often provoked confrontations regarding access to local power and resources among political personalities, leading to political rivalries which at times end up fueling violent conflict within the Counties.



KNCHR Chairperson (in purple scarf) consults with Lamu Commissioner Joseph Kanyiri during the official opening ceremony of the seating in Lamu Fort. (Photo courtesy of © KNCHR 2016)

2.5 Economic Context

Livelihood resources are central to the mostly peasant economy in the Country. Many communities in Coastal Kenya suffer the double tragedy of a government not quite sufficiently sensitive to their needs and the terror of a powerful interest group, the landlord, who have at their disposal gangs for hire who both exploit the natural resources in a way that results in a rapid depletion of the sea and land resources, leading to further marginalization of the local communities. The existing resource exploitation framework provides reason for the disintegration of the Coastal economy. A report by the Ujamaa Centre notes:

> **"To date, much of the best agricultural land remains in the hands of absentee landlords from the minority racial groups who are as vulnerable as most of the Coastal Africans who remain de jure squatters. What this has done is to ensure that long-term agricultural improvement is absent. Cultivation is therefore mostly temporary [with] substantial portions of land even if settled appear[ing] 'idle' and this has led to an appetising condition for land hungry occupiers from up-country."**[78]



2.6 Threats Associated with Land and Natural Resources

2.6.1 Threats Associated with Land

The land problems at the Coastal region date back to pre-independence Land Ordinance Titles of 1908 which became the land Titles Act. The ordinance came into effect without the knowledge of the local communities that owned the land based on customary tenure system[79]. The norms of the customary tenure are drawn from and are sustained by the community itself rather than state law.

The question of the Ten-mile Coastal strip was brought into sharp focus just before the attainment of independence by Kenya in 1963. The Arab land owners on the Ten-mile Coastal strip held that their proprietary interests would not be adequately protected in the newly independent Kenya. As a consequence there was a call for secession in order that the Coastal region would not form part of an independent Kenya. This would have left Kenya a landlocked country and it was on this basis that the call for secession was rejected and subjected to negotiations. In settling this, an agreement was signed on 5th October 1963 between the then Prime Minister of Kenya Mzee Jomo Kenyatta and the Prime Minister of

78 Ujamaa Center, 2003 A Situational Analysis

79 Is a system in which communities operate order and express ownership, control, possession, access and regulate the use and transfer land.

Zanzibar that recognised the freehold titles that had been registered at the Coastal as well as the recognition of the practice of Islam in the newly independent Kenyan.[80] This meant that the Kenyan government was not to interfere with any of the land rights that had been granted by the Sultan of Zanzibar notwithstanding that the land in question actually belonged to the African Coastal communities. To this date large tracts of land at the coast are still owned by the descendants of the Arabs that were originally granted the freehold titles. Many of them immigrated back to Oman soon after Kenya's independence, hence evoking the use of the term, absentee landlords.

On attaining independence, the Kenya government prioritized the issue of resettling the landless by first declaring all land for which no titles had been granted, trust land, from which the landless public can benefit. Successive governments have unfortunately issued titles to the trust land unsystematically, at times using land to reward political loyalty.

In Lamu county, the explanation for the animosity between the 'outsiders' (*Wakikuyu*)[81] and the indigenous (*Wabajuni*) people in Lamu goes back to the question of settling the landless. Witnesses appearing before the Public Inquiry claimed that the resettlement was meant to destabilize the *Wabajuni* so that the President's tribe got settled in the area. According to these Public Inquiry witnesses, this finally happened when in 1971 and 1972 Kikuyu settlements sprung up around Lake Kenyatta. The *Wabujuni* were moved to other small islands in Lamu. This action has made the *Wabajuni* major victims of these historical injustices. Today, the *Wabajuni* who are traditionally farmers, cannot engage in serious farming because much of their land has been occupied by the 'outsider' *Kikuyus*. They equally they cannot engage in fishing because fishing is an activity controlled due to insecurity occasioned by the presence of suspected Al- Shabaab terrorist group and their sympathizers. This has created new conflict fronts between the *Wabajuni*, who are predominantly Muslim, and the 'upcountry settlers', who are predominantly Christians with flashes of violent conflict witnessed around Mpeketoni. One of the witnesses labelled as 'an up-country settler' in Mpeketoni told the Public Inquiry that before the attack on Mpeketoni in 2014,



"There had been threats of eviction from headers who were carrying arms and freely moving around grazing on our farms. They claimed the land belonged to the local communities."[82]

80 When discussions started on the future independence of Kenya in 1960, Arabs within the 10-mile strip waged a protracted struggle to secede and join the Sultanate of Zanzibar or form a self-governing Mwambao territory. In the end, on 5th October 1963, the Prime Minister, Jomo Kenyatta on behalf of the government of Kenya gave undertakings for freedom of worship and entrenched the position of Kadhis within Kenya's judicial system. A second agreement dated 8th October 1963 signed by Jomo Kenyatta, Mohamed Shamte, Prime Minister of Zanzibar and the Sultan of Zanzibar effectively declared the 10-mile strip as part of Kenya and ceasing to be part of the Sultan's territory.

81 Witness at the PI used this term to specifically show their disgust for the way the government official have favoured communities from the hinterland and specifically members of the Kikuyu community who it the witness claimed were brought by the founding President of Kenya.

82 Witness evidence during the PI

Another witness from the community told the Public Inquiry that:



"Those who own land in Mpeketoni are 'outsiders' who were brought by the first President of Kenya, Jomo Kenyatta, others were street children from Nairobi while others were from the Kikuyu who had initially migrated to Tanzania. Around five thousand people were brought back from Tanzania and formed the first resettlement scheme in Mpeketoni."[83]

There has been displacement of the Coastal people from what they consider to be their ancestral land by government, few wealthy individuals, and returning absentee landlords.[84] These historical injustices have not been addressed and continue to cause concern and anxiety.



A resident of Lamu County giving his witness submission to the KNCHR panelists. (Photo: Courtesy © 2016 KNCHR)

83 Witness at the PI

84 'Returnee landlords' refers to individuals who had been allocated land in Lamu, but had deserted as a result of the *shifta* war, but after LAPSETT, are returning to Lamu to claim the land as theirs, because the land has gained value.

2.6.2 Threats Related to Competition for Natural Resources

A predominant type of conflict in the Coastal region arises from competition over commonly shared resources, mainly land and water. The governance of these resources differ from community to community, leading to inherent contradictions, accusations of favoritism, discrimination and exploitation. It emerged from evidence presented at the Public Inquiry that conflict over resources is a dominant and recurring factor in conflict within many parts of the Coastal area but more frequent in Kwale, Mombasa, (Likoni and Kisauni), and Tana River Counties. It also emerged that violence was a present feature in localities with valued resources and commercial hubs such as Lamu.

In arid and semi-arid places, there is a long history of competition for water, pasture, and grazing land for pastoralists on the one hand, and farmers on the other. Herders seek land for grazing while farmers seek the same for farming. This leads to violence in the form of ethnic violence, displacements and massacres.[85] The nature of this violent conflict has evolved and escalated due to the proliferation of small arms and the political competition arising out of devolution.[86] Traditional pastoralist structures have been rendered irrelevant and are thus ill-equipped to cope with these changing conflicts and dynamics.[87]

A witness in Kwale County pointed out that:

> **"There has been conflict over pasture and water between the Duruma community and the Maasais at Lungalunga border where life was lost"**[88]

The case was the same in Hola, Minjila and Mpeketoni where the Public Inquiry held hearings.



Members of the public and media follow the Kwale County Public Inquiry hearings at the Red Cross Hall. It emerged that Economic, Social and Cultural rights of the locals in Kwale County have been affected by insecurity. (Photo: Courtesy © 2016 KNCHR)

85 Sharamo, 2014, p. 3

86 Sharamo, 2014, p. 3

87 Ibid

88 Witness evidence during the PI

2.7 Threats Associated with Negative Ethnicity

2.7.1 Insecurity in the Tana Delta

A land adjudication programme was started in the Tana County without first adequately consulting with the communities, i.e. pastoralists and farmers. This programme was summarily rejected by the pastoralist Orma ethnic community because they saw the adjudication as a conspiracy between the Pokomo, an agricultural community, and the government to deny them access to traditional grazing areas and water access routes known as '*malkas*'.[89] Disputes between these two neighbors' tend to be aggravated by the easy access to guns from war torn Somalia which increases the number of fatalities in conflicts played out in villages.

In the 1980s, there were three major irrigation schemes; Bura, Hola and Tana Delta in Tana River county that greatly influenced the lifestyle of the residents. These three provided employment and hence a steady source of income. There was minimal conflict during those days, allegedly because people were busy in the irrigation schemes. The collapse of these schemes led to massive unemployment, poverty levels rose and competition for resources became a major source of insecurity in the county. Pastoral communities reverted to their traditional methods of nomadic life while farmers reverted to small scale subsistence farming along the Tana River from Mbalambala in the North, to Kipini on the Tana River estuary. The nomadic pastoralists moved far into the hinterland with their large herds of animals while the Pokomos remained along the river. This created two distinct and competing lifestyle; farming and pastoralism that are practiced on the same limited arable land with scant rain rainfall for much of the year.[90] This has provided a major cause of conflict, and subsequent insecurity whenever the pastoralists try to access the river for water for their livestock while the fertile river fronts are under cultivation.

In its 2012 investigation into the atrocities in the Tana Delta, KNCHR established that two communities in the Tana Delta region (the Pokomo and the Orma) have deep seated animosity towards each other emanating from their distinct livelihoods and competing political interests.[91] It emerged that a criminal act by an individual from any of the communities will invite community retaliation from the other and that security agents fail to adequately address ongoing conflict between the two communities. This significantly contributes to insecurity in the County.

89 Animal migratory corridors. This definition is adopted from KNCHR, 2012, p. iv

90 Practical Action-EA Peace Bulletin–September, 2004

91 KNCHR, 2012

2.6.2 Threats Related to Competition for Natural Resources

A predominant type of conflict in the Coastal region arises from competition over commonly shared resources, mainly land and water. The governance of these resources differ from community to community, leading to inherent contradictions, accusations of favoritism, discrimination and exploitation. It emerged from evidence presented at the Public Inquiry that conflict over resources is a dominant and recurring factor in conflict within many parts of the Coastal area but more frequent in Kwale, Mombasa, (Likoni and Kisauni), and Tana River Counties. It also emerged that violence was a present feature in localities with valued resources and commercial hubs such as Lamu.

In arid and semi-arid places, there is a long history of competition for water, pasture, and grazing land for pastoralists on the one hand, and farmers on the other. Herders seek land for grazing while farmers seek the same for farming. This leads to violence in the form of ethnic violence, displacements and massacres.[85] The nature of this violent conflict has evolved and escalated due to the proliferation of small arms and the political competition arising out of devolution.[86] Traditional pastoralist structures have been rendered irrelevant and are thus ill-equipped to cope with these changing conflicts and dynamics.[87]

A witness in Kwale County pointed out that:

> **"There has been conflict over pasture and water between the Duruma community and the Maasais at Lungalunga border where life was lost"**[88]

The case was the same in Hola, Minjila and Mpeketoni where the Public Inquiry held hearings.



Members of the public and media follow the Kwale County Public Inquiry hearings at the Red Cross Hall. It emerged that Economic, Social and Cultural rights of the locals in Kwale County have been affected by insecurity. (Photo: Courtesy © 2016 KNCHR)

85 Sharamo, 2014, p. 3

86 Sharamo, 2014, p. 3

87 Ibid

88 Witness evidence during the PI

2.7 Threats Associated with Negative Ethnicity

2.7.1 Insecurity in the Tana Delta

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In the 1980s, there were three major irrigation schemes; Bura, Hola and Tana Delta in Tana River county that greatly influenced the lifestyle of the residents. These three provided employment and hence a steady source of income. There was minimal conflict during those days, allegedly because people were busy in the irrigation schemes. The collapse of these schemes led to massive unemployment, poverty levels rose and competition for resources became a major source of insecurity in the county. Pastoral communities reverted to their traditional methods of nomadic life while farmers reverted to small scale subsistence farming along the Tana River from Mbalambala in the North, to Kipini on the Tana River estuary. The nomadic pastoralists moved far into the hinterland with their large herds of animals while the Pokomos remained along the river. This created two distinct and competing lifestyle; farming and pastoralism that are practiced on the same limited arable land with scant rain rainfall for much of the year.[90] This has provided a major cause of conflict, and subsequent insecurity whenever the pastoralists try to access the river for water for their livestock while the fertile river fronts are under cultivation.

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89 Animal migratory corridors. This definition is adopted from KNCHR, 2012, p. iv

90 Practical Action-EA Peace Bulletin–September, 2004

91 KNCHR, 2012



Mr. Ramadhan Guye, reads the memorandum on behalf of the Watta Community during the public hearing sessions in Hola town. (Photo: Courtesy © 2016 KNCHR)

2.7.2 The Pokomo

The Pokomo are a Bantu-speaking ethnic group living along the banks of the Tana River. The origin of the Pokomo is in dispute. Some sources claim that some upper Pokomo may be descended from serfs of the Witu Swahili off the mainland.[92] Other sources link the Pokomo to being "partly of Wasanye descent."[93] It is claimed that, "When the Galla invaded the lower Juba in the mid-16th century, they encountered first the Digo and later the remaining Kashur at Shungwaya, driving them all further south in two migrations. The Digo proceeded down the coast to settle in Kwale, south of Mombasa. The Pokomo settled along the Tana River while the Mijikenda and Taita continued to Mwangea."[94] The land actually used and inhabited by the Pokomo extends no more than one or two kilometers from either bank, except towards the delta, where cultivable land stretched for long distances from the actual banks."[95] Within the delta area, the Pokomo relied [and continue to rely] on the periodic floods of the Tana, sowing rice and growing maize and mangoes in the flood plains, oxbow lakes and in the river."[96]

92 Townsend, 1980, pp102-103

93 Ibid

94 Ibid, 67

95 Townsend, N. (1977 pp 386-7

96 Terer, T., Ndiritu, G. G., & Gichuki, N. N. 2004, p4

2.7.3 The Orma

According to the 2009 Census, the Orma population is about 66,300[97]. They are a semi-nomadic community inhabiting parts of Kilifi, and predominantly Lamu, and Tana River counties. The Orma are remnants of the once powerful Galla (Oromo) nation of Ethiopia and Northern Kenya. In the late 19th century the Orma migrated south into Kenya as a result of conflict with neighbouring tribes. Some Orma moved into the delta area of the lower Tana while others settled west of the River.

The Orma keep cattle, goats and sheep and move to higher grounds during the rainy season when the Tana River floods. In the semi-arid hinterland of the Tana River County, the Orma keep camels and donkeys.[98]

2.7.4 Wardei

Wardei is an Eastern Cushitic community that is claimed to be descendants of the Oromo. Herding is their only means of survival and they keep cattle, goats and sheep. Cattle are central to their culture for purposes of paying bride price among other uses. Wardei are mainly pastoralists and live in the drier scrublands of the Tana River County similar to the Orma. During migration, women are tasked with building houses. The demands of modern world of technology have created many cultural challenges. The Government intervention has been the promotion of FPE for children under the Basic Education Act of 2013. This conflicts with the pastoral and traditional expectation of the Wardei children to tend livestock. However, even where children drop out of school to take care of the family livestock, it is not always possible for them to effectively take of large herds of animals. It is therefore no wonder that evidence during the Public Inquiry pointed to a situation where children's lack of control over the animals while in the field has led to clashes between the Wardei and their Pokomo neighbours.[100]

2.7.5 Munyoyaya

The Munyoyaya, also referred to as the Munyo, is a small closely-knit ethnic community with majority living in Tana River while a minority of about 20% live in Garissa County. It is claimed that this community is part of the Oromo, a Cushitic speaking group, whose heritage is traceable to southern Ethiopian highlands from where they migrated to Tana River County eventually settling in their current location. They however consider themselves a separate tribe with a distinctive identity as an ethnic group. While the Oromo predominantly keep cattle and camels, the Munyoyaya engage in subsistence farming on the flood plains of

97 2009, Kenya Population and housing Census

98 Kelly, 1990

the Tana River, growing mainly corn and bananas and occasionally doing some fishing—a lifestyle influenced by their occupation of the Tana delta. At times, they are also referred to as *Korokoro* and others refer to them as *Wamalakote*, names they consider pejorative and disown as being derogatory.[99] The Munyoyaya are predominantly Muslims, the influence deriving from their interaction with Arabs, for employment and their Somali neighbors.

2.7.6 Kenyan Somalis

Kenyan Somalis live mainly in the North Eastern Counties of Mandera, Garissa, Wajir, parts of Marsabit and Isiolo, Ishakani in Lamu, parts of Tana River and the Eastleigh area of Nairobi,[101] and are predominantly Muslim. According to the 2009 census there are 2,385,572 Somalis making them the sixth largest ethnic grouping in Kenya.[102] The Somalis have historically been viewed and treated by the Kenyan state as 'others', which has at times formed the basis and justification for the human rights violations they have suffered over the year.[103] For instance, this 'otherness' profiling has negatively affected their [the Somalis] experience of citizenship and access to equal rights.[104] This is mostly the case for Somalis living in the North Eastern counties of Mandera, and Garissa which border Tana River and the State of Somalia. Because Somalis are Cushitic and predominantly Muslim, the terrorist-label profiling and marginalization is extended to the Wardei and Orma who both share religion and Cushitic ancestry with Somalis. The Public Inquiry was informed that owing to these perceptions of marginalization, some Kenyan Somalis have found ways of asserting themselves as citizens through business and politics in a manner that has stirred rivalry among some in Kenya's Coastal region, occasionally sparking off acts of violence. For instance, one witness, a resident of Chewani ward in Maindangwera Village of Tana River County narrated how his son was stabbed and fatally shot by people of Somali origin who were well known to the local community. On reporting at Hola Police Station, no action was taken against the assailants. All inquiries by the victim's family received a standard response: '*investigations are on-going.*'[105] Evidence supplied during the Public Inquiry alleged that predominantly nomadic pastoralists had a tendency of '*grazing their cattle on land that doesn't belong to them even when famers have planted their crop and that ... the County government seemed to support this since no action is taken against the culprits even when known and reports are made to the police*[106]. The witness went on to state that, '*the Somalis carry guns freely which they use to intimidate the farming community. When you confront those who graze on your farm or ask questions, they respond by saying that it is their government that is in power.*'[107]

99 <http://www.orvillejenkins.com/profiles/munyoyaya.html> accessed 23 May 2018

100 <http://www.orvillejenkins.com/profiles/munyoyaya.html> accessed 23 May 2018

101 Lind et al., 2015, p. 8

102 2009, Kenya Population and housing Census

103 Lind et al., 2015, p. 14; Botha, 2013, p. 19

104 Lind et al., 2015, p. 8

105 Witness evidence during the PI

106 Witness evidence during the PI

107 Witness evidence during PI



Witness breaks down as she shared her testimony in Hola Town. She is consoled by a KNCHR counsellor (Photo courtesy © KNCHR 2016)

2.7.7 The *Wabaara*[108] Narrative

The Coastal region has a long history of linkages with the hinterland. Various communities from the hinterland moved and established links with the Coastal region for various reasons. The main reason however is economic considerations. Some moved to become workers at the port (Kilindini Harbour), sisal farms, while others, as service providers in the then booming tourism industry. Some were attracted by the large tracts of land that lie uncultivated in parts of the region. It is alleged that many politicians from the hinterland have acquired land in the Coastal region, some legally, others under questionable circumstances that include rewards for political loyalty. Aside from these acquisitive interests, it is alleged that the reason for the region's marginalization is the limited central government involvement in attending to local interests and concerns. This has triggered a narrative that distinguishes between the '*Wapwani*' and 'the *Wabaara*'. The Coastal 'Wapwani' population strongly feels that theirs is a case of neglect and failure to address historical injustices perpetrated by successive governments in collaboration with the non-Coastal peoples [the Wabaara] and that so far, no entity has been willing to sufficiently attend to these historical grievances.

108 *Wabaara* is a concept popularly used by Coastal indigenous to refer to up country people who for one reason or the other have settled in the region.

In this region for example, the local communities consider themselves *Coastarians* (*Wapwani*) rather than Kenyans, and are often distrustful and skeptical of people from communities from the hinterland. Politicians often exacerbate these tensions by using the land question in their election campaigns, promising people, albeit falsely and without any legal or policy basis, that they will crusade for recovery of "grabbed" land once they are elected into office. This is the case in Kwale, and significantly, Lamu.

These historic grievances have come back with the claims of the discovery of offshore oil and gas and the decision to build an oil terminal and new port in Lamu, not far from the border with Somalia, to be serviced by both an oil pipeline and railway line. This has led to demand for land, thus exacerbating the already existing ethnic tensions between the locals and people from the hinterland communities over land as a resource. This has led to renewed accusations and suspicions of land grabbing by well-connected businessmen, politicians and individuals at the expense of the local communities. It is felt that the locals are not considered for title deeds but that upcountry people get preferential treatment. Citizenship is addressed under Chapter 3 of the Kenya Constitution, 2010. Many people in the Coastal region, though born in Kenya, undergo long processes of screening and vetting making their citizenship status doubtful and denying them the right to enjoy freedoms on an equal basis with other Kenyan citizens. This is in contrast to their neighbors from hinterland communities who, although living within the same locality, are not subjected to the bureaucratic demands of screening and vetting. This is discriminatory and contrary to the stipulation of Article 12(1) of the Constitution.

2.8 Threats Associated with Marginalization

2.8.1 Muslims and Marginalization

While the population of the Coastal region is highly diverse, nearly half (42%) belong to the nine Mijikenda subgroups, and about one-quarter is made up of people from the hinterland communities. Similarly, while Muslims constitute just under half of all Coastal region's inhabitants, their distribution is quite uneven, with a majority in Mombasa, Kwale and Lamu, but only a small minority in Taita-Taveta. It is however important to note that Muslims in Kenya are not homogeneous in their beliefs and practices[109] hence the reported tension between 'moderate' and 'radical' Muslims that was reported at the Public Inquiry.

Muslims have for long perceived themselves as a marginalized group within the nation of Kenyan by successive governments. Hence, they feel that they are treated as second class citizens.[110] The consequence of this marginalization is that few Muslim community leaders tend to align themselves with the government.[111] Distrust for the Kenya government

109 Mwakimako & Willis, 2014, pp. 9-10; ICG, 2014, pp. 7-8

110 Anderson & McKnight, 2014, p. 20; Botha, 2013, p. 19

111 Anderson & McKnight, 2014, p. 20

is widespread among the local Muslims population, making it difficult to arrest radicalization and extremism.[112] This is aggravated by the lack of investigations into cases of violence visited on citizens profiled as Muslims and some Muslim leaders, deemed radical extremists, which violence is claimed to be orchestrated by the State.[113]

There are several significant demographic disparities between local communities, predominantly Muslims, and people from the hinterland communities, predominantly Christians. This is quite visible in education. People from local communities are nearly six times more likely than those of up-country origin to have less than a full primary school education.[114] Likewise, regarding the income earning category, the main contrast is that of wage and employment. Witnesses at the Public Inquiry alleged that in the wage employment sector, people from the hinterland communities are 'over-represented', that few from the local communities (mostly because of their low educational attainment) do qualify to be employed in the many establishments, both local and international found within the region. Such a contrast is also reflected in estimated monthly household income, with more than twice as many of those with an up-country origin being in the most affluent income bracket. The contrast between (wealthier) Christians and (poorer) Muslims in this regard, while less stark, is also significant. The Public Inquiry received allegations that there was a deliberate effort by the government to marginalize Muslims and Coastal communities in general and make them subservient to people and communities from the hinterland, *Wabaara*. The foregoing allegation is further buttressed by Mwakimako and Willis whose research revealed that many Muslim youth increasingly believe that the discrimination they face is part of a wider scheme designed to systematically isolate Muslims both locally and globally.[115] Most Muslim youth, therefore, look at Islam as a persecuted religion and Muslims as a persecuted citizenry. The result is to look at people from hinterland communities, predominantly non-Muslims but residing in the Coastal region, as 'enemies' deserving to be met with violence in retaliation.

The Public Inquiry was informed that organizations such as the Council of Imams and Preachers of Kenya (CIPK) that have pursued a peaceful engagement with the government have struggled to preach peace and tolerance, but this had left them open to criticism that they had been compromised.[116] This had given rise to perceptions that in defense of Islam, violence was necessary. This had turned out to be a major driver of violent conflict on many fronts; Muslims versus non-Muslims, radicalized Muslim youths versus security agents, and, radicalized Muslims versus moderate Muslims.

112 Anderson & McKnight, 2014, p. 20; Anderson, 2014, p. 2

113 Anderson & McKnight, 2014, p. 20

114 Kenya Health and Demographic Survey,p25

115 Mwakimako & Willis, 2014, p. 13; Botha, 2013, p. 16

116 Mwakimako & Willis, 2014, p. 13

2.8.2 The Rise of Mombasa Republican Council (MRC)

Historically the crisis of insecurity in Coastal Kenya intensified from the time of the Kaya Bombo clashes (Likoni clashes) that gave birth to Mombasa Republican Council (MRC) with its rallying call *Pwani si Kenya* (The Coast is not Kenya). Members of this organization claimed that they were waging war on the Government in Nairobi in order to 'liberate the Coastal region' due to marginalization experienced in the region by successive Government administrations since independence. They alleged that people from hinterland communities had not only looted and plundered the Coastal region's resources, but that they had also turned the locals into slaves. A witness in Mombasa told the Public Inquiry that the problem of insecurity could have been controlled if the government took the MRC seriously. She pointed out that:



'This could have easily been contained if the group was taken seriously as a security risk since it mainly thrived on youth unemployment.'[117]

Instead, the reaction by security agents and government in general to the threat by MRC was a torturous inquisition that selectively targeted the Muslim population. The result was many instances of enforced disappearances and extrajudicial killings. These killings had a pattern in which the youth targeted old men or the police went for Muslim youths suspected to belong or sympathetic to criminal gangs. In Kwale, one witness alleged that the Chairman of MRC, who also doubled as a preacher at Kiteja Mosque, had a huge following in Kwale who keenly and blindly followed his indoctrinating ideology.

2.9 Threats Relating to Youth, Drugs and Extremism

2.9.1 Youth Unemployment and Recruitment into Extremism

For several decades, Kenya has been battling with poverty caused by unemployment which is felt more by the country's youth whose numbers are ever rising. This, coupled with a population that is not only growing at an alarming rate but also saddled with a poorly performing economy, for both private and public sector organizations, means that not all the youth can be absorbed into meaningful and gainful employment.[118] Scarcely available resources have been overstretched and competition for these meagre life sustaining resources has generated disharmony and conflict that has in turn led to violent conflict and insecurity in several parts of the country. Unemployment has become a major problem bedeviling the lives of Kenyan youth, causing increased insecurity, violent extremism, militancy, violent crimes, kidnapping, and other socially delinquent behaviors. The increasing spate of violent extremism, radicalization, crimes and terrorism experienced in the past few years in Coast region is largely connected with the alarming rate of the youth unemployment.

117 Witness evidence during the PI

118 KNBS, 2009. Population and Housing Census

Given the low educational attainment by the Coastal population, unemployment has become the daily experience for the region's youth. This has in turn led to a state of hopelessness among the youth. Evidence from the public Inquiry indicated that:

> **"When three to four of them [the Youth] meet and sit together, they do not discuss how to get jobs, but they discuss how frustrated they are for 'hustling' without success. Therefore, the end result will be a revolt that breeds a fertile ground for recruitment into criminal gangs that include *Wakali wao, Wakali Kwanza, Forty two Brothers MRC, Eleven Crazy (Mji Mkubwa), Islamic State, Akili za Usiku* among others who cause untold suffering on innocent citizens."**[119]



It has been observed that youth unemployment is not just a problem for Coastal region, nor Kenya, but a continental one. The African Continent faces this pressing problem that has been steadily worsening over the years and is now assuming crisis proportions. According to the World Bank, the young people make up 37% of the working-age population in Africa, but 60% of them are unemployed.[120] Young people are more likely to work longer hours under insecure work arrangements, characterized by low productivity and meagre earnings.[121] Females face particularly strong challenges in entering the labour force, due to early motherhood and lack of education. The latter is characteristic of Coastal Counties in general.

The demographic dimension to Kenya's population is such that the country's population profile is shaped like a pyramid with a "youth bulge" at the base. World Bank estimates that in Kenya, like most African countries, half of her population is below 25 years. Then there is a labour markets dimension. The rate at which young people find jobs depends on how prepared the labour market is to receive them, and how ready they are for the labour market. Even with high primary school enrolment with an equal number of girls and boys starting school, the labour market and preparedness is interrupted in the face of high insecurity witnessed in Coastal region as was especially the case for the period 2013-2015. In particular education statistics show low enrolment that peaked in the year 2014. Reports indicate that out of every 100 students who start primary school, only 68 transition to secondary school, and just 6 out of this group go to universities or tertiary institutions to learn the skills required in an increasingly competitive world.[122]

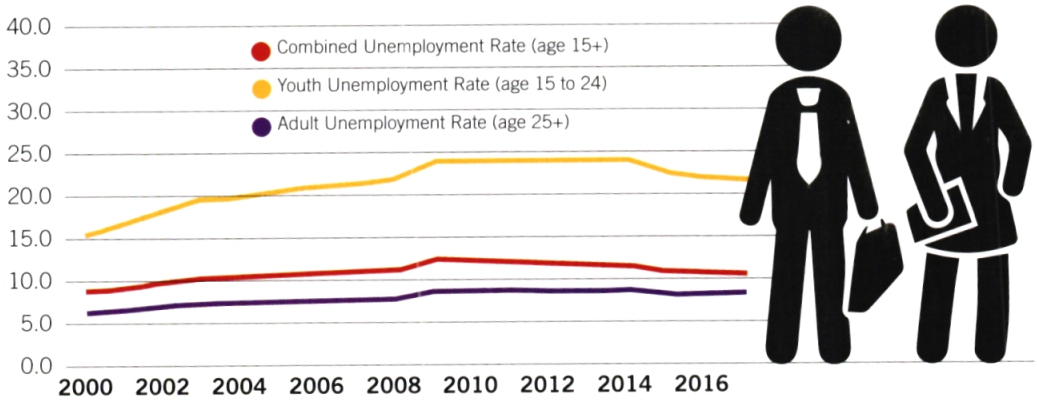
119 Witness evidence during the PI

120 http://web.worldbank.org/archive/website01259/WEB/0__C-107.HTM

121 http://web.worldbank.org/archive/website01259/WEB/0__C-107.HTM

122 Ibid

Figure 1: Unemployment rates (per cent) in Kenya from 2000 to 2017 based on ILO estimates (ILO 2016a)



Source: The British Council, 2017. Youth Unemployment in Kenya

It is thus noticeable that young people are susceptible to radicalization and this poses a significant threat to Kenya's peace and security particularly in the Coastal region.[123] Poverty, unemployment, unfulfilled promises, and relative deprivation are some of the main factors that lead to increased frustration among the youth thus increasing the likelihood of their involvement in militias and other criminal gang groupings.[124] Violence can become a lucrative enterprise for these unemployed youth, who in turn contribute to and perpetuate violent criminal activities.[125] Over and above the foregoing factors, among the key factors luring Muslim youth into violent criminal activities include: the supposed humiliation suffered by Muslims in Kenya; 'Christian occupation' of Coastal land; revenge for the killing of prominent Muslim preachers; and the 'liberating potential' of violence.[126] Muslim youth have thus joined extremist groups as a 'counter-reaction to what they see as government-imposed collective punishment of Somalis and Muslims.'[127] Radicalization amongst Muslim youth is also attributed to the deepening influence of *Wahhabism* and *Wahhabi*[128] organizations that provide basic needs alongside an extremist agenda.[129] It has been widely held that a significant factor in youth radicalization is the 'uneven socioeconomic development and historic marginalization of Coastal region of Kenya.'[130] However, it is also important to remember that radicalization factors are defined by different variables, including personality, religious ideology, as well as regional factors among others.[131]

123 Lind et al., 2015, p.18

124 Kituku, 2012, p. 15; Sharamo, 2014, p. 9; Botha, 2013, p. 13;

125 Sharamo, 2014, p. 9

126 Lind et al., 2015, p. 18; Anderson, 2014, p. 2

127 Botha, 2014, p. 1

128 Wahhabism has been Saudi Arabia's dominant faith. It is an austere form of Islam that insists on a literal interpretation of the Koran. Strict Wahhabis believe that all those who don't practice their form of Islam are heathens and enemies.

129 Lind et al., 2015, p. 19; Batha, 2013, pp. 16, 18

130 Lind et al., 2015, p. 19; Botha, 2013, p. 13

131 Botha, 2013, pp. 12, 20-21

2.9.2 Al-Shabaab Factor

Al Shabaab is a terrorist group affiliated to Al-Qaeda, based in Somalia but quite active in Kenya with a presence in other eastern African countries. An analysis in 2013 suggests that Al Shabaab in Kenya is diffuse and highly divided organization.[132] It is engaged in active recruitment of non-Somalis evidenced by the fact that suspects in recent attacks have come from all regions in Kenya, including central, rift valley and western regions of Kenya.[133] It has skilfully exploited social tensions and manipulated historical claims of injustices, socio-economic inequalities, and the perceived mistreatment of Muslim population to gain advantage for purposes of recruiting new members.[134] Al-Shabaab's tactics include hitting 'soft targets' such as "open public places where a large number of civilians congregate and where the attacks can instil maximum terror, extreme fear, horror, panic and chaos, cause the greatest number of casualties and provoke a high sense of insecurity, uncertainty and doubt about national security forces' ability to stop the carnage."[135] These places include, the US Embassy in Nairobi, shopping malls, hotels and most recently on 2 April 2015, gunmen stormed the Garissa University College, killing 148 people, and injuring more than 79.[136] The deliberate targeting of civilians increased sharply from late 2010 to early 2011.[137] Al Shabaab's selective killing of non-Muslims was intended to create discord, division and mutual suspicion amongst Kenyans that painted the attacks as a conflict between Christians and Muslims.[138] The 2014 Mpeketoni attacks is an example of this religious narrative. Al Shabaab has positioned itself as carrying out legitimate acts of self-defense and revenge on behalf of Muslims in East Africa.[139] It is intolerant to moderate Islamic theology and has from time to time threatened moderate Muslim preachers.[140] The group's recent activities in Kenya are an indication that it is reinventing itself to exploit the wider sense of economic and social grievance amongst Kenya's disadvantaged Muslim populations in its north-eastern and Coastal provinces.'[141] At the time of the Public Inquiry, the Al-Hijra wing of Al Shabaab[142] widely associated with Nairobi's Muslim Youth Centre (MYC) and especially Nairobi Pumwani Riyadha Mosque[143] was active in trying to develop war within Kenya by appealing to Kenyan Muslims to recognize their oppression and join the jihad movement through media messages.[144]

132 Dowd & Raleigh, 2013, p. 6

133 Lind et al., 2015, p. 18

134 Lind et al., 2015, p. 20; Anderson and McKnight, 2014, p. 3

135 African Union, 2015, p. 4

136 "Death toll from Kenyan attack rises to 148". Retrieved 17 April 2018.

137 Dowd & Raleigh, 2013, p. 6

138 African Union, 2015, p. 4; Cox et al., 2014, p. 5

139 African Union, 2015, p. 4

140 Anderson & McKnight, 2014, p. 19; Anderson, 2014, p. 2; ICG, 2014, p. 9

141 Anderson & McKnight, 2014, p. 3; Anderson, 2014, p. 3

142 Anderson & McKnight, 2014, p. 2

143 Anderson & McKnight, 2014, p. 17. It is important to point out that the mosque's organizing committee has vehemently denied the allegations

144 Anderson, 2014, p. 2; Anderson & McKnight, 2014, p. 17

According to reports by the Mombasa County CVE action plan, as Al-Qaeda rose to prominence with attacks on the World Trade Centre, radicalization appeared to rise in parts of the Coastal region. In 1992, the paradise Hotel was attacked in Kikambala. On the same day there was an attempt on an Israeli airline that was departing from Moi international Airport Mombasa. Sheikh Aboud Rogo was charged and acquitted for the Kikambala bombing, but became bolder and started to preach regularly at Masjid Musa Mosque in Majengo, until he was killed by unknown assailants. It is alleged that youth led by Aboud Rogo and Sheikh Abubakar Shariff alias Makaburi graduated to full blown open preaching of jihad and other radical and extremist ideologies. Several attacks were experienced at the coast including an attack on Bella Vista club, churches in Likoni and central police in 2016. The Public Inquiry was informed that many youths from Mombasa, Kwale and Lamu had allegedly travelled to Somalia while a number had returned after heeding the government's call for amnesty.

Efforts to arrest the rising violent conflict saw many youth either disappear without a trace, or face summary execution either by alleged security agents or unknown assailants resulting into the region experiencing tensions and restlessness. The case of Abdul Khadir Rehani Abdalla who left his house in Majengo, King'orani on 10/4/2014 to visit a cobbler had not by the time of the PI been traced. After about three months, he started calling the family using a strange number. It is then that the wife decided to leave the husband's home and relocate elsewhere upon which her house was raided on several occasions by security officers in search of criminals. It is then that she learnt that her husband had joined Al Shabaab. After the Mpeketoni attack, the wife received pictures of Al Shabaab terrorists killed in the attack. Among them was Abdul Khadir Rehani Abdalla.

Another case that stands out is that of Hemedi Salim Ahmed a resident of Magongo Changamwe who was arrested in February 2014 at Masjid Musa. His arrest was widely covered in the local media including television news. The family searched for him in all the police stations but in all stations police denied knowledge of Hemedi's arrest. The family went to court for a habeas corpus where they produced evidence of Hemedi's arrest which evidence showed a picture of Hemedi in the hands of the police. The police in turn alleged that Hemedi had escaped by jumping out of a police lorry as he was being taken to the police station.

Evidence at the PI indicated that Hemedi was not carried by the lorry as the police alleged rather he was transported in a land cruiser. A witness at the PI lamented that 'she has no hope of seeing Hemedi alive again and strongly believed that he had been executed by the police.[145] '*The witness told the PI that for justice to be done 'the family wanted to know if Hemedi was dead or alive and if alive, he should appear before a court and be charged accordingly.*'[146]

145 Evidence at the PI

146 Ibid

The consequences of these enforced disappearances and extra-judicial killings "generated a climate of fear and anxiety amongst Muslim leaders of all shades and opinions."[147] A witness in Kwale pointed out that the Al Shabaab ideology was fuelling insecurity that led to violation of human rights. He pointed out:



"Radicalization is systematic. Children at Madrasa are informed that they are marginalized hence their mind is set to radicalization doctrines."[148]



2.9.3 The Killing of Muslim Clerics and the Rise of Youth Radicalism

It is claimed that events in Mombasa and Kwale not only helped to further fuel religious tensions and 'served as key flashpoints for violence, with rioting following the violent deaths of prominent Muslim clerics in the region.'[149] Beginning in 2012, there was a wave of assassinations of Muslim businessmen, traders, clerics and activists.[150] There were "no conclusive investigations resulting in arrests and the prosecution of the killers or those who have paid them."[151] These assassinations created an atmosphere of resentment and further radicalizing the Muslim population[152] leading to a profound breakdown of trust in the country's security institutions by the people within the Coastal region which is reflected in some residents blaming assassinations of Muslims clerics and the civilian population on the security forces.[153]

2.9.4 Criminal Gangs

These are normally organized along ethnic, religious, or local lines, and "typically engage in violence against other identity groups in pursuit of local goals and objectives, that include control over resources, or in cyclical violence between groups."[154] Communal militias had been involved in 29.5 % of all recorded violent activities between 1997 and September 2013, which made them the most active violent actor category in Kenya while 52 % of communal militia violent activity involved the targeting of civilians.[155] In the Coastal region this is a serious source of insecurity especially in Mombasa, Kwale, Lamu and Tana River. In Mombasa these are organized in a manner that threatens both security agents and ordinary citizens.

147 Anderson & McKnight, 2014, p. 18

148 Witness evidence during the PI

149 Dowd & Raleigh, 2013, p. .

150 Lind et al., 2015, pp. 27-28; Anderson and McKnight, 2014, p. 18

151 Lind et al., 2015, p. 28; ICG, 2014, p. 11

152 Botha 2014, p. 24

153 Dowd & Raleigh, 2013, p. 7; Lind et al., 2015, p, 28; Anderson & McKnight, 2014, p. 18

154 Dowd & Raleigh, 2013, p. 4

155 Dowd & Raleigh, 2013, p. 4&5

These gangs may evolve or get aligned to terrorist groups with clear established leadership hierarchy and operational methodologies that involve surprise attacks on both civilian and security installations. A witness pointed out that:



"The problem of insecurity intensified way back in 2000 when the MRC sprung up. The failure by the government to take it seriously has meant that it poses serious security risk since it thrives on youth unemployment. But it has since caused many other problems that have adversely influenced the security environment."[156]

The witness went on to identify some criminal gangs associated with violence, politics and insecurity as *Wakali wao, wakali kwanza, mbulu wakola* which operate in Mombasa's Kisauni, Majengo, Likoni, Changamwe and Bombolulu while in Kwale the operational base for these criminal gangs is mainly in Kinango.

2.9.5 Youth and Drugs

A drug is any substance, other than food that, when inhaled, injected, smoked, consumed, absorbed via a patch on the skin, or dissolved under the tongue causes physiological changes in the body.[157] A witness in Mombasa observed that:



"Drug and substance abuse contribute to insecurity through its influence on crime. That under the influence of drugs, criminal gangs engage in rape, sodomy and other forms of sexual harassment besides other forms of criminal violence."[158]

Another witness reported that young boys between the ages of 15-18 engage in poker games and this breed violence between and among themselves. She pointed out that this had escalated crime in the region '*since these games generate money for the youths, it has promoted the use of drugs in the region as they now can afford to buy drugs.*'[159]

The PI established that the drug menace among the youth in Lamu and Mombasa was real. Drugs are openly sold and consumed including in educational institutions. During the Public Inquiry, it was alleged that school children, youth and adults, and even security agents actively participate in the sale of drugs. It was reported that drug business had created a complex network that is difficult to control. Children and the youth easily convert into criminal gangs in search of the elusive cash to stay on drugs either as abusers or peddlers. This means that drugs have hit at the heart of society, the youth, who hold society's future. So we have a mix of drugs, youth and criminal gangs. Witnesses pointed out that some government officers,

156 Witness evidence during the PI

157 Hockenbury, Don H & Sandra E Hockenbury, 2004. Discovering Psychology, 3rd ed. New York: Worth Publishers, pp156ff

158 Witness evidence during the PI

159 Witness evidence during the PI

using official vehicles, were not only abetting but also engaged in transporting drugs between Mombasa and Lamu. The most common drugs in Lamu are *bhang*, cocaine, *kuber*, heroine and *bugizi*. The Public Inquiry received reports and a lot of information about bugizi in Mombasa. KNCHR Regional Office wrote a letter to the Pharmacy, Drugs and Poisons Board inquiring why this drug [bugizi] was easily available in the market and why it was being widely distributed despite its negative social impact among the youth.

In Lamu County, Langoni and Kijitoni areas are notorious in the sale and abuse of drugs. It was further reported that the personalities involved in the business of selling drugs are well known to the authorities and allegedly armed. Of particular interest, the Public Inquiry was informed that Kadhahali Kashimi in Langoni was known for selling drugs to school children. This place neighbors an Administration Police camp and the officers at the camp seemed to be aware of the drug business but were either reluctant or unable to stop it. Since drug peddling is illegal, it presents a significant catalyst to occurrence of insecurity; between law enforcement agents on the one hand, and consumers and peddlers on the other, and, between drug merchants fighting for control of particular markets. On the other hand, consumers in their attempt to fulfill their lifestyle goals turn to criminal activities to raise income.

2.9.6 The Proliferation of Small Arms and the Rise of Terrorism

According to the Small Arms Survey Special Report of 2012 it was estimated then that there were 600,000 small arms in circulation in Kenya and this meant easy access to arms for reasons other than national security. Kenya's proximity to Somalia, Sudan, Yemen and Eritrea which have been known to empathize with Al Qaeda and Al Shabaab has left the country vulnerable to violent crime and terrorism. The seaway from the Gulf of Aden into the Indian Ocean has been rife with violent activities linked to piracy and international terrorism. In turn Kenya has supported counter terrorism measures and the fight against piracy, and the potential consequences of this are obvious to the country. Somalia is the de facto home base and traditional training ground for Al Shabaab, the Al Qaeda allied terrorist organization in East Africa. Sudan and Eritrea have also provided safe havens for elements associated with these two terrorist entities obtaining recruits from Kenya drawn from unemployed idle and disgruntled youth. This is particularly made possible given the inherently porous borders between Kenya and Somalia. Tana River County borders Garissa County to the East and Isiolo County to the North. These two counties are associated with the proliferation of small arms and light weapons emanating from the porous borders with Somalia. By extension and by virtue of limited security presence on the ground, and similar lifestyles in the three counties, Tana River County is vulnerable to infiltration and proliferation of small arms and light weapons.[160] The same applied to Lamu County which borders Tana River County to the southwest, Garissa County to the north, Republic of Somalia to the northeast and the Indian Ocean to the south. Matters are complicated by returnees believed to possess or have access to weapons.

160 KNCHR 2012, pp, 35& 40

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160 KNCHR 2012, pp, 35& 40

2.10 Threats Rising from Hostility between Civilians and Security Agencies

2.10.1 Relationship between Civilians and Security Agencies

In Lamu County, the *Wabajuni* and people from the Boni community live in fear in the belief that that if Al Shabaab attacks, they will be victimized by security forces who arrest and accuse them either as being members of Al Shabaab or their sympathizers. But they also live in the fear of Al Shabaab suspecting they are government informers on what goes on in the vast Boni forest by virtue of their master of the terrain. A witness at the Public Inquiry reported that many *Bajuni* youths have been arrested and disappeared without explanation, while those from the Boni community are constantly harassed by security agents severely denied the right to move freely. Finally, Kiunga where the Bajuni would have engaged in commerce to earn a living is under KDF operation. Due to this arbitrary arrests, harassment and blanket condemnation of the residents by security agencies, the youth and any other person who would otherwise volunteered on security are unwilling or unable to do so.

It was reported to the Public Inquiry that during security operations, security agents visit terror on the residents completely oblivious of the human rights entitlements due to the citizens. Witnesses reported to the Public Inquiry how the GSU had caused destruction of property in villages in Lamu East among these Ishakani, Kiunga, Mwambore, Rubu, Simambaye, Mvundeni, Mkokoni, Mwadhi, Vumbe, Kiduruni; Basuba; Lamu West villages including Mokowe, Barigoni, Kiongoni, Kibokoni, Koreni, Mukunumbwi, Mapenya, Witu, Pandanguwo Katsakakairo under the generalized excuse that the inhabitants were sympathetic to or were sheltering suspected Al Shabaab terrorists. As at the time of the Public Inquiry, Boni forest was under occupation by the KDF and GSU because of the threat from the Al Shabaab terror group.

2.10.2 Threats Associated with Devolution and Competition for Political Power

The Constitution of Kenya, 2010 created a decentralized system of government wherein two of the three arms of government; namely the Legislature and the Executive are devolved to the 47 political and administrative counties as provided for under Article 6 and specified in the First Schedule. Tana River is one of the 47 counties, and is inhabited by the Orma, Pokomo and Wardei. There have been ethnic hostilities between the Pokomo and the Orma, and the conflict between the two communities has resulted in violent conflict resulting in insecurity in the Tana River County.

The conflict between the Pokomo and the Orma has often been blamed on rivalry over pasture and water. Besides, recent developments indicate that competition for political power is also behind the violence experienced in the Tana River County.[161]

161 See KNCHR, 2012, pp. 31& 34

Tana River County has three registered constituencies that include Bura, Galole and Garsen and three administrative regions namely Tana North, Tana River and Tana Delta. The boundary changes effected by the Independent Electoral Boundaries Commission (IEBC) resulted in some villages, sub-locations and locations being shifted to different constituencies an act said to be fuelling conflict and bloodletting because this shifts have influenced the voting patterns in the county. According to witnesses, politicians seeking elective positions in the Tana River County are to blame for the intensified fighting between the Pokomo and the Orma especially during electioneering period, intensity which is not seen when there is no election. During the mass voter registration, voter mobilization was based on ethnic considerations with politicians forging alliances to share available seats for the Governor's, Senate, in the county government with the aim of disenfranchising some communities.

Kenya and especially parts of the Coastal region has frequently been in the news in recent years because of interethnic violence, violence from criminal gangs, deadly attacks by radical Islamist group al-Shabaab, which all lead to insecurity hence violation of human rights of residents. This report has tried to demonstrate that the activities of internal radical and armed groups and, indeed, the nature of Kenyan politics itself, may in fact, pose greater threats. Armed civilians operating either as bandits or other criminal gangs, inter-ethnic rivalry, religious radicalization and extremism as well as conflict over resources are the greatest drivers of insecurity in Coastal Kenya.

CHAPTER THREE

INSECURITY AND HUMAN RIGHTS VIOLATIONS

3.1 Introduction

This chapter presents an analysis of the impact of insecurity human rights violations in the Coastal region of Kenya. The chapter identifies and evaluates the extent of the violations. The information is categorized into economic, social and cultural rights, and, civil and political rights.

Economic, social, and cultural rights are freedoms, privileges and entitlements that individuals and communities require to live a life of dignity. Although some economic, social, and cultural rights cannot be immediately implemented, the state is under obligation to progressively guarantee their realization. Being the duty bearer, the state has an obligation to protect, fulfil and respect these rights. In other words, the state cannot impede the enjoyment of these rights; the state is further obligated to reasonably prevent other actors from interfering with enjoyment of these rights. The state should thus create conditions necessary for individuals' full enjoyment of these rights. The public Inquiry focused on right to education, water, health, work, property, fair wage, safe working conditions, rights of the family, and right to peaceful habitation.[162]

Civil and political rights restrict the powers of the government in respect of actions affecting the individual and his or her autonomy (civil rights), and confer an opportunity upon people to contribute to the determination of laws and participate in government (political rights). The Public Inquiry focused on right to life, freedom from torture, right to a fair trial, freedom of assembly and association, freedom of thought, conscience and religion, right to an effective remedy, right to privacy, right to liberty and security, and, freedom from discrimination.[163]

3.2 Human Rights Based Approach (HRBA)

Human Rights-Based Approach (HRBA) presupposes that the ultimate goal of all development programmes is the realization of human rights. The development process is normatively based on international human rights standards and principles that recognize human beings as rights holders and establishes obligations for duty bearers to fulfil the rights. The framework integrates the norms, principles, standards and goals of international human rights system into the plans and processes of development. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede the process of development. Within this context, development should aim for a progressive realization of all human rights. All initiatives to mainstream HRBA in service delivery at the national and county levels of governance ought to be geared towards having all programmes, policies and initiatives aligned to Chapter 4 of Kenya Constitution 2010,

162 See CoK Article 43(1) a,b

163 Ibid, Articles 29, 31, 32, 40 &48

especially the economic, social and cultural rights (ESCR) as laid down in Article 43 of the Bill of Rights, Universal Declaration of Human Rights (UDHR) and all other human rights instruments. Human rights standards should guide the process of development program in all sectors and phases. Development needs to contribute to increased capacities of duty bearers to meet their obligations and of rights holders to claim their rights.

In summary, HRBA:

a) Endeavors to enhance respect for, protection and fulfilment of human rights;
b) Emphasizes empowerment of marginalized groups, accountability of duty bearers and collaborative action between right holders and duty bearers; and,
c) Shifts focus of analysis to the most deprived and excluded by demanding a deeper analysis of political and social power relationships in the public and private sphere.

3.2.1 Applying HRBA in Kenya

The application of HRBA in Kenya is anchored in the constitution which;

a) Recognize and guarantee the rights and fundamental freedoms of the individual;
b) Bind all state organs and all persons to observe, respect, protect, promote and fulfil the rights and fundamental freedoms;
c) Imposes legal obligations on government and other duty bearers;
d) Provides national values and principles of governance to guide policy processes under Art. 10; and,
e) Provide a framework to monitor and evaluate policies from a human rights perspective.

Kenya has responded to the application of HRBA through the national human rights policy and action plan.[164] The main principles that guide the operation of this policy include but are not limited to;

a) The state ensuring a sustained and lasting improvement in the enjoyment of human rights;
b) Helping the citizenry internalize and systematize respect and recognition for human rights;
c) A demonstration by the state and all other state organs to a commitment that Kenya becomes a human rights respecting society;
d) Ensuring that the state and all its organs adhere to its human rights obligations as contained in international and regional instruments; and,
e) Placing the state at the forefront in ensuring observance, respect, protection, promotion and fulfilment of the rights and fundamental freedoms as contained in the Kenya Constitution, 2010.

164 See Sessional Paper No 3, National Policy and Action Plan on Human Rights, 2014

3.2.2 Violation of Economic, Social and Cultural Rights

Economic, social, and cultural rights are freedoms, privileges and entitlements that individuals and communities require to live a life of dignity. These include the rights to work, food, housing, health, education and cultural identity. Legal protection of economic, social, and cultural rights depends on which treaties have been ratified by the respective States. Kenya ratified the ICESCR on 1 May 1972. This is the most comprehensive international human rights instrument that addresses human rights violations relating to economic, social and cultural rights. The Constitution of Kenya provides for these under Article 43.[165]

The identified violators of human rights in Coastal region according to the Public Inquiry findings include members of: KDF, the GSU, ATPU, BPU, Government Officers, the Pokomo, Orma, Islamic radical preachers and Imams, criminal gangs, Al Shabaab returnees and agents from countries bordering the Coastal Counties.

3.2.3 Monitoring and Enforcement

Internationally, several mechanisms have been put in place to specifically monitor and protect economic, social and cultural rights. These include various United Nations and regional bodies. In addition, other human rights bodies with more general mandates often consider issues and complaints related to economic, social, or cultural rights. The Committee on Economic, Social and Cultural Rights (CESCR) oversees States parties' implementation of the ICESCR. The CESCR issues General Comments, which are authoritative interpretations of the ICESCR.

The regional human rights commissions and courts also play a role in protecting economic, social, and cultural rights. In Africa, ESCR violations are addressed by the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights.

3.2.4 Violations of the Right to Education

The Constitution of Kenya 2010 guarantees every citizen the right to education. These include education for all citizens;[166] for every child[167] access to educational facilities for persons with disabilities,[168] all youth to access relevant education and training,[169] as well as put in place affirmative action programs to ensure minorities and marginalized groups are provided special opportunities in educational and economic fields.[170] This section analyses the findings of the Public Inquiry by comparing key indicators on education across selected counties in Kenya with those in which the PI was conducted in order to elucidate the existing and ensuing disparities.

165 See CoK Article 43
166 See Article 43(1)f
167 See Article 53(1)b
168 See Article 54(1)b
169 See Article 55a
170 See Article 55b

If a significant number of individuals within a State are deprived of the right to education this amounts to a human rights violation under our law and international human rights instruments that deal with education.

Education is a key ingredient of development as it enhances realization of development goals. The national literacy rate as at 2015 was 78%[171] down from 82.2 %[172] in 2000. While these national statistics are favorable, in the Coastal region, illiteracy levels have remained high among both women and men but significantly higher among women who show an overall dropout rate of 81% compared to the national rate of 58.4%.

Highlights of the negative impacts of Insecurity on the quality of Learning

The following are the highlights of the negative impact of insecurity on education according to the PI findings:

a) The violent conflict led to high dropout rates among the few students that enrolled and attended school at both primary and secondary levels;
b) The frequency of conflict led to the departure of teachers from upcountry, hence leaving the duties of teaching to the very few local teachers;
c) Many teachers were unable to continuously go to work due to lack of security in the region;
d) Incidences of early pregnancy among girls as a consequence of dropping out of school;
e) Social problems such as drug use and abuse, and criminal gang related activities causing many youths to drop out of school;
f) The conversion of schools in Basuba ward in Boni forest into military camps occupied by KDF and GSU making the institutions inaccessible for learning;
g) The hunt for Al Shabaab in the parts of the Boni forest led to problems in mobility for students seeking to access education institutions for fear of attack either from security agents or/and Al Shabaab;
h) Education facilities had been closed down while others had been bombed as a result of religious conflict;
i) Women related to suspected Al Shabaab or radical extremists fled homes for fear of harassment/arrest by security agents making it impossible for their children to access education; and,
j) Enforced disappearances and extrajudicial killings of men created education uncertainty among their school going children since they depended on them for livelihood.

171 https://www.indexmundi.com/map/?v=39

172 https://knoema.com/atlas/Kenya/topics/Education/Literacy/Adult-literacy-rate

3.2.5 An Overview of Education in Coastal Counties

Available statistics at the time of the public inquiry indicated that in Kilifi County, a third of all secondary school students were girls while adult education was dominated by female learners. When compared to the large number of children in Mombasa's informal settlements, the evidence showed that those entering and attending primary school was more than 90% while secondary school net attendance rate was only 27%. It is worth noting that from the Public Inquiry sessions, it clearly emerged that the poor education record in the region is historical. From the time of colonization, education was not prioritized among communities in this region. Historically, the colonial government perpetuated regional inequalities through their governance and resource allocation mechanisms. The independence government adopted a similar system of economic categorization in which regions were grouped either as high or low productive areas in which case resources were to be concentrated on high productive areas from which the rest of the country would benefit gradually. Kwale, Kilifi and Tana River counties were among the regions in Kenya negatively affected by this policy.[173]

In Kwale, due to cultural reasons, girls and women are generally neglected especially in the lower class stratum. The Public Inquiry was informed that the education of the girl child in Tana River and Lamu counties was in jeopardy as the many school going girls continue to drop due to early marriage and teenage pregnancy which are on the increase. Figure 1 below shows the gross and net enrolment rates (GER & NER)[174] for girls in Coastal counties. Kwale in particular had an enrolment rate of below 20% making it sit just above Mandera, Marsabit and West Pokot.

The impact of insecurity on education was exemplified by the low enrolment experienced especially in 2014. Tables 3, 4 and 5 below summarizes the impact on the GER and NER for Coastal counties. It will be observed that 2015 and 2016 saw an improvement from the generally low enrolments levels experienced in for 2014 at all levels of education from pre-preprimary, primary and secondary both for girls and boys. This can partly be explained by the violence experienced in many parts within the region between 2011 to 2014.



173 See Sessional paper No 10 of 1963: African Socialism and its Application to Planning in Kenya, pp 40 & 56

174 Gross Enrolment ratio (GER) and net enrolment ratio (NER) are statistical measures used in the education sector to determine the number of students of school going age enrolled in at different stages like ECDE, primary and secondary against the total population and expressed in percentage.

Table 4: Pre-Primary School Enrolment and GER, NER - Coast Region

County	YEAR	Enrolment by Sex			Gross Enrolment rate GER)			Net Enrolment rate (NER)		
		Males	Females	Total	Males	Females	Total	Males	Females	Total
KILIFI	2014	53,059	51,303	104,362	79.80%	82.80%	81.20%	77.60%	80.60%	79.00%
	2015	57,515	56,193	113,708	87.70%	91.90%	89.70%	87.20%	91.30%	89.20%
	2016	61,858	58,693	120,551	93.10%	94.70%	93.90%	93.30%	94.80%	94.00%
KWALE	2014	32,079	30,720	62,799	83.20%	84.20%	83.70%	80.90%	81.40%	81.20%
	2015	36,832	35,185	72,017	96.90%	97.80%	97.30%	95.90%	96.70%	96.30%
	2016	40,666	38,900	79,566	105.50%	106.70%	106.10%	99.90%	95.50%	97.80%
LAMU	2014	5,701	5,488	11,189	111.30%	97.90%	104.30%	93.60%	91.70%	92.60%
	2015	5,646	5,537	11,183	111.70%	100.20%	105.70%	99.50%	97.50%	98.40%
	2016	5,422	5,073	10,495	105.90%	90.50%	97.90%	97.40%	88.90%	93.00%
MOMBASA	2014	28,696	26,179	54,875	72.50%	61.50%	66.80%	71.30%	60.90%	65.90%
	2015	32,020	30,296	62,316	82.10%	73.70%	77.70%	81.70%	73.30%	77.30%
	2016	31,568	30,691	62,259	79.80%	72.10%	75.80%	79.80%	71.80%	75.60%
TANA RIVER	2014	10,616	9,787	20,403	72.80%	67.30%	70.10%	71.60%	66.40%	69.00%
	2015	13,289	12,863	26,152	92.40%	89.70%	91.00%	91.70%	89.10%	90.40%
	2016	13,941	12,799	26,740	95.60%	88.00%	91.80%	95.80%	88.10%	92.00%
TAITA TAVETA	2014	10,780	10,405	21,185	83.40%	77.10%	80.20%	81.30%	75.20%	78.10%
	2015	12,499	12,011	24,510	98.00%	90.30%	94.10%	97.30%	89.70%	93.40%
	2016	13,360	12,821	26,181	103.30%	95.10%	99.10%	99.20%	94.40%	96.80%

Source: KNBS

Table 5: Primary School Enrolment and GER, NER - Coast Region

County	YEAR	Enrolment by Sex			Gross Enrolment rate (GER)			Net Enrolment rate (NER)		
		Males	Females	Total	Males	Females	Total	Males	Females	Total
KILIFI	2014	156,841	153,166	310,007	106.80%	111.90%	109.30%	81.40%	86.50%	83.90%
	2015	154,348	150,749	305,097	102.90%	107.70%	105.20%	86.40%	91.30%	88.80%
	2016	158,189	155,175	313,364	104.00%	109.40%	106.60%	76.10%	81.80%	78.90%
KWALE	2014	90,711	87,455	178,166	106.50%	108.50%	107.50%	74.10%	78.30%	76.10%
	2015	92,822	90,769	183,591	106.60%	110.20%	108.40%	91.40%	95.70%	93.50%
	2016	94,255	92,013	186,268	106.80%	110.20%	108.50%	80.10%	84.30%	82.20%
LAMU	2014	14,055	13,361	27,416	124.20%	108.00%	115.70%	93.40%	83.90%	88.50%
	2015	13,463	13,357	26,820	116.40%	105.60%	110.70%	92.30%	87.50%	89.80%
	2016	14,188	13,611	27,799	121.00%	106.10%	113.30%	95.10%	86.50%	90.60%
MOMBASA	2014	70,357	70,408	140,765	80.50%	74.90%	77.60%	70.80%	66.70%	68.70%
	2015	69,876	67,985	137,861	78.20%	70.80%	74.40%	71.10%	64.80%	67.90%
	2016	73,362	72,279	145,641	81.00%	74.20%	77.50%	69.40%	64.60%	66.90%
TANA RIVER	2014	25,935	23,733	49,668	80.50%	73.90%	77.20%	64.00%	61.20%	62.60%
	2015	26,744	24,677	51,421	81.30%	75.20%	78.20%	72.00%	68.10%	70.10%
	2016	27,899	26,147	54,046	83.60%	78.60%	81.10%	67.20%	65.60%	66.40%
TAITA-TAVETA	2014	35,339	34,101	69,440	123.80%	114.50%	119.00%	95.70%	91.20%	93.40%
	2015	35,013	34,014	69,027	119.90%	11.70%	115.70%	97.30%	93.50%	95.40%
	2016	34,852	33,257	68,109	117.80%	107.80%	112.70%	97.70%	92.20%	94.90%

Source: KNBS

Table 6: Secondary School Enrolment and GER, NER - Coast Region

County	Year	Enrolment by Sex			Gross Enrolment Rate (GER)			Net Enrolment Rate (NER)		
		Males	Females	Total	Males	Females	Total	Males	Females	Total
KILIFI	2014	53,059	51,303	104,362	79.80%	82.80%	81.20%	77.60%	80.60%	79.00%
	2015	29,266	22,499	51,765	45.10%	37.20%	41.30%	23.60%	21.50%	22.60%
	2016	29,791	25,113	54,904	45.10%	40.80%	43.00%	22.40%	20.90%	21.60%
KWALE	2014	32,079	30,720	62,799	83.20%	84.20%	83.70%	80.90%	81.40%	81.20%
	2015	13,925	13,622	27,547	37.00%	38.30%	37.60%	20.60%	23.40%	22.00%
	2016	14,699	14,196	28,895	38.40%	39.00%	38.60%	18.70%	21.40%	20.00%
LAMU	2014	5,701	5,488	11,189	111.30%	97.90%	104.30%	93.60%	91.70%	92.60%
	2015	3,378	2,576	5,954	67.60%	47.10%	56.90%	44.40%	35.70%	39.80%
	2016	3,330	2,675	6,005	65.40%	48.00%	56.30%	41.70%	33.80%	37.60%
MOMBASA	2014	28,696	26,179	54,875	72.50%	61.50%	66.80%	71.30%	60.90%	65.90%
	2015	19,413	11,698	31,111	50.30%	28.20%	38.80%	35.80%	18.60%	26.90%
	2016	17,751	15,676	33,427	45.10%	37.10%	41.00%	28.10%	26.80%	27.40%
TANA RIVER	2014	10,616	9,787	20,403	72.80%	67.30%	70.10%	71.60%	66.40%	69.00%
	2015	4,053	2,414	6,467	28.50%	17.00%	22.80%	20.30%	11.80%	16.10%
	2016	3,952	2,825	6,777	27.30%	19.50%	23.40%	16.50%	13.80%	15.10%
TAITA-TAVETA	2014	10,780	10,405	21,185	83.40%	77.10%	80.20%	81.30%	75.20%	78.10%
	2015	10,610	11,287	21,897	84.10%	85.80%	85.00%	56.80%	59.80%	58.40%
	2016	10,747	11,508	22,255	83.60%	85.80%	84.80%	55.30%	61.30%	58.40%

Source: KNBS

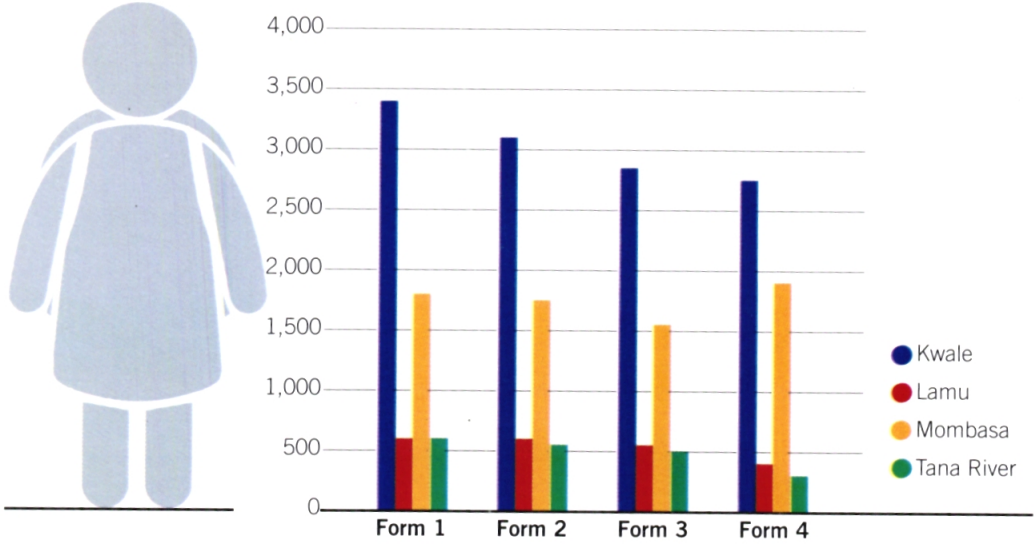
Table 7: Secondary Schools in the Coast Region

COUNTY	Public			Private			Total		
	Boys	Girls	Mixed	Boys	Girls	Mixed	Boys	Girls	Mixed
KILIFI	0	0	521	0	1	206	0	1	727
KWALE	2	0	386	0	0	71	2	0	457
LAMU	3	2	97	0	0	32	3	2	129
MOMBASA	7	6	82	1	1	267	8	7	349
TAITA TAVETA	0	0	249	0	0	56	0	0	305
TANA RIVER	1	0	156	0	0	17	1	0	173

Source: KNBS

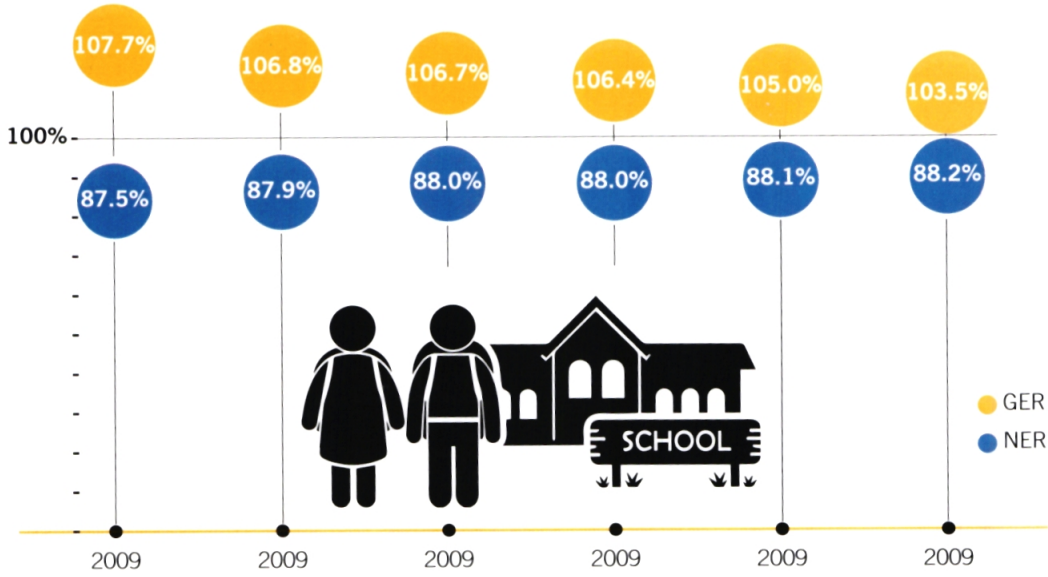
At the primary level, the GER consistently registered more than 100% between 2009 and 2014. The GER greater than 100% indicates existence of overage and underage children enrolled in primary schools. The GER decreased by 4.2 percentage points between 2009 and 2014 representing a decline of 3.9%. The decrease of GER over the period may be the result of reduction of repeaters and reduction of overage students within primary level. However from the table above showing GER and NER, the gap between the primary GER and NER declined between 2009 and 2014. In 2009, the gap was 20.2 percentage points while in 2014 it stood at 15.3 percentage points. This indicates that over the period the number of under age and over age pupils enrolled at primary has been declining. The decline in GER and increase in NER indicates a positive trend implying that the Government's policies on repetition and promotion are working.

Figure 2: Public Secondary Schools Enrolment per Class for Girls



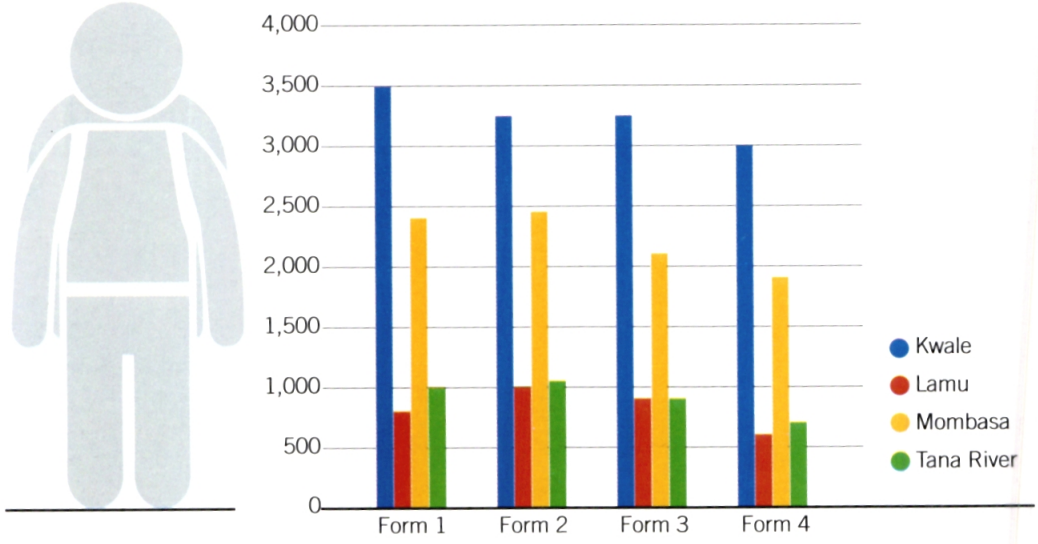
Source: MoEST, 2014

Figure 3: Public Secondary Schools enrolment per class



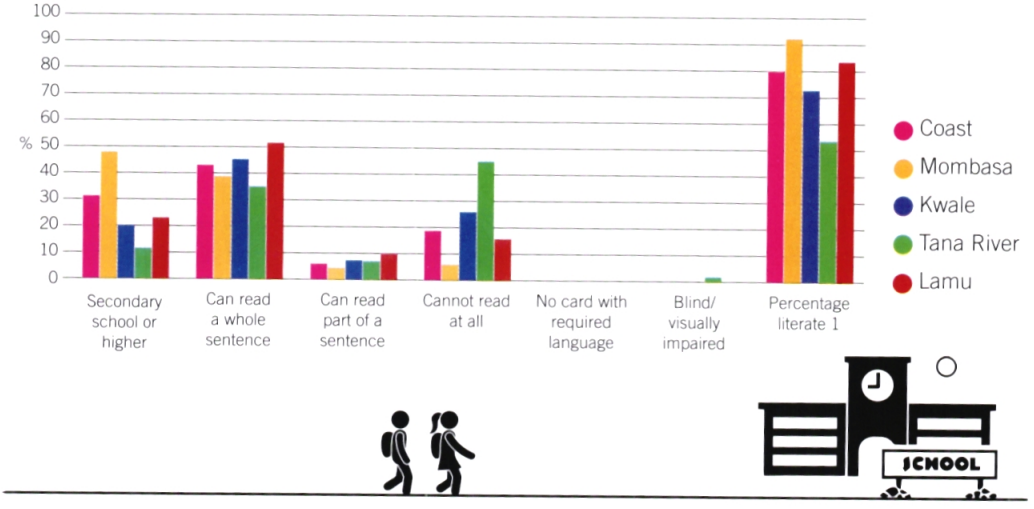
Source: MoEST, 2014

Figure 4: Public Secondary Schools Enrolment per class for Boys



Source: MoEST Basic Statistical Booklet

Figure 5: Primary Gross and Net Enrolment Rates by County, 2014



It is however important to point out that within the context of compulsory basic education policy under the free primary education (FPE), the single most important explanation for the region's low educational attainment when compared to the rest of the country is the frequent violent conflict and insecurity in the region. Among these significant disparities in education levels have been in Taita Taveta, Mombasa, Tana River and Kwale counties. Research has shown that there is a strong correlation between education level achieved and monthly household income. Thus educational disparities are to a certain extent affected by the monthly household income, with inhabitants of Tana River, Kwale and Kilifi counties being most disadvantaged. In the Coastal region as a whole, half of all households report a total monthly income of below KES. 10,000. In terms of the contrast between 'locals' and residents of up-country origin, several significant demographic disparities emerged, such as levels of education, where learners of the Coastal origin are nearly six times more likely than those from elsewhere to have less than a full primary school education.[175]

In its report, the Kenya Demographic and Health Survey indicated that 26.5percent of Coastal inhabitants have no education at all, 39.8% have some primary education, 14.3% have completed primary school, 6.3% have some secondary education 9.0% have completed secondary school, while a paltry 3.8% have post-secondary education (KDHS, 2014, p26). Thousands of children in the Coastal Counties remain out of school due to security operations which occasion interruptions to learning sessions, are an inconvenience, and remain a distraction to school going children. Those students who manage to circumvent these tough conditions and attend school do not receive quality education. The dictum here is 'Bora elimu', and not 'elimu bora,' loosely translated as better to be seen to attend school notwithstanding the quality. The Public Inquiry received little information linking violation of right to education to PWD and therefore the report did not form any opinion on this.

175 See KDHS,2014

This is attributable to the fact that PWD or those acting on their behalf did not make any representation. The only case that had subtle relevance here was the evidence from Tana River County where an adult male in Hola was attacked and seriously injured leading to amputation of one of his legs. The bone of contention was family land where each of the family members wanted to take possession. This prompted his uncles to issue death threats to the victim. It was reported that the victim was attacked on many occasions with the intention to kill him. On reporting the issues to the police however, no action was taken. The witness who happened to be the son to the victim observed that he might drop out of school since his father who was paying his school fees had lost one of his legs which was going to make it difficult for him to work normally and raise the much needed money for his education given the lack of accommodation for persons with disabilities in work and employment. This then might deny the son the right to education.

For the period under investigation, residents of Boni forest in Lamu County who appeared before the Public Inquiry reported that they had challenges having access to education for their children after teachers fled attacks by Al Shabaab terrorist group. Security forces moved in full force to comb out the militia from the vast Boni forest, from where they were hiding and launching attacks. The *Operation Linda Boni* succeeded, but the education access was limited or in most cases halted mainly among the Awer living in the Boni Forest.

Teachers fearing attacks dared not resume work, as the area had been labeled a danger zone due to, not only the Al Shabaab terror gang that was ambushing villages and schools, but also the threat posed by security forces. Residents of this area fall victim to both security forces and Al Shabaab, forcing many residents to flee for safety especially in Kiunga, Mkokoni, Hindi, Lamu, Faza and Witu, among other areas. This did not just affect teachers but other government officials, especially those that had been posted in the area from other regions.

After the 2014 Mpeketoni terror attack that left more than 60 people dead, followed by a series of similar attacks in adjacent areas of Lamu County the security situation worsened. In a visit to the then Governor of Lamu Hon. Issa Timamy, he informed the PI that after the attack many schools were closed indefinitely and pupils in upper classes transferred to Mokowe Lamu Arid Boarding School, which was seen as safe. It was reported that in Lamu East, at the time of the Public Inquiry, over 400 pupils had not been attending school since 2014 after the closure of primary schools due to frequent Al Shabaab attacks. The school buildings had been turned into security camps, depriving children of classrooms, while others had shut down due to insecurity. These were Basuba, Milimani, Mangai, Mararani and Kiangwe. A further two schools in Ishakani in Lamu East and Pandanguo in Lamu West had been closed due to attacks and raids by Al-Shabaab militants. Some of those in upper classes who were on full sponsorship by the county could not get to the new school locations due to the high poverty levels, and where they did, they often got to the learning institution late.

Table 8: Schools Closed Due To Insecurity

County	Name of Primary School
Mombasa	Nil reported
Kwale	Kayawa Kumbani
Tana River	Nil reported
Lamu	Basuba, Milimani, Mangai, Mararani, Kiangwe

Source: MoEST

A memorandum from Shungwaya Welfare Association of Lamu made the following observations:

> **"The GSU under the command of the Lamu County Commissioner[176] destroyed all the villages in Lamu East including Ishakani, Kiunga, Mwambore, Rubu, Simambaye, Mvundeni, Mkokoni, Mwadhi, Vumbe, Kiduruni and all Boni villages. In addition, Lamu West villages such as Mokowe, Barigoni, Kiongoni, Kibokoni, Koreni, Mukunumbwi, Mapenya, Witu, Pandanguwo Katsakakairo and others were targeted claiming the dwellers were sympathetic and sheltering the shiftas."**[177]



This made it difficult for children to access education facilities even though some were in rudimentary state making learning under trees a commonplace occurrence. There were very few primary schools set far apart, and even fewer secondary schools. This led to low enrollment generally, and high school dropout rates not to mention frequent absenteeism. One witness in Lamu Fort emphasized that:

> **"Teachers who had previously been posted to Basuba Ward used insecurity excuses as a reason for their refusal to return to teach in the Boni schools."**[178]

176 Pursuant to Article 252 CoK and S. 26,27 28 and 52 of the KNCHR Act, the KNCHR issued summons for personal attendance to the Lamu County Commissioner on 30th October 2018, to personally appear before it and respond to as well as provide further information on the allegations as stated. In a letter dated 20th November 2018 the County Commissioner responded denying the allegations (see annex, appendix 7)

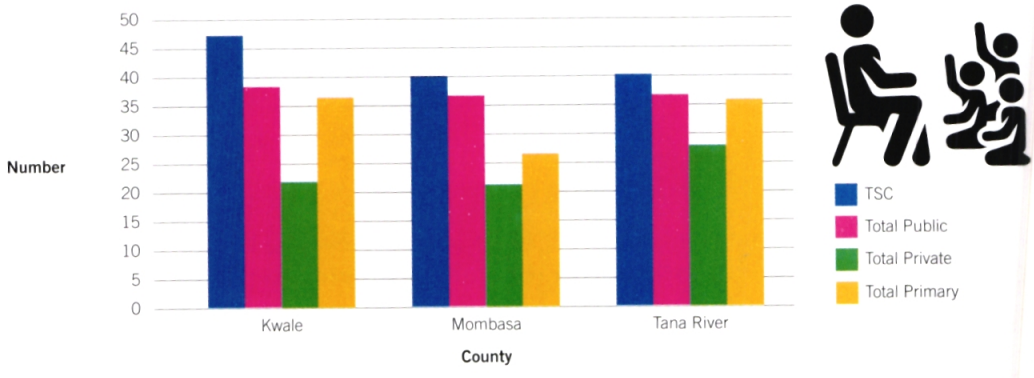
177 The word shifta historically served as local militia in the lawless rural mountainous regions on the Horn of Africa. In Kenya it referred to 'bandit' or 'outlaw' mainly of Cushitic ancestry who roamed North Eastern and Coastal regions causing untold destruction to life and property whose sole claims included rebelling against Kenyan authority in their desire to establish the Somali Nation.

178 Witness evidence during the PI

A witness originally from Mwingi but resident of Kayawa in Kwale lamented that she had been a teacher since 1993 but began teaching at a Catholic Church sponsored school from the year 2003. Suddenly the school came under attack by the locals (who are predominantly Muslims) destroying infrastructure like the boreholes, classroom windows and doors. People unknown to her began erecting structures in the school compound and when she made inquiries, she was told '*to report to the priest that the place was not theirs and they should remove the school and take it to their homes of origin (other parts of Kenya other than the coast).*'[179] At some point during class session, the chairman of *Nyumba Kumi* in the area approached her with a *panga* threatening to attack her, which led her to abandon the class and the facility and flee from the area. Many times during class time, the learners would be heard '*praising their indulgence in alcohol and how tasty it was.*'[180] The witness reported that drug and substance abuse is a common phenomenon among school going children in the region.

The teacher/pupil ratio (TPR)[181] for public schools based on TSC data of 2014 was 1:41.5 which compared well with the international norm that stands at 1:40. Considering that teachers employed by the Board of Management (BOM), the TPR at public schools drops to 34.5. As at 2014, the following TPR obtained for public primary schools in the following counties: Mombasa, 1:40; Kwale, 1:43; Lamu, 1:36; and, Tana River, 1:40. In public secondary schools the ratio was as follows: Mombasa, 1:25; Kwale, 1:35; Lamu, 1:28; and, Tana River, 1:32.[182] An analysis of the TPR across counties shows the existence of regional disparities in the distribution of teachers. Twenty seven counties lie below the national average while twenty lie above the national average. The TPR presented above for Coastal counties seems adequate in quantitative terms. But when scrutinized, and read together with the total percentage enrolment as well as the transition from one level to the other, it is not.[183]

Figure 6: Primary school teacher distribution per county (teacher- pupil ratio)



Source: MoEST, 2014. Basic Education Statistical Booklet

179 Witness evidence during the PI

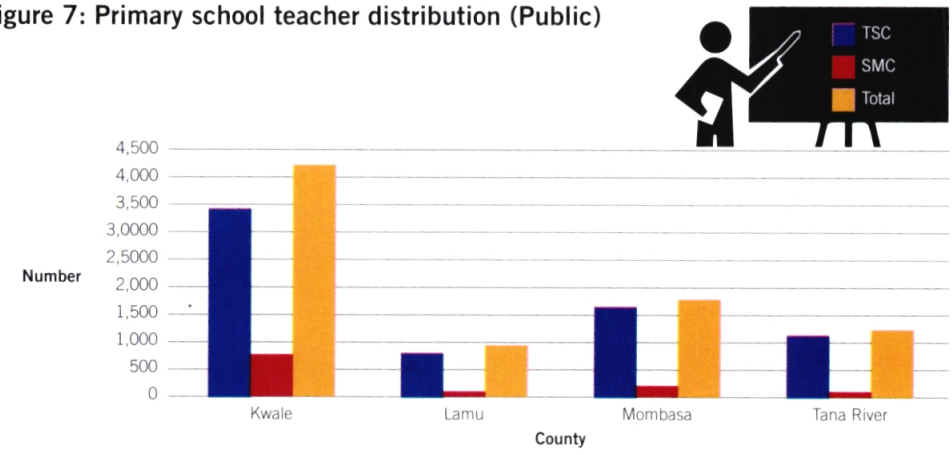
180 Ibid

181 MoEST, 2014. Basic Education Statistical Booklet, p20.

182 Ibid 21-22

183 Ibid, 19-22

Figure 7: Primary school teacher distribution (Public)



Source: MoEST, 2014. Basic Education Statistical Booklet

The PI was informed that persistent insecurity had led to low school attendance and high dropout rates. There are many youths who drop out of school and begin abusing drugs and some end up joining criminal gangs. A witness in Lamu complained that Kadhahali Kashimini in Langoni is known for selling drugs to school children. The place is reportedly next to an administration police camp and the officers at the camp are well aware of the drug activities involving school children. The PI received complains of alleged police involvement in drug peddling in the area negatively affecting the lives of the people in this region, with allegations that the police vehicles were involved in the transportation of drugs. The police are said to be involving in drug dealings at the expense of providing security to the residents some who end up becoming victims of crime such as theft and killings from criminals.

A witness shared with the Public Inquiry the nexus between drug use, violent and criminal youth activities and loss of challenges in parenting, especially as a result of the absentee father in parenting. She explained that:



"The family has virtually collapsed, the youth have become a threat to security because of truancy. Parents are unable to discipline their children who in turn engage in delinquent acts including joining gangs that are used to spread violence. Besides the family, polygamy is another cause of insecurity, because parental authority is delegated and watered down. The absentee father becomes irresponsible because of the inability to play his role in multiple households. As a result, children enter groups and form gangs where they are exposed to possible indoctrination including radicalization, engage in drug and substance abuse which influence their entry into the criminal world."[184]

184 Witness evidence during the PI

The results, especially for the girl child, are that many girls drop out of school because of early pregnancies. Children's involvement in sex tourism on the Kenyan coast remains a concern for many. In 2001, a report was prepared for UNICEF on sexual exploitation of children in the Eastern and Southern Africa region. This report looked at the forms of sexual exploitation in the region and drew attention to the rising numbers of children involved in commercial sexual exploitation. One of the findings of this report was the difficulty of planning interventions around commercial sexual exploitation of children (CSEC) because of a general lack of data and information. Kenya has recently adopted a national plan of action on child sexual exploitation. Many of the girls on the streets of Mombasa and other Coastal region's urban centers have limited formal education and therefore little chance of gainful legal employment. Young men who hang around the beaches act as pimps for tourists seeking young girls and some get paid handsome commissions, fueling the cycle of child sex. In 2006 a report by the government and the UN Children's Fund reported that as many as 30 percent of teenage girls in the Coastal towns of Diani, Kilifi, Malindi and Mombasa were involved in casual commercial sex work. More than 10 percent of girls began transactional sex before the age of 12. The study also found out that 35.5 percent of all sex acts involving children and tourists took place without condoms. This is worrying because of its negative impact on the sexual and reproductive health rights of the young girls most of whom are school drop-outs. Besides the addiction occasioned by drug abuse, there are other key triggers and factors for this behavior [commercial sexual exploitation of the child] which include, but are not limited to high levels of household poverty, which in turn forces the young girls and boys to turn to commercial sex work.

A witness from Likoni shared with the PI how she experienced police harassment which led to her daughter dropping out of school. Her testimony is captured below as happened in 1992 during the Kaya Bombo conflict.



"A police officer was brutally murdered at Likoni police station in 1992 and his rifle taken by members of the public. The GSU went out on a search and recover mission for the lost rifle. They encountered me and they started kicking me all over. They even sexually assaulted me. I resisted as much as I could when it came to sexual harassment. So they beat me, dragged me for several hours. All this while they said they were looking for my husband who was not present then. I ended up with many wounds and a broken leg. I then escaped to a relative's place for some time. When I came back, I found everything in the houses had been looted and the house was empty. When my husband came back and saw what had happened, he collapsed and died. I needed a lot of money for medication and had none to spare for my daughters school fees. As a consequence, they dropped out of school. The elder daughter went to work in Qatar while the younger daughter stayed at home where she fell prey to a man who impregnated and left her."[185]



185 Witness evidence during the PI

The Public Inquiry heard from a resident of Majengo, one of the witnesses of how her husband was among those killed during the Mpeketoni attack. She was not allowed to bury her husband making it difficult to have a death certificate. At the time of the PI she was struggling with the burden of single handedly raising children left behind by the father. Since she did not bury the husband, she did not get a death certificate to help in accessing orphans education fund making it difficult for the children to access education.

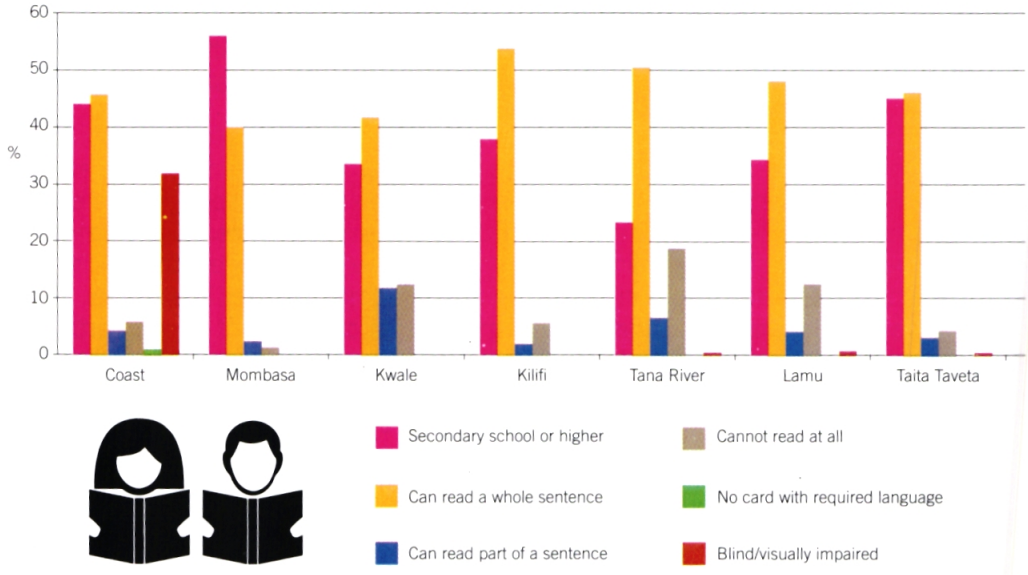
The PI was also informed that the education of the boy child in Lamu County was in jeopardy as more focus had been shifted to promoting the girl child's education. The number of primary school boys quitting school to become casual laborers as coxswains, *miraa* peddlers, touts and *boda boda* riders is on the increase. Stakeholders in the education sector were concerned that if measures were not taken to encourage the boy child to stay in school, the region may face a serious crisis soon. For pre-school, primary and secondary school levels, there are adequate physical facilities and enrolment. The challenge is on poor performance. The county's literacy level is estimated at 70% but this proportion represents the highly exposed residents of Lamu West Sub County. Literacy levels for Lamu East are estimated to be less than 30%. There are no tertiary level institutions except four (4) polytechnics that are not only under-equipped but also experience poor enrolment. The county's youth economic empowerment just like youths all over Kenya lies with acquisition of tertiary level skills.

From a research conducted by one of the head teachers in Tana River county whose findings were shared with the Public Inquiry, over 500 students in the county attained grade D and below at KCSE and ended up dropping out into the labour market with little prospects of a bright future. It is this group that ends up as *boda boda* riders with no consistent income making it very easy to manipulate them and even lure them into deviant behavior, and other criminal activities including joining terror gangs. Many children who completed secondary education are just idle at home.

3.2.6 Literacy Levels

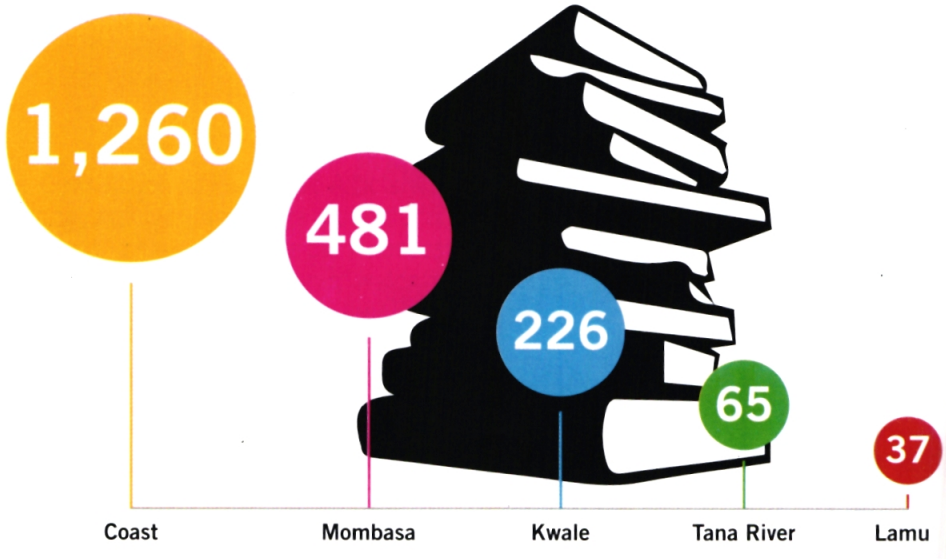
Literacy means the ability to read and write. Being able to read and write is an important skill in modern societies. Usually, people learn how to read and write in school. People who can read and write are called literate; those who cannot are called illiterate. Level of literacy is a significant variable in education. The two empower individual's ability to make informed decisions about the kind of life one would like to lead. Literacy helps in making individuals and society understand the need to enjoy fundamental rights and freedoms and the need to protect these. Literacy is an important statistical parameter, for policy makers. Studies have shown that high literacy levels, especially among women, are a significant factor in decision-making at the household level. The literacy levels for selected counties for the year 2014 are presented in the table below.

Figure 8: Literacy levels



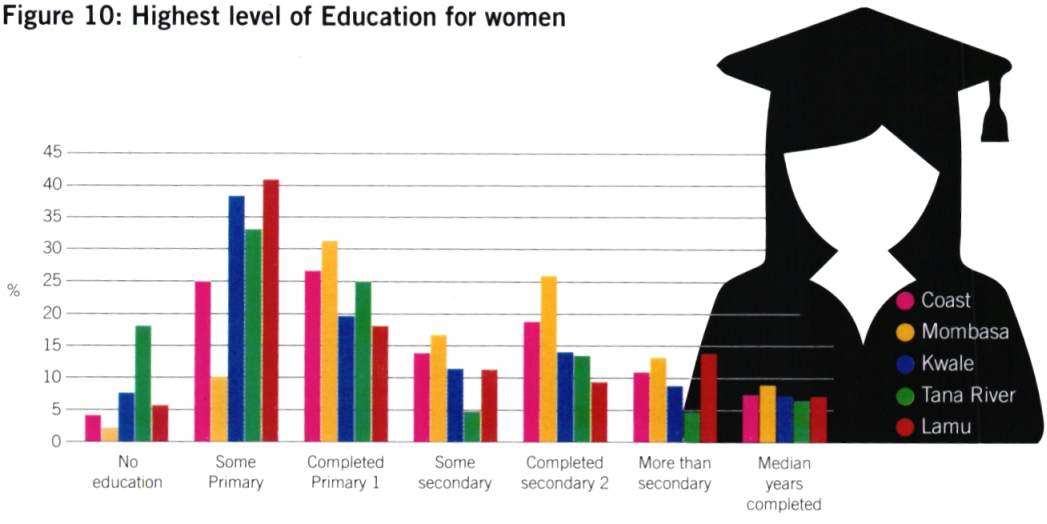
Source: MOEST 2014. Basic Education Statistical Booklet

Figure 9: Highest level of schooling



Source: KDHS, 2014

Figure 10: Highest level of Education for women



Source: KDHS, 2014

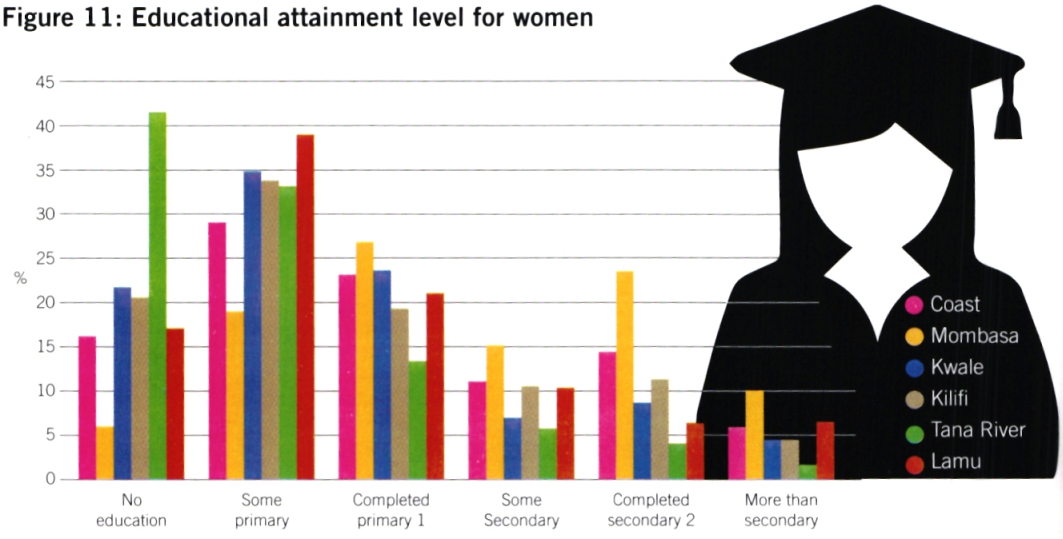
According to KDHS 2014 statistics, nationally with the exception of children aged 6-9, fewer males than females have never been to school. In that age group, boys (38 percent) are more likely than girls (34 percent) to have never attended school. Meanwhile, 4 percent of both boys and girls age 10-14 have never been to school, indicating that boys enroll in school slightly later than girls. However, the proportion of the population with no education steadily increases thereafter with age, as does the gap between the proportion of males and females with no education, indicating a gender differential in educational attainment as students' age.

Nationally, the median number of years of schooling completed is slightly higher among males (6.3 years) than females (5.8 years). Over the years, median number of years of schooling completed has been increasing among both men (from 5.0 in 2003 and 6.0 in 2008-09 to 6.3 in 2014) and women (from 4.3 in 2003 and 5.2 in 2008-09 to 5.8 in 2014).

About twice as many women and men in rural areas as in urban areas have no education. For example, the proportion of women who have never been to school varies from a low of 5 percent in Nairobi to a high of 69 percent in North Eastern. As expected, the proportion of women and men with no education decreases dramatically as wealth increases.

The figure below presents percent distribution of women age 15-49 by highest level of schooling attended or completed and median years completed.

Figure 11: Educational attainment level for women

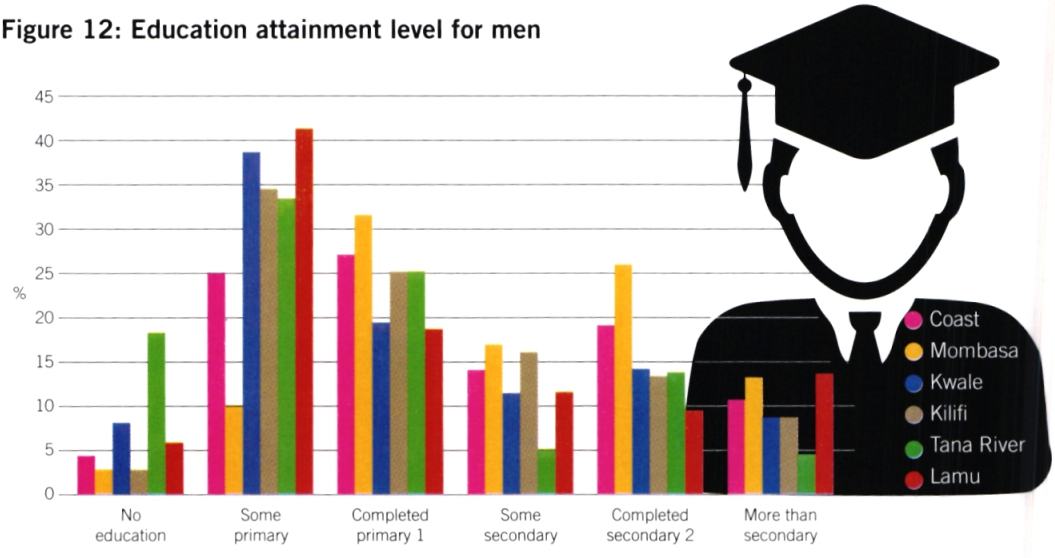


Source: KDHS, 2014

3.2.7 Educational attainment level for men

Figure 12 shows percent distribution of men age 15-49 by highest level of schooling attended or completed and median years completed in Coastal region according to county.

Figure 12: Education attainment level for men

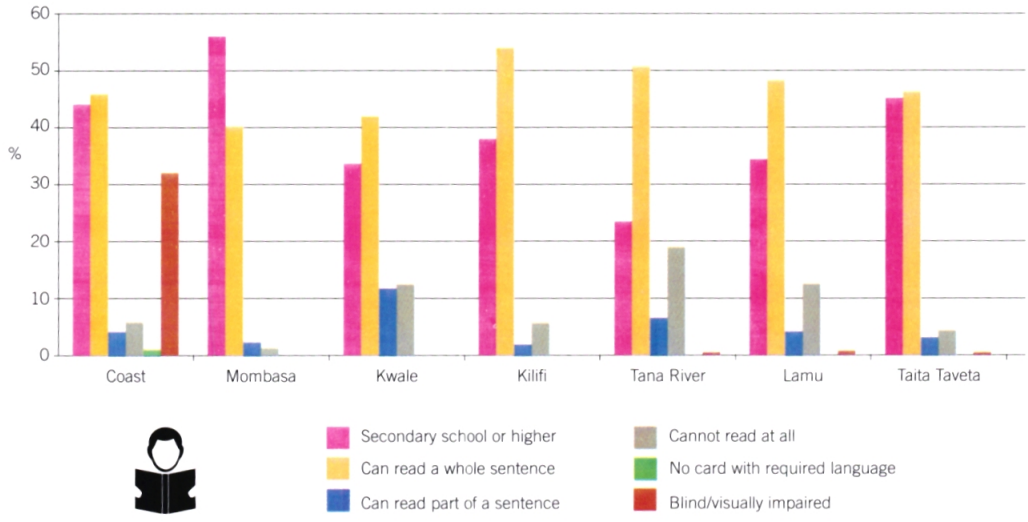


Source: KDHS 2014

The tables below present data on the educational attainment of household members age 6 and older. Continuing a trend found in earlier KDHS surveys, the data show a slight decrease in the proportion of women and men with no education. Compared with the 2008-09 KDHS, the 2014 KDHS shows a decline from 19 percent to 16 percent among women and from 13 percent to 11 percent among men. As expected, more men (13 percent and 8 percent, respectively) than women (10 percent and 7 percent, respectively) have completed a secondary education and more than a secondary education.

The figure above shows the percent distribution of men age 15-49 by level of schooling attended and level of literacy, and percentage literate, according to county.

Figure 13: Literacy levels for men



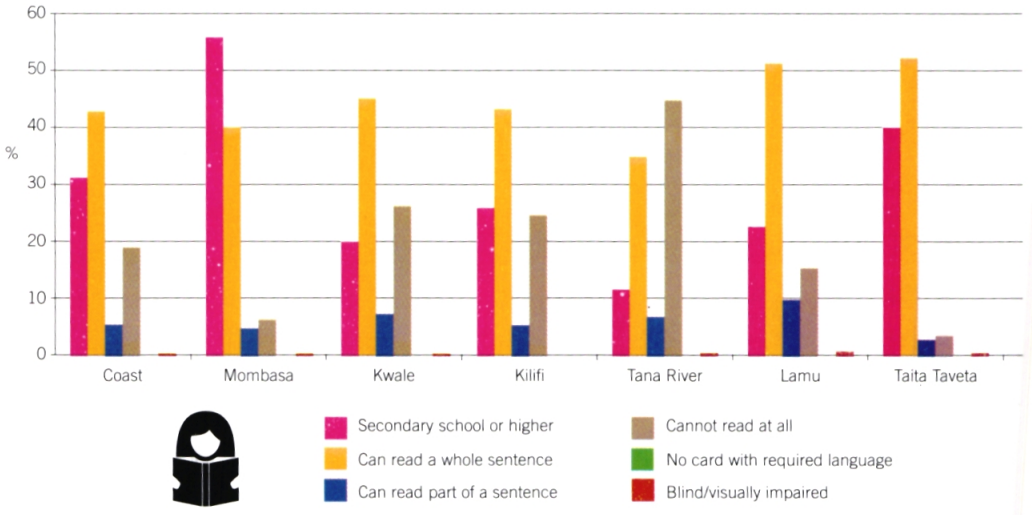
Source: Kenya 2014

3.2.8 Literacy levels for women

Figure 15 shows percent distribution of women age 15-49 by level of schooling attended and level of literacy, and percentage literate, according to county.[186]

186 KDHS, 2014, p.26

Figure 14: Literacy levels for women

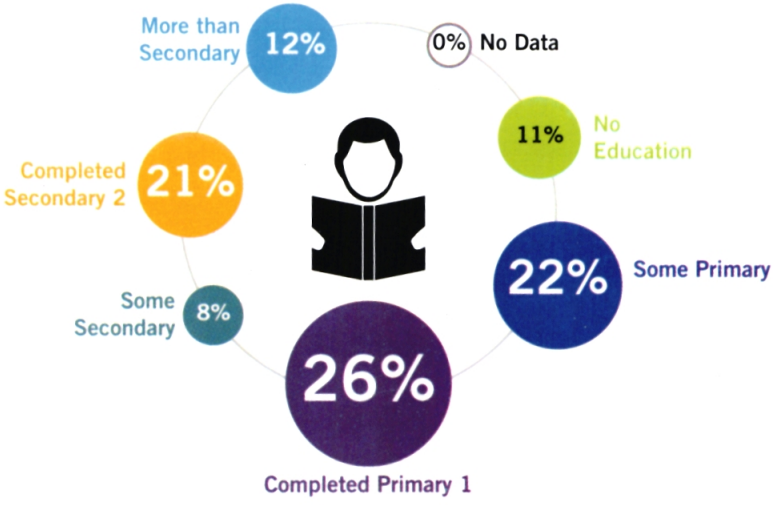


Source: KDHS, 2014

3.2.9 Educational Attainment of the Male Household Population

Percent distribution of the de facto male household population age 20 and over by highest level of schooling attended or completed and median years completed, according to background characteristics.

Figure 15: Educational attainment of the male household population



Source: KDHS, 2014

Table 9: Children out of school based on Primary Net Enrolment in selected counties

County	Boys	Girls	Total
Kericho	330	1,027	1,358
Kiambu	6,685	2,747	9,432
Kilifi	27,298	18,491	45,788
Kitui	7,645	8,338	15,983
Kwale	22,045	17,515	39,561
Laikipia	3,100	2,706	5,806
Lamu	747	1,986	2,733
Mombasa	25,533	31,265	56,798
Nyeri	913	715	1,628
Samburu	11,452	14,504	25,956
Taita Taveta	1,218	2,614	3,831
Tana River	11,583	12,463	24,046
Kenya	**580,921**	**711,754**	**1,292,675**

Overally, the Public Inquiry found out that there were low class transition rates and high dropout rates due to insecurity, compounded by the fact that very expansive areas have few, if any, learning facilities and more often than not learning is regularly interrupted due to insecurity. Lack of school feeding programmes and families who are forced to flee with their school going children during security operations contribute not only to low educational attainments but also result in heavy loss of life. The PI found this to be the case in Lamu, Tana River, Kwale and parts of Mombasa. In Tana River, the destruction of crops rendered farmers destitute and as a result, most were unable to afford the basics that could enable their children attend school, forcing the girl child to get married off to elderly men instead.

3.3 The Right to Work

The Constitution of Kenya 2010[187] grants 'every person the right to fair labour practices which includes fair remuneration and reasonable working conditions. The ICESCR at article 6 protects the right to work, which is the opportunity to earn a living by work that one freely chooses. Article 15 of the ACHPR, states that every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

187 See CoK Article 41(1) &(2)

To fully realize the right to work, States are encouraged to develop technical and vocational guidance and training programs, along with policies that facilitate access to employment. Along those lines, States have the core obligation to ensure the right of access to employment, by avoiding measures that discriminate against marginalized groups and by implementing national plans of action to effectuate the right to work for the disadvantaged.

The right to work implicitly forbids forced labor. The CESCR, General Comment No. 18 para. 6, observed that forced labor is involuntary "work or service which is extracted from any person under the menace of any penalty."[188] States are required to "abolish, forbid and counter" all forms of forced labor. Kenyans seeking employment opportunities in the MENA region rarely anticipate the working conditions they encounter. While on duty the victims are forced to watch pornographic movies, exposed to naked men and are injured bodily. Moreover, the victims are used as sex objects.

This is a violation of the right to work under the constitution and all other relevant International and regional human rights instruments. This right extends to the right to a fair wage and safe working conditions The ICESCR protects the right to just and favorable work conditions, including the right of all workers to receive "fair wages and equal remuneration for work of equal value".[189]

The ICESCR's emphasis on equality prohibits States from discriminating against women, and requires States to "ensure equal opportunities and treatment between men and women in relation to their right to work."[190] The ICESCR guarantees the right to safe and healthy working conditions, equal opportunity for promotion, and provides for "rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."[191]

The work itself must be "decent," meaning that it respects workers' physical and mental integrity, and respects their human rights in terms of work safety and remuneration.[192] The remuneration should be enough so that individuals are able to earn "a decent living for themselves and their families."[193]

However, the inadequate measures taken by the government do not give Kenyans preference over job opportunities. Some Kenyans like those seeking opportunities in MENA region hardly have alternative choices. Many girls are forced to move to Arab countries like Qatar looking for greener pastures. Sometimes boys leave for Somalia and never return. It is thus clear that insecurity is a push factor to negative life for many in the county.

188 See ILO Convention No. 29 Concerning Forced or Compulsory Labor, art. 2(1)

189 See ICESCR, art. 7. The African Charter on Human and Peoples' Rights art. 15

190 See CESCR, General Comment No. 18, para. 13

191 See ICESCR, art. 7

192 See CESCR, General Comment No. 18, para. 7

193 ICESCR, art. 7

In their quest for this, Kenyans resort to seeking employment abroad mainly in Saudi Arabia, most of whom end up working under difficult and inhumane conditions which can be equated to modern day slavery. The experience of one such victim who testified to the PI proceedings, pointed out that she experienced sexual harassment while on duty including exposure before some naked men who forced her to watch pornographic movies while using her as a sex object and subjecting her to various forms of physical torture.

3.3.1 Violation of Right to Work in Kwale

In Kwale, the police officers reportedly solicited for bribes of Kshs. 5000.00 from *boda boda* riders who operated past 6.00pm in the evening. The riders would be expected to pay Kshs.5000 bribe so as to secure their freedom after being arrested. This is according to documented testimony to the PI.

3.3.2 Violation of Land Rights

Article 40 (1) (a) protects citizens from arbitrary deprivation of property of any description. In Kenya, land is owned either by individuals or communities. It is thus a treasured property that has both commercial and cultural value. The mandate of the National Land Commission (NLC) is drawn from the National Land Policy of 2009, Constitution of Kenya 2010, National Land Commission Act, 2012, the Land Act 2012 and the Land Registration Act of 2012. Kenya's National Land Policy (NLP) is statement guidance to the country towards a sustainable and equitable use of land. It calls for immediate actions to address environmental problems that affect land such as degradation, soil erosion and pollution. The policy stipulates the principle of conservation and management of land based natural resources, the principle of protection and management of fragile and critical ecosystems including wetlands and arid lands. The policy calls for extensive overhauls to current policies and institutions in an attempt to address chronic land tenure insecurity and inequity.

The National Land Policy categorizes all land in Kenya as public, private (freehold or leasehold tenure), or community/trust land, which is held, managed and used by a specific community. In Tana River and Lamu there are many cases of violations of the right to land in account of occupation and other illegal means. In Kwale, a witness reported that she was at risk of being disposed of ownership of a ten acres piece of land she had inherited from her late father. The reason for this is that culturally her relatives argued that a woman has no right to own land.

Other cases included conflict over ownership of land between farmers and pastoralists with the later accusing the former of conspiring with government officials to dispossess them of their community land for a long time used for livestock grazing. This was the case in Mpeketoni, Lamu, while in Tana Delta and Hola because the land is not demarcated hence ownership cannot be established.

The PI heard about an experience of a middle-aged man who was known for often having physical fights with police officers. Apparently, the man showed no respect to the authorities and whenever the police pursued him, he always found a way out of their hands. Other than pursue the man to the end and find legitimate reasons to charge him, the police framed the man by claiming that he was armed and dangerous.

The police further alleged that man's grandmother was a witch and she was using her witches to make him escape from custody. This made the security agencies to turn on the family members whom they oftentimes battered regardless of the age or gender. The man's home was constantly raided and his family members brutalized in the pretext of searching for the criminal. The police would wake up sleeping babies while searching the house without any search warrants. The family property was constantly raided for imagined crimes leading to arbitrary arrests that resulted to no charges. Whenever one of the family members was arrested, the police did not reveal the crime committed. One of the brothers of the victim's brother suffered from a broken rib out of this torture which has weakened his performance in his daily chores since he can no longer carry heavy luggage. The family has been asking for state protection which has not been provided to date.

In Kwale there were reported cases of conflict arising out of land ownership. A witness in Kwale claimed that her relatives wanted to take away a piece of land from her under the guise that women are not entitled to land rights. With regard to property rights, organized criminal gangs have been displacing non locals so as to benefit from their property.

In Tana River County, witness narrated how, after cattle grazed on his farm destroying his crops, invited a preacher to mediate. The neighbors had brought one of the herders who they wanted to punish. The preacher advised that it is not good to take the law into their own hands but rather seek guidance from other authorities preferably the village headmen. On their way to the village headman, they met a group of people who attacked them, in the process chopping off the hand of one of the farmers.

3.3.3 Violation of the Right to Water

The Constitution of Kenya at Article 43(d) guarantees everyone the right clean and safe drinking water in adequate conditions. This right to water entitles individuals to safe, affordable, clean, and physically accessible water for personal and domestic uses. States should prioritize the allocation of water for personal and domestic uses, for the prevention of starvation and disease, and to ensuring that water is available to meet the core obligations of other ESCR, including the right to food or the right to health. States have a related duty to ensure that everyone has access to adequate sanitation, which is crucial to protecting the quality of the water supply.

The main sources of water in the Coast region are; the Indian Ocean, rivers Tana, Galana, Goshi river, Tiwi, Pemba, Umba and Ramisi, the numerous streams and Lakes Kenyatta,

Lake Gambi, underground waters. Insecurity influences the decision of the water sector actors on where to develop water infrastructure and there is a tendency to avoid areas of conflict.

The quality of domestic water in Kenya is provided for in the Legal Notice No. 120 on Environmental Management and Co-Ordination (Water Quality) Regulations, 2006 Arrangement of Regulations. Schedule 1 on Quality Standards for Sources of Domestic Water has seventeen standards. The Second Schedule on Water Quality Monitoring for Sources of Domestic Water also provides for seventeen standards.[194]

Water supply is an essential requirement for all people. Determining how much is needed is one of the first steps in providing that supply. Providing water is one of the functions of county governments under the devolved system. Water needs to be collected, stored, treated and distributed to the consuming public.

Taking too much water from a limited source may deprive people elsewhere of water and have adverse environmental and health impacts. People use water for a wide variety of activities. Some of these are more important than others, for example, having a few litres of water to drink a day is more vital than washing clothes. But people will need to wash if skin diseases are to be prevented and physiological needs met. Each additional use has health and other benefits, but with decreasing urgency. This is often measured in litres per person capita per day (Lpcd). Different populations may also have specific needs.

The minimum recommended water usage is 15 Lpcd per household. It is further recommended that the maximum distance from any shelter to the nearest water point is 500 meters to serve 250 people.

Table 10: The recommended minimum consumption for the various users

Individual Minimum	7 Lpcd	Drinking	Food Preparation & Clean up	Personal Hygiene	Laundry
Individual		3-4 Lpcd	2-3 Lpcd	-	-
Medium term	15-20 Lpcd	3-4 Lpcd	2-3 Lpcd	6-7 Lpcd	4-6 Lpcd
Health Centres	1 Out Patient	1 In patient	-	-	-
	5 litres	40-60 litres	-	-	-
Hospital	1 Bed	-	-	-	-
with laundry facilities	220-300 litres	-	-	-	-
Schools	1 student	With Water flushed toilets	-	-	-
	2 litres	10-15 litres	-	-	-

194 See Kenya Gazette supplement No. 68, Legislative supplement No. 36 of 29th September, 2006

Individual Minimum	7 Lpcd	Drinking	Food Preparation & Clean up	Personal Hygiene	Laundry
Feeding Centres	1 Patient	Camp Administration	Accommodation	-	-
	20-30 litres	5 Lpcd per staff	30 Lpcd	-	-
Mosques	1 Visitor	-	-	-	-
	5 litres	-	-	-	-
Livestock	Cattle	goats, sheep, pigs	Chicken	-	-
	20-30 litres per head	10-20 liters per head	10-20 litres per 100	-	-
Crops	per square metre	-	-	-	-
	3-6 litres	-	-		

Given the Coastal regions' position on the Indian Ocean Mombasa and Lamu) and the largely arid and semi-arid areas of Kwale and Tana River, the right to water is far from being fulfilled.

The nexus between business and human rights often impacts the right to water. States have a duty to refrain from interfering with individuals' use of water, and a duty to reasonably prevent other actors, including corporations, from denying equal access to adequate water; and polluting and inequitably extracting from water resources. States have an obligation to prevent private companies from compromising equal, affordable, and physical access to sufficient, safe, and acceptable water by establishing an effective regulatory system.

3.3.4 Violation of the Right to Health

The Constitution of Kenya provides for the right to the highest attainable standard of health, which includes the right to healthcare services including reproductive health. Article 12 of the ICESCR protects the enjoyment of the highest attainable standard of physical and mental health.[195] The African Charter on Human and Peoples' Rights, among others, contain similar provisions African Charter on Human and Peoples' Rights.[196] The right to health implicitly involves the right to a healthy environment and States are obligated to eliminate or reduce the harmful effects of environmental pollution by taking appropriate regulatory or monitoring measures so that its citizens may fully enjoy their right to health.[197] The entry of mining industry in Coastal Kenya presents a significant challenge to the realization of the right to health.

195 ICESCR, art. 12(1)

196 See ACHPR, art. 16

197 See African Charter on Human and Peoples' Rights, arts. 16, 24

3.3.5 Challenges Affecting Quality of Health Services in Insecure Areas

The inquiry was informed that the following challenges affect the quality of health services and staff in insecure areas:

a) Home visits and follow-up of patients is hardly done;
b) Low uptake of nutrition and vaccination services;
c) Some patients decline to leave hospital after recovery for fear of insecurity in their home areas;
d) Low doctor-patient ratio;
e) Long distance between a homestead and the nearest health facility. The recommended distance should be a radius of 5km;
f) Few health facilities in the region;
g) Inability to access health facilities due to rough terrain;
h) Closure of hospitals due to insecurity; and,
i) Low and unreliable income to afford health services.

Most health care facilities in Kenya are below internationally prescribed standards with limited capabilities. Public hospitals are understaffed, poorly equipped, have limited supplies but significantly underpaid and demoralized staff. On average, health care facilities in the region are only staffed at 30% their optimal level. The World Health Organization (WHO) recommends that health centre staffing should never decrease below 88% their optimal level. The low staffing translates to poor service delivery and/or inability to access to the health services[198]. Health personnel frequently desert work, medicine cannot be delivered on time, many staff members are not willing to work in insecure areas and some facilities are manned by unqualified personnel. There is frequent closure of the health facilities hence communities are denied their right to health services. In addition many health facilities are up to 50 km away from their catchment populations in some of the counties.

3.3.6 Family Planning: Fertility Rate and Child Spacing

Access to modern methods of family planning in many areas of the Coastal region is the lowest in the country. The main reason is the health infrastructure is not available, abandoned or destroyed due to insecurity. Many health centers have no health staff that has either deserted, been killed, or afraid to report to work. The insecurity deprives people of the right to health services.

Although the Kenya fertility rate has been on decline from 8.1% in 1977–78, 6.7% in 1989, 5.4% in 1993, 4.7% in 1998, 4.9% in 2003, 4.6% in 2008 – 2009 and 3.9% in 2014 the fertility rate for counties in the Coastal region is 4.3%. Child spacing in the Coastal counties is much shorter compared to counties that do not suffer from high insecurity and the national average (See Table 23 below). The main reason is lack of access to reproductive health services as reported to the PI was insecurity occasioned by violent conflict.

198 A minimum threshold of 23 doctors, nurses and midwives per 10 000 population was established by WHO as necessary to deliver essential maternal and child health services.

Table below shows the total fertility rate for the 2011, percentage of women age 15-49 then pregnant and mean number of children ever born to women age 40-49 years, by background characteristics.[199]

Table 11: National Fertility Statistics

Background Characteristics	Total fertility rate	Percentage of women age 15-49 currently Pregnant	Mean number of children ever born to women age 40-49
Residence			
Urban	3.1	6.0	3.9
Rural	4.5	6.4	5.6
Region			
Coast	4.3	6.6	5.5
Coast	4.3	6.6	5.5
North Eastern	6.4	12.0	7.1
Eastern	3.4	4.6	4.7
Central	2.8	4.8	3.7
Rift Valley	4.5	7.0	5.5
Western	4.7	6.7	6.1
Nyanza	4.3	5.9	5.8
Nairobi	2.7	6.8	3.1
Education			
No education	6.5	11.0	6.5
Primary incomplete	4.8	6.3	6.0
Primary complete	4.2	6.3	5.1
Secondary+	3.0	5.4	3.7

Source: KDHS 2014

Table below shows the total fertility rate for Coastal Counties in 2011, percentage of women age 15-49 then pregnant and mean number of children ever born to women age 40-49 years, by background characteristics.[200]

199 KDHS, 2014
200 KDHS, 2014

Table 12: Coastal Counties Fertility Statistics

County	Total fertility rate	Percentage of women age 15-49 currently pregnant	Mean number of children ever born to women age 40-49
Mombasa	3.2	5.4	4.1
Kwale	4.7	7.5	5.8
Kilifi	5.1	7.1	6.4
Tana River	5.8	10.2	7.4
Lamu	4.3	5.6	5.0
Taita Taveta	3.2	3.7	4.3
Coast overall	**4.3**	**6.6**	**5.5**

3.3.7 Childhood Mortality

Childhood mortality continues to decline in Kenya. Infant mortality is 39 deaths per 100 live births and under five mortality is 52 deaths per 1000 (KDHS, 2014). In Kenya, there is a strong relationship between childhood mortality and mothers' education. It is therefore higher in most parts of Coastal counties where women have the lowest access to education due to insecurity among other factors. In terms of the knowledge and use of contraception, the counties in the Coastal region fall far below the national average. Low levels of knowledge about contraception are linked to:

a) High level insecurity;
b) Low literacy levels;
c) Inaccessibility or non-functioning health centers;
d) Low or no opportunities for access to information;
e) Low radio, television and newspaper coverage;
f) Physical inaccessibility of many areas due to lack of roads;
g) Health staff are irregularly at work due to insecurity;
h) Health professionals are unable to access many areas due to insecurity; and,
i) Exceedingly high doctor patient ratio.

3.3.8 Maternal Health /Antenatal Care

High-quality antenatal care operates on the principle that every pregnancy is at risk of complications. Therefore, apart from receiving basic care, every pregnant woman should be routinely monitored for complications. Antenatal Care (ANC) from a skilled provider is useful in the monitoring of pregnancy and to reduce the risk of morbidity for mother and baby during pregnancy and delivery. The quality of antenatal care is determined by the content of services received and the kind of information mothers are given during the visits.

Due to insecurity, counties in the Coastal region have low number of women who receive antenatal and post-natal care. The reasons are:

a) No or too few medical personnel in health establishments;
b) The unavailability and inaccessibility to health facilities;
c) Health staff is irregularly at their stations; and,
d) Many health facilities are manned by one staff while many others are closed.

The Public Inquiry was informed that In the Coastal region, most births take place at home. This is mainly occasioned by the long distances (average 40km) from home to a health facility. Secondly many health facilities are either minimally operational, not operational or are not available largely because of insecurity. In the Kenya Demographic and Household Survey (KDHS) (2014) women in the 15 – 49 age groups cited the following as impediments to accessing health care:

a) Getting money to go for treatment accounted for 37%;
b) Long distance to the health facility 2 accounted for 3%;
c) Unwilling to go to health facility alone accounted for 11%; and,
d) Overall 46% of the women reported that at least one of these problems was a barrier to them for seeking health care for themselves.

Immunization in the region is below the national target. See comparisons in Table relevant table on immunization from KDHS to be inserted. The Inquiry is of the view that factors that contributed to this state are:

a) Vaccination campaigns are not successful due to insecurity;
b) The frequent movement/relocation/displacement of people leads to some people not being accessed; and,
c) Lack of access to information due to the inaccessibility of some of the areas.

3.3.9 Violation of the Right to Health in Mombasa

An official from the Ministry of Health confirmed that drug abuse contributes to cases of insecurity in Mombasa County. She observed that organizations like UNODC, USAID, CDC, and NACADA that are committed to help drug addicts from endangering their lives by drug abuse. They educate with an aim of empowering the people involved so that after they have received medication they can lead normal lives and be able to earn a living.

According to NACADA report of 2012 on the rapid situation assessment of the statutes of drugs and substance abuse in Kenya and in 2010 a survey in Coast province, Mombasa is the leading with 2.7% prevalence which translates to approximately 20,000 addicts.

Drug and substance abuse also contributes to insecurity through its influence on crime. Additionally, under the influence of drugs, rape, sodomy and sexual harassment are committed either to or by youth gangs.

A witness to the Public Inquiry observed that drug abuse observed leads to mental problems to many youths in the region. It also traumatizes mothers when their sons are arrested over the same drug abuse and peddling. She raised concern over a specific drug 'bugizi a pain killer that makes the youth lose consciousness and engage in immoral and unreasonable acts in broad daylight. It is said that 'bugizi' turns one into a zombie. Apart from the drug menace, insecurity also affects the health of business women and the witness confirmed knowing cases in which justice has not been served.

Among the human rights violations underlined in the PI in Mombasa include: the harassment of drug users; criminalizing drug users; and frequent incarceration in spite of the fact that these people majority aged between 18 and 35 require medical attention and not police harassment. This erroneous perception of drug users is a hindrance to treatment according to a non-governmental organization who testified before the PI.

3.3.10 Violation of Right to Housing

The Constitution of Kenya at Article 42 (b) grants every person the right to accessible and adequate housing and to reasonable standard of sanitation. Individuals have the right to housing, which goes beyond the right to have a roof over one's head, and includes the right to live in peace and dignity, with security from outside threats.



Mr. Keya shares a testimony on the invasion of his farm (Photo courtesy ©KNCHR 2016)

The many incidences of violent conflicts, security operations and general insecurity including the frequent harassment from security agents of locals grossly violate this right other basic needs are compromised in terms of habitability and accessibility among others.

3.3.11 The Right to Food

The Constitution of Kenya provides for every person to be free from hunger, and to have adequate food of acceptable quality. International human rights law recognizes the fundamental right to be free from hunger. The right to food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.[201] The core content of this right requires food to be available in a quantity and quality that is sufficient to satisfy dietary needs, safe and culturally appropriate, and accessible without interfering with other human rights.

Violations of the right to food occur when States directly interfere with enjoyment of the right and when States insufficiently regulate other actors that interfere with enjoyment of the right. The many instances where crop is destroyed opens up avenues for violence that is a trigger to insecurity. This was observed in Lamu, Kwale and Tana River Counties.

3.3.12 Violation of the Right to Security of the Person

The Constitution of Kenya Article 29 guarantees every citizen and their property a right to security. Evidence presented to the Public Inquiry detailed many violations contrary to this right.

During the period 2013/2014/2015, a number of people picked up by persons who identified themselves as police officers but ended up disappearing and their whereabouts still unknown to-date, contrary to Article 29. Evidence of persons believed to have crossed over to Somalia to join Al Shabaab have disappeared and their whereabouts unknown to date. Persons suspected to be returnees have been subjected to extra-judicial killings, contrary to Article 26 that guarantees the right to life.

Many cases of insecurity occasioned by criminal gangs issuing threats to non-indigenous persons working in the Coastal region and cases of security agents failure to act whenever this is reported, contrary to Articles 27 (5) that forbid discrimination on race, ethnic, social origin, or culture among others. Article 28 recognizes the inherent dignity of all citizens and this right should be respected and protected, while Article 40 protects the right to own property in any part of the country. The Public Inquiry heard of reports of cases involving police and other security agents' officers assaulting civilians. One particular case brought to the PI involved an Administration Police Officer who assaulted a civilian in Kwale to the extent of the victim losing an eye. When this incident was reported to Diani Police Station, the officers not only failed to record the incident but also failed to support pursuit of the case by the complainant.

201 See CESCR, General Comment No. 12, The Right to Adequate Food, UN Doc. E/C.12/1999/5, 12 May 1999, para. 6

There reports of cases where senior government officers in the Coastal region issued unlawful 'shoot to kill' orders that led to the killing of innocent persons and unarmed suspects who would otherwise be taken through the justice process, contrary to Articles 49 that guarantees access to justice. In Hola, it was reported that known members of the National Police Service engage in acts of brutality by beating up suspects sometimes making them lose consciousness contrary. In the case of Hola, a nine year old boy tending to their crop jumped into River Tana where he was eaten by crocodiles. The victim was escaping from approaching GSU officers whom he suspected would harass him. This is contrary to National Police Act in which civilians should feel secure in the presence of security agents.

3.4 Civil and Political Rights

These are the rights that restrict the powers of the government in respect of actions affecting the individual and his or her autonomy (civil rights), and confer an opportunity upon people to contribute to the determination of laws and participate in governance (political rights).

3.4.1 The Freedom and Security of the Person

Article 29 (d) & (f) of the constitution of Kenya guarantees the right to freedom from torture whether physical or psychological and cruel, inhuman or degrading treatment or punishment. According to the international human rights mechanisms, this right can be violated in a variety of ways, including:

- Deliberate infliction of severe physical or psychological pain by state agents with the intention of causing suffering;
- Subjecting an individual to inhuman or degrading treatment or punishment; and,
- Keeping persons in very poor conditions of detention, even if there is no intention to inflict suffering.

Evidence presented to the PI detailed many violations contrary to this right. Everyone has the right to liberty and security and according to the international human rights mechanisms- this right can be violated in a variety of ways, including: unlawful or arbitrary detention. This deprives one of liberty without legal basis. It can also be violated where individuals are detained because they have exercised the rights and freedoms guaranteed by the constitution and other international instruments.

The Public Inquiry heard that since the Mpeketoni attack in 2014, there had been constant harassment of Lamu residents by security agents by way of accosting and harassing civilians going about their daily business. The many security road blocks between Watamu and Lamu are a nuisance to the public especially the sick and old. The sick, persons living with disability and elderly are made to walk long distances between the point of disembarking and the point of boarding at road blocks not considering their frail conditions.

KDF personnel who mount road blocks between Kiunga and Hindi harass and intimidate civilians, act without courtesy and are a total nuisance to the residents in the area. The Inquiry further heard that many civilian population have lost their jobs due to the 2014 Mpeketoni attacks because they fled from their places of work. One witness a resident of Bargoni reported that continuing with his adult education teaching job at Kiangui was no longer tenable since he '*fled from the area because the curfew imposed in the area had contributed to the closure of schools which had been turned into GSU and KDF camps.*[202] In his own words:



"The KDF camp at Baragoni is a threat to the people since any time residents encounter officers, they are perceived either to belong to Al Shabaab or are Al Shabaab sympathisers hence subjected to harassment and untold suffering."[203]

A witness to the PI reported that a victim of the violations was picked up by the police a week after being cleared by the court. The victim had earlier on been asked to surrender to the police since his name had been published among the 'most wanted' list. Human rights organizations, the media, political leaders and religious leaders escorted the victim to the police station and thereafter talked to him after which he was taken to court. The court cleared him of the allegations only to be re-arrested. He however disappeared never to seen again.

Freedom from torture, cruel and inhuman treatment is a fundamental right hence is absolute and cannot be limited.[204] However security agents in Coastal region of Kenya have made torture and other forms of inhuman treatment an everyday thing. During his address to the Public Inquiry the then sitting MP for Mvita constituency the Hon Abdulswamad Shariff noted with concern that terrorism in the Coastal region was being fought with terror. In his words:



"Police officers engage in torturing citizens and yet they know that this is unconstitutional.' Bullet and force is not the right approach to the ideological problems that has inflicted Mombasa and other Coastal Counties."[205]

Evidence to the Public Inquiry pointed to many instances where police engage in torture, cruel and other inhuman treatment. A witness, a mother of six children narrated how one of her grandchildren was constantly being sought by police. Instead of targeting the person of interest, the police kept raiding her house harassing her and her other children, causing damage to her property in the guise that she was hiding guns. The Public Inquiry heard that in the process, her son was beaten up, chained and dumped in a police vehicle driven to his neighbor's house where the neighbor was also picked up. The two were locked up for four days and later released without any charges being preferred. But the threats to the family continued with the police threatening to kill the two victims of torture.

202 Witness evidence during the PI

203 Ibid

204 See CoK, Article 25

205 Witness evidence during the PI

One witness reported to the PI alleged that he was assaulted by an Administration Police officer until he lost one of his eyes. He alleges that the police declined to record his complaint and urged him to pursue alternative means of resolving the disputes. There were reports appearing in the local media that Mr. Nelson Marwa, the former Regional Coordinator Coast Region, had given instructions of a shoot to kill to security officers operating in the Coastal region. According to the Standard Newspaper of March 26th 2014:

> **Police have widened search for perpetrators of Sunday church shooting in Likoni, Mombasa to the neighbouring Kwale and Kilifi as the Mombasa County Commissioner Nelson Marwa declared a shoot to kill order on all terrorism suspects. Marwa claimed that it is counter-productive to take terror suspects to court because it is very difficult to prosecute them or find witnesses in their prosecution. According to Marwa witnesses fear to testify in terror trials or terrorists kill many people who could have been witnesses to their crimes. Following a prolonged two hours meeting between Mombasa Christian leaders and the provincial administration, Marwa ordered the police to shoot and kill any criminal in the county found terrorizing residents saying that the government will no longer wait for innocent lives to be killed. Speaking directly to the Mombasa County Commander, Robert Kitur, Marwa said the shoot to kill order had been prompted by the fact that criminals gangs had infiltrated the county and it was fair to kill the criminals as it would bring to justice they deserve on behalf of the victims.**[206]



206 https://www.standardmedia.co.ke/article/2000107870/police-issue-shoot-to-kill-order-on-terrorism-suspects Retrieved on 31st May 2018

Pursuant to Article 252 CoK and S. 26,27 28 and 52 of the KNCHR Act, the KNCHR issued summons for personal attendance to then coast regional coordinator on 30th October 2018, to personally appear before it and respond to as well as provide further information on the allegations as stated. In a letter dated 28th November 2018 the Principal Secretary responded (see annex, appendix 8)

This being a gross violation of the constitution one would have expected that Mr. Marwa would be charged in a court of law which has not happened to date. The principle of presumption of innocence until proven guilty was suspended by Mr. Marwa as reported by the witnesses. These orders allegedly emboldened security agents to act with impunity. There are instances where these orders were used to justify extra judicial killings. It was further reported that one instance was the killing of one Idris but on investigation, it was found out that the body belonged to Ismael and not Idris. To cover up, the police said the body was actually that of Idris alias Ismael, a case of mistaken identity.

The PI was also informed of a victim who was tortured by police and spent close to five years in a Mombasa hospital due the injuries incurred. Surprisingly no one has been brought to book to date. In another instance, a victim was arrested by the Kenya wildlife service officers on his way home. The reason for his arrest was that he was in possession of game meat which happened not to be the case since the meat he had was from one of his cows that was slaughtered after fatigue while in the field. The KWS officers beat him up without presenting him to court and on examination by a veterinary officer it was indeed confirmed that the meat was from a cow and he was released without any charges.

In Lamu, a witness informed the PI that while on his way from his fishing expedition, he was arrested by security agencies that were in two land cruisers with no registration numbers. He alleges that he was asked to produce his identification document which he had not carried on that day. He was blindfolded, handcuffed and taken to a KDF in camp in Baragoi where he was stripped naked, tortured and forced to admit crimes he had not committed. They accused him of having killed some people in Hindi which he denied. At some point they made him witness two people being executed which was made to make him admit to the made-up crimes. He also revealed that he was exposed to insect bites (safari ants) to inflict pain so as to coerce him into confessing. They however set him free after realizing he was innocent.

The PI was informed of arbitrary arrest case where five people were arrested at a road block at Machakos junction on their way to Nairobi. They were not notified of the offence committed but were ordered to lie down upon which they were tortured and brutalized after which they were taken to the GSU camp. Afterwards they were taken to the CID headquarters for further interrogation for crimes they were not aware of. On tracking the missing persons the Former Lamu County Governor found out that they were being held at the CID Headquarters in Nairobi. The Governor requested an MP to follow-up on the arrests. On reaching at the CID Headquarters, the MP was told that the arrested persons had killed 61 people and that was the reason they were being held incommunicado. The victims were taken back to Lamu by a chopper and detained at a GSU camp where they were further brutalized. Two of them were released with no charges against them but the driver was taken to court and bailed out with Ksh 500,000 and had his driving license, ID card and ATM confiscated.

A witness to the PI who happened to be a member of Kenya Police Reserve (KPR), informed the Commission that he suffered in the hands of the police. The witness indicated that he had asked a police officer to pay his debt but rather than comply he resorted to brutalizing him.

The witness decided to report the matter to his seniors but on reaching the police station, other police officers descended on him with blows and kicks accusing him of being a terrorist. The witness was temporarily detained at Kiunga police station and it took the intervention of an officer who knew him to be released. His stated that at the date of the PI his case has not been addressed. Further, a 21 year old mother of six observed that her house was invaded by policemen who brutally attacked the husband accusing him of being a terrorist. She noted that besides injuring her husband, they arrested him and detained him at Basuba camp. Later that day the police returned to conduct a search in the house which prompted the witness to escape with her children as she was being accused of 'hiding' a terrorist. As at the time of the inquiry the husband had not returned home.

The PI also received a complaint from a resident in Mpeketoni who alleged that he was arrested and branded as a terrorist. It is alleged that he took part in the Mpeketoni attacks. He was tortured by electrocution, whipping among other inhumane acts that included squeezing his private parts to extract a confession that would link him to terrorism. When he failed to confess, he was remanded at an unknown place near Kiunga for three months in solitary confinement with no provision of lavatory and bedding facilities, but with an entitlement of one meal a day. Having confiscated his mobile phone, the police forcefully asked for his Mpesa pin number from which they allegedly withdrew Ksh. 8,000.

A witness from Lamu informed the PI that while fishing, his boat developed some mechanical problem and he therefore pulled it to the shore for repair. While there, he was confronted by policemen who started beating him for no apparent reason. He sustained serious injuries that made it difficult for him to continue with his economic activity. Another witness added that while in his usual operations, he encountered police who needed him to produce his identification document. Since he had not carried the documents that very day, he received a beating rendering him unconscious. In the process, he fell in the ditch and fractured his leg. To date, his movement was affected owing to the condition on his leg.

3.4.2 Right to Life

Article 26(1) of the Constitution guarantees the right to life. According to the international human rights enforcement system and mechanisms this right can be violated in a variety of ways, including deaths in lawful custody; deaths resulting from torture or use of excessive force, or life-threatening conditions of detention, and, killings by state agents. This right too can be violated if the state fails to investigate alleged violations of the right to life and to bring those responsible to justice.

As a result of the tribal clashes that hit Tana River County, more specifically Kau village and its environs, houses were burnt and property destroyed by unknown people. An elderly woman aged 100 years was killed during the same period after being beaten and tortured. This was a case of insecurity resulting from ethnic clashes. A victim a Mr. Maharusi was brutally killed by officers from the Administration Police unit on 17th July 2007. His body was found five days later and to date no one has been held liable for his death.

The PI was also informed that in Kilelengwani a man lost his life after trying to swim across a crocodile infested river for fear of being arrested by the GSU who were known to harass the residents. Moreover, following the Tana River clashes in 2012, a mass grave containing 10 bodies was discovered in the same area of Kilelengwani. It was also reported that during the clashes many women were raped but could not report the same for fear of societal victimization. Another instance of insecurity was also reported by witness a resident of Chewani Ward in Maindangwera village, Tana River County. He narrated how his son was stabbed to death by people well known to the society. He recorded a statement with the police at Hola police station but no action was taken. The PI was further informed that In Tana Delta, a fisherman who was on his way to a fishing expedition was killed by his peers and his body found three days later at Tana Delta. The victim was a resident of Chara village. His body had evidence of panga/machete injuries and piercing with some sharp objects. The police however didn't offer any help nor investigate the matter.

In Mombasa, a witness to the PI, a mother of three, residing in Kongowea, presented a chilling narration on police brutality and their involvement in extrajudicial executions. In her evidence she took the PI through the sad events that led to her disabled son being shot dead by police after he was left behind by his comrades who took off after seeing the police. The family is still traumatized as the culprits have never been brought to book. On February 2014, a male suspect arrest was captured by the print media. The family mounted the search of the said person to no avail. This made them seek the remedy from the court where the court issued the order of habeas corpus. The prosecution failed to produce the body arguing that he jumped out of a lorry that was transporting him and passed on. The family countered that information by producing a piece of evidence that showed that he was actually transported in a white Land cruiser, but to date he is still missing.

Table 13: Specific cases detailing violations of right to life and other human rights violations

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/perpetrator
February 2014	Hemedi A.	Enforced disappearance	Majengo-Masjid Musa	Alleged had no information on arrest	Allegedly arrested by security agents
Unknown date at 8.30 pm	Lee K.	Enforced disappearance	Ukunda	Alleged had no information on arrest	Allegedly arrested by security agents driving KBZ 249X dark blue Subaru
Unknown	Abdi O. and one Ali	Enforced disappearance	Mpeketoni	Alleged had no information on arrest	Reportedly arrested after the Mpeketoni attack and to date his whereabouts are not known.
01.08. 2016	K. Omar	Assaulted by Security agents at Kiunga for allegedly belonging to Al Shabaab	Basuba ward	Did not report case	GSU Officers
April 2013	K. Petro	Attacked and assaulted left with serious injuries	Kaloleni village Tana Delta	Reported, obtained P3 but no progress	Pastoralists
22nd August, 2015	A young boy named Tony	Fatally shot	Kongowea/Uwanja wa Mbuzi	Investigations OB number 72 of 19 May 2016 at Nyali Police station	Allegedly shot dead by known officers from Nyali Police Station
Unknown	H. Ali	Seriously assaulted by security agents when repairing a broken down boat that he has not been able to resume normal life due to injuries sustained	Kiunga	None	Security agents

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Unknown	M. Salim	Assaulted, left with fractured leg			GSU officers
13.04. 2013	M. Swalleh	Fatally shot	Mbuani village	Case under investigation Cr: 321/79/2014	Unknown number of armed gangsters suspected to be Al-Shabaab returnees from Somalia, raided his home and shot him twice
13.04.l 2013	M. Halima	Shot and injured	Mbuani village	Case under investigation Cr: 321/79/2014	suspected to be Al-Shabaab returnees from Somalia
10/4/2014	A. Abdul	Voluntary enforced disappearance/Killed during Mpeketoni attack	Majengo/Mpeketoni		Al Shabaab/Security agents
13.10. 2014	M. Rashid then a community policing vice Chairman	Fatally shot twice on the head and twice on the chest	Mbuani village Bongwe location	Case pending under investigations	suspected to be Al-Shabaab returnees from Somalia
18.12 2013 at about 10.00pm	M. Hamed	Fatally shot on the head	Mvindeni village	case is pending under investigation Cr.323/354/2013	Unknown
20.02. 2014 at about 2.00pm	L. Salim	Kidnapped from place of work in Diani township, handcuffed and driven in a white motor vehicle that sped towards Likoni area	Diani	Case pending under investigation	Unknown
15.02. 2014	M. Omar and M. Sudi	Attacked at home and shot dead	Harmony village within Ukunda township	case is pending under investigation	Unknown

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
21.01. 2014	B. Simon and 10 others 1. B. Simon: On the back 2. K. Richard: On the chest and right leg 3. W. Peter: On both legs 4. W. Linnet: Both legs 5. M. Jacinta: On the head and legs 6. W. Monica: On the chest 7. M. Reuben: On the right leg 8. W. Mary: Fractures on both legs 9. M. Abass: On the left leg 10. K. James: On the left leg	Injured after an explosion at a night club	Tanduri Night Club	Case pending under investigation	Unknown
25.04. 2014 at about 4.30 pm	K. Rashid	Fatally shot dead	Tiwi village, Ukunda	Case pending under investigations	Police officers: Victim's house raided, was wanted for a series of robberies
13.01. 2014 at about 11.30 pm	PC D. Aidi	Grenade attack on police vehicle Reg. no. GK B479C grand Tiger at Kona ya Musa: shot and injured on the left thigh, rushed to Palm Beach hospital, treated and discharged	Nyumba Tatu and Kona ya Musa, Diani	Case is pending under investigation	Unknown criminals riding on three motor cycles
26.12. 2013	M. Said	Shot fatally	Mwamanga village	Case is pending under investigation Cr 323/278/2013	Suspected Al Shabaab returnees targeting officials of community policing collaborating with security agents

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
23.09. 2013	1. M. Suleiman 2. M. Suleiman (60 yrs) 3. A. Mwanhamisi (55yrs) 4. H. Manakombo 9 yrs) 5. H. Mwanaisha (7 yrs)	Arson attack that led to loss of lives	Mwangoni village	Case is pending under investigation Cr 323/67/2014	Unknown
05.12.2013 at about 7.20 pm	M. Hassan driving of a vehicle Reg. no. KBL 626F Mitsubishi Rosa, operating along Ukunda-Lunga Lunga road	Blocked by a taxi car with three armed men on board who fatally shot him after robbing him Ksh. 1,400	Bixa	Case is pending under investigation	Unknown
08.12.2013	M. Ali the then Bongwe area chief	Attacked, shot and injured by two armed men riding a motor cycle He was rushed to Msambweni sub county hospital where they were treated and discharged	Bongwe	Case is pending under investigation	Suspected Al-Shabaab returnees targeting government officials
10.02.2014	1. PC D. Asumwa No. 84682 2. CPL F. Achieng No. 77446 both of Traffic Base Diani	Attacked by two gangsters while on duty. PC D. Asumwa was shot twice and seriously on the head before being robbed of his AK47 rifle S/NO. 76980 with 30 rounds of 7.62mm special. He was rushed to Jocham hospital in Mombasa where he was admitted in serious condition	Kombani area along Lunga Lunga-Mombasa road	Case pending under investigation at Kwale Police station Cr. 322/10/2014	suspects Al-Shabaab returnees targeting officer with intent to rob and acquire firearms

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
30.01.2015, at about 3.20 am	V. Omar	House was set on fire by unknown persons. Members of public who responded to the cry were repulsed by gun shots	Bongwe	Case pending under investigation	Suspected to be Al-Shabaab returnees from Somalia targeting members of community policing.
15.6.2014	H. Ahmed	Voluntary enforced disappearance	Majengo		Allegedly joined Al Shabaab
18.11.2015	Hamisa	enforced disappearance	Kwamjovu	No knowledge of arrest	Allegedly arrested by security agents driving a Prado
Unknown	Farah	Enforced disappearance Suspected member of terrorist group, but family, political and religious leaders took him to police, charged and cleared	Mombasa	No knowledge of arrest	Suspected Security agents
Unknown	M. Abdalla	Shot dead	Malindi		Suspected Security agents
Unknown	M. Maarum	Voluntary enforced disappearance	Majengo		Suspected Security agents
Diverse dates between	Several journalists		Various		
Unknown	H. Ramla	Tortured and subjected to cruel and inhuman conditions	Saudi Arabia		Employer
Unknown	S. Abebi	enforced disappearance	Makupa		KDF

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Unknown	A. Sumea	sexual harassment/ assault/rape/forceful exposure to pornography	Saudi Arabia		
Diverse dates	35 people have died	Destruction of public property: Public social hall; boreholes; solar panels; nursery	Diani from the village of Ng'waroni		Civilian conflict
Diverse dates	Unexplained 40 deaths many as result of unresolved land dispute		Mwangulu, Mwereni Ward Lunga Lunga Sub County		Insecurity caused by land disputes
Diverse dates	35 people were killed	Cattle rustling by Maasais	Lunga Lunga border of Kenya and Tanzania		Duruma Maasai
Diverse dates		conflict over land between the Duruma people and the Maasais			
Unknown	Mr. Mwakajo	Extra-judicial killing	Kirimangodo area Mwereni Location	case not filed	Suspected bodaboda rider in complicit police inspector and the local chief
Unknown	Mundungu	Killed by unknown persons	Mwangulu	Case reported at Mwangulu police station but upon the intervention of Kwale OCPD culprits charged with creating disturbance and then released upon being fined	Main suspects: sub chief, the chief and the police

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
24.08. 2016	An unnamed adult father to K. John	Threats to father by known person. On 24.08.2018, his father was attacked and seriously wounded	Zaani, Kilimangodo Sub-location in Mwereni Location	Case reported at Lunga Lunga police	One Mwavuo Chiti
Unknown	K. Saidi	Threats to his father by unknown persons making family live in fear	Mwangulu	Case reported to police but no action was taken	Insecurity as a result of conflict over land
Unknown	Unnamed chief	Shot fatally by	Mwangulu	Bongwe	Suspected Al Shabaab Returnees
Diverse dates	village elders, chiefs and assistant chiefs	Fear of attacks	Mwangulu/ Bongwe		Suspected Al Shabaab Returnees
	Police	Lack of cooperation from members of the public for fear of reprisals	Mwangulu/Bongwe		
	The youth	Drugs abuse			
	Public	Reluctant to report disappearances			
	F. Fara				
	81 cases of enforced male disappearance, all male	Majengo Mombasa			
	Children arrested during the raid on Masjid Musa	Subject to inhuman and cruel conditions	Majengo		Security agents
13.04. 2015	A. Amadi	Disappeared from home reportedly picked up by men in Probox vehicle	Diani		Suspected security agents

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
17.04. 2015	A. Amadi	Found dead	Voi		No report on assailants
	Loss of business and employment	Hotels closed down,			
	Boda boda and tuktuk	Unable to operate normally and forced to close early because of police harassment	Diani		
10.04. 2015	M. Mohammed	Shot dead	Kibarande Bongwe		Unknown
	boda boda riders and Tuk tuk drivers	Police harassment and making illegal arrest. Victims forced to pay 5000 to secure release (name of Cpl Chesire came up)	Kibundani Ukunda		Security agents
05.12. 2013	Hassan	Passenger bus stopped and one Hassan shot dead, allegedly for being on the wanted list of Islamic radicals	Msambweni		Security agents/Police
18.12. 2013	Hamadi	Shot dead by men riding a boda boda	Msambweni		Security agents/Police
25.12.2013	M. Salim	Two men raided his home, called him by name and shot him fatally	Msambweni		Security agents/Police
	An unnamed adult male	attacked, injured and later killed by hired gangs	Mtuma village		Unknown Youth criminal gangs

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
29.09. 2013	An unnamed adult male driving Tuk tuk	adult male driving Tuk tuk shot dead	Matuga	recorded a statement with the CID, given an OB number, but no action by the time of PI	Administration Police
	Girls	Early marriages and FGM	Hola		Community
Unknown	An unnamed young male	stabbed and shot to death people	Hola	Case reported at Hola police station but no action. As at the time of PI investigations still going on	Unknown
Diverse dates	Loss of lives	conflict over land/ pastoralists and farmers	Hola	Some Reported others did not	Pokomo Orma
Diverse dates	Destruction of crop	pastoralists grazing on farms	Many areas of Tana River County	Some Reported others did not	Pokomo Orma
Diverse dates	The Boni community	invasion of Boni forest	Lamu		Security agents
	Loss of life and property	Ethnic clashes between Pokomo and Wardei	Many areas of Tana River County		Pokomo Wardei
	Assault	During Ethnic clashes between Pokomo and Wardei	Hola		Security agents
Unstated date in 2013	B. Suleiman	Harassed and assaulted by a police officer named Major Kwendo	Hola	Reported at Hola Police station	Administration Police

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
29.04. 2010	D. Bashir then local chief	Shot and wounded	Hola	Reported at Hola Police station	Unknown assailants Identified Mandule Machua and one Adams as main suspects since the y an unresolved dispute
29.04.2010	Misuse of Government property	Bashir Doyo paid Ksh 10000 to hire government ambulance to travel to Garissa after being referred from Hola Hospital	Hola		MoH Hola
1979-2002	Loss of life and property	Banditry, loss of life	Tana Delta	Many cases reported at Gamba Police station	Communities living in Tana Delta
Unknown	Diversion of the lake by the Orma	Affected the livelihood of about 3000 people living in Ngao Irrigation scheme	Matomba which provided water for irrigation and also fishing ground		Orma
Unknown	M. Timson	Shots and seriously injured on	Tana Delta	Reported	Unknown
Unknown	G. Mohammed	Killed by suspected fellow fishermen	Chara	Case reported at Gamba Police station. Progress of investigation unknown at the time of PI	Suspected fellow Fishermen
Diverse dates	Destruction of crops	Animals let loose on farms	Shakaba in Tana Delta	Reported but no action by police	Pastoralists

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Diverse dates	• Lack of title deeds • Border dispute • pastoral nomads	• No title deeds in many areas of Tana. • Kitui county encroaching on Tana County land • pastoral nomads that flock Tana Delta during drought causing insecurity	Many areas in coastal region		• Pastoralists • IEBC
	Future conflict between pastoralists and farmers	Proposed Tana Delta Grazing Control Bill that aim at the number of animals in Tana Delta. Farmers alleged they were not consulted and during the PI hearings, witnesses from the farming community were unhappy with the bill	Tana River County	Tana River County	Tana River County Assembly
07.07.2015	K. Briton	shot dead while in the police cells during attack on Gamba Police station	Gamba Police Station	Investigations in progress	Suspected Al Shabaab terrorists
7.08.2016	C. Katana	Assaulted by herds boys who took cows to his farm and destroyed crop.	Tarasaa	Case reported to the police but no action taken as at the time of the PI hearing.	Pastoralists
Unknown date	Y. Haji	Loss of animals, KES. 40,000 and KES. 60,000 Arrested and seriously injured	Tana Delta		KWS officers Police officers

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Unknown date	J. Joseph	Injured through boda boda rider. Police demanded KES. 300 to pursue case.	Kipini	Case reported but no action by police at the time of PI	Bodaboda rider Police officers
14.8.2012	Unnamed adult Kenyan lady aged 100 years; Loss of 29 goats and Property destroyed.	Killed when Kau village was attacked and set on fire.	Tana Delta Kau	Investigations in progress	Oromos Pokomos Wardei
Diverse dates	Search for Pasture, destruction of crop Loss of life	People from other communities flock Tana Delta e.g. Ukambani, Maasai	Delta		Kamba, Masaai, Pokomo Wardei and Orma
17.07. 2007	Maharusi	killed by police officers and body thrown in River Tana eaten by crocodiles	Hola	Case reported but no action	Administration Police officers
Unknown date	Unnamed victim, young boy	stabbed taken to hospital but died	Nduru Primary School	Case reported at Gamba Police Station, suspect arrested but released under questionable circumstances	Criminal gangs Police officers
Unknown date	M. Asa	Attacked and hand chopped off at Bunamnazi	Bunamnazi, Tana Delta	Case reported at Gamba Police station not supplied with P3 for lack of 1000	Pastoralists Police officers
Diverse dates	Early marriages and pregnancies	Girls education affected by drop out	Many parts of Tana County		Local Community

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Diverse	Destruction of crops without compensation	wild animals, hippos	Many parts of Tana River that border forest	Case reported and in one case KWS approximated the loss at Kshs 118,520, but no action thereafter	KWS
01.08. 2016	K. Omar	Harassed, arrested and subjected to inhuman treatment	Kiunga police station		A Mr Rono an Administration police officer
Unknown date	Group of Youth	While heading for swimming carrying jerry cans, accused of taking water and food stuff to Al-Shabaab members, arrested, locked up at the Basuba police camp	Basuba		KDF and GSU
Unknown date	K. Omari	Attacked and subjected to cruel and inhuman treatment	Basuba		Security agents
Unknown dates	M. Fatuma	Harassed and subjected to inhuman treatment	Basuba		Security agents
Unknown dates	N. Hamza and A. Salim	Arrested, assaulted and subjected to cruel and inhuman treatment at Basuba GSU	Mangai, Basuba	Did not report	GSU Officers

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
23.07.2014	A. Swaleh	Arrested by Police officers in civilian who subjected him to torture, cruelty and inhuman treatment.	Mokoe/Baragoni KDF Camp		Security agents
Diverse dates	Illegal drugs in Lamu	Ingestion by youth forming who later join criminal gangs	Langoni and Kijitoni		Security agents Criminal gangs Drug dealers
Diverse dates between 2006-2009	A. Sheik	Arrested and subjected to cruel and inhuman treatment due to his fight against illegal drugs	Lamu Island		Drug dealers, peddlers and security agents
Diverse dates	Boni Community	Many youths arrested, beaten and tortured in Operation Linda Nchi	Boni forest		Security agents
Unknown dates	B. Omar	Tortured and subjected to cruel inhuman treatment	Basuba AP camp. Kiunga Police Station.		Security agents
Unknown dates	A. Jamal	Harassed and subjected to torture for failing to bribe for freedom during curfew	Lamu Island		Security agents Al Shabaab
Unknown	K. Abubakar	Fled work station after 2014 attacks and lost source of livelihood	Kiangui		KDF Criminal gangs
Unknown	N. Francis	Killed during the Mpeketoni attack that lasted 7 hours	Mpeketoni		Security agents Criminal /terrorist gangs

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Unknown	M. Anthony	Killed during the Mpeketoni attack that lasted 7 hours	Mpeketoni		Security agents Criminal /terrorist gangs
	Alleged religious hostilities	Alleged that only Christians were killed during the Mpeketoni attack	Mpeketoni		Security agents Criminal /terrorist gangs Islamic radicals
Diverse dates	Destruction of crop	Headers release cattle on farms	Mpeketoni	Reported but no action	Herders
Diverse dates	Civilian/wildlife conflict	Destruction of property/ crop by wild animals	Mpeketoni	Reported to KWS but no action	KWS
Unknown	A. Osman and one Ali	Enforced disappearance due to religious profiling	Mpeketoni		Security agents
Unknown	K. Daniel	Tractor and car burned during the Mpeketoni attack	Mpeketoni		Criminal/terrorist groups
Unknown	Death of two boys	Sons to Raphael Muigai Njoroge Killed during the Mpeketoni attack two of his children belonging to killed during the Mpeketoni attack	Mpeketoni		Criminal/terrorist groups
Unknown	An unidentified person with disability on wheel chair	killed during the Mpeketoni attack	Mpeketoni		Criminal/terrorist groups
Diverse dates	Destruction of property and crops	Unclear policy on land use on former land occupied by herders	Mpeketoni Ndambwe Meya		Government officials

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Diverse dates	Discriminatory actions	Indigenous people subjected to screening before IDs are issued	Lamu		Government officials
	Harassment of farmers by Kenya Forestry Officers	Farmers licensed to farm in the forest are harassed but allow pastoralists from other areas to graze their animals in the forest	Mpeketoni		KFS officers
Unknown	N. Evans	Arrested, tortured and subjected to cruel and inhuman treatment Police took KES. 8000 from his Mpesa	Mpeketoni Unidentified Military facility		Security agents
Diverse dates	Outstanding land issues	Mkondoni scheme meant for farming and many landless allocated land but were being evicted by armed youth	Mkondoni	complaints with IPOA, EACC & NLC	Ministry of lands Chief, Mkondoni location
15.06.2014	S. Caroline, M. Ann, M. Doris, Z. Janet and others representing widows	Husbands were killed during the attack making the widows vulnerable	Mpeketoni, Hongwe and Kibaoni		Criminal/terrorist groups
Unknown	C. Muchiri	Shot at and injured by people driving in a Nissan Matatu who allegedly were dressed in police uniform	Mpeketoni		Criminal/terrorist groups
Unknown	An adult only identified as Kimani	Killed during the Mpeketoni attack	Mpeketoni		Criminal/terrorist groups

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
Unknown	K. Francis	Killed during the attack	Mpeketoni		Criminal/terrorist groups
Unknown	Kimani	Son to Priscila Wairimu killed during the Mpektoni attack	Mpeketoni	chief and the DO who have not taken any action	
13.4. 2013	M. Swalleh	Fatally shot in the stomach.	Mbuani village	Case is pending under investigation Cr:321/79/2014	Suspected Al-Shabaab returnees
13.4. 2013	M. Halima	Shot and injured on the leg	Mbuani village	Case is pending under investigation Cr:321/79/2014	Suspected Al-Shabaab returnees
30.01.2015	V. Omar member of community policing	Grass thatched house was set on fire, on running out the victim was shot twice	Bongwe village	Case pending under investigation	Suspected to be Al-Shabaab returnees
13.10.2014	M. Rashid Vice Chairman, members of community policing	Shot twice on the head and twice on the chest	Mbuani Village	Case pending under investigation	Suspected to be Al-Shabaab returnees
18.12.2013	M. Hamed	Fatally shot on the head, and nothing stolen from him	Mvindeni village	Case is pending under investigation Cr.323/354/2013	Unknown criminals

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
20.02. 2014	L. Salim	Enforced disappearance: Kidnapped from his place of work by three gangsters who handcuffed him and bundled him in a white motor vehicle which sped towards Likoni area. Last traced through mobile signal at Likoni	Hasali enterprises in Diani	Case is pending under investigation	Unknown criminals
15.02. 2014	M. Omar and M. Sudi	Attacked by three gangsters who fatally shot them after defying orders to lie down	Harmony village	Case is pending under investigation	Security agents
21.02.2014	B. Simon, K. Richard, W. Peter, W. Linnet, M. Jacinta, W. Monica, M. Reuben, W. Mary, M. Abass & K. James	Several injured from explosion: B. Simon; back; K. Richard: Chest & right leg; W. Peter: both legs; W. Linnet: both legs; M. Jacinta: head & legs; W. Monica: chest; M. Reuben: right leg; W. Mary: fractured both legs; M. Abass: left leg; K. James: left leg	Tandoori Night Club	Case is pending under investigation	Unknown criminals

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
25.04. 2014	K. Rashid, an alleged Al Shabaab returnee and wanted for a series of robberies	Fatally shot after police challenged him to surrender. He allegedly opened fire on police, who returned, killed him and recovered a Berretta pistol with three rounds of ammunition of 9mm	Tiwi village, Ukunda	Case is pending under investigation	Security agencies-Police
13.01. 2014	Sgt M. Issa No. 50264S DCI Diani & PC A. Dan	Grenade attack on police vehicle Reg. no. GK B479C grand Tiger. PC A. Dan shot and injured on left thigh	Nyumba Tatu and Kona ya Musa	Case pending under investigation	Unknown criminals
26.12. 2013	M. Said a member community policing suspected to be collaborating with security agents.	Fatally shot by three men armed with rifles	Mwamanga village	Case pending under investigation vide Cr 323/278/2013	Three men suspected to be Al-Shabaab returnees
23.09.2013	M. Suleiman	Makuti house set on fire and fatally killed: M. Suleiman aged 60 yrs; A. Mwanhamisi aged 55yrs; H. Manakombo aged 9 yrs; H. Mwanaisha aged 7 yrs	Mwangoni village	Case pending under investigation vide Cr 323/67/2014	Unknown Criminals

DATE	VICTIM	NATURE OF INJURY/ CAUSE OF DEATH	PLACE	ACTION BY POLICE	Alleged AGENT/ perpetrator
05.12. 2013	M. Hassan	Mitsubishi Rosa Reg. no. KBL 626F was blocked by a taxi (Salon) car with three armed men on board. Everyone was ordered to lie down. M. Hassan fatally shot and being robbed Ksh. 1400. Assailants escaped towards Ukunda.	Bixa	Case pending under investigation	Unknown Criminal
08.12.2013	Ali Mwakubo Chief Bongwe location	attacked by two armed people riding on a motor cycle who shot injuring him on the left leg	Bongwe village	Case pending under investigation	Suspected Al-Shabaab returnees
10.02.2014	PC A. Dominic and, No. 84682 and CPL A. Fridah No. 77446 of Traffic Base Diani	Attacked by two gangsters. PC A. Dominic shot twice on the head seriously injuring him before being robbed of his AK47 rifle S/NO. 76980 with 30 rounds of 7.62mm special	Kombani area along Lunga-Lunga-Mombasa road	Case pending under investigation vide Kwale Police station Cr. 322/10/2014	Suspected Al-Shabaab returnees

3.4.3 Violation of the Right to a Fair Hearing

The CoK in Article 50 (2) (a) and (9) guarantees all persons the right to a fair hearing. This right can be deemed to be violated in a variety of ways, including: hearing criminal charges before administrative bodies which are not independent and impartial courts; trials in which, from the beginning, one party has a significant advantage over the other (this is said to breach the principle of "equality of arms"); excessive delays in bringing a case to trial and/or in completing court proceedings; secret trials; failing to respect the presumption of innocence by denying procedural protection to accused persons for example information about the nature of the charge, time to prepare a defence, access to a lawyer, and the possibility to confront witnesses. Due to the frequent threat of arrest and subsequent torture without being subjected to proper trial a witness reported to the Public Inquiry that in Mombasa a known adult Kenyan voluntarily disappeared to join Al Shabaab. The witness's brother had been shot by police officers after being branded one of the most wanted criminals. The family alleged that the deceased was a law abiding citizen and should have been given the opportunity to respond to the accusations levelled against him. These two cases provide evidence in which the right to fair hearing is violated.

A witness giving evidence in Kwale during the Public Inquiry narrated how another victim of human right violation was arrested by unknown people driving a blue Subaru, registration number KBZ 249 X. On reporting the case to Diani police station, the family was advised by the police to report the matter at Inuka police station which was nearer to their residence. Surprisingly the family found the car that was used to ferry him parked at Likoni police station but the police denied having arrested the victim. The family witness told the PI that the police tried extorting the sum of KES 500,000 from them to have them offer some assistance with regard to tracing their kin.

The PI was also informed that in the years 2013-2015, many residents of Kwale County were arbitrarily arrested by plain cloth security agents who patrolled while armed. The relatives of the targeted persons would report at the nearest police stations only to find their kin missing and the incidence not recorded in the occurrence book. The relatives would then be advised to make follow-ups with the Anti-Terrorism Police Unit (ATPU) who would in most cases deny knowledge of the whereabouts of the arrested persons. The witness who gave evidence at the PI held that residents however believed that security agents were responsible for such disappearances.

3.4.4 Right to Access to Justice

Provided under Article 48 CoK, the right to access to justice is touted to be one of the key pillars of democracy. For this right to be fully realized it has to be made available to all persons and should not be at a fee that impedes access to justice

In Tana River, the PI was informed of a young man was stabbed at Nduru primary school by unknown persons during tribal clashes the Orma and Pokomo. The suspect was arrested and taken to Malindi police station but released after a week with no charges filed against him. Follow ups by the family remain futile as the police are yet to take action. While in Lamu, the PI was informed of a male youth who was arrested by people believed to be policemen and was never presented in court. It was reported that his whereabouts remain unknown.

Another witness testified on the events of 29th day of September 2015 in which a tuk tuk driver was mistakenly fatally shot by an administration police officer at Matuga. He was said to have been carrying a drug peddler who was being pursued by the police. It was alleged that the police were aiming at the drug peddler but accidentally shot the driver instead. It was pointed out that the police officer did not have the intention of arresting the suspect. However, no justice has been served to the family of the deceased.

3.4.5 Right to Freedom of the Media & Access Information

The Constitution of Kenya not only guarantees the freedom of the media[207] but also right to information.[208] These two freedoms work hand in hand and restricting the media affects in a significant way access to information.

The right to freedom of expression can be violated in a variety of ways, including by:

- Restricting access to political, artistic or commercial information and ideas;
- Limiting the freedom of the press; and,
- Placing undue restrictions (excluding reasonable licensing restrictions) on broadcasting.

Majority of the people in the Coastal region are deprived of the right to information because newspapers supply, radio, television, mobile phone network, have inadequate infrastructure in most parts of the region, save for Mombasa, Lamu Island, Hola and Garsen towns. Experience during the Public Inquiry showed that attempts by the consultant group to access daily newspapers in areas like Tana Delta, Minjila, and parts of Lamu were difficult. In some occasions newspapers were accessed after two (2) days, and in other cases erratic.

Access to information is essential to increasing people's knowledge and awareness of the issues around them, and it has an important influence on their behavior patterns.[209] Generally, access to media increases with increasing education and wealth for both men and women. It has been established that the proportion of women who listen to radio at least once a week increased from 28% among those with no education to 79% among those with some secondary school education. Also the proportion of women, who watch television, read newspapers or listen to radio at least once a week increases with increase in wealth to 90%.[210]

The Inquiry found that the low access to media in the conflict-prone counties of the Coastal region is attributed to the following:

1. The frequent security operations in pursuit of criminal elements and suspected terror gang groups does not create a conducive environment to access the media;

207 See CoK, Article 34

208 See CoK Article 35

209 See Dennis, Everette E., Justin D. Martin, and Robb Wood. "Middle Use in the Middle East, 2017: A Seven-Nation Survey." Northwestern University in Qatar. 2017. http://www.mediaeastmedia.org/survey/2017, pp34-38.

210 See also, UNDP Media Habits and Information Sources of Youth in Cambodia BBC Media Action, Research & Learning February 2014, p22

2. During conflict some of the media sources e.g. radio or television are either stolen or destroyed;
3. Many areas have no radio or television network;
4. Many areas and homes are not connected to the national electricity grid; and,
5. Frequent threats to journalist who work in hostile environment.

In Mombasa, a witness narrated to the Public Inquiry the PI how journalists in line of duty face many challenges which impede their working smoothly and violate their right. Many journalists are threatened and intimidated especially by business persons, politicians, government officers and terror groups who feel that their stories have been covered in a manner that prejudices their interests.

Table 14: Specific attacks on media persons in the Coastal Region

Date	Subject of violation/Victim	Cause of Injury or death	Place	Action by Police
March 2016	Journalist	Arrested and threatened after writing a story that touched on State security and the President	Unknown	No action
September, 2016	Correspondent collapsed and died mysteriously	Unknown	Unknown-His home	Case pending investigation
2014	Correspondent reporting on the attack	Mob attack	Mpeketoni	Pending investigations
1999	Unnamed	Died after falling in bathroom		
April 2015	Two journalists and a driver	brutally attacked and injured by General Services Unit GSU	Tana River ADC Galana ranch	No action
March 2015	Journalist	kidnapped by people who introduced themselves as police officers and chained to a tree in a forest in Diani	Diani Kwale	Pending investigations
March 2013	Journalist	Died after being found with blood oozing from nose and mouth		Pending investigations
January 2013	Journalist	Shot dead	Nyabikaye in Migori County	Pending investigations

3.3.6 Violation of Group rights

3.3.6.1 Right to Citizenship

Citizenship is the status of belonging to a nation or being a legal member of a sovereign state.[211] In Kenya, one can become a citizen either by birth or registration. One is considered a citizen by birth if either of their parent was Kenyan at the time of their birth, while citizenship by registration is either acquired by marriage, residence or adoption.[212] Being a citizen attracts a myriad of rights, privileges and benefits key amongst them being entitled to a Kenyan passport and any document of registration or identification issued by the state to citizens.[213] The benefits of obtaining this crucial document cannot be overstated as lack of it means that one cannot vote, purchase property, open a bank account, register a business or obtain formal employment. As insecurity remains a growing concern both internationally and locally, the government has time and again rolled out security operations aimed at weeding out criminal gangs and organized terror groups such as the Al Shabaab.[214] Thousands of individuals who do not have identification documents and are not affiliated to either of the aforementioned illegal groups have often fallen victim to the swoops.[215]

The rise of insecurity along the Kenya-Somali border during the 1963-1967 *shifta* war saw Kenyan security organs heighten security operation resulting in thousands of Kenyan Somalis fleeing to Somalia for fear of their own security.[216] The disintegration of Somalia as a result of the 1991 civil war however saw the reverse influx of persons from Somalia into Kenya. This included both Somalis of Kenyan and non-Kenyan origin. Consequently, insecurity along this region was presumed to be as a result of this influx. This led to a crackdown on the communities living along the Kenya-Somali border in a bid to root out illegal immigrants.[217] The unfortunate casualty of this operation was the Galje'el community in Tana River County which saw their national identification cards confiscated by the Government. Consequently a task force[218] was formed to determine the validity or otherwise of the nationality of the Galje'el community members. Due to the protracted period taken by the taskforce (1990 to 2011) to communicate its decision to the affected persons, the community moved to court to assert their citizenship rights in 2011.[219]

211 Claus Haas, What is Citizenship? An Introduction to the concept and alternative models of citizenship< http://www.epice-net.org/grundtvig/docs/citizenship%20haas.pdf> as at 26th May, 2018.

212 Article 14 and 15 CoK

213 Article 12(1) CoK

214 Faith Muthoni, *Security Swoops are Perfectly Legal,* <https://www.the-star.co.ke/news/2014/04/17/security-swoops-are-perfectly-legal_c924320> as at 26th May, 2018

215 Ibid.

216 MUHURI, Banditry and the Politics of Citizenship: The Case of Galjeel Somali of Tana River (1999) Pg.3-9

217 ibid

218 The task force was appointed under Gazette Notice No. 5319 of 10th November 1989.

219 MUHURI & Others v Principal Registrar of Persons & Others Msa HC Pet. 50/2011

In 2007 and 2010, KNCHR conducted investigations into alleged discrimination of Kenyans of Somali descent. The findings of the investigations indicated that Kenyans of Somali descent, especially those inhabiting what was then known as the Northern Frontier District that later became Northern Eastern Province had been unfairly discriminated in acquiring national identification cards which are basic documents available to all citizens as a matter of right.[220] Additionally the reports established that the process of vetting Kenyan-Somalis, Nubians and Kenyan Arabs is discriminatory and violates the principle of equal treatment. The investigations further established that the lack of IDs not only affected the persons so rejected, but also the entire family members including the children.

3.3.6.2 Violation of Gender and Women's Rights: Sexual and Gender Based Violence (SGBV)

According to WHO[221], the general breakdown in law and order which occurs during conflict and displacement leads to an increase in all forms of violence, with women and children being most affected. Unrest is said to fuel a sense of masculinity which manifests aggressiveness amongst men while women may be idealized as the bearers of a cultural identity and their bodies perceived as 'territory' to be conquered.[222] Troops may also use rape and other forms of violence against women to increase men's subjugation and humiliation.[223] This is further compounded by cultural perceptions which provide a platform where gender ideologies define the rights, responsibilities and relations between men and women.

The PI was informed that during the 2012 Tana River clashes, GSU officers raped many girls in the area but the victims could not report because of the cultural belief that if a girl is raped she will never be married. In Mombasa, the PI was further given an account of how women were reported to have been raped by GSU officers during the 1997 *Kaya Bombo* clashes.

220 KNCHR, *An Identity Crisis? A Study on the Issuance of National Identity Cards in Kenya(2007) and Out of The Shadows Towards Ensuring The Rights of Stateless Persons and Persons at Risk of Statelessness in Kenya Report*(2010)

221 WHO, *Violence against women in situations of armed conflict and displacement.*<http://www.who.int/gender/violence/v7.pdf >as at 26th May 2018

222 Ibid

223 Ibid.

Table 15: Cases of Sexual and Gender Based Violence in Mombasa County

Case Number	Complainant	Aggressor	Action by Police
82/14 Rafos Moraa (female) & her father Mrs Moraa vs. Josphat Ombasa Nyabwaga	Rafos Moraa Defiled when minor	Josphat Ombasa Nyabwaga alleged defilement	• Case dragged on for more than two years until the complainant / victim turned 18 years • Police reluctant to proceed • Police reluctant to attend court hearings • Occasionally police gave misleading information to complainant • The file keeps disappearing • Threats from the perpetrator's side • Witness fatigued
169/12 Children Protection and Care case No.: Public verses Tofila Stacy Joseph	Public	Tofia Masenga mother-in-law Accused of Concealing child from the mother Janet Mwende	• Case Pending
Court file 791/13: Toefila Masenga / Janet Mwende	Toefila Masenga (mother-in-law on behalf Child	Janet Mwende- Allegation of child abandonment by the mother Janet	• Case Pending • The culprit was remanded more than 2 years and then supported to acquire bond • The culprit was a minor at the time of getting pregnant hence early marriage • The complainant used the culprit's age and economic status to intimidate her to take the child from her and throw her out of her family • The police and the court were reluctant to cooperate

3.4 Violation of the Rights of Indigenous Communities (The case of the Boni Community)

The Constitution of Kenya[224] grants everyone the right to belong and practice a cultural and linguistic community of their choice. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides an international framework for the protection of indigenous peoples. These include the right to state protection of person and property, right to food, water, housing, education, health, and employment to name but a few.[225]

Living in and adjacent to the Boni forest is the Boni community. These are a remnant hunter-gatherer group that inhabit parts the Kenyan coast. In the last 30 years, the Aweer, a section of the Boni people inhabiting Boni forest in Lamu have faced very difficult times. In 1967, their homeland became a battle field in the war between Kenya and Somalia. In Kenya today, they are a vulnerable group, struggling to survive, in search of a new identity. Once hunter-gatherers, the Boni now depend more on subsistence cultivation, livestock and harvesting wild plants and honey. Agriculture is however a new way of life to the community that has been cut off from their traditional source of livelihood. Since both their traditional and new livelihood options are natural resource based, it is important that some human rights interventions need to be made that lead sustainably manage the livelihoods of this community.

The Boni numbering about 7500 people are an indigenous Cushitic ethnic community found in coastal Kenya.[226] Unlike other Cushitic groups who are pastoralists, their life revolves around hunting and gathering hence these know no settled life.[227] The Boni community live in the vast Boni forest, an indigenous open canopy coastal mosaic forest which straddles the three Counties of Tana River, Lamu and Garissa in coastal Kenya, stretching all the way to the Eastern part of Lamu District and the Western section of Badaade district in Somalia.[228] As a hunter gatherer community, they hunt in the wild, seek wild fruits and collect honey, all within their habitat, the forest. The Boni and their lifestyle do not put emphasis on formal education and have not quite been integrated in the modern life of urbanism and its attendant dynamics. This has meant that they live in abject poverty unable to enjoy rights like other Kenya citizens, and actually, they seem to be unaware that these rights exist. Their primary language is Aweer while many if not majority practice Islam. It is the latter that has led to their being profiled as Al Shabaab sympathizers solely on the basis of their sharing religion.

224 See CoK Article 44(1)

225 See https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

226 Kenya Housing and Population Census 2009

227 See Andanje et al, 2010:1-8

228 See https://protectedplanet.net/2417

The State may limit the right to take part in cultural life to prevent individuals from infringing upon other human rights. However, the limitations must pursue a legitimate aim, be compatible with the nature of the right to take part in cultural life, and be strictly necessary to promote the general welfare. Security operation in the vast Boni forest has interfered with the community's way of life and violated their cultural, educational, health as well as other rights captured under the UN Declaration on the Rights of Indigenous Peoples.[229] The community's right to economic rights have been by limiting their and preventing access to resources on their land which has equally violated the community's right to cultural expression.

Evidence from the PI indicated that 'teachers and health personnel fearing attacks would be reluctant to resume work as the area had been labeled a danger zone due to not only Al Shabaab terrorist groups that ambushed individuals from villages and schools, but also the security forces who saw the community as being sympathetic to Al Shabaab hence potentially harboring and protecting Al Shabaab criminals.' Areas affected most include: Kiunga, Mkokoni, Hindi, Lamu, Faza and Witu.

In the case of the Boni, evidence of rights violations was reported in education, health, culture and language, as well as the maintenance and development of their histories, languages and other systems for transmitting cultural knowledge.

229 See United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Articles 3, 5, 8, 9, 13, 14, 23, 24 & 33(2)

CHAPTER FOUR

FINDINGS, CONCLUSIONS AND RECOMMENDATION

4.1 Findings

Based on the information obtained during the Public Inquiry, the Commission established that there are human rights violations in the Coastal caused mostly through acts of omission and commission by various actors. This reality exists despite the fact that Kenya has ratified various international and regional conventions, treaties and protocols in addition to national laws and policies aimed at ensuring that all her citizens enjoy human rights to the fullest extent possible. However, and unfortunately, most, if not all, aspects of the human rights instruments and commitments are not implemented or are partially implemented hence human rights violations arising from conflict continue unabated.

The causes of conflict in Coastal Kenya are complex ranging from historical, contemporary, administrative lapses, political incitement, government marginalization or absence of government and dwindling of natural resources. There is need for concerted efforts to resolve the conflict and attain sustainable peace to the conflict. Managing these efforts calls for united strategies and cooperation between the National Government, County Governments within the region, and local as well as International CSOs charged with advancing and building peaceful coexistence among members of diverse communities.

The contribution of conflict on the violation of human rights in the Coastal region remains profound. The principal violators of human rights in this region are the security agencies (these include: KDF, GSU, ATPU and BPU) , Government Officers, some members of the communities living in the region, terrorists, Islamic radical preachers and Imams, criminal gangs, Al Shabaab returnees, and countries bordering the region. As a result violation of the right to education is prominent. The violations are manifest in the following: low enrolment, closed schools, schools without trained teachers, school infrastructure destroyed, intermittent learning, few teachers from outside the region willing to be posted here, high dropout rates, low transition rates, high illiteracy and overall low quality of learning compared to other parts of the country. The Coastal region has a low rate of access to information. Most journalists work under very difficult conditions caused by the prevailing insecurity. Whereas most parts of the region have access to mobile telephone, network, radio, and television, access to print media still remains a major challenge. The right to water is violated in spite of the region being on or close to the Indian Ocean, and other major watercourses. Many water sources or infrastructure are either not accessible, destroyed or not available due to conflict witnessed frequently in the area.

Violation of the right to health is quite pronounced. The region has a very low doctor-patient ratio far less than the national average and the WHO recommended levels. Many health institutions are far wide apart, or have less staff to manage the population and therefore the quality of health services is too low or not available at all. As a result, access to health services or information is much lower than other parts of the country. Health indicators such as family planning, maternal health care, antenatal care, knowledge of HIV/AIDS and sanitation practices for instance are far below the national average largely due to conflict.

The conflict in the Coastal region has denied millions the right to a livelihood and the right to own property mainly through conflict over resources (Lamu, Tana River and Kwale) which leads to loss of lives and displacement. Houses have been destroyed, crops destroyed, livestock cattle killed, and many business enterprises destroyed translating to huge economic losses. In addition, many people have been killed and maimed or lost employment thereby losing their livelihoods. Many others have been tortured by the violators, consequently losing the right to enjoy the basic rights prescribed in the Constitution. At the time of the PI hearing, the Commission found out that following the frequent conflict, raids on Mosques and the mutual suspicion between Christians and Muslims, thousands of people had lost their right to worship as Churches and Mosques had been subjected to attacks or acts of vandalism.

4.2 Conclusion

The evidence from the Public Inquiry suggest that lasting conflict resolution can only be achieved by the parties themselves, based on a strengthened local institutional capability (including customary institutions and local civil society organizations), and key local individuals. However, government and CBOs have an essential role to play in creating the external conditions for such local settlements, and in supporting local institutional capability. Farming and Pastoral societies in Kenya have a range of institutions, rituals, practices, oral and material culture items connected to conflict management within and between the ethnic groups. These have been studied, but their full range and the way they operate in practice is not fully understood. Even though active hostilities may cease, when conflicts and acts of violence are not fully expunged according to correct ritual procedures, hostility between groups may persist.

In urban set ups, modern formal structures can be effective in managing and arresting conflict between the different groups living in the built environment. Security structures using modern tools of securing community should suffice. But still in these places customary conflict management practices could play a role where the causes are clearly understood. There is however a largely unexplored potential for modern ideas about conflict management to be incorporated with other approaches. These include measures to build up social capital by multiplying social and economic interactions, networks and connection between individuals and groups. This may include, but is not limited to, peace festivals which provide the youth with alternative ways of channeling their aggression.

4.3 Recommendations

In light of the evidence presented to the Commission during the Public Inquiry, we hereby make the following recommendations.

First, there is a need for full implementation of the legal and policy frameworks that guarantee fulfilment, protection and promotion of human rights. This is fundamental to the realization of human rights for the people of Coastal region of Kenya. The recommendations are structured into:

- Immediate: 0 to 3 months
- Intermediate: 4 to 12 months
- Long term: 13 to 36 months

Every duty bearer with the constitutional mandate is called upon to discharge their functions and implement the recommendations assigned to them without fear, favour or delay. All duty bearers at the helm of their respective constitutional offices are personally held responsible for the implementation or non-implementation of the recommendations. KNCHR and other oversight bodies will audit and monitor the implementation process of the recommendations within the specified time frames.

The government should immediately restore the security and order in the affected areas and take appropriate measures to prevent further resurgence of violence. Firm and decisive action should be taken against the perpetrators of human rights violations irrespective of their standing in society. This will eliminate the perception of bias by the local population of any security operation. The government should be implored to provide timely humanitarian assistance to the displaced victims of the conflict and guarantee their protection pending resolution of the conflicts. The relevant government ministries, departments and agencies must urgently resolve with finality the endemic issues associated with violent conflict by addressing the structural as well as historical issues that cause conflict.

This could include capital investment to boost employment, provision of water, humanitarian support and enforcing community driven modalities of sharing pasture during the dry season. The National Steering Committee on Peace Building and Conflict Management (NSC) and the National Cohesion and Integration Commission (NCIC) must be more proactive in forestalling this bloodletting through the early warning and conflict prevention mechanisms, structures and systems at their disposal. Politicians and their agents must desist from any conduct and utterances that may stoke tensions and conflicts among communities. The political leaders in the Coast region must take leadership in fostering peace and national cohesion especially during the electioneering period. They must be reminded of running the risk of being disqualified by the IEBC including facing criminal sanctions if found breaching the law.

Kenyans should resolve whichever grievances they have through peaceful and legal means including traditional dispute resolution mechanisms which are recognized in the constitution of Kenya and desist from taking the law into their hands. Below is a list of recommendations that will address the problems faced in the enjoyment of human rights by persons in the Coastal region, and Kenya in general.

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
1.0 Acknowledge Human Rights violations	State Officials need to take responsibility for Human Rights violations by apologizing to the Coastal residents and specifically those affected by these violations	The President of the Republic of Kenya; the Inspector General Police The KDF Chief of Staff	0-3 Months
2.0 Audit of Human Rights Violations	Given the scale and intensity of insecurity and human rights violations in the Coastal region there is need for an audit of the various human violations with a focus on key state and non-state actors. The goal should be to identify legal, policy and institutional gaps so as to increase compliance with human rights standards	The Office of the Attorney General and the Department of Justice; Parliament	13-36 Months
	A mechanism for ease of reporting of human rights violations should be put in place.	The Office of the Attorney General and the Department of Justice; The Independent Policing Oversight Authority; the Internal Affairs Unit of the National Police Service Commission	

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
3.0 Restoration of Lost Livelihoods / Compensation	Due to the considerable and long history of human rights violations that have included loss of life and property, the National and County Governments should set up a Compensation Fund for victims of these violations and other types of conflicts in the region.	Parliament The Six County Governments of the Coastal region.	8 months
	There is need for a programme to construct houses and restoration of property that was destroyed as a result of the conflict.	Ministry of Devolution and Planning	12 months
	Develop and roll out a comprehensive Programme of psychological support for victims/relatives of police brutality, torture and killings and enforced disappearances, and other conflict in general as most of them live with trauma.	The Six County Governments through their respective CVE Strategies; Churches/Civil Society	5 months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
4.0 Security Agencies Violations of Human Rights	Embed a human right program in the syllabi of all security organs	NPS, IGP, CDS, Director NIS, DCI, IPOA, IAU	12 Months
	The execution of duty by security agencies must follow the laid down international human rights law, standards and procedures as contained in human rights instruments and the Constitution of Kenya, 2010		3 Months
5.0 Availability of Illegal Fire Arms among Civilians	A comprehensive exercise Supervised by KNCHR to be mounted to get rid of illegally held guns among civilian populations especially in border Coastal counties of Kwale, Tana River, and Lamu.	Ministry of Interior and Coordination of National Government	24 Months
	To stop inflow of illegal guns into the country specifically by monitoring the boarder Coastal Counties of Kwale, Tana River and Lamu.	Ministry of Interior & Coordination of National Government; Ministry of Defense	3 Months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
6.0 Inadequate Policing	Audit the staffing of Security personnel in Coastal counties with a view to establishing whether they are sufficient or well-distributed to meet the security challenges of the Coastal region	The IGP, National Police Service, Commission, Director DSI, Director NIS	3 Months
	Each police station, police post, AP Camp, GSU camp, Border Patrol Unit and ATPU should be adequately staffed with adequate personnel commensurate with the Security needs and assessment.	IGP, National Police Service Commission, Director DSI, Director NIS	3 Months
	Security interventions should be intelligence based so as to avoid 'collective punishment' approaches of entire communities in policing	IGP, National Police Service Commission, Director DSI, Director NIS	3 Months
	Increased visibility of Security agents	IGP, National Police Service Commission, Director DSI, Director NIS	3 Months
	Police officers should follow the law and take orders from the police command and not politicians	IGP, National Police Service Commission Director DSI, Director NIS	3 Months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
	Increase monthly fuel allocation for county police commanders to adequately cover the counties in the Coastal Counties.	National Police Service	3 Months
	Need for an audit of Police Personnel presence covering Tana Delta, Mpeketoni and Hindi areas during the respective attacks that were reported to the Public Inquiry.	National Police Service	3 Months
	Capacity assessment and training for Chiefs to enhance public confidence and effective service delivery.	Ministry of Interior and Coordination of National Government.	6 Months
7.0 Violation of the Right to Education	The KDF and GSU camps operating from school and health grounds in Basuba area in Lamu County should be withdrawn.	IGP, National Police Service Commission, and Chief of General Staff	3 Months
	An Educational Fund should be established to support children whose fathers are victims of extra judicial killings, enforced disappearances and all whose deaths were result of insecurity.	Parliament Ministry of Education County Governments	3 Months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
	Construction of school boarding facilities in all schools in the conflict zones to reduce the high school dropouts.	Parliament Ministry of Education County Governments	12 Months
	Schools in the conflict zones need to be properly fenced and secured to avoid free-access and entry from unauthorized persons.	Parliament Ministry of Education County Governments	6 Months
	Efforts to be made to post teachers to schools in the Coastal Counties to enhance quality in education. The teachers posted should be assured of their security at all times.	Ministry of Education TSC	6 Months
	Enhance school feeding programme in the Coastal Counties.	Ministry of Education County Governments	3 Months
	Enforce the law on compulsory basic education by focusing on mobilization at Sub-Location level for children of school going age.	Ministry of Education Ministry of Interior & National Coordination	3 Months
	Introduce integrated religious education in schools to contain radicalization among the youth/learners.	Ministry of Education Religious Organizations	6 Months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
8.0 Unfair distribution of National Development Resources	The Equalization Fund need to be under the control and determination of the respective county Governments to better prioritize projects in neglected areas.	Parliament Council of Governors Ministry of Finance	6 Months
	There is need to suggest amendments to the constitution particularly Article 204 (2) to put the equalization fund under County Governments.	Parliament	6 Months
	Lamu, Tana River and Kwale Counties should be beneficiaries of an enhanced Equalization Fund (EF) allocation for investment in enhancement of the quality of service delivery for the key sectors like Education and Health.		3 Months
9.0 Low educational achievements by Coastal Counties	The NGCDF to set aside funds to support education and health facilities in affected areas	Parliament	3 Months
10.0 Engagement of Returnees	A census of returnees needs to be undertaken in all Coastal counties.	Ministry of Interior & Coordination of National Government Religious Organizations CBOs	12 Months
	Integrate returnees in Society to engage in gainful and legitimate activities.	Ministry of Interior & Coordination of National Government Religious Organizations CBOs	12 Months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
11.0 Deterrent action to be taken against funders and promoters of conflict	Investigate and prosecute individuals holding public positions adversely mentioned in the conflict.	Director of Public Prosecutions IGP	6 Months
12.0 Violation of Land Rights	Make clear a public policy on the procedure for land acquisition, ownership and use in the Coastal Region in line with the CoK 2010 and other relevant land laws and policies.	Ministry of Lands and NLC	3 Months
	Make public clear guidelines for land adjudication and demarcation	Ministry of Lands and NLC	6-12 Months
	Operationalize the recently enacted Community Land Act, taking priority on arid and semi-arid regions of Kenya (ASAL)	Ministry of Lands and NLC	3 Months
	The Tana River County Assembly to be persuaded to drop the Land and Grazing Bill pending for legislation.	CoG Tana River county Government	3 Months
	Decisions on land use and management in conflict prone areas to be made in consultation with the community	Ministry of Lands NLC CoG	3 Months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
13.0 Cases of extrajudicial Killings, torture and inhuman treatment of citizens	Investigate and prosecute security agents responsible for extrajudicial killings	DPP National Coroner's Office	6 Months
	Compensate families of those who died in the hands of the State security through extra-judicial killings.	Attorney General	6-12 Months
14.0 Violation of Group Rights	Government to observe and protect the human rights of the indigenous peoples [the Awer] within the Coastal Counties by respecting their right to inhabit Boni forest by the Boni Community	Ministry of Interior & Coordination of National Government Ministry of Land, Housing and Urban Development	12-36 Months
	Engage the National Youth Service in constructing Community Health Centers, public schools and other social amenities in Boni forest	Ministry of Devolution and Planning National Youth Service Ministry of Education Ministry of Sports, Culture and the Arts	12-36 Months
	Engage the NYS and military to construct roads and bridges to open the areas for commercial activities	Ministry of Devolution and Planning National Youth Service Ministry of Defense Ministry of Transport and Infrastructure County Governments	12-36 Months

Issue	Recommendation	Duty-Bearer/Responsibility	Implementation Time Frame after Official Launch of the Report.
	Identify and sponsor selected students to secondary schools, polytechnics, university and other tertiary institutions in the spirit of affirmative action	Ministry of Education County Governments	6 Months
	Provide more opportunities for employment by considering least those who have basic education for economic empowerment	County Governments	3 Months
	Provide the youth and women with development funds, loans and skills necessary for managing projects for economic empowerment of the community	Ministry of Industrialization and Commerce County Governments Ministry of Interior and Coordination of National Government (Special Programs)	3 Months

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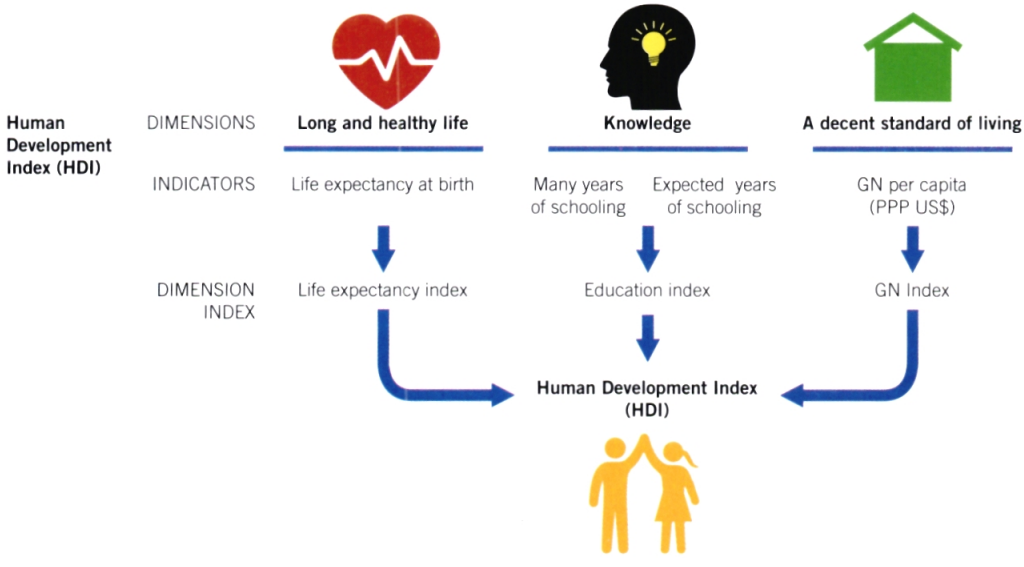
APPENDICES

APPENDIX 1: HUMAN DEVELOPMENT INDEX (HDI)



APPENDIX 2: SCHEDULE OF ACTIVITIES (PRE- INQUIRY)

Date	Group	Persons Responsible
26th Sept-1st Oct, 2016	Pre-inquiry preparations in Lamu & Tana River	Coast Region Office, KNCHR legal team
27th Sept, 2016	Meeting Mombasa CSOs at KNCHR Office	Coast Region Office, KNCHR legal team
28th Sept, 2016	Haki Africa's meeting at Peugeot Centre, Old Town KNCHR to take advantage of the meeting to popularize the Security PI and take statements	Coast Region Office
29th Sept, 2016	Peugeot Centre, Old Town Community Meeting	KNCHR Commissioners, Panelists, Coast Region Office, KNCHR legal team
30th Sept, 2016	Changamwe Social Hall Community Meeting	KNCHR Commissioners, Panelists, Coast Region Office, KNCHR legal team
2nd October, 2016	Team returning from T/ River & Lamu	Coast Region Office
3rd - 8th October, 2016	Witness preparation in T/River, Lamu, Mombasa & Kwale Counties	Coast Region Office, KNCHR legal team

APPENDIX 3: KEY HUMAN RIGHTS VIOLATIONS AS IDENTIFIED BY THE REFERENCE GROUP

Issues/ Thematic area (E.g. EJEs/ Enforced disappearance, Harassment by security agencies, Inaction by police, Resource conflicts Etc.)	Location (Where the violation took place)	Witness /Victim (e.g. Gender/ Age/ Ethnicity/ Religion)	Contacts (Personal/ Proxy)	Action taken by the victim (Office reported, Copies of correspondence/ Documents etc.)/ follow up	Summary of violations	Any other cases of insecurity in the county
Violent extremism linked to Mulungunipa, MRC and now returnees	Mombasa, Kisauni places of ceremonies	Youth from 13-20 years, unemployed, frustrated & desperate, drug addicted; Families of returnees who suffer disappearances/ executions	HURIA, Muhuri	Muhuri and Huria to provide documentation, information and reports	Freedom of association, freedom of movement, freedom to assemble, Right to life, right to human dignity, torture and degrading treatment, economic sabotage, freedom from fear	

Issues/ Thematic area (E.g. EJEs/ Enforced disappearance, Harassment by security agencies, Inaction by police, Resource conflicts Etc.)	Location (Where the violation took place)	Witness /Victim (e.g. Gender/ Age/ Ethnicity/ Religion)	Contacts (Personal/ Proxy)	Action taken by the victim (Office reported, Copies of correspondence/ Documents etc.)/ follow up	Summary of violations	Any other cases of insecurity in the county
Land related violence Family level, youth killing elders to inherit land Tensions arising from large scale acquisitions KISCOL & Base Titanium Land invasions by squatters often accompanied with violence; vested interests using youth to invade land on which natives/squatters live	Kilifi county	Youth who have resigned to their fate	Transparency International, Pamoja Trust, World Grace	Pamoja Trust inventory	Same as above	
	Kwale county		Transparency International, Pamoja Trust, World Grace		Same as above	
	Mombasa, Kisauni		Transparency International, Pamoja Trust, World Grace		Same as above	
Violent criminal gangs associated to politics; Wakali wao, kwanza, mbulu wakola etc.	Mombasa, Kisauni, Majengo, Likoni, Majengo and Changamwe, Bombolulu, Kinango in Kwale		Angaza Trust, Haki Centre,	Huria to share a report on economic impacts of insecurity	Same as above	

Issues/ Thematic area (E.g. EJEs/ Enforced disappearance, Harassment by security agencies, Inaction by police, Resource conflicts Etc.)	Location (Where the violation took place)	Witness /Victim (e.g. Gender/ Age/ Ethnicity/ Religion)	Contacts (Personal/ Proxy)	Action taken by the victim (Office reported, Copies of correspondence/ Documents etc.)/ follow up	Summary of violations	Any other cases of insecurity in the county
Politically motivated criminal violence Goons hired to threaten governance CSOs attending budget forum in Tononoka Effort to destabilise the region for political reasons by national government Evictions motivated by need to rid areas of people perceived to be political opponents as elections draw near	Mombasa county		HURIA, Pamoja Trust, Muhuri, World Grace		Same as above	
Criminal violence targeting elders accused of witchcraft	Kilifi	Elders being killed by youth	Huria		Same as above	
Criminal violence associated with boda boda riders that is almost a military on its own	Kilifi		Huria		Same as above	
Enforced disappearances & arbitrary arrests	Kwale		Muhuri, Haki Africa		Same as above	
Forced violent evictions from settlements	Mombasa				Same as above	
Human trafficking and sexual exploitation of children and street families	Kilifi, Mombasa, Kwale		Trace Kenya, Huria		Same as above	

APPENDIX 4: CSOs IN COASTAL REGION AND AREAS OF INTERVENTION

Organization	Focus	County/Area
Haki Centre	Peace and security program with religious leaders, *nyumba kumi* and youth in Kwale	Kilifi, Mombasa and Kwale
Huria	CVE with women, elderly and youth Human security and conflict resolution Street children and livelihoods Criminal violence/community policing	Kilifi, Kwale and Mombasa
Angaza Network	Formative stages doing a beach project with youth and women	Mombasa (Bamburi, Kisauni and projected Changamwe)
Transparency International	Governance across sectors i.e. education, health and land) Land and related conflicts	Kwale
Pamoja Trust	Governance and land advocacy Informal settlements mainly threats of eviction	Mombasa
Trace Kenya	Human rights, counter trafficking of persons Commercial sexual exploitation of children	Kilifi
World Grace	Orphans and vulnerable children, PWDs Interaction with Christian religious leaders Land rights	Mombasa, Kilifi

APPENDIX 5: SPECIFIC HUMAN RIGHTS VIOLATIONS OCCASSIONED BY INSECURITY AS REPORTED DURING THE PUBLIC INQUIRY

DATE	VICTIM	NATURE OF VIOLATION	PLACE	ACTION BY POLICE	SUSPECTED PERPETRATOR
13.4. 2013	Swalleh Rashid Mwakuyumba	Fatally shot in the stomach	Mbuani village	Case is pending under investigation Cr:321/79/2014	Al-Shabaab returnees
13.4. 2013	Halima Matsudzo wife to Swalleh Rashid Mwakuyumba	Shot and injured on the leg	Mbuani village	Case is pending under investigation Cr:321/79/2014	Al-Shabaab returnees
30.01.2015	Omar Salim Vumbi member of community policing	Grass thatched house set on fire.On running out, victim was shot twice	Bongwe village	Case pending. Under investigation	Al-Shabaab returnees
13.10.2014	Rashid Ali Muhenzi Vice Chairman, members of community policing	Shot twice on the head and twice on the chest	Mbuani Village	Case pending under investigation	Suspected to be Al-Shabaab returnees
18.12.2013	Hamed Juma Mboga	Fatally shot on the head, and nothing stolen from him	Mvindeni village	Case is pending. Under investigation Cr.323/354/2013	Unknown gunmen
20.02. 2014	Salim Hamisi Likongo	Enforced Kidnap from his place of work by three people who handcuffed and bundled him into a white motor vehicle which sped-off towards Likoni area. Last traced through mobile signal at Likoni. disappearance:	Hasali enterprises in Diani	Case is pending. Under investigation	Unknown persons
15.02. 2014	Omar Suleiman Maarifa and Sudi Omar Mwakuona	Attacked by three people who fatally shot them after defying orders to lie down	Harmony village	Case is pending under investigation	Security agents

DATE	VICTIM	NATURE OF VIOLATION	PLACE	ACTION BY POLICE	SUSPECTED PERPETRATOR
21.02.2014	Simon Buoyo, Richrd Kaburo, Peter Wahome, Linnet Wanjiku, Jacinta Mbaiza, Monica Wambui, Reuben Mutisya, Mary Wambui, Abass Muhammed, & James Kithiona	Several injured from explosion: Simon Buoyo; back; Richard Kaburo: chest & right leg; Peter Wahome: both legs; Linnet Wanjiku: both legs; Jacinta Mbaiza: head & legs; Monica Wambui: chest; Reuben Mutisya: right leg; Mary Wambui: fractured both legs; Abass Muhammed: left leg; James Kithiona:left leg	Tandoori Night Club	Case is pending under investigation	Unknown persons
25.04. 2014	Rashid Tumbo Kufungwa, an alleged Al Shabaab returnee and wanted for a series of robberies	Fatally shot after police challenged him to surrender. He allegedly opened fire on police, who returned, killed him and recovered a Berretta pistol with three rounds of ammunition of 9mm.	Tiwi village, Ukunda	Case is pending under investigation	Security agencies-Police
13.01. 2014	Sgt Issa Mwatchifa No. 50264S DCI Diani & PC Dan Aidi	Grenade attack on police vehicle Reg. no. GK B479C grand Tiger. PC Dan Aidi shot and injured on left thigh	Nyumba Tatu and Kona ya Musa	Case pending under investigation	Unknown persons
26.12. 2013	Said Salimu Mwasalimu a member community policing suspected to be collaborating with security agents.	Fatally shot by three men armed with rifles	Mwamanga village	Case pending under investigation vide Cr 323/278/2013	Three men suspected to be Al-Shabaab returnees

DATE	VICTIM	NATURE OF VIOLATION	PLACE	ACTION BY POLICE	SUSPECTED PERPETRATOR
23.09.2013	Suleiman Mwatsumi	Makuti house set on fire and fatally killed: Suleiman Abdalla Mwanzuri aged 60 yrs; Mwanhamisi Abdalla aged 55yrs; Manakombo Hamisi aged 9 yrs; Mwanaisha Hamisi aged 7 yrs	Mwangoni village	Case pending under investigation vide Cr 323/67/2014	Unknown persons
5.12. 2013	Hassan Suleiman Mwayuyu	Mitsubishi Rosa Reg. no. KBL 626F was blocked by a taxi (Salon) car with three armed men on board. Everyone was ordered to lie down. Hassan Suleiman Mwayuyu fatally shot and being robbed Kshs. 1400. Assailants escaped towards Ukunda.	Bixa	Case pending under investigation	Unknown persons
8.12.2013	Ali Mwakubo Chief Bongwe location	attacked by two armed people riding on a motor cycle who shot injuring him on the left leg	Bongwe village	Case pending under investigation	Suspected Al-Shabaab returnees
10.02.2014	PC Dominic Asumwa and, No. 84682 and CPL Fridah Achieng No. 77446 of Traffic Base Diani	Attacked by two gangsters. PC Dominic Asumwa shot twice on the head seriously injuring him before being robbed of his AK47 rifle S/NO. 76980 with 30 rounds of 7.62mm special	Kombani area along Lunga-Lunga-Mombasa road	Case pending under investigation vide Kwale Police station Cr. 322/10/2014	Suspected Al-Shabaab returnees

APPENDIX 6: PANELIST AND OTHER RESPONDENTS

PANELISTS

Kagwiria Mbogori	Chairperson, KNCHR
George Morara	Vice Chairperson, KNCHR
Jedida Waruhiu	Commissioner, KNCHR
Tom Kagwe	Commissioner, IPOA
Vincent Kiptoo	Commissioner, IPOA
Commissioner Fatuma Ali	Commissioner, IPOA

KNCHR STAFF

Dominic Kabiru	Head Public Affairs and Communication
John Wamwanga	Head of Finance Department
Victor Kamau	Head of Department – Redress
Mohamed Jaafar	Lead Counsel/regional coordinator – Coast office
Keith Changalwa	Assisting counsel
Maureen Mwadime	Assisting counsel
Janet Kabaya	Assisting counsel
Judy Lema	Assisting counsel
Alice Mbuvi	Community liaison
Joseph Otieno	Counsellor
Mary Akello	Counsellor
Patience Nyange	PA Chairperson/Media support
Lynesther Mureu	Communications and Media
Erastus Kamura, Elias Baya, Chris Maweu, Kasaine Saibulu, James Opiyo, Samuel Jomo, Nahashon Maua	Drivers

CONSULTANTS

Dr. Jane Wambui	Consultant
Patrick Ochieng	Consultant
Dr Francis Owakah	Consultant

PARTNER

Simon Katee	Civil Society

LEADERS

Hon. Abdulswamad Shariff Nassir	MP Mvita
Evans Achoki	County commissioner Mombasa
Mr. Martin Mwaro	The Kwale County Secretary
Hon. Omar Boga	MCA Ukunda
Daniel Mwendwa	DO - Diani
Patrick Oduma	OCPD Ukunda
Mr. Mwangi	DCC Matuga
Mr. joseph Kanyiri	County Commissioner, Lamu
Salim Buni	Governor Rep. Lamu/Director of Admin
Stephen Sangoro	DCC, Lamu
Zachary Kimani	OCPD Lamu
Onno Koopnans	Netherlands Embassy

ORGANISATIONS THAT SUBMITTED MEMORANDA

Betty Sharon	Coast Women In Development
Maureen Mudi	Media Council of Kenya
Hassan Abdille	MUHURI
Francis Ouma	Haki Africa
Yusuf Lule Mwatsefu	HURIA
Justus Kioko Kilunja	Beach Operators from South Coast
Alui Webzein	KNCCI - Lamu
Timson Maneno	Farmer – Tana River
Frankhart Jillo Daido	Tana River County Community Chairpersons Association (TRICA) – Tana River
Dahir Daudi Ahmed	Tana River CSO Coordination Network
Amalie Miyesa	Tana River Women Group

APPENDIX 7: RESPONSE FROM PRINCIPAL SECRETARY NELSON MARWA SOSPETER, EBS.

REPUBLIC OF KENYA





MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION
OFFICE OF THE PRINCIPAL SECRETARY

Tel: +254 (0) 2729800/2727980-4
Fax: +254 (0) 2726222/2734417
Email: pssocialsecurity@labour.go.ke
When replying, please quote

Social Security House, Bishops Road
P.O. Box 40326/16936 - 00100
Nairobi
KENYA

28th November, 2018

The Kenya National Commission on
Human Rights
P.O Box 74359-00100
NAIROBI

Attn: Dr. Benard Mogesa
Secretary to the Commission/
Chief Executive Officer

RE: RESPONSE TO THE PUBLIC INQUIRY INTO INSECURITY AND HUMAN RIGHTS WITHIN THE COASTAL REGION

Kindly Sir, refer to your letter Ref: KNCHR/REDRESS/VOL.11/2018 dated 16/11/2018 touching on the above stated subject.

I am requesting that you allow me to do my short submission in writing due to the pressure of work that I have to deal with.

It is true that I was the County Commissioner Mombasa and the Regional Commissioner Coast up to February, 2018 when His Excellency the President appointed me to the position of Principal Secretary Devolution and Principal Secretary Ministry of Labour and Social Protection, State Department for Social Protection later.

While at the Coast, I was charged with the Mandate and roles of Coordinating Government Programmes in Coast Region. I was charged with responsibilities of ensuring security of all Citizens both Kenyans and Foreigners/Visitors who were in the Coast Region regardless of their Tribe, Colour, Political Persuasion, Religion, Social or Economic status.

From 2012, Security situation in Coast Region was not good. (i) Mombasa Republican Council (MRC) which was an illegal outfit was threatening to separate

Coastal Region from the rest of Kenya, they were doing this by invading and attacking none locals, they were attacking security establishments and police officers and snatching guns from them, this led to total collapse of the Coastal Economy which is dependent on tourism.

The MRC group created hatred between Christians and Muslims, they wanted to drive a wedge between the two religious groups when they started attacking churches on Saturdays and Sundays. This resulted in the Government Physically securing places of worship.

Another challenge that as the Government functionary was dealing with was the Menace of drugs. The Architects of drug World were targeting the Youths, Schools as their potential markets and they would use the addicted youths to cause insecurity including Shopping Malls, Churches and Police Stations.

There was a strong collaboration between drug menace, Radicalization and Al-Shabaab in the Coastal Region. The Al-Shabaab wing from outside the Country found it fit to use Youths and radicalize them and even use Holy Mosques as training grounds. The objective of these radicalization and trainings was to attack Foreign Tourists, Churches, none local business community and Christians thereby blame it on the government.

Al-Shabaab, radicalized Youths were daring security officers and attacking them, Snatching guns and use the same to attack churches a case of baby-Sastrin who when they attacked a church in Likoni they shot the poor baby in the head, it took the efforts of Governor Sonko and the Government to intervene and have the bullet removed from the young boys head.

Dear colleagues and friends, I found myself as a government coordinator of security with either the options of protecting the citizens and their property as enshrined in the constitution or letting them die in the hands of these merciless criminal gangs.

To the best of my knowledge, I did my level best to protect all the citizens in Coast Region regardless of their race, religion, political persuasions, social, economic standing and Age. We were dealing with criminal gangs who had sophisticated weaponry and who were ready to die and ready to kill not only innocent citizens but also armed police officers.

At a personal level, I feel that I sacrificed even my own life for the shake of Kenyan Citizens who were living in coast Region legally.



Nelson Marwa Sospeter, EBS
PRINCIPAL SECRETARY

APPENDIX 8: RESPONSE FROM COUNTY COMMISSIONER LAMU

OFFICE OF THE PRESIDENCY
Ministry of Interior and Coordination of National Government

Email: lamucounty12@yahoo.com
Telephone: Lamu 633511
Fax: 042-4633511

COUNTY COMMISSIONER'S OFFICE,
P.O. BOX 41 - 80500
LAMU COUNTY.

When replying please quote;

REF. No: SS.27/13 VOL.I/36

Date: 20th November, 2018

The Secretary/Chief Executive Officer,
Kenya National Commissioner on Human Rights,
MOMBASA.

RE: SUMMONS FOR PERSONAL ATTENDANCE

Reference is made to your summon letter dated 30th October, 2018 on the above subject. I wish to respond as hereunder:-

1. **THAT** at no time in my lifetime did I ever command the GSU to destroy any of the villages mentioned in your above cited letter.

2. **THAT** the GSU is an independent Formation within the National Police Service (NPS) and are not under my command for their day to day operations.

3. **THAT** to the best of my knowledge and belief there are no villages that have been destroyed or adversely targeted by our security agencies as alleged.

4. **THAT** the villages of Ishakani, Mambore, Rubu, Simambaye, Mvundeni, Yumbe and Mwadhi fell into derelicts in the late 1960s and early 1970s after abandonment by the residents due to incessant raids and attacks by Shifta bandits and poachers. These criminals at their height rummaged the villages looting, raping and taking locals captives thus making life unbearable and consequently abandonment of the villages. **FUTHER** it is noted that the villages of Ishakani, Kiunga and Mkokoni still exist to-date and are vibrant fish landing sites.

5. **THAT** the allegations raised to the effect that some villages namely; Mokowe, Barigoni, Kiongoni, Kibokoni, Koreni, Mkunumbi, Mapenya, Witu, Pandanguo and Katsakakairo have been adversely targeted on allegations that the dwellers were sympathetic and sheltering shiftas is unknown to me. The security agencies have performed their work professionally, dedicatedly and without biais. The accusations are thus meant to malign, tarnish and discredit our security officers. There exists no shade of proof to support these allegations.

6. **THAT** what is deponed herein above is factual, truthful and to the best of my knowledge represents the correct position on the issues raised in your summons. We pray that you conduct further own investigations on these otherwise frivolous and vexatious allegations and undoubtedly your findings will vindicate our security officers and ourselves from the transgressions levelled at us during your said public hearings.

(J. M. KANYIRI)
COUNTY COMMISSIONER,
LAMU COUNTY

COUNTY COMMISSIONER
LAMU COUNTY

Copy to:-

The Principal Secretary,
State Department of Interior,
P.O. BOX 30510-00100
NAIROBI.

Regional Commissioner,
Coast Region
P.O. BOX 90424,
MOMBASA.

APPENDIX 9: SUMMONS FOR PERSONAL ATTENDANCE

Kenya National Commission on Human Rights
CVS Plaza, 1st Floor, Lenana Rd, P.O. Box 74359 - 00200 Nairobi - Kenya. Tel: +254-020-3969000
Mobile: 0733 780 000; 0736 780 000; 0724 256 448; 0726 610 159 SMS: 22359
Website: www.knchr.org, Email: haki@knchr.org Complaints: complaint@knchr.org.

Coast Regional Office-Mombasa
Panal Freighters Lane
Off Haile Selassie Road
P.O. Box 90171 – 80100, Mombasa
Tel: 041- 2220468/2220584
Email: coast@knchr.org
Twitter: @KNCHRMombasa

Western Regional Office-Kisumu
Reinsurance Plaza, 3rd Floor
Oginga Odinga Street,
P.O.Box 7768 - 40100, Kisumu
Tel: 057- 2020078
Mobile: 0717045681
Email: kisumu@knchr.org
Twitter: @KNCHRKisumu

North Rift Regional Office - Kitale
AFC Building
Opposite Mega Centre - Nakumatt
P.O. Box 2999 - 30200 Kitale
Tel: 054 - 31773/0203969057
Mobile: 0708271216/0786236683
Email: northrift@knchr.org
Twitter: @KNCHRKitale

North Eastern Regional Office - Wajir
Wajir Bor Rd, near Public Works
P.O. Box 383 - 70200, Wajir
Tel: 046 - 421512
Email: northernkenya@knchr.org
Twitter: @KNCHRWajir

SUMMONS FOR PERSONAL ATTENDANCE

(Pursuant to Article 252 Constitution of Kenya; Section 26, 27 and 28 Kenya National Commission on Human Rights Act (CAP 5B) and any other enabling provisions of the law)

To: Mr. Joseph Kanyiri,

County Commissioner.

Lamu County.

Dear Sir,

WHEREAS the Kenya National Commission on Human Rights (the Commission), in discharge of this mandate, conducted a Public Inquiry into Insecurity and Human Rights within the Coastal Region between the 24th October 2016 and 11th November 2016.

AND WHEAREAS the Commission requires your appearance before it for purposes of elucidating on information within your knowledge regarding the subject of insecurity and human rights within the Coast Region by virtue of the office that you held , AND FURTHER based on a number of allegations that were made in the course of the hearing touching on you,

AND WHEREAS your personal attendance is now necessary for the proper finalization of the Report on the Inquiry aforesaid since information within your possession, custody or knowledge is still required and necessary for the conclusion of the report on the subject matter aforesaid;

You are HEREBY REQUIRED, personally to appear before a panel of the Commission on the **15th day of November 2018** at **9:00 am** at the **KNCHR's Head Office** located at **CVS Plaza, 1st Floor, Lenana Road, Nairobi** for purposes of providing give any such information under oath and submitting any such documents and/or information as are material to the subject matter and specifically information touching on issues hereunder listed or as indicated in a schedule attached hereto.

Accredited "A" Status National Human Rights Institution
Chairperson: Kagwiria Mbogori, **Vice Chair:** George Morara Monyoncho
Commissioners: Jedidah Wakonyo Waruhiu, Shatikha S. Chivusia
Commission Secretary / CEO: Dr. Bernard Mogesa, PhD, CPM

Kenya National Commission on Human Rights
CVS Plaza, 1st Floor, Lenana Rd, P.O. Box 74359 - 00200 Nairobi - Kenya. Tel: +254-020-3969000
Mobile: 0733 780 000; 0736 780 000; 0724 256 448; 0726 610 159 SMS: 22359
Website: www.knchr.org, Email: haki@knchr.org Complaints: complaint@knchr.org.

Coast Regional Office-Mombasa
Panal Freighters Lane
Off Haile Selassie Road
P.O. Box 90171 – 80100, Mombasa
Tel: 041- 2220468/2220584
Email: coast@knchr.org
Twitter: @KNCHRMombasa

Western Regional Office-Kisumu
Reinsurance Plaza, 3rd Floor
Oginga Odinga Street,
P.O.Box 7768 - 40100, Kisumu
Tel: 057- 2020078
Mobile: 0717040681
Email: kisumu@knchr.org
Twitter: @KNCHRKisumu

North Rift Regional Office - Kitale
AFC Building
Opposite Mega Centre - Nakumatt
P.O. Box 2999 - 30200 Kitale
Tel: 054 - 31773/0203969057
Mobile: 0708271215/0796236683
Email: northrift@knchr.org
Twitter: @KNCHRKitale

North Eastern Regional Office - Wajir
Wajir Bor Rd, near Public Works
P.O. Box 363 - 70206, Wajir
Tel: 046 - 421512
Email: northernkenya@knchr.org
Twitter: @KNCHRWajir

SUMMONS FOR PERSONAL ATTENDANCE

(Pursuant to Article 252 Constitution of Kenya; Section 26, 27 and 28 Kenya National Commission on Human Rights Act (No. 14 of 2011) and any other enabling provisions of the law)

To: Mr. Nelson Marwa Sospeter, EBS,
Principal Secretary,
State Department for Social Protection,
Ministry of Labour and Social Protection,
Bishops Road, Social Security House,
NAIROBI.

31 OCT 2018

Dear Sir,

WHEREAS the Kenya National Commission on Human Rights (the Commission), in discharge of this mandate, conducted a Public Inquiry into Insecurity and Human Rights within the Coastal Region between the 24th of October 2016 and the 11th of November 2016.

AND WHEAREAS the Commission requires your appearance before it for purposes of elucidating on information within your knowledge regarding the subject of insecurity and human rights within the Coast Region by virtue of the office that you held , AND FURTHER based on a number of allegations that were made in the course of the hearing touching on you,

AND WHEREAS your personal attendance is now necessary for the proper finalization of the Report on the Inquiry aforesaid since information within your possession, custody or knowledge is still required and necessary for the conclusion of the report on the subject matter aforesaid;

Accredited "A" Status National Human Rights Institution
Chairperson: Kagwiria Mbogori, **Vice Chair:** George Morara Monyoncho
Commissioners: Jedidah Wakonyo Waruhiu, Shatikha S. Chivusia
Commission Secretary / CEO: Dr. Bernard Mogesa, PhD, CPM

APPENDIX 10: EDITORIAL COMMITTEE

1. Commissioner George Morara
2. Dr. Bernard Mogesa
3. Dr. Francis Owakah
4. Brenda Dosio
5. Dominic Kabiru
6. Petronella Mukaindo
7. Patrick Ochieng
8. Victor Kamau
9. Alice Mbuvi
10. Maureen M. Mwadime
11. Michael N. Lusweti
12. Anthony N. Luganje
13. Cyrus Maweu
14. Elizabeth Kamundia
15. Jude Boy
16. Faiza Sidi
17. Rosemary Kirui

HEAD OFFICE
1st floor CVS plaza, Lenana road
P.O Box 74359 – 00200 Nairobi, Kenya
Tel: 254-020-3969 000
Mobile: 0724 256 448 / 0726 610 159 /
0733 780 000 / 0736 780 000
Fax; 254-20-2716160
Email: haki@knchr.org

North Rift Office - Kitale
Ambwere plaza, Ground floor
P.O Box 2999 – 30200 Kitale
Telephone: 054 31773
Email: northrift@knchr.org
Twitter: @KNCHRKitale

North Eastern Office - Wajir
Wagberi, Opp former Al Shifaa Hospital
P.O Box 363 – 70200 Wajir
Telephone 046 - 4421512
Email:northernkenya@knchr.org
Twitter: @KNCHRWajir

Coast Regional Office - Mombasa
Panal Freighters Lane
Off Haile Selasie Road
P.O Box 9171 -80100
Telephone: 041 2220468 / 2220584
Email: coast@knchr.org
Twitter: @KNCHRCoast

Western Regional Office
Re Insurance Plaza, 3rd floor
Oginga Odinga Street
P.O Box 1967 – 40100
Tel: 057 2020078
Email:kisumu@knchr.org
Twitter: @KNCHRkisumu

Directorate of External Linkages
& Human Rights-Centre for Human Rights,
Laikipia University - Nyahururu
P.O Box 1100-20300,
Nyahururu, Kenya.
Tel: +254(0) 713 552 761, +254(0)20 266 3505/6
Email: info@laikipia.ac.ke

@hakiKNCHR
KNCHR
KNCHR
complaints@knchr.org
22359
www.knchr.org

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