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THE SENATE
14 OCT 2021
CLERK'S OFFICE

TWELFTH PARLIAMENT (FIFTH SESSION)

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

REPORT ON THE INQUIRY INTO EXTRAJUDICIAL KILLINGS
AND ENFORCED DISAPPEARANCES IN KENYA

Approved
14/10/2021

Rt. Hon. Speaker
You may approve for
tabling.
14/10/21

Clerk's Chamber,
First Floor,
Parliament Buildings,
NAIROBI.

DC-ES
Forwarded to the Speaker
for tabling
14/10/2021
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ABBREVIATIONS AND ACRONYMS

CSO	-	Civil Society Organisation
DCI	-	Directorate of Criminal Investigations
EDs	-	Enforced Disappearances
EJKs	-	Extra Judicial Killings
HRDs	-	Human Rights Defenders
HURIA	-	Human Rights Agenda
IG	-	Inspector General of the National Police Service
IJM	-	International Justice Mission
IMLU	-	Independent Medico-Legal Unit
IPOA	-	Independent Policing Oversight Authority
KFS	-	Kenya Forest Service
KNCHR	-	Kenya National Commission on Human Rights
KWS	-	Kenya Wildlife Service
MRC	-	Mombasa Republican Council
MUHURI	-	Muslims for Human Rights
NGO	-	Non-Governmental Organisation
NPS	-	National Police Service
ODPP	-	Office of the Director of Public Prosecutions
SGR	-	Standard Gauge Railway
SJCWG	-	Social Justice Centres Working Group
TJRC	-	Truth Justice and Reconciliation Commission

FOREWORD BY THE CHAIRPERSON

1. The issue of extra-judicial killings and enforced disappearances in Kenya has been of grave concern both prior to and following promulgation of the Constitution of Kenya, 2010.
2. Pursuant to its mandate under the Senate Standing Orders, the Standing Committee on Justice, Legal Affairs and Human Rights commenced an inquiry into the matter, with a view to establishing the factors which led to the continuance of this practice, and to making recommendations thereon on the interventions necessary to address the issue decisively.
3. In undertaking the inquiry, the Committee held meetings with key stakeholders, including family members of victims of extra-judicial killings and enforced disappearances, human rights organizations, as well as officials of various government agencies relevant to the Committee inquiry. The Committee further undertook fact-finding visits to Kwale and Mombasa Counties, before its schedule of such visits was interrupted by the COVID-19 pandemic. An overview of the deliberations held, and submissions made during these meetings and visits is set out at Chapter Two of this Report.
4. Through these engagements, the Committee was able to receive first-hand accounts of the terror visited upon families and communities arising from extrajudicial killings and enforced disappearances. The Committee pressed for answers and accountability from the responsible government agencies, from which it identified various gaps that have allowed this plague to continue ravaging the country. This informed the observations and recommendations of the Committee, which are set out at Chapter Three of the Report.
5. The observations and recommendations by the Committee are clustered into three categories, namely legislative frameworks, policy frameworks, and administrative arrangements. The recommendations are addressed to specific offices and timelines given for their implementation.
6. Regarding the proposed legislative interventions, the Standing Committee on Justice, Legal Affairs and Human Rights is in the process of developing a Bill, following which it shall engage with key stakeholders before introducing the Bill for consideration by Parliament.
7. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this inquiry. The Committee

further wishes to thank members of the public, human rights organizations, and the various government agencies and stakeholders who appeared before or submitted written memoranda to the Committee.

8. It is now my pleasant duty, pursuant to Standing Order 213, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its inquiry into extra-judicial killings and enforced disappearances in Kenya.

Signed..........

Date.....*5th October, 2021*.....

SEN. ERICK OKONG'O MOGENI, SC, MP
CHAIRPERSON
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS

PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 212 and mandated to: -

'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'


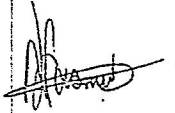


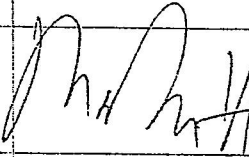
The Committee is comprised of -

- | | |
|--|--------------------|
| 1) Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson |
| 2) Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3) Sen. Amos Wako, EGH, SC, FCLArb, MP | |
| 4) Sen. James Orengo, EGH, SC, MP | |
| 5) Sen. Fatuma Dullo, CBS, MP | |
| 6) Sen. Mutula Kilonzo Junior, CBS, MP | |
| 7) Sen. Irungu Kang'ata, CBS, MP | |
| 8) Sen. Johnson Sakaja, CBS, MP | |

The Minutes of the Sittings of the Committee in considering the matter of extra-judicial killings and enforced disappearances in Kenya are attached to this Report collectively as *Annex 1*.

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON ITS INQUIRY INTO EXTRA-JUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA

We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report-

Sen. Erick Okong'o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, ^{EBS} EGH, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, ^{CBS} MP	-Member	
Sen. Irungu Kang'ata, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	

CHAPTER ONE: INTRODUCTION

Background

1. The issue of extra-judicial killings and enforced disappearances in Kenya has been of grave concern for quite a while, both prior to and after the promulgation of the Constitution of Kenya 2010. This is despite the country having put in place legal and institutional frameworks to address the two issues.
2. 'Extrajudicial killing' or execution refers to the *arbitrary deprivation of life* by government authorities or individuals *without the sanction of any judicial proceeding or legal process*. These executions include deaths resulting from torture or ill-treatment in prison or detention; death resulting from enforced disappearances, deaths resulting from the excessive use of force by law-enforcement officials, among others.
3. 'Enforced disappearance' is defined in the International Convention for the Protection of All Persons from Enforced Disappearance to refer to the "*arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law*". Kenya is not a party to and has not ratified the said Convention.
4. Extrajudicial killings and enforced disappearances present a grave affront to the Constitution and the administration of justice, in that persons profiled or suspected to have committed crimes are summarily executed without being subjected to the benefit of a fair trial, where evidence may be presented against them and the opportunity to rebut such evidence granted.
5. Article 26 of the Constitution guarantees every Kenyan the right to life, and specifically states that '*A person shall not be deprived of life intentionally*'. While Article 29 of the Constitution provides for the freedom and security of the person which includes the right not to be subjected to torture, or treated or punished in a cruel, inhumane, or degrading manner. The Constitution further requires the State to ensure access to justice for all persons (Art. 48), sets out the rights of arrested persons (Art. 49), and grants to every person the right to a fair hearing, including the right to be presumed innocent until the contrary is proved (Art. 50). Article 51 further sets out the rights of persons detained, held in custody, or imprisoned.

6. In addition, Parliament has enacted several legislations to address extrajudicial killings and enforced disappearances. These include –
- i) the Independent Policing Oversight Authority Act, 2011 which provides for civilian oversight of the work of the NPS officers;
 - ii) the Prevention of Torture Act, 2016 which provides for the prevention, prohibition and punishment of acts of torture and cruel, inhuman or degrading treatment or punishment; reparations to victims of torture and cruel, inhuman or degrading treatment or punishment;
 - iii) the Witness Protection Act, which provides for the protection of witnesses in criminal cases and other proceedings;
 - iv) the Penal Code, which establishes a code of criminal law;
 - v) the Persons Deprived of Liberty Act, 2014 which provides for the rights of persons deprived of liberty;
 - vi) the National Coroner's Service Act, 2017 which provides for investigation of reportable deaths; and
 - vii) the Victim Protection Act, 2014 which provides for protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims.
7. Regarding the institutional frameworks, Kenya has put in place several institutions to protect, fulfil and uphold human rights related to extrajudicial killings and enforced disappearances. These include –
- a) the Kenya National Commission of Human Rights (KNCHR) which is established under Article 59 of the Constitution and the Kenya National Commission on Human Rights Act of 2011. The Commission is responsible for the promotion of respect and protection of human rights, and monitoring, investigating and reporting on the observance of human rights;
 - b) the Independent Policing Oversight Authority (IPOA) established under the Independent Policing Oversight Authority Act, 2011 with the responsibility to provide civilian oversight over the work of the National Police Service;
 - c) the Judiciary established under Chapter Ten of the Constitution and responsible for the determination of disputes;
 - d) the Witness Protection Agency established under the Witness Protection Act and responsible for giving special protection to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies;
 - e) the Office of the Director of Public Prosecutions established under Article 157 of the Constitution and the Office of the Director of Public Prosecutions Act is to be responsible for prosecution in the country;
 - f) the National Police Service (NPS) established under Article 244 of the Constitution and the National Police Service Act. The main objects and

functions NPS are to strive for the highest standards of professionalism and discipline among its members, comply with constitutional standards of human rights and fundamental freedoms and foster and promote relationships with the broader society. Further, Article 245 of the Constitution establishes the office of the Inspector General (IG) of Police exercises independent command over the NPS, and perform any other functions prescribed by national legislation.

In exercising the independent command, the IG has the responsibility to ensure that his officers commit to protect the right to life of all Kenyans by adhering to the Constitution and other pieces of national legislations. Specifically, under the Sixth Schedule to the NPS Act, 2011, Part A, Para 12 on Conditions as to the Use of Force and Part B, Para 8 on Conditions as to the Use of Firearms, the IG is responsible for making regulations to guide on use of force and firearms.

CHAPTER TWO: SUBMISSIONS FROM STAKEHOLDERS

Meeting with Civil Society Organisations (CSOs) in Kwale County

8. On Saturday, 6th April, 2019, the Committee held a meeting with representatives of Civil Society Organisations (CSOs) operating in Kwale County, at Kwale Cultural Center, where members were informed that 45 cases of extrajudicial killings and 16 cases of forced disappearances were documented within the past three years in Kwale County. The widows and children of these victims could not access various government services due to lack of vital documents to prove their status and cases.
9. In a presentation by Human Rights Agenda (HURIA), a Human Rights Non-Governmental Organisation (NGO) working in the coastal region, the Committee was informed that, since 2014, the victims of extra judicial killings and enforced disappearances had been increasing in the county. Most of these victims were said to be engaged in informal employment such as *bodaboda* operation, fish mongering, fruit vending, teaching in *madrassa* and subsistence farming.
10. The analysis by the NGO further revealed that most killings happened between 7.00 pm and midnight, and that majority of the victims' bodies were found lodged with bullets. The Committee was informed that majority of these cases were reported to the Police, but no action was taken. Most of the victims who were killed or were said to have disappeared were found to be Muslims and were buried within a day due to religious reasons, thus hindering further autopsy examinations and investigations. The Committee was informed that families of the victims lived under constant harassment from the police and were accused of being radicalised and owning illegal firearms.
11. It was proposed that there was need to strengthen the witness protection programs because majority of the people who had been killed are also said to have been village elders and leaders who might have provided some intelligence information to law enforcers. It was further proposed that there is need to establish a structure to rehabilitate radicalised youth who are ready to come back and get integrated back in the society.

Courtesy call to the County Commissioner, Mombasa County

12. The County Commissioner informed the Committee that violence and crime was emerging, and criminals were using sophisticated weapons that gave law enforcers

no chances at times. However, the County security apparatus had never held a meeting to plan to execute members of the public.

13. The County Commissioner further informed the Committee that there were concerns that many people had been abducted by unknown people and later their bodies were discovered in the National Parks decomposing. However, nobody knew who picked them and why.
14. The Committee was informed that the County security apparatus were concerned that majority of other victims were village elders and *Nyumba Kumi* leaders raising concerns as to the intention of the abductors.

Submission from Civil Society Organisations (CSOs) in Mombasa County

15. The Committee received submissions from the Mombasa Law Society, Human Rights Agenda (HURIA), HAKI Afrika, MUHURI, Human Development Agenda, and Maendeleo ya Wanawake.

i) Mombasa Law Society – Lumatete Muchai

16. In their submissions, the Mombasa Law Society informed the Committee of the historical perspective to forced disappearance and extra judicial killings in Kenya, particularly at the Coast region. These included political, social, and economic marginalisation since independence of the coastal communities in Kenya that led to the emergence of *Kaya Bombo* of 1997 and the Mombasa Republican Council (MRC).
17. The recent construction of the Standard Gauge Railway (SGR) had also manifested marginalisation of the coastal communities and fermented a feeling that labour had been evacuated from Mombasa to the hinterland.
18. Young people harboured sentiments of discrimination which made them vulnerable and susceptible to recruitment by terror groups. There was therefore need for inclusive development programs. The Committee was further informed that there was need for timely disbursement of county resources to address marginalisation.

ii) Human Rights Agenda (HURIA) - Yusuf Lule

19. The Committee was informed that Kenya had witnessed a sharp increase in the number of insecurity incidences over the years even after adopting a progressive

Constitution, in 2010. According to NPS Crime Situation Report 2014, the crime figures for Kwale County were 958 which increased significantly to 1097 in 2015 and were estimated to have risen based on the number of killings reported in the year.

20. Over the past 12 months, HURIA had been implementing a project that sought to strengthen community resilience against extremism amongst residents in Kwale County. The project had been targeting *Nyumba Kumi* and Community Policing Committees with a view to improving their knowledge and skills towards community security. HURIA also sought to support positive and trusting relationship between police and the community as a foundation for assisting in the identification and diversion of vulnerable individual from radicalisation and violent extremism.
21. The Committee was further informed that families and relatives of the victims of extra judicial killings and enforced disappearances had undergone psychological torture, emotional disturbance, and continued harassment by law enforcement agencies. Their next of kin had also been subjected to economic difficulties. These cases had bred fear, mistrust, and unease amongst residents within the villages. Further, criminal gangs had taken advantage of the situation leading to confusion on the real perpetrators of the killings.
22. HURIA recommended that there was need for urgent ratification of the International Convention for Protection of all Persons from Enforced Disappearance. Further, there was need for expeditious implementation of the recommendations of the Truth Justice and Reconciliation Commission (TJRC) on enforced disappearances and extra judicial killings. HURIA also asked the government to commit reparations for the hundreds of families of victims of extra-judicial killings in accordance with the commission's reparation framework.

iii) HAKI AFRIKA

23. The Committee was informed that suspects and innocent people were victims of trigger-happy police officers, criminal gangs and ill-informed members of public who lynched them. However, when human rights group condemned the killings, they were accused of taking sides and supporting criminals. Nonetheless, human right groupings speak out in defence of the rule of law and respect for human rights. The law required that every person was innocent until proven guilty by a court of law. Suspects should therefore be apprehended, taken to court and charged.

24. HAKI Africa informed the Committee that they had recorded 81 cases of killings and 32 disappearances. Out of these, 56 cases were believed to be killings by police, 16 by criminal gangs and 9 by public/private citizens.
25. HAKI Africa called on the Senate through the Committee to immediately call for setting up of a judicial inquiry to conclusively investigate extra judicial killings and enforced disappearances at the Coast of Kenya.

iv) Muslims for Human Rights (MUHURI)

26. MUHURI informed the Committee that there had been more than 158 cases of judicial killings and enforced disappearances documented by the organisation in the Coastal Region within the past one year. However, there had been a slow pace of action and investigations against the persons implicated in such cases.
27. MUHURI proposed that the Independent Policing Oversight Authority (IPOA) be empowered to prosecute reported cases of extrajudicial killings and enforced disappearances.

v) Human Development Agenda (based in Kwale County)

28. The Committee was informed that Kwale County faced many security related challenges since the emergence of *Kaya Bombo* and Mombasa Republican Council. Radicalisation and violent extremism continued to wreak havoc in the area since the government response was usually harsh.
29. The Committee was informed that over 45 people had been killed in Kwale County and nobody had ever been prosecuted, while about 16 others had been abducted/arrested and their whereabouts were still unknown.
30. The Human Development Agenda recommended that families of victims of extra judicial killings and enforced disappearances be compensated. The government should also publicise the amnesty policy and further support the civil society organisation working on de-radicalisation.

vi) Maendeleo ya Wanawake

31. The Committee was informed that there was need for the Committee to come up with strategies to address the status and plight of the returnees who were coming back from Somalia after joining terror groups.

32. The Committee was further informed that drugs and substance abuse affected many people in the region. To this end therefore, there should be some targeted interventions to people suffering from drugs and substance abuse.

Submissions from family members of victims

33. The Committee received submissions from some family members of victims of extrajudicial killings and enforced disappearances.

i) Mohammed Khalifa Mohammed

34. The Committee was informed that on 22nd September, 2017, Mohammed's son aged 26 years left their house to buy watermelon in the market, but he never returned to date. His father and family members conducted a search at hospitals, police stations and mortuaries but he has not been found yet.

35. However, his bicycle was discovered parked at the market and some witnesses informed the family that he was abducted/arrested by about five (5) men who were carrying walkie talkie and handcuffs and were presumed to have been police officers. Nonetheless, efforts to get any information from the police and other security agencies had been futile.

ii) Meja (Resident of Bamburi

36. The Committee was informed that Meja's son was working in Bamburi in a Hotel as a cab driver. One day he took a visitor to the airport on his way back he was killed by police in Changamwe together with two others. When Meja reported to the police, the OCS was adamant that those who were killed were criminals and denied his father a chance to record a statement and/or obtain an OB number.

iii) Abdi Farah

37. Abdi Farah informed the Committee that his son, Farah Abdi Farah, disappeared and his whereabouts were still unknown.

iv) Abubakar

38. Abubakar informed the Committee that there were concerns that some youths were being radicalised in police cells and prisons.

Responses and submissions from Security agencies

39. The Committee received the following responses and reactions from the security agencies at the Coast.

i) DCI Regional Coordinator, Coast Region

40. The DCI informed the Committee that they were led by evidence in investigating cases. However, many cases were not reported. The cases that had reached the DCI were investigated and files forwarded to the ODPP for necessary action.

41. The Committee was informed that the police service had also suffered in the line of duty and especially in pursuit of criminals. However, there were no incidences where police officers had authorised excessive use of firearms.

ii) ODPP Regional Coordinator, Coast Region

42. The Committee was informed that there was a Human Rights and Counter-Terrorism Division established at the ODPP with clear mandates. The ODPP was also partnering with Human Rights NGOs on criminal justice and accountability to improve the relationship between the police and members of the public.

Submissions from Civil Society Organizations in Nairobi

43. On Wednesday, 4th March, 2020, the Committee met and received submissions from the following CSOs: -

i) Amnesty International – Kenya (Irungu Houghton)

44. The Committee was informed that extrajudicial killings, unlawful use of lethal force and enforced disappearances continued to undermine the rule of law, and that it was important that the issue was addressed comprehensively and constructively.

45. Amnesty International was particularly alarmed by the sustained abuse, excessive use of force, and extrajudicial killings of Kenya's young people. According to a report by Missing Voices, 107 people either were killed by the police or reported missing in 2019. So far in 2020, 14 people had been reported as killed by police or missing. Amnesty called on the Committee to fully investigate these cases.

46. In particular, the Committee was urged to: -
- a) undertake as a matter of urgency a fact-finding mission to the counties most hit by the concerns raised. This engagement would enable the Committee to meet the people on the ground as well as engage with responsible duty bearers such as police leaders in the selected areas;
 - b) require the Inspector General of Police to provide police data on police killings and enforced disappearances in Kenya;
 - c) require the Inspector General of Police to provide a status update on the progress of investigations and prosecution of police officers linked to excessive use of force during demonstrations;
 - d) encourage the Attorney General and the Cabinet Secretary for Interior and Coordination of National Government to prepare and gazette the regulations for the Prevention of Torture Act, 2017, and the National Coroners Service Act, 2017, and cause the two laws to be fully operationalised;
 - e) investigate the circumstances around the deaths of persons during demonstrations and peaceful protest since the 2017 elections as documented by three Kenya National Commission on Human Rights Reports; and
 - f) review Kenyan laws and regulations on use of force and firearms and public order management to ensure that force is only used in a legal, accountable, necessary, ethical and proportionate manner in the circumstances, and the minimum amount necessary to accomplish the lawful objective concerned.

ii) HAKI Afrika – Hussein Khalid

47. The Committee was informed that HAKI Afrika, working with social justice centres and paralegals, had received and documented numerous cases of human rights violations in all the six Counties of the Coast region, including extrajudicial killings and enforced disappearances. These cases had been analysed and enumerated in a Report presented to the Committee, and which is annexed to this Report.
48. During the year 2019, Haki Afrika had documented a total of 59 killings, of which 43 were by police or suspected to have been by police. At least 11 people were alleged to have been forcefully disappeared in 2019, compared to 9 in 2018. In addition to the National Police Service, these killings also involved officers from other security formations, among them the Kenya Forestry Service, the Kenya Wildlife Service, the Kenya Prisons Service, and the Kenya Coastguard Service.

49. Haki Africa noted that, unlike the National Police Service whose operations are placed under civilian oversight through the Independent Policing Oversight Authority (IPOA), these other security formations were not under any such oversight. They therefore recommended that the law be amended to expand the mandate of IPOA over these formations as well.

iii) Independent Medico-Legal Unit (IMLU) - Peter Kiama

50. The Committee was presented with reports compiled by IMLU documenting cases of killings and the excessive use of force by the police, including cases of shootings, torture and beatings, and suffocation after inhaling teargas fumes. This had taken place both during the elections as well as after. IMLU was concerned that no tangible investigations had commenced, nor measures taken to address the rehabilitation or compensation of victims and their families.
51. It was noted that the situation of extra judicial killings and excessive use of force by the police was not limited to managing public assemblies during elections but was a more systemic and deep-rooted problem.

iv) Defenders Coalition - Francis Ndegwa

52. The Committee was informed that, over the past 12 years, the Defenders Coalition had been documenting cases of threats and reprisals against human rights defenders (HRDs) in Kenya. HRDs investigating, reporting and calling out perpetrators of extrajudicial killings and enforced disappearances had been met with glaring life threats, intimidation and evictions by landlords who colluded with the trigger-happy cops.
53. The Coalition was worried that the HRDs who help victims of EJKs and EDs do not get state protection as the victims they assist. While the Defenders Coalition had been at the forefront in offering protection to the HRDs through medical and psychosocial support, legal support and also relocation services, the cases continued to increase with increased number of killings, media interviews, release of investigative journalism pieces and dissemination of reports consolidated by HRDs on extra judicial killings and enforced disappearances.
54. In 2020 alone, the Defenders Coalition had responded to 5 cases of HRDs who had either been physically assaulted by the police officers, threatened and others intimidated through trailing and arbitrary arrests

55. The Coalition therefore requested the Committee to recommend for adoption of the HRD Protection Policy developed by the Coalition in conjunction with the Kenya National Human Rights Commission (KNCHR), and for its adoption and domestication by the National Police Service, Witness Protection Agency and other relevant government institutions. Further, the Committee was requested to assure the HRDs of their security as they conduct their work through investigations, arrests and prosecution of the perpetrators of these vices.

v) International Justice Mission (IJM) – Aggrey Juma

56. The Committee was informed that part of the challenge in tackling extrajudicial killings and enforced disappearances was the existence of officers who were not, in the police chain of command, answerable or accountable to the officers in charge of the respective stations where they were stationed. This left them at liberty to commit crimes and act with impunity due to this failure of command.

57. It was further noted that, while Kenya was not a signatory to the international Convention for the Protection of All Persons from Enforced Disappearance, the right to *habeas corpus* was provided for in the law and could not be derogated from. Consequently, what was required was to ensure strict adherence by the National Police Service to the law.

vi) Social Justice Centres Working Group – Wilfred Olal

58. The Committee was informed of the existence of 'killer cops' in slum areas and informal settlements who were well known, would extort and kill at will, yet no action would be taken against them. An example given was one Ahmed Rashid, said to operate in Pangani, Eastleigh and Mathare areas, and who run a gang dubbed 'Pangani Six'. It was stated that Rashid was responsible for most of the killings in the said three areas yet, despite evidence of his actions being available, no action had been taken against him.

59. There were also cases of police officers operating an online platform known as 'Nairobi Crime Free'. Going under the name 'Hessy wa Dandora', the officer would profile young men in Nairobi slums, post them on social media when alive, later kill and post their photos when dead.

60. The Committee was further informed that Police killings during lawful demonstrations were becoming common, with 4 young men having lost their lives in 2020 alone, while exercising the Constitutional right to picket as enshrined at Article 37 of the Constitution.

61. While the Social Justice Centres from across the country had managed to document police killings and enforced disappearances cases and forwarded most of these cases to IPOA, the Committee heard that most of these cases could not proceed as witnesses were threatened and intimidated, as a result of which most of them could not proceed to testify. Some witnesses had also lost their lives. It was pointed out that there was a lacuna in law, in that while the Witness Protection Agency only takes up witnesses whose cases are in court, there is no protection offered to potential witnesses at the investigative stage, and this comprised a serious gap on the fight against extrajudicial killings and enforced disappearances.
62. The Committee was also informed that most families whose sons were killed by police undergo further victimization when they are prevented from holding burial meetings and are forced to pay for the bullets and the post-mortem charges.
63. Another case presented before the Committee was that of illegal and arbitrary arrests, whereby every day in the slums and informal settlements, young men were arrested, rounded up and asked to pay bribes to police officers. Those who paid were released while those without money were taken to police stations where they would spend their night before being taken to court and charged with trumped-up charges.
64. The Social Justice Centres requested that the Committee recommend strengthening and devolution of IPOA to all counties, and the operationalization of the National Coroners Services Act, 2017 and the Prevention of Torture Act, 2017.

Submissions from the Independent Policing Oversight Authority (IPOA)

65. The Committee met and received submissions from the Independent Policing Oversight Authority (IPOA) on Wednesday, 4th March, 2020. In a presentation by the Chairperson of the Authority, Ms. Anne Makori, the Committee was informed that IPOA exists to provide civilian oversight over the work of the National Police Service, with the objectives to: a) hold the Police accountable to the public in the performance of their functions; b) give effect to the provision of Article 244 of the Constitution; and c) ensure independent oversight of the handling of complaints by the Service.
66. In execution of this mandate, the Authority had documented continuous abuse of use of force and firearms, and had been making the relevant and necessary recommendations, including prosecutions and disciplining of culpable police

officers, and on improvement of policing services (as per section 6 (k) of the IPOA Act). However, there had been restrained progress on this, the resultant being continuous abuse of use of force and firearms occasioning deaths.

67. The Authority thereupon informed the Committee that, between 1st October, 2018, and 28th February, 2020, it had received and admitted for investigation **210 cases** of death as an as a result of police action, death in police custody/premises and enforced disappearances. The complaints are tabulated as hereunder: -

Case by Nature	Overall	Nairobi County	Other Counties
Deaths due to Police Action	146	35	111
Deaths in Police Custody	39	4	35
Enforced Disappearance	25	6	19
Total	210	45	165

68. The Authority then presented a status update on six cases directly raised by Senators involving police killing, namely the cases of Duncan Githinji, Carliton Maina, Daniel Mburu, Ahmed Majid, Stephen Macharusi, and Benson Kiptire, who was a Personal Assistant to the Senate Majority Leader.
69. Among the challenges the Authority faced in carrying out its work were: -

a) *Non-adherence to the rule of law*, including failure by police to notify the Authority on deaths and serious injuries as per section 25 of the IPOA Act, 2011; reporting deaths as per Part A, Para 5 and 7 of the Sixth Schedule to the NPS Act, 2011 and, not identifying themselves when carrying out police operations as per Part A, Para 10 of the Sixth Schedule to the NPS Act, 2011 on Conditions as to the Use of Force.

Additionally, the National Coroners' Services Act, 2017 and Prevention of Torture Act, 2017 were yet to be operationalised.

- b) *Non-cooperation*, through denial of access to police documents and reports in relation to crimes committed by police officers; as well as the lack of effective measures to protect witnesses before cases are admitted in courts, leading to withdrawal of witnesses from the investigations process.
- c) *Duplicity of investigative mandate* between the Authority and the Directorate of Criminal Investigations (DCI).

- d) *Intimidation and threats* of witnesses, the investigation officers and victims.
- e) *Non-implementation of the Authority's recommendations* on disciplinary actions (interdictions) to be taken against rogue police officers as a way of deterring such conduct and this leads to a series of complaints against such officers.
- f) *Lack of oversight of other law enforcement agencies*, including the Kenya Forest Service (KFS), Kenya Wildlife Service (KWS), Kenya Prison Service (KPS) and the Kenya Coast Guard Service (KCGS) which, in some incidents, are involved in abuse of firearms.
- g) *Policing gaps during public order and crowd control management*, on which the Authority has made recommendations for training but the same is yet to be done.
- h) *Incorrect entries and updates of police records and registers*, which affect the accuracy of evidence necessary for conclusive investigations by the Authority.
- i) *Lack of regulations on use of force and firearms*, which has created a lacuna leading to abuse of force and firearms.
- j) *Limited resources*, in terms of inadequate human capital and equipment necessary for conducting prompt and independent investigations. The Authority currently has around 70 investigators, who are expected to conduct investigations of cases reported across the country.

Written Submissions from Government Agencies

- 70. On diverse dates, the Committee received written memoranda from the following Government agencies: -
 - i) *The Office of the Attorney-General and Department of Justice*
- 71. The Committee received written submissions dated 21st April, 2020 from the Office of the Attorney-General and Department of Justice (OAG & DOJ). In the submissions, it was observed that Kenya respects human rights based on constitutional democracy and the rule of law, and that the Government does not sanction any form of extrajudicial killings or enforced disappearance. Where, extrajudicial killings or enforced disappearance, it was noted that appropriate action must be taken by appropriate authorities so as to ensure that justice is done.

72. It was submitted that Kenya has in place sufficient Constitutional, national legislative and institutional frameworks, including international laws to which Kenya is a State party, to address extrajudicial killings and enforced disappearance were set out. These include the Article 26 on the right to life, Article 48 on the rights of an arrested person, Article 50 on the right to fair trial, the Penal Code, the Criminal Procedure Code, the African Charter on Human and Peoples' Rights (Banjul Charter), the International Covenant on Civil and Political Rights (ICCPR), the Internal Affairs Unit established under section 87 of the National Police Service Act, the IPOA, ODPP and the Judiciary.
73. Despite the existence of legislative and institutional frameworks to address extrajudicial killings and enforced disappearance, the OAG & DOJ noted that there are various challenges hampering the achievement of the desired results. These challenges are –
- a) lack of proper coordination and cooperation among agencies handling matters relating to complaints against law enforcement officers, and duplication of efforts in the investigation and prosecution of cases;
 - b) Kenya does not have an independent forensic analysis laboratory. As a result of this, IPOA relies on the Police for any scene of crime analysis leading to difficulties in accessing police documents and reports in relation to crimes committed by police officers which thwarts the IPOA's investigations; and
 - c) the procedure for payment of compensation to beneficiaries of extrajudicial killings and enforced disappearance under the Victim Protection Fund has not been operationalized since the Victim Protection (Trust Fund) Regulations are yet to be enacted by the National Treasury.
74. With a view to addressing the above challenges, the OAG & DOJ made the following recommendations –
- a) the establishment a strong Multi-Agency Task Force comprising of representatives from the NPS, ODPP, IPOA, NPSC and NCAJ, and report to Parliament to ensure better synergy, collaboration and cooperation between the various agencies responsible for addressing extrajudicial killings and enforced disappearances. The task force should be fashioned along the lines of the Multi-Agency Taskforce on Corruption which has proved very valuable in the fights against corruption;
 - b) the develop a monitoring and evaluation plan for the envisaged the taskforce. The Plan should set out clear indicators to track complaints, investigations, prosecutions and final outcomes of cases on extrajudicial killings and enforced disappearance. In this way, each organization will own the process, make them

more accountable since it will clearly indicate any weakness in the system and hence identify specific institutional issues.

- c) increase budgetary allocation to the OAG & DOJ to facilitate operationalization of the National Coroners Service under the National Coroners Service Act. Once operationalized, the Service will facilitate the proper collection of forensic evidence from the scene of crime to avoid contamination, independently verify the courses of death and therefore increase the chances of the successful resolution of a criminal case and the successful prosecution of the offender;
- d) enhancement of training of law enforcement officers on respect of human rights in undertaking duties involving arrest, detention, search and seizure of property, surveillance, use of force and firearms;
- e) enhancement of the capacity of the IPOA and ODDP by increasing competent staff and training to successfully investigate and prosecute cases of extrajudicial killings and enforced disappearance to increase the chances of compensation. This is because the Victim Protection Board can only compensate families of a victim of extrajudicial killing and enforced disappearance based on the actual conviction of an accused person in a criminal case; and
- f) fast track the enactment of the Victim Protection (Trust Fund) Regulations by the National Treasury.

ii) The Director of Public Prosecutions

- 75. The mandate of the Office of the Director of Public Prosecutions (ODPP) as set out under Article 157 of the Constitution and the Office of the Director of Public Prosecutions Act is to be responsible for prosecution in the country. The Committee received written submissions dated 9th June, 2020 from Additionally, prosecution strategies employed geared towards efficient and impactful service delivery to the public were set out. These strategies include prosecution guided investigations, focus on high impact cases, conviction-based approach to cases, and ODPP complaints desk and hotline number.
- 76. Regarding addressing extrajudicial killings and enforced disappearance, the ODPP submitted that it has adopted a multi-agency approach which entails working in collaboration and adoption of complementary between the IPOA, DCI, NPS and ODPP. Specific actions take include –
 - a) establishment of the civil rights division aimed at enhancing the promotion of human rights and address cases relating to inaction or action by law enforcers resulting in criminal violations of human rights. The department is in the process of establishing a tri-partite task force on civil and human rights;

- b) collaboration with IPOA. A Memorandum of Understanding has been signed between the ODPP and IPOA, the Standard Operating Procedures with IPOA have been developed, and establishment of an IPOA Desk. This sets out rules of engagement on matters of mutual interest, and guide the investigations and prosecutions of matters relating to IPOA;
- c) development of a community outreach program in conjunction with HAKI Africa and the International Justice Mission (IJM) aimed at bringing together communities and justice actors to ensure access to justice and upholding of human rights. Through the program, communities have been sensitized on the role of the various actors in the criminal justice system, and public enquiring on police excesses have been conducted in Nairobi, Mombasa, Kilifi, Lamu, Taita Taveta, Tana River, Isiolo and Kisumu counties;
- d) the Criminal Justice Accountability Project initiated in collaboration with the civil society and piloted in the six counties of the coast region in order to bridge the mistrust gap between law enforcement and communities;
- e) collaboration with the Office of the High Commission for Human Rights (OHCHR) where an evaluation on the capacity, structure and resources within the ODPP was carried out with a view to address human rights violations. Through the evaluation, recommendations including capacity building among stakeholders were made; and
- f) establishment of the ODPP Witnesses and Victims of Crime Unit which works closely with the Witness Protection Agency to ensure protection of witnesses and victims of crime, as conducting guidance and counselling to the victims and witnesses.

77. From the public engagements undertaken by the ODPP, the ODPP observed that the communities mentioned several cases of disappearances and deaths attributed to security agencies, people had information but feared sharing with the police for fear of victimization or no action will be taken, and in some cases, there was admission of victims being involved in criminal gangs.

78. In terms of statistics, the ODPP indicated that it had received 171 files relating to police excesses. Out of these files, 85 cases are pending before court and 6 convictions had been recorded. Additionally, between 22nd April, 2020 and 29th May, 2020, the ODPP received 38 files from the IPOA out of which consent to prosecute has been given in 15 files.

79. The ODPP noted that it is ready to prosecute cases of police excess without fear or favor. Specifically, some of the actions taken include it has ensured that administrative action has been taken against police officers, directed the IPOA to undertake investigations on all documented cases of police excesses, directed the

DCI to take action on specific cases, and working closely with the Internal Affairs Unit of the NPS.

iii) The Kenya National Commission on Human Rights

80. The mandate of the Kenya National Commission on Human Rights (KNCHR) is set out under Article 59 (2) of the Constitution and the Kenya National Commission on Human Rights Act of 2011. Pursuant to these provisions, KNCHR is responsible for, among others –
- a) promotion of respect and protection of human rights;
 - b) monitoring, investigating and reporting on the observance of human rights;
 - c) receiving and investigating complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;
 - d) investigating or researching a matter in respect of human rights, and make recommendations to improve the functioning of State organs;
 - e) investigating any conduct in State affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice; and
 - f) investigating complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct
81. On 9th March, 2020, the Committee received written submissions from the KNCHR. In the submissions, the KNCHR stated that it has put in place procedures and systems including a complaints management system which helps it preserve, process and analyze data on complaints received. In relation to extra-judicial killings, enforced disappearances and related human rights violations, the KNCHR submitted that it has documented and conducted investigations on numerous complaints received. In its view, evidence gathered a pattern of conduct by the Kenya security agencies amounting to grave violations of the law and human rights against persons or groups of persons suspected to be associated with various acts of criminality.
82. Since the year 2013, KNCHR has documented over 1040 cases of extrajudicial killings and enforced disappearances attributed to the security agencies. Over 80% of the victims in these cases are young male adults aged between 15 and 35 years. Additionally, KNCHR has compiled reports and presented them to the relevant authorities including Parliament for action. The reports point to a widespread and systematic violations which include arbitrary arrest, extortion, illegal detention, torture, killings and disappearances.

83. The KNCHR submitted the following eight investigation reports for consideration by the Committee –
- a) *The Error of Fighting Terror with Terror*. The report documents 150 cases of people who have disappeared, killed or brutalized by various security forces involved in the ongoing counter-terrorism operations in the country;
 - b) *Return of the Gulag – Report on Operation Usalama Watch, 2014*. The Report captures findings by KNCHR regarding the implementation of the Usalama Watch Security operation which commenced on 3rd April, 2014 in response to escalating terrorist activities in the country. The operation was characterized by massive violation of human rights by police officers against residents of areas of operation majority of whom were ethnic Somalis;
 - c) *The Cry of Blood: Report on Extra-Judicial Killings and Disappearances of Suspected Mungiki Members*, September 2018. The Report covers investigations into executions and disappearances of suspected mungiki members attributed to the Kenya Police;
 - d) *The Mountain of Terror – A Report on Investigations of Torture and Killings by the Military in Mt. Elgon*, May 2008. The Report documents abuses and brutality committed by the military against suspected members of the outlawed Sabaoth Land Defence Force (SLDF) in Mt. Elgon. The abuses were indiscriminate and targeted many innocent civilians who were not members of SLDF;
 - e) *You Got Brains, We Got Brawn – A Report on investigations into police brutality committed at the University of Nairobi*. This Report covers human rights violations by the National Police Service against the students and staff of the University of Nairobi on 28th September, 2017. The Police had used excessive force in response to protests by a section of the students who were demanding the release of Hon. Paul Ongili;
 - f) *Mirage at Dusk: A Human Rights Account of the 2017 General Elections*. The Report covers human rights violations documented by the KNCHR during the 2017 general elections. Majority of the documented cases were as a result of police aggression towards civilians;
 - g) *Report of the KNCHR on Violation of Human Rights in the Matter of Miguna Miguna*; and
 - h) *Footprints of Impunity – Counting the Cost of Human Rights Violations*, 2017. The Reports illustrates the heavy price paid by the taxpayer, including the cost of lawsuits and awards made by courts, as a result of human rights violations by the State and its agencies.
84. Whereas the KNCHR supports the ongoing efforts by the State to secure the country, it observes that the security policies and practices must be legal and consistent with human rights standards and principles. Additionally, KNCHR

submitted that its investigation work has been inhibited by various challenges including –

- a) intimidation of victims and witnesses who are afraid of disclosing information for fear of reprisals by security agencies;
- b) threats on staff of KNCHR in the course of performing their duties; and
- c) lack of cooperation and denial of access to places of detention by the relevant security agencies.

85. The KNCHR made the following recommendations –

- a) the security forces to forthwith stop the abuses, the perpetrators to be held to account and an account of the missing persons be provided;
- b) the government to expedite reparations to survivors and families of the deceases;
- c) Parliament to provide sufficient budgetary allocations to compensate victims, especially where courts have made awards;
- d) Parliament to prevail on security agencies to provide KNCHR with unconditional and unfettered access to information relating to investigations carried out by KNCHR to enable it fulfill its mandate;
- e) Parliament to restrict the involvement of the military in internal affairs since KDF has refused to be held accountable for their actions; and
- f) Parliament to summon the CS for Interior and Coordination of National Government, and the IG with a view to sanction them for the abuses and unlawful acts of the police.

iv) The Office of the Inspector-General, National Police Service

86. The mandate of the Office of the Inspector-General of the National Police Service (IG) as set out under Article 245 of the Constitution and the National Police Service Act of 2011 is to exercise independent command over the National Police Service (NPS).

87. On 20th March, 2020 the Committee received written submissions from the IG. The IG outlined the following actions undertaken –

a) Formulation and Gazettement of regulations on use of force and firearms

The existing Force Standing Orders which provide guidance on lawful use of force and firearms were reviewed in 2017 and launched in 2018. It was submitted that the NPS has endeavored to ensure that the Force Standing Orders are adhered to by all officers and that cases involving firearms are reported for accountability and investigated by the police and independent bodies such as the IPO.

b) *Cooperation with IPOA*

It was submitted that the NPS continues to cooperate with the IPOA as provided under the Independent Police Oversight Authority Act by giving IPOA space, documents and exhibits whenever requested by IPOA regarding the oversight role of the IPOA. This has led to suspension, dismissal or discharge of officers based on recommendations by IPOA, imprisonment of officers found to have misused their positions or firearms, and prosecution of officers on account of improper use of force and firearms.

c) *Investigation of offences relating to use of force and firearms*

It was reported that there are instances where officers have violated the law due to poor judgement or outright criminality. Such officers, it was submitted that, are subjected to investigations by the relevant agencies including the DCI and where an officer is found to have arbitrary and unlawfully used force or a firearm, action is taken in line with the recommendations.

d) *Professionalism and integrity*

It was reported that NPS has a comprehensive curriculum on human rights, use of force and firearms, investigations and management, including a working relationship with EACC Education Department which trains the police on integrity issues with a view to ensuring observance of good conduct, professionalism and integrity. Additionally, the recent restructuring of the NPS centralized command structures within the devolved units resulting in minimized conflicts and internal competitions which previously hampered smooth operation in the NPS.

Further, the IG outlined the following actions which had been undertaken –

- (i) the directive that all officers except DCI officers to be in uniform whenever on duty has reduced complaints concerning officers who cannot be identified;
- (ii) the piloting of the digital OB is anticipated to make it possible to monitor reports made to police stations and give prompt feedback. Currently, commanders carry out regular inspection of police records with a view to ensuring timely actions are taken on reports made;
- (iii) use of non-invasive methods such as dialogue, water cannons and erection of barriers using special vehicles in crowd control has resulted in reduced number of injuries to both the police and members of the public;
- (iv) to ensure independent of the Internal Affairs Unit (IAU), officers attached to IAU are competitively selected after carrying out vetting, and they are housed outside the police institutions to minimize interference; and

(v) working closely with the EACC on issues of integrity and corruption has resulted in prosecution of many officers.

88. On the issue of extra-judicial killings, it was submitted that there is no policy in Kenya which supports extra-judicial killings or enforced disappearances and that the National Police Service does not support such practice. The NPS curriculum has a mandatory module on human rights at all levels of its trainings which is complemented by continuous seminars on human rights to its officers.

89. It was further submitted that reports have been made and recoveries of bodies made regarding persons killed in circumstances alleged to be executions. Inquiries have been undertaken in all reported cases and most are found to have resulted from robberies and murders by criminal gangs. Regarding the operation of the Anti-Terrorism Police Unit, the IG was of the view that the Unit does its work professionally and within the law, and that there are no special laws guiding the operations of the Unit.

v) The Directorate of Criminal Investigations

90. The Directorate of Criminal Investigations submitted a list of eight (8) cases which were under investigations or pending before court. Two cases were under investigation, five cases were pending before court and one case was awaiting filing before court in the form of a public inquest.

91. Of the five cases pending in court, three are public inquests while two are criminal cases involving police officers. Out of the 8 cases, seven were investigated by the DCI while one was investigated by the IPOA, and two are cases of mysterious deaths while in six of these cases, police officers are directly involved.

CHAPTER THREE: COMMITTEE FINDINGS AND RECOMMENDATIONS

Committee Findings

92. Whereas Kenya has a Constitution which provide for a progressive bill of rights, as well as legal and institutional frameworks to address extrajudicial killings and enforced disappearances, cases of extrajudicial killings and enforced disappearances continue to be matters of grave concern in the country. Arising from the stakeholder engagements, site visits undertaken by the Committee and written submission received, the Committee has made the following findings.

i) Legislative Frameworks

93. Extrajudicial killings and enforced disappearances are issues touching on violation of human rights and are criminal in nature. As human rights issues, they are protected under Articles 26 which guarantees for the right to life, 29 of the Constitution provides for the freedom and security of the person, 48 on the right to access justice, 49 on the rights of arrested persons, 50 on the presumption of innocence and Article 51 on the rights of detained persons.

94. To implement the above provisions of the Constitution, Kenya has in place various laws which address extrajudicial killings and enforced disappearances as set out in Chapter One under paragraph 6 of this Report. Whereas the existing legislative framework is adequate, the Committee notes the following –

a) Kenya signed the International Convention for the Protection of All Persons from Enforced Disappearance in the year 2007 but has not ratified it. The existing legal frameworks on enforced disappearances therefore are not aligned with international human rights standards.

b) In the year 2017, Parliament enacted the National Coroners Services Act and the Prevention of Torture Act. The objective of the National Coroners Services Act is to establish a National Coroners Service responsible for the investigation of reportable deaths in order to determine causes such deaths. On the other hand, the objective of the Prevention of Torture Act is to give effect to Articles 25(a) and 29(d) of the Constitution and the principles of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; to provide for the prevention, prohibition and punishment of acts of torture and cruel, inhuman or degrading treatment or punishment; and to provide for reparations to victims of torture and cruel, inhuman or degrading treatment or punishment.

However, the two Acts are yet to be operationalised and Regulations thereon published.

- c) The Sixth Schedule to the National Police Service Act provide for guidance on the use of force. Additionally, the Schedule requires the Cabinet Secretary for Internal Security and the IG to make regulations to provide further directions on the use of force. However, these regulations are yet to be made despite the Act having been enacted in the year 2011.
- d) Pursuant to the sections 24(e) and 35(a) & (j) of the National Police Service Act, the police are responsible for investigation of crimes. On the other hand, under sections 6(a) and 25 of the Independent Policing Oversight Authority Act, IPOA is responsible for investigation of crimes committed by the police.

As such there exists an overlap of mandate between the DCI and IPOA on investigating extrajudicial killings and enforced disappearances. There is also an apparent conflict as the police cannot effectively investigate extrajudicial killings and enforced disappearances alleged to have caused by the police.

- e) While the NPS is placed under the oversight of an independent civilian body (IPOA), no such oversight mechanism has been created with regard to officers of the Kenya Wildlife Service, Kenya Forest Service, Kenya Prisons Service, and Kenya Coast Guard Service, all of whom have been given police powers to arrest, detention and use of force.

ii) Policy Frameworks

- 95. Under the Kenya Vision 2030, the economic, social, and political pillars are anchored, among others, security reforms. It is envisioned that Kenya will be a society free from danger and fear. The government undertook to adopt policy, legal as well as institutional reforms for the advancement of security.
- 96. To implement Kenya Vision 2030, the Ministry of Interior and Co-ordination of National Government developed a Sector Plan for Security, Peace Building and Conflict Management 2013 – 2017. On policy reforms, the Ministry committed to developing and implementing a national security policy.
- 97. Additionally, under section 4(1)(d) of the National Security Council Act, the National Security Council is responsible for developing and from time to time reviewing the national security policy. The Committee notes the following –

- a) despite the requirement under the National Security Council Act and the commitment by the government to put in place a national security policy, the policy is yet to be developed;
- b) whereas Kenya does not have a national security policy, some organs within the security and the criminal justice sector have developed sector specific policies. These include the National Defence Policy, National Policy for Prevention and Response to Gender Based Violence, and the Prosecution Policy; and
- c) regarding investigation of crime, oversight of security agencies, and extrajudicial killings and enforced disappearances, the country does not have policies on these subjects. However, the National Police Service Commission had in place a Strategic Plan 2013 – 2018, and IPOA has in place the IPOA Strategic Plan 2019 – 2024 to guide their respective operations.

iii) Administrative

98. To effectively address extrajudicial killings and enforced disappearances in the country, the various laws require institutions perform certain functions. Additionally, the several institutions are required to co-operate with one or more institutions in the performance of their functions. In this regard, the Committee notes the following --
- a) the Witness Protection Act envisages protection of potential witnesses at the investigative stage. However, the Witness Protection Agency does not provide protection to potential witnesses at the investigative phase. The Witness Protection Agency comes in to protect witnesses once a case has been presented in Court. This has greatly hampered investigations in instances where potential witnesses are not provided protection;
 - b) there does not exist meaningful cooperation amongst key institutions involved in addressing violations of human rights relating to extra-judicial killings and enforced disappearances. Specifically, the NPS has not been adhering to the law which requires NPS to, for example, notify IPOA of deaths and serious injuries occurring in police custody, and providing access to police premises and documents;
 - c) Kenya does not have an independent forensic analysis laboratory. As a result of this, IPOA relies on the police for any scene of crime analysis leading to difficulties in accessing police documents and reports in relation to crimes

alleged to have been committed by police officers. The lack of an independent forensic analysis laboratory thwarts investigations by IPOA;

- d) families of victims of extrajudicial killings and enforced disappearances undergo a lot of trauma, their loved ones are denied due process, and they are denied the opportunity to properly mourn their family members. Additionally, they are subjected to harassment and intimidation by police officers, and are denied permits to hold funeral meetings;
- e) extra-judicial killings and enforced disappearances occur throughout the country. As regards instances where police officers are alleged to have been involved in the commission of these offences, the IPOA ought to investigate such matters. However, the IPOA is not adequately resourced and is understaffed; and
- f) Part V of the Victim Protection Act, No. 17 of 2014 provide for the establishment and administration of a Victim Protection Trust Fund. One of the uses of this Fund is for the payment of expenses arising out of assistance to victims of crime as provided for under section 28(2)(a) of the Victim Protection Act. However, despite the Act having been enacted in the year 2014, this Fund is yet to be operationalized.

Committee Recommendations

99. From the above findings, the Committee makes the following recommendations –

NO	RECOMMENDATION	ACTOR	TIMELINE	OVERSIGHT BY THE COMMITTEE
LEGISLATIVE				
1.	The Attorney General to initiate the process of ratifying the International Convention for the Protection of all Persons from Enforced Disappearance in accordance with section 7 of the Treaty Making and Ratification Act	Attorney General	Within two months	AG to file a status report within three months
2.	Parliament to amend the National Police Service Act and the Independent Policing Oversight Authority Act to grant IPOA the primary responsibility to investigate crimes alleged to have been committed by police officers.	Parliament	Within twelve months	
3.	Parliament to amend the Independent Policing Oversight Authority Act, the Wildlife Conservation and Management Act, the Prisons Act, the Forest Conservation and Management Act, and the Kenya Coast Guard Service Act to expand the mandate of IPOA to exercise civilian oversight over and investigate crimes alleged to have been committed by officers under KWS, KPS, KFS, and the KCGS.	Parliament	Within twelve months	

NO	RECOMMENDATION	ACTOR	TIMELINE	OVERSIGHT BY THE COMMITTEE
4.	The CS Interior and Co-ordination of National Government and the IG to make regulations on use of force and firearms to guide police officers, as required under the Sixth Schedule to the National Police Service Act	CS Interior and Co-ordination of National Government and IG	Within six months	CS Interior and Co-ordination of National Government to file a status report within three months
5.	The CS for National Treasury and the AG to make regulations and operationalize the Victim Protection Trust Fund established under the Victim Protection Act	AG and CS National Treasury	Within six months	AG and CS National Treasury to file status reports within three months
POLICY				
6.	The National Security Council to develop a national security policy	CS Interior and Co-ordination of National Government	Within twelve months	CS Interior and Co-ordination of National Government to file status report within three months
7.	The Independent Policing Oversight Authority, in coordination with the Attorney General, to develop a national policy on policing oversight	Chairperson, IPOA	Within twelve months	Chairperson IPOA to file status report within three months

NO	RECOMMENDATION	ACTOR	TIMELINE	OVERSIGHT BY THE COMMITTEE
ADMINISTRATIVE				
8.	The AG to initiate the establishment of a multi-agency taskforce comprising of representatives from the NPS, ODPP, IPOA, NPSC, KNCHR and NCAJ to ensure better coordination between the various agencies responsible for addressing extrajudicial killings and enforced disappearances	Attorney General	Within two months	AG to file a status report within three months
9.	The AG in consultation with the CS National Treasury to operationalise the National Coroners Services Act and the Prevention of Torture Act	AG and CS National Treasury	Within two months	AG and CS National Treasury to file status reports within three months
10.	Upon the operationalisation of the National Coroners Services Act, the AG to fast-track the operationalisation of an independent forensic analysis laboratory contemplated under the National Coroners Services Act	Attorney General	Within six months	AG to file a status report within seven months
11.	The AG in consultation with IG and the Witness Protection Agency to initiate review of the Witness Protection Act and the witness protection program with a view to ensuring protection of potential witnesses during the investigative stage of a case	Attorney General	Within two months	AG to file a status report within three months

NO	RECOMMENDATION	ACTOR	TIMELINE	OVERSIGHT BY THE COMMITTEE
12.	The AG in consultation with the CS Labour and Social Protection and CS Health and other relevant government agencies to make available all necessary information and provide psychosocial support to families affected by extra-judicial killings and enforced disappearances	Attorney General	Immediate/ Continuous	AG to file a status report within two months
13.	The AG in consultation with the CS for the National Treasury to fast-track the payment of court awards and reparations to victims of unlawful police killings	Attorney General	Immediate/ Continuous	AG to file a status report within two months
14.	The IG to ensure compliance with section 25 of the IPOA Act requiring notification to IPOA of all suspicious deaths and serious injuries.	Inspector General of the National Police Service	Immediate/ Continuous	IG and Chairperson IPOA to file status reports within two months
15.	The IG to ensure the NPS makes available to IPOA and KNCHR documents and reports in relation to crimes alleged to have been committed by police officers as required under section 7(1)(a)(i) of the IPOA Act and other relevant laws	Inspector General of the National Police Service	Immediate/ Continuous	IG, Chairperson KNCHR and Chairperson IPOA to file status reports within two months
16.	The IG to implement recommendations by IPOA on interdiction and disciplining of police officers found to have committed crimes or breached Service standards in accordance with section 10(1)(t) of the National Police Service Act	Inspector General of the National Police Service	Immediate/ Continuous	IG and Chairperson IPOA to file status reports within two months

NO	RECOMMENDATION	ACTOR	TIMELINE	OVERSIGHT BY THE COMMITTEE
17.	The IG to ensure that NPS officers have tags with their names and service numbers distinctly displayed whenever they are carrying out police operations as per the Sixth Schedule to the NPS Act	Inspector General of the National Police Service	Immediate/Continuous	IG to file a status reports within two months
18.	The IG to ensure all police records and registers are correctly, properly, timely and accurately entered, updated and kept. Further, the NPS to fully implement e-Occurrence Book and automated registers within the service.	IG	Immediate/Continuous	IG to file a status reports within two months
19.	The IPOA to ensure officers suspected to have committed offences or breached Service standards are prosecuted quickly, and that the names and details of officers found culpable are published and publicised.	Chairperson IPOA	Immediate/Continuous	Chairperson IPOA to file a status reports within two months
20.	The CS Interior and Co-ordination of National Government in consultation with the CS National Treasury and IPOA to increase budgetary allocation to IPOA	CS Interior and Co-ordination of National Government and CS National Treasury	With effect from FY2021/22	CS Interior and Co-ordination of National Government and CS National Treasury to file status reports on or before 31 st December, 2021
21.	The CS National Treasury in consultation with AG to increase budgetary allocation to the OAG & DOJ to facilitate operationalization of the National Coroners Service under the National Coroners Service Act.	AG and CS National Treasury	With effect from FY2021/22	The AG and CS National Treasury to file status reports on or before 31 st December, 2021

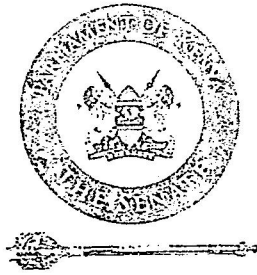
100. An act required to be done in this report shall be done by the specified officer within the time specified in the recommendations from the date of adoption of this Report.

ANNEXES

Annex 1: Minutes

Annex 2: Copies of submissions received from -

- a) Amnesty International – Kenya;
- b) HAKI Afrika;
- c) Defenders Coalition;
- d) Social Justice Centres Working Group;
- e) the Independent Policing Oversight Authority (IPOA);
- f) The Directorate of Criminal Investigations;
- g) The Office of the Inspector-General, National Police Service;
- h) The Kenya National Commission on Human Rights;
- i) The Office of the Director of Public Prosecutions; and
- j) The Office of the Attorney-General and Department of Justice.



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE THIRTY-FIRST SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON FRIDAY, 21ST MAY, 2021 AT 6.20 P.M.

PRESENT

1. Sen. Erick Okong'o Mogeni, SC, MP - Chairperson (Chairing)
2. Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
3. Sen. Amos Wako, EGH, SC, FCI Arb, MP - Member
4. Sen. Mutula Kilonzo Junior, CBS, MP - Member
5. Sen. Irungu Kang'ata, CBS, MP - Member

ABSENT WITH APOLOGY

1. Sen. James Orengo, EGH, SC, MP - Member
2. Sen. Fatuma Dullo, CBS, MP - Member
3. Sen. Johnson Sakaja, CBS, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Clerk Assistant (Taking minutes)
2. Mr. Moses Kenyanchui - Legal Counsel
3. Mr. Said Osman - Research Officer
4. Ms. Lucianne Limo - Media Relations Officer
5. Mr. James Ngusya - Serjeant at Arms
6. Mr. James Kimiti - Hansard Officer

MIN. NO. 163/2021 PRAYER

The sitting commenced with a word of prayer by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 164/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Irungu Kang'ata, CBS, MP.

MIN. NO. 165/2021 THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2020)

The Committee adopted the Report on its consideration of the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Canon) Naomi Jillo Waqo, MP.

MIN. NO. 166/2021 INQUIRY INTO EXTRA-JUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA

The Committee adopted the Report on its inquiry into Extra-judicial killings and enforced disappearances in Kenya, having been proposed by Sen. (Canon) Naomi Jillo Wago, MP and seconded by Sen. Amos Wako, EGH, SC, FCI Arb, MP.

MIN. NO. 167/2021 ANY OTHER BUSINESS

The Committee considered the status of legislative business before the Committee and resolved to -

- a) Undertake a working visit to Nyamira, Kericho and Elgeyo-Marakwet Counties from 9th to 13th June, 2021;
- b) Explore the possibility of holding one sitting each week, on Thursdays, at noon; and
- c) Undertake a full day working retreat every last Friday of the month, to enable the Committee to comprehensively and expeditiously process the legislative business before it.

MIN. NO. 168/2021 ADJOURNMENT

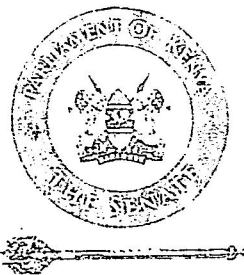
There being no other business, the Chairperson adjourned the meeting at 6.45 pm. The next meeting will be held on Tuesday, 25th May, 2021 at 8.00 am.



SIGNED:

(CHAIRPERSON)

DATE: 7th July, 2021



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE THIRD SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD IN THE COUNTY HALL MINI-CHAMBER, PARLIAMENT BUILDINGS, ON WEDNESDAY, 4TH MARCH, 2020, AT 11.20 A.M.

PRESENT

1. Sen. Samson Cherarkey, MP - Chairperson (Chairing)
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. Susan Kihika, MP - Member
4. Sen. Mohamed Faki Mwinyihaji, MP - Member

ABSENT WITH APOLOGY

1. Sen. Mithika Linturi, MP - Vice Chairperson
2. Sen. James Orengo, EGH, SC, MP - Member
3. Sen. Amos Wako, EGH, SC, MP - Member
4. Sen. Fatuma Dullo, CBS, MP - Member
5. Sen. Irungu Kang'ata, MP - Member

IN ATTENDANCE

1. Ms. Anne Makori - Chairperson, Independent Policing Oversight Authority (IPOA)
2. Dr. Jonathan Lodompui - Vice Chairperson, IPOA
3. Dr. Jimmy M. Mwithi - Commissioner, IPOA
4. Ms. Fatuma M. Mohamed - Commissioner, IPOA
5. Dr. Walter Omony - Commissioner, IPOA
6. Ms. Praxedes Tororey - Commissioner, IPOA
7. Hon. John M. Waiganjo - Commissioner, IPOA
8. Mr. Maina Njoroge - CEO, IPOA
9. Mr. Irungu Houghton - Executive Director, Amnesty International Kenya
10. Mr. Hussein Khalid - Executive Director, HAKI Africa
11. Mr. Peter Kiama - Executive Director, Independent Medico-Legal Unit
12. Mr. Francis Ndegwa - Advocacy Officer, Defenders Coalition
13. Mr. Victor Ndede - Policy Officer, Amnesty International Kenya
14. Mr. Aggrey Juma - International Justice Mission (IJM)
15. Ms. Zaina Kombo - Haki Africa
16. Mr. Kevin Mwangi - IMLU
17. Mr. Wilfred Olal - Social Justice Centres Working Group
18. Mr. Bichanga Osiemo - IMLU

SECRETARIAT

1. Mr. Charles Munyua - Clerk Assistant (Taking Minutes)
2. Mr. Mitchell Otoro - Legal Counsel

3. Ms. Lucianne Limo - Media Relations Officer
4. Ms. Lucy Mwaniki - Serjeant-at-Arms
5. Mr. Phillip Kipkemboi - Audio Officer

JLAHRC. MIN. NO. 15/2020 PRAYER

The sitting commenced with a prayer said by Sen. Mutula Kilonzo Junior, MP.

JLAHRC. MIN. NO. 16/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, MP and seconded by Sen. Mohamed Faki Mwinyihaji, MP.

Thereupon, the Chairperson invited the parties in attendance to introduce themselves and welcomed them to the sitting of the Committee.

JLAHRC. MIN. NO. 17/2020 INQUIRY INTO EXTRA-JUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES - RECEIPT OF SUBMISSIONS

The Committee proceeded to receive submissions from the following organizations, on its inquiry into extra-judicial killings and enforced disappearances in Kenya: -

- a) Amnesty International Kenya - presented by Mr. Irungu Houghton, Executive Director
- b) Independent Medico-Legal Unit (IMLU) - presented by Mr. Peter Kiama, Executive Director
- c) Defenders Coalition - presented by Mr. Francis Ndegwa, Advocacy Officer
- d) International Justice Mission - presented by Mr. Aggrey Juma, Policy and Advocacy Officer
- e) Social Justice Centres Working Group - presented by Mr. Wilfred Oial
- f) Haki Africa - presented by Mr. Hussein Khalid
- g) Independent Policing Oversight Authority - presented by Ms. Anne Makori, Chairperson

The Committee considered the submissions, sought clarifications, and made preliminary observations and recommendations, which it directed that they be included in the Committee's Interim Report to be tabled in the Senate on Thursday, 5th March, 2020.

The Committee further directed that a further sitting of the Committee on its inquiry into extrajudicial killings and enforced disappearances in Kenya be held on Wednesday, 25th March, 2020, during which the following would be invited to make submissions before the Committee and respond to the issues raised by the various groups that had made submissions thereon: -

- a) the Attorney General;
- b) the Director of Public Prosecutions;
- c) the Inspector General of the National Police Service;
- d) the Director of Criminal Investigations; and
- e) the Chief Registrar of the Judiciary

The Committee further resolved to carry out site visits and meetings with stakeholders in areas of the country mentioned as hotspots for extrajudicial killings and enforced disappearances. In Nairobi City County, the visits would be undertaken in four clusters, as below, commencing on Monday, 16th March, 2020: -

- i) *Cluster 1*: Mathare, Huruma, Kamkunji, Ruaraka, and Eastleigh;
- ii) *Cluster 2*: Dandora, Kayole, Mukuru, and Korogocho;
- iii) *Cluster 3*: Kibera, Kawangware, and Satellite; and
- iv) *Cluster 4*: Thika Road, Juja, Kasarani, and Githurai.

JLAHRC. MIN. NO. 18/2020 ADJOURNMENT

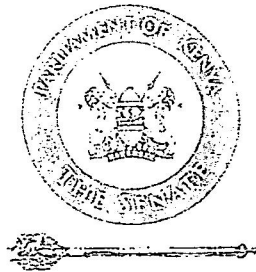
There being no other business, the Chairperson adjourned the meeting at twenty five Minutes past One O'clock. The next meeting will be held on Wednesday, 4th March, 2020 at 4:00pm.



SIGNED:
(CHAIRPERSON)

20th April, 2020

DATE:



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD IN THE OFFICE OF THE SENATE MINORITY WHIP, PARLIAMENT BUILDINGS, ON WEDNESDAY, 4TH MARCH, 2020, AT 4.00 P.M.

PRESENT

- | | |
|-------------------------------------|--------------------------|
| 1. Sen. Samson Cherarkey, MP | - Chairperson (Chairing) |
| 2. Sen. Fatuma Dullo, CBS, MP | - Member |
| 3. Sen. Mutula Kilonzo Junior, MP | - Member |
| 4. Sen. Susan Kihika, MP | - Member |
| 5. Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| 6. Sen. Irungu Kang'ata, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-----------------------------------|--------------------|
| 1. Sen. Mithika Linturi, MP | - Vice Chairperson |
| 2. Sen. James Orengo, EGH, SC, MP | - Member |
| 3. Sen. Amos Wako, EGH, SC, MP | - Member |

SECRETARIAT

- | | |
|-----------------------|------------------------------------|
| 1. Mr. Charles Munyua | - Clerk Assistant (Taking Minutes) |
| 2. Mr. Mitchell Otoro | - Legal Counsel |

JLAHRC. MIN. NO. 19/2020 PRAYER

The sitting commenced with a prayer said by Sen. Mutula Kilonzo Junior, MP.

JLAHRC. MIN. NO. 20/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Susan Kihika, MP and seconded by Sen. Mohamed Faki Mwinyihaji, MP.

JLAHRC. MIN. NO. 21/2020 CONSIDERATION AND ADOPTION OF THE INTERIM REPORT ON THE INQUIRY INTO EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA

The Committee considered and adopted its Progress Report on the Committee inquiry into extra-judicial killings and enforced disappearances in Kenya, and resolved that the Report be presented in the Senate on Thursday, 5th March, 2020.

JLAHRC. MIN. NO. 22/2020 BRIEFING ON ISSUES ARISING AND PROCEDURE FOR CONSIDERATION OF A PETITION BY MR. REUBEN KIBEGWA MAGEUZI REGARDING ALLEGED CORRUPTION AND MISMANAGEMENT IN THE COUNTY GOVERNMENT OF NYAMIRA

The Committee was taken through and considered the following issues which had arisen regarding consideration of a Petition by Mr. Reuben Kibegwa Mageuzi on alleged corruption and mismanagement in the County Government of Nyamira: -

- a) the Petition did not disclose specific allegations or provide evidence in support thereof, and comprised generalized statements;
- b) the Petitioner, Mr. Reuben Kibegwa Mageuzi, had submitted to the Senate a Notice of Withdrawal of Petition and Affidavit in support thereof; and
- c) four other residents of Nyamira County had come forward to present evidence in support of the original Petition by Mr. Mageuzi.


The Committee was further informed that Summons to Appear had been served on Mr. Mageuzi, who was expected to be present during the sitting of the Committee the following day.

The Committee observed that a Petition, once presented in the Senate, became the property of the House, and therefore a Petitioner could not claim to withdraw such a Petition. Regarding the matter at hand, the Committee resolved to proceed as follows:

- a) the Committee would examine Mr. Mageuzi to establish the basis on which he claimed to withdraw the original Petition, and on other material averments made in his Affidavit in support of the withdrawal of petition;
- b) in the event Mr. Mageuzi insisted in not prosecuting the Petition, he would be discharged, and the other four residents of Nyamira admitted to submit the evidence in support thereof; and
- c) the Governor would be given reasonable time to respond to the additional evidence.

JLAHRC. MIN. NO. 22/2020 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at forty-five Minutes past Four O'clock. The next meeting will be held on Thursday, 5th March, 2020 at 11:00am.



SIGNED:

(CHAIRPERSON)

20th April, 2020

DATE:

THE SECURITY SERVICES LAWS (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Prisons Act Cap. 90 laws of Kenya, Borstal Institutions Act Cap. 92 laws of Kenya, the National Police Service Act, No. 11 of 2011, the Independent Policing Oversight Authority Act, No. 35 of 2011, the Wildlife Conservation and Management Act, No. 47 of 2013, and the Forest Conservation and Management Act, No. 34 of 2016 to clarify on the respective investigative powers of the National Police Service and the Independent Policing Oversight Authority; to expand the civilian oversight function of the Independent Policing Oversight Authority; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

Short title.

1. This Act may be cited as the Security Services Laws (Amendment) Act, 2021.

Amendment of section 6 of Cap 90.

2. Section 6 of the Prisons Act is amended by inserting the following new subsection immediately after subsection (2) —

No. 35 of 2011.

(3) The Commissioner shall cooperate with and implement recommendations of the Independent Policing Oversight Authority established under the Independent Policing Oversight Authority Act in accordance with section 6,7 and Part III of the Independent Policing Oversight Authority Act.

Amendment of section 12 of Cap 90.

3. Section 12 of the Prisons Act is amended by inserting the following new subsections immediately after subsection (2) —

No. 11 of 2011.

(3) Where a prison officer exercises the powers of a police officer including arrest and use of force or firearm in the performance of duties under this Act, the officer shall exercise such powers in accordance with the guidelines applicable to a police officer under the Sixth Schedule to the National Police Service Act.

No. 35 of 2011.

(4) Where a person in the custody of the Service dies or is injured, or a prison officer or an employee of the Service causes the death or injury of a person, the officer in charge shall in writing notify the Independent Policing Authority of such death or injury in accordance with the Independent Policing Oversight Authority Act.

The Security Services Laws (Amendment) Bill, 2021

Amendment of section 10 of Cap 92.

4. Section 10 of the Borstal Institutions Act is amended –

- (a) by numbering the existing provision subsection (1); and
- (b) by inserting the following new subsection immediately after subsection (1) –

(2) Where a person in custody dies or is injured, or an authorized officer or an employee of a borstal institution causes the death or injury of a person, the Superintendent shall, in writing, notify the Independent Policing Oversight Authority of such death or injury in accordance with the Independent Policing Oversight Authority Act.

No. 35 of 2011.

Insertion of new section 72A in No. 35 of 2011.

Exclusion from investigating certain matters.

5. The National Police Service Act is amended by inserting the following new section immediately after section 72 –

72A. (1) Notwithstanding sections 24(e), 35(b), and 51(1)(j) or any other provision of this Act, a police officer shall not investigate a crime alleged to have been committed by a member of the Service.

(2) Where a complaint is made against a police officer or a police officer is arrested for the alleged commission of a crime, a police officer in charge of a police station or other post, unit or formation shall in writing notify the Independent Policing Oversight Authority of such complaint or arrest.

(3) A police officer in charge of a police station or other post, unit or formation shall take all necessary steps to secure evidence which may be relevant to the investigation, including pictorial evidence and supply the Independent Policing Oversight Authority with the evidence and all other facts relevant to the matter, including the names and contact details of all persons who may be able to assist the Authority to conduct an investigation.

(4) A police officer who contravenes subsection (1) or (2) commits an offence.

6. Section 87 of the National Police Service Act is amended –

- (a) in subsection (2) by deleting the word “against” appearing immediately after the words “investigate complaints” in paragraph (a) and substituting therefor the words “by”; and
- (b) in subsection (4) by deleting the words “or members of the

Amendment of section 87 of No 11 of 2011.

public” appearing immediately after the words “the Service” in paragraph (a).

Amendment of
section 2 of No.
35 of 2011.

7. Section 2 of the Independent Policing Oversight Authority Act is amended —

- (a) in the definition of the word “complaint” by deleting the words “the Service” appearing immediately after the words “members of” and substituting therefor the word “a service”;
- (b) in the definition of the word “disciplinary action” by deleting the words “the Service” appearing immediately after the words “member of” and substituting therefor the word “a service”;
- (c) in the definition of the word “disciplinary proceedings” by inserting the words “or such other disciplinary proceedings instituted under the Prisons Act, the Wildlife Conservation and Management Act, or the Forest Conservation and Management Act” at the end;
- (d) by deleting the definition of the word “internal Police investigation” and substituting therefor the following new definition —

“internal investigation” means an investigation conducted by the Internal Affairs Unit or an internal investigation conducted under the Prisons Act, the Wildlife Conservation and Management Act or the Forest Conservation and Management Act”;

- (e) in the definition of the word “misconduct” by deleting the word “Service” appearing immediately after the words “members of the” in paragraph (a) and substituting therefor the word “services”;
- (f) by deleting the definition of the word “member of the service” and substituting therefor the following new definition —

“member of a service” means a police officer, prison officer, member of the Kenya Wildlife Service, forest officer, or an employee of a Service”

- (g) in the definition of the word “policing” by deleting the word “Service” appearing immediately after the words “applicable to the” and substituting therefor the word “services”;
- (h) by deleting the definition of the word “Service” and substituting therefor the following new definition —

“service” means the National Police Service

established under Article 243 of the Constitution, the Kenya Prisons Service established under the Prisons Act, the Kenya Wildlife Service established under Wildlife Conservation and Management Act or the Kenya Forest Service established under the Forest Conservation and Management Act” immediately after the words “of the Constitution”;

- (i) by inserting the following new definitions in their proper alphabetical sequence —

“Internal Affairs Unit” means the Unit established under section 87 of the National Police Service Act;

“forest officer” means a member of the Kenya Forest Service and includes the professional, technical and disciplined cadre, and other employees of the Kenya Forest Service;

“Kenya Prisons Service premises” means any location where the Kenya Prison Service hold office or from where they carry out their duties including a prison, temporary prison, borstal institution or a youth corrective training centre;

“Kenya Wildlife Service premises” means any location where the Kenya Wildlife Service hold office or from where they carry out their duties including areas for the detention of persons;

“prison officer” means a member of the Kenya Prisons Service of whatever rank and includes an employee of the Kenya Prisons Service;

Amendment of section 5 of No. 35 of 2011.

8. Section 5 of the Independent Policing Oversight Authority Act is amended —

- (a) in paragraph (a) by inserting the words “prison officers, members of the Kenya Wildlife Service and forest officers” immediately after the words “hold the Police”;
- (b) by inserting the following new paragraph immediately after paragraph (a) —
- (aa) hold the services accountable to the public in the performance of their functions;
- (c) in paragraph (c) by deleting the words “by the Service” and substituting therefor the words “against the services”.

The Security Services Laws (Amendment) Bill, 2021

Amendment of
section 6 of No.
35 of 2011.

9. Section 6 of the Independent Policing Oversight Authority Act is amended –

- (a) in paragraph (a) by deleting the words “the Service” appearing immediately after the words “any member of” and substituting therefor the words “a service”;
- (b) by deleting paragraph (b);
- (c) by deleting paragraph (d);
- (d) by deleting paragraph (e) and substituting therefor the following new paragraph –
 - (e) conduct inspections of Police premises, Kenya Prisons Service premises, Kenya Wildlife Service premises and the Kenya Forest Service premises, including detention facilities under the control of the services;
- (e) by deleting paragraph (f) and substituting therefor the following new paragraph –
 - (f) cooperate with other State organs and institutions on issues of oversight of the services;
- (f) in paragraph (g) by deleting the words “Police misconduct” appearing immediately after the words “the pattern of” and substituting therefor the words “misconduct by members of the services”; and
- (g) in paragraph (k) by deleting the word “Service” appearing immediately after the words “recommendations to the” and substituting therefor the word “services”.

Amendment of
section 7 of No.
35 of 2011.

10. Section 7 of the Independent Policing Oversight Authority Act is amended –

- (a) in subsection (1)(a) –
 - (i) by deleting the word “Service” appearing immediately after the words “to investigate the” in the introductory clause and substituting therefor the word “services”;
 - (ii) by deleting the word “Police” appearing immediately after the words “including from the” in subparagraph (i) and substituting therefor the word “services or a member of a service”;
 - (iii) by inserting the words “Kenya Prisons Service premises, Kenya Wildlife Service premises and Kenya Forest Service premises” immediately after the words “Police

premises” in subparagraph (ii);

- (iv) by inserting the words “Kenya Prisons Service premises, Kenya Wildlife Service premises and Kenya Forest Service premises” immediately after the words “Police premises” in subparagraph (iii);
- (v) by deleting the words “Police officer” appearing immediately after the words “serving or retired” in subparagraph (vii) and substituting therefor the words “member of a service”; and
- (vi) by deleting subparagraph (x) and substituting therefor the following new paragraph –

(x) investigating any crime suspected to have been committed by a member of a service.

- (b) in subsection (1)(c) by deleting the words “police conduct” appearing immediately after the words “victim of unlawful” and substituting therefor the words “conduct by a member of a service;”
- (c) in subsection (1)(e) by deleting the words “the Service” appearing immediately after the word “require” and substituting therefor the words “a service”; and
- (d) in subsection (3) by inserting the words “the Senate” immediately after the words “the National Assembly”.

Amendment of
section 10 of
No. 35 of 2011.

11. Section 10 of the Independent Policing Oversight Authority Act is amended in subsection (2) by deleting the words “police officer” appearing immediately after the words “is a serving” in paragraph (e) and substituting therefor the words “member of a service”.

Amendment of
section 24 of
No. 35 of 2011.

12. Section 24 of the Independent Policing Oversight Authority Act is amended –

- (a) in subsection (1) by deleting the words “the Police” appearing immediately after the words “complaint against” and substituting therefor the words “a service or a member of a service”;
- (b) in subsection (4) by deleting the word “Police” appearing immediately after the words “members of the” in paragraph (b) and substituting therefor the words “services”;
- (c) in subsection (5) by deleting the words “the Service” appearing immediately after the words “members of” and substituting

therefor the words “a service”;

(d) in subsection (6) by deleting the words “the Police” appearing immediately after the words “in the event of” and substituting therefor the words “a service”;

(e) by deleting subsection (10) and substituting therefor the following new subsection –

(10) Nothing in this section shall prevent a member of a service from lodging a complaint, but the Authority may, at its discretion, refer any complaint back to the Internal Affairs Unit or any other internal processes of a service for redress.

(f) in subsection (11) by deleting the words “the Police” appearing immediately after the words “member of” and substituting therefor the word “a service”; and

(g) in subsection (12) by deleting the words “Police officer” appearing immediately after the words “who subjects a” and substituting therefor the words “member of a service”.

Amendment of
section 25 of
No. 35 of 2011.

13. The Independent Policing Oversight Authority Act is amended by deleting section 25 and substituting therefor the following new section –

Death or injury in
custody.

25. (1) A member of a service in charge of a police station, prison or any other place where a person may be detained shall –

(a) in writing, notify the Authority of any death of or injury to a person while in the custody of the service; and

(b) take all necessary steps to secure evidence which may be relevant for the investigation, including pictorial evidence and supply the Authority with the evidence and all other facts relevant to the matter, including the names and contact details of all persons who may be able to assist the Authority to conduct an investigation.

(2) Where death is caused by or a person is injured by a member of a service in the course of performance of duties by that member, the member of a service in charge of the area where such a death or injury occurs shall notify and facilitate the Authority in accordance with subsection (1)

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(3) A member of a service who contravenes this section commits an offence.

Amendment of section 26 of No. 35 of 2011.

14. The Independent Policing Oversight Authority Act is amended by deleting section 26 and substituting therefor the following new section –

Exclusion of certain matters.

26. The Authority shall not investigate any matter which is the subject of proceedings before a court of law or judicial tribunal, or the matter is subject to investigation by such other investigative body as may be specified under any written law.

Amendment of section 29 of No. 35 of 2011.

15. Section 29 of the Independent Policing Oversight Authority Act is amended –

(a) in subsection (1) –

(i) by deleting the words “the Service” appearing immediately after the words “a member of” in paragraph (a) and substituting therefor the words “a service”; and

(ii) by deleting the words “the Service” appearing immediately after the words “a member of” in paragraph (b) and substituting therefor the words “a service”; and

(b) in subsection (3) by deleting the word “Police” appearing immediately after the words “employment of the” in paragraph (c) and substituting therefor the words “a service”.

Amendment of section 30 of No. 35 of 2011.

16. Section 30 of the Independent Policing Oversight Authority Act is amended –

(c) by deleting subsection (1) and substituting therefor the following new subsection –

(1) The Authority shall submit to the National Assembly and the Senate, at least once in every six months, a report on the performance of the functions of the Authority.

(d) by deleting subsection (2) and substituting therefor the following new subsection –

(2) The Authority shall forward a copy of the report referred to in subsection (1) to the Cabinet Secretary, the Inspector-General, the Commission, the Commissioner-General of Prisons, the Director-General of the Kenya Wildlife Service, the Chief Conservator of Forests and the County Assemblies.

(e) in subsection (4) –

(i) by deleting the words “Service has” appearing immediately after the words “how the” in paragraph (f) and substituting therefor the words “services have”;

(ii) by deleting the words “Police accountability” appearing at the end of paragraph (h) and substituting therefor the words “accountability by a service and members of the service”; and

(iii) by inserting the words “and the Senate” immediately after the words “the National Assembly” in paragraph (l).

Amendment of section 31 of No. 35 of 2011.

17. Section 31 of the Independent Policing Oversight Authority Act is amended in subsection (1) by deleting the words “Police oversight” appearing immediately after the words “on issues of” in paragraph (h) and substituting therefor the words “oversight of the services”.

Amendment of section 38 of No. 35 of 2011.

18. Section 38 of the Independent Policing Oversight Authority Act is amended in subsection (4) by inserting the words “and Senate” immediately after the words “the National Assembly”.

Amendment of section 39 of No. 35 of 2011.

19. Section 39 of the Independent Policing Oversight Authority Act is amended in paragraph (c) by deleting the word “Police”.

Amendment of section 7 of No. 47 of 2013.

20. Section 7 of the Wildlife Conservation and Management Act is amended by inserting the following new paragraph immediately after paragraph (r) –

No. 35 of 2011.

(ra) cooperate with and implement the recommendations of the Independent Policing Oversight Authority established under the Independent Policing Oversight Authority Act in accordance with section 6,7 and Part III of the Independent Policing Oversight Authority Act.

Amendment of section 24 of No. 47 of 2013.

21. Section 24 of the Wildlife Conservation and Management Act is amended in subsection (2) by inserting the words “or an authorized officer” at the end of the subsection.

Amendment of section 25 of No. 47 of 2013.

22. Section 25 of the Wildlife Conservation and Management Act is amended in subsection (1) by inserting the words “or by an authorized officer” immediately after the words “the Third Schedule”.

Amendment of section 112 of No. 47 of 2013.

23. Section 112 of the Wildlife Conservation and Management Act is amended by inserting the following new subsections immediately after

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subsection (6) –

No. 11 of 2011.

(6A) Whenever an authorized officer exercises the powers of a police officer including arrest and use of force and firearm in the performance of duties under this Act, that officer shall exercise such powers in accordance with the guidelines prescribed under the Sixth Schedule to the National Police Service Act.

No. 35 of 2011.

(6B) Where a person in the custody of the Service dies or is injured, or an authorized officer causes the death or injury of a person, the authorized officer who is in charge shall, in writing, notify the Independent Policing Authority of such death or injury in accordance with the Independent Policing Oversight Authority Act.

Amendment of section 8 of No. 34 of 2016.

24. Section 8 of the Forest Conservation and Management Act is amended by inserting the following new paragraph immediately after paragraph (p) –

No. 35 of 2011.

(pa) cooperate with and implement the recommendations of the Independent Policing Oversight Authority established under the Independent Policing Oversight Authority Act in accordance with section 6,7 and Part III of the Independent Policing Oversight Authority Act.

Amendment of section 63 of No. 34 of 2016.

25. Section 63 of the Forest Conservation and Management Act is amended by inserting the following new subsection immediately after subsection (3) –

No. 11 of 2011.

(4) Whenever a forest officer exercises powers of a police officer including arrest and use of force and firearm in the performance of duties under this Act, the officer shall exercise such powers in accordance with the guidelines prescribed under Sixth Schedule of the National Police Service Act.

Insertion of new section 63B in No. 34 of 2016.

26. The Forest Conservation and Management Act is amended by inserting the following new section immediately after section 63A –

Death or injury in custody.

No. 35 of 2011.

63B. Where a person in the custody of the Service dies or is injured, or a forest officer causes the death or injury of a person, the forest manager shall in writing notify the Independent Policing Authority of such death or injury in accordance with the Independent Policing Oversight Authority Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects

The principal purpose of the Bill is to amend the Prisons Act Cap. 90 laws of Kenya, Borstai Institutions Act Cap. 92 laws of Kenya, the National Police Service Act, No. 11 of 2011, the Independent Policing Oversight Authority Act, No. 35 of 2011, the Wildlife Conservation and Management Act, No. 47 of 2013, and the Forest Conservation and Management Act, No. 34 of 2016 to clarify on the respective investigative powers of the National Police service and that of the Independent Policing Oversight Authority, and to expand the civilian oversight function of the Independent Policing Oversight Authority.

Pursuant to the sections 24 and 35 of the National Police Service Act, the police are responsible for investigation of crimes, including crimes alleged to have been committed by police officers. On the other hand, under sections 6 and 25 of the Independent Policing Oversight Authority Act, IPOA is responsible for investigation of crimes committed by the police. As such there is no clear demarcation of the roles of the institutions and there exists an overlap of the mandate of the police and that of the Independent Police Oversight Authority regarding investigation of crimes.

Further, while the National Police Service is placed under the oversight of the Independent Policing Oversight Authority, no such oversight mechanism has been created with regard to officers of the Kenya Wildlife Service, Kenya Forest Service and Kenya Prisons Service who exercise police powers of arrest, detention and use of force.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers or limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill seeks to enhance civilian oversight over certain security agencies in the country by bringing the Kenya wildlife Service, the Prisons Service, the Forest Service, and the Kenya Coast Guard Service under the oversight of the Independent Policing Authority. For county governments to effectively perform the functions and exercise powers under the Fourth Schedule to the Constitution, security is a matter of critical importance. The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of the Constitution.

The Security Services Laws (Amendment) Bill, 2021

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated2021

Erick Okong'o Mogeni,
Chairperson,
Standing Committee on Justice, Legal Affairs and Human Rights.

Section 6 of Cap 90 of the Laws of Kenya which it is proposed to amend —

6. Powers of Deputy Commissioner and delegation of powers

(1) The Deputy Commissioner may exercise any of the powers or perform any of the duties vested in or assigned to the Commissioner by or under this Act or any rules made thereunder or by or under any other written law.

(2) The Commissioner may delegate any of the powers vested in him by this Act or any rules made thereunder or, save where a contrary intention appears therein, by any other written law, to an Assistant Commissioner.

Section 12 of Cap 90 of the Laws of Kenya which it is proposed to amend —

12. Use of force by prison officer

(1) Any prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in a prison.

(2) Any prison officer may use any weapons which have been issued to him, including firearms, against a prisoner if—

- (a) he is escaping or attempting to escape and refuses, when called upon, to return; or
- (b) he is engaged with other persons in breaking out or attempting to break out of any part of a prison and continues to break out or attempts to break out when called upon to desist; or
- (c) he is engaged with others in riotous behaviour in a prison and refuses to desist when called upon; or
- (d) he is endangering the life of, or is likely to inflict grave injury to, the prison officer or to any other prison officer or person and the use of weapons, including firearms, is the only practicable way of controlling the prisoner:

Provided that weapons shall not be used as authorized in paragraphs (a), (b) and (c) of this subsection unless the officer has reasonable cause to believe that he cannot otherwise prevent the escape, breaking out or riotous behaviour, as the case may be.

Section 10 of Cap 92 of the Laws of Kenya which it is proposed to amend —

10. Duties of superintendent

The superintendent of a borstal institution shall supervise and control all matters concerning the institution, and shall keep or cause to be kept such records as the Commissioner may from time to time direct, and shall be responsible to the Commissioner for the conduct and treatment of staff and of the inmates under his control and for the due observance by staff and inmates of the provisions of this Act and of all rules, directions and orders made thereunder.

Section 87 of No 11 of 2011 which it is proposed to amend —

87. Internal Affairs Unit

(1) There is established an Internal Affairs Unit (hereinafter referred to as “the Unit”) of the Service which shall comprise of—

- (a) an officer not below the rank of assistant Inspector-General who shall be the Director;
- (b) a deputy director; and
- (c) such other staff as the Unit may require.

(2) The functions of the Internal Affairs Unit shall be to—

- (a) receive and investigate complaints against the police;
- (b) promote uniform standards of discipline and good order in the Service; and
- (c) keep a record of the facts of any complaint or investigation made to it.

(2A) Without prejudice to subsection (2), the unit may where necessary investigate and recommend appropriate action in respect of any Found engaging in any unlawful conduct.

(3) In the performance of its functions, the Unit shall be subject to Article 47 of the Constitution.

(4) The Unit shall investigate misconduct and hear complaints—

- (a) from members of the Service or members of the public;
- (b) at the direction of a senior officer;
- (c) on its own initiative; or
- (d) on the direction of the Inspector-General; or
- (e) at the request of the Independent Police Oversight Authority.

(5) Notwithstanding subsection (4)(e) the Authority may at any time intervene and take over the investigations when they have reason to believe the investigations are inordinately delayed or manifestly unreasonable.

(6) The Unit may recommend the following disciplinary actions to the Inspector General—

- (a) the interdiction of an officer;
- (b) the suspension of an officer;
- (c) the administration of a severe reprimand or a reprimand to control or influence the pay, allowances or conditions of service of an officer; or
- (d) any other lawful action.

(6A) Where the Unit recommends disciplinary action, it shall submit a copy of the recommendations to the Commission.

(6A) The Inspector-General may in exceptional cases and in the interest of the service, authorise the unit to undertake disciplinary proceedings against any officer who has been a subject of its investigations, and may for that purpose direct a Deputy Inspector-General or the Director of the Unit to appoint an officer to preside over such proceedings.

(7) The Unit shall be located in separate offices from the rest of the Service.

(8) The Director shall assign a senior investigating officer in every county who shall be responsible for police internal affairs in that county.

(9) The Units shall report directly to the Assistant Inspector-General who shall subsequently report directly to the Inspector-General.

(10) There shall be an effective relationship and regular reporting by the Internal Affairs Unit to the Independent Police Oversight Authority, Coroners, the Chief Firearms Licensing Officer as well as the Commission.

(11) The Unit shall not be subject to the control, direction or command of the Kenya Police, Administration Police or the Directorate.

Section 2 of No 35 of 2011 which it is proposed to amend —

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“appointed member” means a member of the Board appointed other than an ex officio member of the Board;

“Authority” means the Independent Policing Oversight Authority established under section 3;

“Board” means the Independent Policing Oversight Board established under section 8;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to the Police;

“complaint” means a complaint by any person alleging misconduct by one or more members of the Service;

“Director” means the Director of the Authority appointed under section 19;

“disciplinary action” means imposition of any punishment against a member of the Service on account of breach of any code of conduct or misconduct;

“disciplinary proceedings” means proceedings under Part IX of the National Police Service Act;

“ex officio member” means a person who is a member of the Board by virtue of the office the person holds;

“Inspector-General” means the Inspector-General appointed in accordance with article 245 of the Constitution;

“member of the Board” means a member of the Board appointed under section 10;

“internal Police investigation” means an investigation conducted by the Internal Affairs Unit of the Service;

“misconduct” means any action, or failure or refusal to act, which although it may not necessarily constitute a contravention of law, does not meet—

- (a) the requirements or norms of policing contained in any regulation or official document, charter, standing orders or policy providing for standards of discipline, behaviour or ethics, rules of engagement, rules on the use or abuse of power or rules and regulations on the use of equipment, applicable to members of the Service;
- (b) the values and norms applicable to policing in a democratic society and in particular those laid down in Articles 10, 232 and 244, of the Constitution and any law relating to ethics and leadership; or
- (c) applicable norms and standards provided for in international instruments applicable to Kenya;

“member of the Service” has the same meaning assigned to it under the National Police Service Act;

“police officer” has the same meaning assigned to it under the National Police Service Act;

“Police premises” has the same meaning assigned to it under the National Police Service Act;

“the Police” means the National Police Service and includes—

- (a) any person or body—
 - (i) employed by it; or
 - (ii) acting on its behalf, under its control or at its behest; and
 - (iii) any other person for the time being exercising Police powers under any written law.

“policing” means the discharge of functions, exercise of the powers and, performance of duties applicable to the Service;

“Service” means the National Police Service established by Article 243 of the Constitution;

“police station” has the same meaning assigned to it under the National Police Service Act;

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

Section 5 of No 35 of 2011 which it is proposed to amend —

5. Objectives of the Authority

The objectives of the Authority shall be to —

- (a) hold the Police accountable to the public in the performance of their functions;
- (b) give effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and
- (c) ensure independent oversight of the handling of complaints by the Service.

Section 6 of No 35 of 2011 which it is proposed to amend —

6. Functions of the Authority

The functions of the Authority shall be to—

- (a) investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations;
- (b) receive and investigate complaints by members of the Service;
- (c) monitor and investigate policing operations affecting members of the public;
- (d) monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the Service in response to complaints against the Police and keep a record of all such complaints regardless of where they have been first reported and what action has been taken;
- (e) conduct inspections of Police premises, including detention facilities under the control of the Service;
- (f) co-operate with other institutions on issues of Police oversight, including other State organs in relation to services offered by them;
- (g) review the patterns of Police misconduct and the functioning of the internal disciplinary process;

- (h) present any information it deems appropriate to an inquest conducted by a court of law;
- (i) take all reasonable steps to facilitate access to the Authority's services for the public;
- (j) subject to the Constitution and the laws related to freedom of information, publish findings of its investigations, monitoring, reviews and audits as it sees fit, including by means of the electronic or printed media;
- (k) make recommendations to the Service or any State organ;
- (l) report on all its functions under this Act or any written law; and
- (m) perform such other functions as may be necessary for promoting the objectives for which the Authority is established.

Section 7 of No 35 of 2011 which it is proposed to amend —

7. Powers of the Authority

(1) The Authority shall have all the powers necessary for the execution of its functions under this Act, and without prejudice to the generality of the foregoing, the Authority shall have the power—

- (a) to investigate the Service on its own motion or on receipt of complaints from members of the public, and for that purpose, to gather any information it considers necessary by such lawful means as it may deem appropriate, including by—
 - (i) requisition of reports, records, documents or any information from any source, including from the Police, irrespective of whether that source is located within or outside Kenya and irrespective of whether any other person or body, other than a court of law, has already instituted or completed a similar investigation or similar proceedings;
 - (ii) entering upon any establishment or premises, including Police premises, on the strength of a warrant, and subject to any relevant law, where the premises are a private home or dwelling;
 - (iii) seizing and removing any object or thing from any premises, including Police premises, which may be related to the matter under investigation, and in respect of which a receipt shall be given to the owner or person apparently in control of the object or thing;
 - (iv) interviewing and taking statements under oath or affirmation from any person, group or members of organizations or institutions and, at its discretion, to conduct such interviews in private;
 - (v) summoning any person to meet with its staff, or to attend any of its sessions or hearings, and to compel the attendance of any person who fails to respond to its summons;
 - (vi) administering oaths or affirmations before taking evidence or statements where necessary;

- (vii) summoning any serving or retired Police officer to appear before it and to produce any document, thing or information that may be considered relevant to the function of the Authority;
 - (viii) ensuring that where necessary, the identities of complainants or witnesses are not disclosed to their detriment;
 - (ix) recommending to the Director of Public Prosecutions the prosecution of any person for any offence;
 - (x) investigating any death or serious injury occurring or suspected of having occurred as a result of police action.
- (b) to take over on-going internal investigations into misconduct or failure to comply with any law if such investigations are inordinately delayed or manifestly unreasonable;
- (c) where appropriate, to provide relevant information to enable a victim of unlawful police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income;
- (d) require the Director of Public Prosecutions to provide it with his response to any recommendation made by the Authority to prosecute any person or body;
- (e) require the Service to within a specified, reasonable time, provide it with information on issues relating to policy, its implementation and its effectiveness, and its response to any recommendation made to it by the Authority; subject to the approval of a complainant, and only if it is not a serious complaint, reconcile or mediate on any matter within its mandate; and
- (f) exercise any other power provided for in this Act or any other law which is necessary for the effective performance of its functions.
- (2) The Authority may in the exercise of its powers under this Act, request and receive such assistance from the or any other governmental or international body or person as may in its opinion be necessary in the exercise of its powers.

(3) The Authority may in exceptional circumstances regarding matters of national importance submit a report simultaneously to the National Assembly and the Cabinet Secretary if such a matter requires urgent consideration for the wellbeing of the people of Kenya.

Section 10 of No 35 of 2011 which it is proposed to amend —

10. Qualifications and disqualifications

- (1) A person shall be eligible to be appointed as a member of the Board if that person—
- (a) holds a degree from a university recognized in Kenya;
 - (b) is fit and proper to serve as a member of the Board charged with upholding and protecting ethics, professionalism, accountability and lawful conduct;
 - (c) is a Kenyan citizen;

- (d) is not disqualified from serving in accordance with the provisions of subsection (2), and
 - (e) meets the requirements of Chapter Six of the Constitution.
- (2) No person may be appointed or serve as a member of the Board if that person—
- (a) has previously served as a member of the Board;
 - (b) is employed by or is associated with any person who supplies services or goods to the Authority, or whose spouse or other family member is so employed or associated;
 - (c) holds office in a political party;
 - (d) is a member of Parliament or a member of a county assembly or a Governor or Deputy Governor;
 - (e) is a serving police officer, or retired from being such an officer within the five years immediately preceding the commencement of this Act;
 - (f) has been convicted, whether in Kenya or elsewhere, of an offence involving dishonesty or of any other offence for which such person has been sentenced to imprisonment without the option of a fine; or
 - (g) is unable to perform the functions of office due to mental incapacity; or
 - (h) is an undischarged bankrupt.
- (3) A member of the Board, including the Chairperson, who at any time during his term of office becomes disqualified to hold office as a member of the Board under subsection (2) shall—
- (a) immediately and in writing inform the President and the Chairperson of the Board of that disqualification, and the President shall forthwith remove that member from the Board; and
 - (b) not attend any meeting of the Board from the time the member has so become disqualified.
- (4) A member of the Board who contravenes subsection (3) commits an offence.

Section 24 of No 35 of 2011 which it is proposed to amend —

24. Lodging of complaint and investigation

- (1) A person wishing to lodge a complaint against the Police may do so orally or in writing or in such other appropriate format as may be prescribed in the regulations.
- (2) Where a complaint is made orally, the same shall be reduced into writing by the employee of the Authority with whom it is lodged, and that employee shall render all reasonable assistance to the complainant to ensure that a proper investigation of the complaint is done.
- (3) A complaint made under subsection (1) shall contain such particulars as the Authority may from time to time prescribe.

- (4) Upon receipt of a complaint the Authority shall forthwith—
- (a) call for information or reports regarding the complaint from the appropriate Government department or agency or any other body within a specified period; or
 - (b) without prejudice to paragraph (a), initiate such inquiry as it may consider necessary, having regard to the nature of the complaint and taking into account the fundamental rights and freedoms of the individuals concerned, including members of the Police, contemplated in Chapter Four of the Constitution.
- (5) If criminal proceedings are instituted against a member of the Service in respect of a matter under investigation by the Authority, the Authority may suspend its investigation until the conclusion of those proceedings, after which it may continue its investigation or in appropriate cases, decide to discontinue.
- (6) In the event of the Police having conducted and concluded an internal investigation or internal disciplinary proceedings, the Authority may in appropriate cases and in its sole discretion decide to abide by the outcome of such investigation or proceedings and adopt the findings and recommendations of that investigation or those proceedings as its own, and conclude its own investigation.
- (7) The Authority shall during an investigation consider the—
- (a) circumstances which, if present during the incident under investigation, impede the effectiveness of policing; and
 - (b) unlawful action, if any, taken by the complainant, the victim or any other person present during the incident under investigation.
- (8) Where the Authority considers a complaint to be vexatious or frivolous it may refuse to conduct an investigation.
- (9) The Authority may upon receipt of new evidence re-open any investigation which has been concluded, and may amend or withdraw any previous findings and recommendations.
- (10) Nothing in this section shall prevent an individual Police officer from lodging a complaint, but the Authority may, at its discretion, refer any complaint back to the Internal Affairs Unit of the Service for redress.
- (11) No member of the Police shall be subjected to disciplinary hearings or other disadvantage based solely on the fact that such member has lodged a complaint with or given evidence or information to the Authority.
- (12) Any person who subjects a Police officer to a disciplinary hearing or other disadvantage based solely on the fact that he has lodged a complaint with or given evidence before or information to the Authority, commits an offence.

(13) Nothing in this Act shall prevent any person or body from lodging a complaint in terms of this section, or the Authority from conducting an investigation, even if the target, victim or witness of the action does not agree to or approve of such an investigation by the Authority.

(14) Any law providing for the unlawfulness of—

- (a) the intimidation, harassment or interference with witnesses or potential witnesses to any matter under investigation by the Authority; or
- (b) concealment, destruction, tampering with or removal of evidence relevant to any matter under investigation by the Authority, shall apply with necessary modifications to the proceedings of the Authority.

(15) Notwithstanding any other written law, any document or statement drafted or made or taken during an investigation shall remain confidential until the Authority in writing determines otherwise.

(16) The Authority shall upon request from a complainant keep the complaint's identity confidential unless it is demonstrably in the interest of justice not to do so, until the investigation has been concluded:

Provided that the Authority may in exceptional cases determine that the identity of a complainant may not be published even after the conclusion of an investigation, or may be published only on terms determined by the Authority.

Section 25 of No 35 of 2011 which it is proposed to amend —

25. Deaths and serious injury in custody

(1) The Authority shall investigate any death or serious injury including death or serious injury while in Police custody, which are the result of Police action or were caused by members of the Service while on duty.

(2) The Police shall upon a death or serious injury as contemplated in subsection (1) take all necessary steps to secure evidence which may be relevant for the investigation, including pictorial and written evidence, and shall in writing notify the Authority, and supply it with the evidence and all other facts relevant to the matter, including, if available, the names and contact details of all persons who may be able to assist the Authority should it decide to conduct an investigation.

(3) A Police officer who contravenes subsection (2) commits an offence.

Section 26 of No 35 of 2011 which it is proposed to amend —

26. Exclusion of certain matters

The Authority shall not investigate any matter which is the subject of proceedings before a court of law or judicial tribunal.

Section 29 of No 35 of 2011 which it is proposed to amend —

29. Steps after investigations

- (1) The Authority may after completing an investigation into a complaint under this Act—
- (a) where the inquiry, in the Authority's opinion, discloses a criminal act by a member of the Service, recommend the prosecution of that member to the Director of Public Prosecutions;
 - (b) where the inquiry, in the Authority's opinion, discloses negligence in the performance of duty by a member of the Service, recommend disciplinary action be taken against such member;
 - (c) where the investigation discloses any shortcomings in the processes or procedures employed by the Authority, recommend improvement or rectification thereof;
 - (d) recommend that the complainant take any other course of action suitable in the circumstances;
 - (e) assist the complainant or any other victim with action contemplated in section 7(1)(i);
or
 - (f) take any other steps it may deem fit.
- (2) The Authority may apply to the court for the enforcement of any of its recommendations contemplated in subsection (1).
- (3) The Authority's investigations, findings and recommendations provided for in this Act shall remain in force and effect despite the fact that a person or body—
- (a) under investigation, has since the commencement or conclusion of an investigation, left the employment of the Police; or
 - (b) is no longer acting on behalf of the, under its control or at its behest.

Section 30 of No 35 of 2011 which it is proposed to amend —

30. Performance Report

- (1) The Authority shall submit to the Cabinet Secretary, at least once in every six months, a report of the performance of the functions of the Authority, making such recommendations as it may consider necessary, and the Cabinet Secretary shall, within fourteen days after

receiving such report, cause it to be publicized and laid before the National Assembly, or if the National Assembly is not then in session, on the day that the National Assembly resumes its sittings.

(2) A copy of the report referred to in subsection (1) shall forthwith be forwarded to the Inspector-General, the Commission and the County Assemblies.

(3) The Authority shall publicize the report in such manner as it may consider appropriate.

(4) The report contemplated in subsection (1) shall include—

- (a) the recommendations made by the Authority during the period under review;
- (b) the action taken by the responsible authorities in response to the Authority's recommendations or lack thereof;
- (c) the trends emerging in cases handled;
- (d) matters contained in earlier reports contemplated in subsection (1) in respect of which the relevant authority has still not taken any action;
- (e) the action taken by the responsible authorities in response to the Authority's recommendations;
- (f) how the Service has acted on the complaints referred to it by the Authority;
- (g) statistics about disciplinary and criminal action taken as a consequence of complaints disposed of by the Authority;
- (h) the Authority's recommendations on Police accountability;
- (i) the Authority's opinion on whether any person, authority or institution has attempted to unlawfully or unduly interfere with the operations of the Authority;
- (j) any matter relating to the operation of the Authority which any minority of members of the Authority may wish to bring to the attention of the public;
- (k) any matter that highlights the need for reform or change in practice or policy regarding the Service; and
- (l) any other matter the Authority wishes to bring to the attention of the National Assembly.

Section 31 of No 35 of 2011 which it is proposed to amend—

31. Offences and Penalties

(1) A person or body who—

- (a) disobeys a summons by the Authority;
- (b) fails to produce any document, papers or thing on the order of the Authority;
- (c) refuses to be examined before or to answer questions relating to an inquiry put to him by the Authority;
- (d) fails to comply with any lawful order or direction of the Authority;
- (e) presents to the Authority a false document or makes a false statement with the intent to deceive or mislead the investigating officers;

- (f) deliberately submits false information;
 - (g) wilfully obstructs or hinders a person acting in the performance of functions or exercise of powers conferred by this Act;
 - (h) fails to co-operate with the Authority on issues of Police oversight;
 - (i) in any way interferes with the functioning or operations of the Authority, whether unduly or unlawfully; or
 - (j) contravenes any provision of this Act for which no specific penalty is provided, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three years or to both.
- (2) Any person who publishes a confidential document or statement in contravention of section 23(14) commits an offence, and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding three years or to both.

Section 38 of No 35 of 2011 which it is proposed to amend —

38. Annual report

- (1) The Authority shall cause an annual report to be prepared for each financial year.
- (2) The Authority shall submit the annual report to the Cabinet Secretary within three months after the end of the year to which it relates.
- (3) The annual report shall contain, in respect of the year to which it relates—
 - (a) the financial statements of the Authority;
 - (b) the Authority's opinion on the adequacy of its funding;
 - (c) a description of the activities of the Authority;
 - (d) such other statistical information as the Authority considers appropriate relating to complaints to the Authority, investigations by the Authority and reports by the Authority on the results of the investigations;
 - (e) any other information relating to its functions that the Authority considers necessary.
- (4) The Cabinet Secretary shall within thirty days after receiving the annual report, transmit it to the National Assembly.
- (5) The Authority shall cause the annual report to be published in the Gazette and in such other manner as the Authority may determine.

Section 39 of No 35 of 2011 which it is proposed to amend —

39. Regulations

The Authority may make regulations for the better carrying into effect of the purposes of this Act, and in particular for the following—

- (a) the mode of bringing complaints before the Authority;
- (b) the rules relating to the initiation, hearing and disposal of complaints;
- (c) the procedures of taking over of internal Police investigations;
- (d) generally for the good order and management of the Authority.

Section 7 of No. 47 of 2013 which it is proposed to amend —

7. Functions of the Service

The functions of the Service shall be to—

- (a) conserve and manage national parks, wildlife conservation areas, and sanctuaries under its jurisdiction;
- (b) provide security for wildlife and visitors in national parks, wildlife conservation areas and sanctuaries;
- (c) set up a county wildlife conservation committee in respect of each county;
- (d) promote or undertake commercial and other activities for the purpose of achieving sustainable wildlife conservation;
- (e) collect revenue levies and charges due to the national government from wildlife and, as appropriate, develop mechanisms for benefit sharing with communities living in wildlife areas;
- (f) develop mechanisms for benefit sharing with communities living in wildlife areas;
- (g) advise the Cabinet Department on matters pertaining to wildlife policy, strategy and legislation;
- (h) coordinate the preparation and implementation of ecosystem plans;
- (i) prepare and implement national park management plans;
- (j) assist and advise in the preparation of management plans for community and private wildlife conservancies and sanctuaries;
- (k) undertake and conduct enforcement activities such as anti-poaching operations, wildlife protection, intelligence gathering, investigations and other enforcement activities for the effective carrying out of the provisions of this Act;
- (l) conduct and co-ordinate, all research activities in the field of wildlife conservation and management and ensure application of research findings in conservation planning, implementation and decision making;
- (m) advise the National Land Commission, the Cabinet Secretary and the Council on the establishment of national parks, wildlife conservancies and sanctuaries;

- (n) promote and undertake extension service programmes intended to enhance wildlife conservation, education and training;
- (o) identify user rights and advise the Cabinet Secretary thereon;
- (p) grant permits;
- (q) establish forensic laboratories;
- (r) monitor the compliance of terms and conditions of licences; and
- (s) perform such other functions as the Board may assign the Service or as are incidental or conducive to the exercise by the Service of any or all of the functions provided under this Act.

Section 24 of No. 47 of 2013 which it is proposed to amend —

24. The Wildlife Compensation Scheme

- (1) The Government shall establish a Wildlife Compensation Scheme that shall consist of—
 - (a) monies specifically allocated for this purpose through the budget process;
 - (b) an insurance scheme to be established by the Cabinet Secretary responsible for matters relating to finance; and
 - (c) monies from any other source approved by the Cabinet Secretary for the time being responsible for matters relating to finance; and
- (2) The Wildlife Compensation Scheme shall be used for financing compensation claims for human death or injury or crop and property damage caused by wildlife.

Section 25 of No. 47 of 2013 which it is proposed to amend —

25. Compensation for personal injury or death or damage to property

- (1) Where any person suffers any bodily injury or is killed by any wildlife listed under the Third Schedule, the person injured, or in the case of a deceased person, the personal representative or successor or assign, may launch a claim to the County Wildlife Conservation and Compensation Committee within the jurisdiction established under this Act.
- (2) The County Wildlife Conservation and Compensation Committee established under section 18 shall verify a claim made under subsection (1) and upon verification, submit the claim to the Cabinet Secretary together with its recommendations thereon.
- (3) The Cabinet Secretary shall consider the recommendations made under subsection (2) and where appropriate, pay compensation to the claimant as follows—
 - (a) in the case of death, five million shillings;
 - (b) in the case of injury occasioning permanent disability, three million shillings;

(c) in the case of any other injury, a maximum of two million shillings, depending on the extent of injury.

(4) Any person who suffers loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County Wildlife Conservation and Compensation Committee who shall verify the claim and make recommendations as appropriate and submit it to the Service for due consideration.

(5) The County Wildlife Conservation and Compensation Committee shall review the claim and award and pay a compensation valued at the ruling market rates:

Provided that no compensation shall be paid where the owner of the livestock, crops or other property failed to take reasonable measures to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.

(6) A person who is dissatisfied with the award of compensation by either the County Wildlife Conservation and Compensation Committee or the Service may within thirty days after being notified of the decision and award, file an appeal to the National Environment Tribunal and on a second appeal to the Environment and Land Court.

(7) The Cabinet Secretary may, by notice in the Gazette, prescribe such regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.

Section 112 of No. 47 of 2013 which it is proposed to amend —

112. Use of firearms

(1) The President may, through the Inspector-General of the National Police Service, make available to the uniformed and disciplined officers of the Service such firearms as may be necessary for the Service to carry out its functions under this Act.

(2) The Service shall co-ordinate and control all wildlife security issues in all the national parks, national reserves, wildlife conservancies and sanctuaries in collaboration with other law enforcement agencies, counties and community wildlife scouts.

(3) A member of the uniformed and disciplined cadre, after acquiring the requisite training, and when authorized by the Director-General, may use firearms for the following purposes, in the course of and for his lawful duty—

(a) in the course of law enforcement against—

(i) any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape lawful custody;

- (ii) any person who, by force, removes or attempts to remove any other person from lawful custody;
 - (iii) any person who, by force, attempts to prevent the lawful arrest of himself or any other person; or
 - (iv) any person unlawfully hunting any wildlife using a firearm;
 - (b) in self-defense or in defense of another officer or other person;
 - (c) for the protection of people and property against any animal causing destruction to human life or crops or livestock or property;
 - (d) for the protection and safety of visitors against banditry or animals;
 - (e) in the course of problem animal control; and
 - (f) wildlife veterinary activities.
- (4) Notwithstanding the foregoing, a uniformed and disciplined officer of the Service shall not resort to the use of firearms—
- (a) under paragraph (a)(i) of subsection (3), unless the officer concerned has reasonable grounds to believe that he cannot otherwise prevent the escape, and unless he has given ample warning to such person that he is about to use a firearm against him, and the warning is unheeded; or
 - (b) under paragraph (a)(ii), (a)(iii) or (a)(v) of subsection (3), unless the officer concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm, or that he cannot otherwise prevent the removal, effect the arrest or, as the case may be, defend himself or the other officer or person.
- (5) When a person has been taken into custody for any offence under this Act, the authorized officer shall, if it does not appear practicable to bring that person to the nearest police station or competent court within twenty-four hours after he has been so taken into custody, detain the person in appropriate premises at the nearest Service station.
- (6) A person arrested and detained in accordance with subsection (5) of this section shall be brought before a competent court or the nearest police station within forty-eight hours.
- (7) Any person who, without authorization conveys into a wildlife conservation area, or being within the area thereof, is in possession of, any weapon, ammunition, explosive, trap or poison, commits an offence.
- (8) The Cabinet Secretary may, on recommendation of the Service make rules and regulations in respect of wildlife security operations in national parks, marine protected areas, wildlife conservancies and sanctuaries.

Section 8 of No. 34 of 2016 which it is proposed to amend —.

8. Functions of the Service

The functions of the Service shall be to—

- (a) conserve, protect and manage all public forests in accordance with the provisions of this Act;
- (b) prepare and implement management plans for all public forests and, where requested, assist in preparation of management plans for community forests or private forests in consultation with the relevant owners;
- (c) receive and consider applications for licenses or permits in relation to forest resources or management of forests or any other relevant matter in accordance with this Act;
- (d) establish and implement benefit sharing arrangements in accordance with the provisions of this Act;
- (e) assist county governments to build capacity in forestry and forest management in the counties;
- (f) in consultation with relevant stakeholders, develop programmes for tourism and for recreational and ceremonial use of public forests;
- (g) promote forestry education and training;
- (h) register and maintain a register of all forest management plans prepared for public forests;
- (i) collaborate with relevant persons in identifying research needs and applying research findings in relation to forests and forestry;
- (j) manage water catchment areas in relation to soil and water conservation, carbon sequestration and other environmental services in collaboration with relevant stakeholders;
- (k) prepare —
 - (i) a Forest Status Report for the Cabinet Secretary once in every two years; and
 - (ii) a Resource Assessment Report for the Cabinet Secretary once in every five years;
- (l) consider and recommend to the Cabinet Secretary the establishment of public forests on un-alienated public land or any other public land;
- (m) consider and recommend to the Cabinet Secretary the determination and alteration of boundaries of public forests;
- (n) establish forest conservancy areas for purposes of conservation and management;
- (o) approve the provision of credit facilities and technical training for community-based forest industries, and the provision of incentives to persons for the sustainable utilization of wood and non-wood forest products;
- (p) implement and enforce rules and regulations governing importation, exportation and trade in forest produce; and
- (q) develop, maintain and regularly update a geographic information system database of all forests in Kenya.

Section 63 of No. 34 of 2016 which it is proposed to amend —

63. Use of firearms

(1) The Cabinet Secretary responsible for matters relating to firearms may, through the Inspector-General of Police, make available to the Service such firearms as may be necessary for the Service to carry out its functions under this Act.

(2) Any uniformed and disciplined officer of the Service, after acquiring the requisite paramilitary and skill at arms training, and when authorised by the Chief Conservator of Forests, may use a lawfully issued firearm—

- (a) in the course of the enforcement of the provisions of this Act against—
- (i) any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape from lawful custody;
 - (ii) any person who, by force, removes or attempts to remove any other person from lawful custody;
 - (iii) any person who, by force, attempts to prevent the lawful arrest of himself or any other person; or
 - (iv) any person unlawfully hunting any animal within a forest area or nature reserve.
- (b) or the protection of people and property against any animal causing destruction to human life or property or crops; and
- (c) in the course of animal population control.

(3) Notwithstanding the foregoing, an officer of the Service shall not use a firearm—

- (a) under sub-section (2) (a)(i), unless the officer has reasonable grounds to believe that he or she cannot otherwise prevent the escape, and unless he or she has given ample warning to such person that he or she is about to use a firearm against that person, and the warning is unheeded;
- (b) under sub-section (2)(a) (ii) or (iii) of, unless the officer concerned believes on reasonable grounds that the officer or any other person is in danger of grievous bodily harm, or that the officer cannot otherwise prevent the removal, or, as the case may be, effect the arrest.



AMNESTY
INTERNATIONAL



MEMORANDUM ON EXTRA-JUDICIAL EXECUTIONS AND ENFORCED
DISAPPEARANCES IN KENYA PRESENTED TO THE SENATE STANDING COMMITTEE
ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

4th March 2020

Amnesty International Kenya welcomes the move by the Senate Standing Committee on Justice, Legal Affairs and Human Rights of launching an inquiry and establishing an ad hoc committee into extra-judicial killings and enforced disappearances in Kenya.

Amnesty also welcomes the Committee's decision to invite stakeholders on the subject to inform the Committee while considering this very important matter. Our interaction with the Joint Committees of the Senate and National Assembly during the vetting of the incoming of the Inspector General of the Police Service marked a new corner in the quality of our engagement with the National Police Service and other law enforcement agencies.

Amnesty welcomes the open-door policy by the Interior Ministry and the Office of the Inspector General and the Office of the Director of Public Prosecutions. We reaffirm our commitment to open, honest and frank policy dialogue and to jointly addressing the danger this issue faces to communities and to the criminal justice system itself.

Amnesty remains deeply concerned that extrajudicial executions, unlawful use of lethal force and enforced disappearances continues to undermine the rule of law. We submit this memorandum to constructively address this issue.

Specifically, Amnesty International Kenya calls on the Standing Committee on Justice, Legal Affairs and Human Rights to;

1. Undertake as a matter of urgency a fact-finding mission to the counties most hit by the concerns we raise. The County of Nairobi and the coastal counties contribute the highest incidences of police brutality and violence. Attached we propose a schedule of activities and offer our support alongside the Social Justice Working Group the network of community based legal aid centers to facilitate this.
2. Require the Inspector General of Police to provide police data on police killings and enforced disappearances in Kenya and to respond to the Missing Voices annual figures on police killings and enforced disappearances.
3. Require the Inspector General of Police to provide a status update on the progress of investigations and prosecution of four police officers linked to excessive use of force in JKUAT demonstrations and other demonstrations.
4. Encourage the Attorney General and the Cabinet Secretary for Interior and Coordination of National Government to prepare and gazette the regulations for the

Prevention of Torture Act and the National Coroners Service Act and cause the two laws to be fully operationalised.

5. Investigate the circumstances around the deaths of persons during demonstrations and peaceful protest since 2017 elections as documented by three Kenya National Commission on Human Rights Reports during that period on excessive use of force and sexual and gender-based violence.
6. Review of Kenyan laws and regulations on use of force and firearms and public order management to ensure that force is only used in a legal, accountable, necessary, ethical and proportionate in the circumstances, and the minimum amount necessary to accomplish the lawful objective concerned.

1. Extra-Judicial Executions and Unlawful use of Deadly Force

Article 26 (1) of the Constitution states that every person has the right to life. The State also has the obligation to promote and protect the right to life and prosecute alleged criminals or perpetrators. In July 2014, amendments to the National Police Service Act were introduced by the Executive were adopted by the National Assembly. The amendments permitted the use of "justifiable" force to protect "life and property." It is our submission that this amendment has been used to justify and allow the use of lethal force for the protection of property contrary to the UN Basic Principles of the Use of Force and Firearms.

Amnesty International is alarmed by the sustained abuse, excessive use of force, extrajudicial killings of Kenya's young people. According to Missing Voices, 107 people either were killed by the police or reported missing in 2019. So far in 2020, 14 people have been reported as killed by police or missing. Amnesty calls on the Committee to fully investigate these cases.

2. Right to Assembly and Protest.

Article 37 of Kenya's Constitution guarantees every person the right to assemble, demonstrate, picket, and present petitions to public authorities, peaceably and unarmed. The Article further binds the State and this includes the police to respect, protect and promote this right. The Kenya National Commission for Human Rights have elaborated *A Checklist for the Police and the Public on Peaceful Assembly* for both organisers of demonstrations and those charged to ensure that there is no violence or criminal activity.

Despite this, the police have routinely failed to promote, respect and fulfil Article 37 of the Constitution on several occasions. In January 2020, police officers responding to a public demonstration in Kasarani used excessive force in managing a public demonstration which resulted in death and injuries of civilians.

Amnesty International calls on the Senate Committee to investigate the circumstances surrounding the deaths of persons who have died as a result of police excesses while policing demonstrations and protests. We urge the Committee to study and press for the implementations of the recommendations contained in the Kenya National Commission on Human Rights reports namely; *Mirage At Dusk - A Human Rights Account Of The 2017*

General Election¹; Still A Mirage At Dusk - A Human Rights Account Of The 2017 General Election²; and, Silhouettes Of Brutality -An Account Of Sexual Violence During And After The 2017 General Elections³.

We also call upon the Committee to recommend the review of the Public Order Act to bring it to conformity with the Article 24 of the constitution regarding justifiable limitation of the right to peaceful assembly as enshrined in Article 37 of the Constitution.

3. Enforced Disappearances

Article 29 of the Constitution states that every Person has the Right to Freedom and Security. The UN Declaration on the Protection of All persons From Enforced Disappearance also obligates all States not to arrest, detain or abduct people against the law. The refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty places such persons outside the protection of the law.

Amnesty reiterates its call to the Committee to investigate the matter fully and understand the implications of the abuse.

4. Prevention of Torture Act National Coroners Service Act

In 2017, President Kenyatta assented to Prevention of Torture Act and the National Coroners Service Act after they were deliberated and passed into law by the National Assembly. The laws have criminalized all forms of torture; and, sought to establish an office to investigate all violent, sudden and suspicious deaths in Kenya, and provide forensic medical science services to the police through corpse and scene management respectively. Three years on, their regulations are yet to be developed and the laws have not been operationalised.

Amnesty strongly believes that the commencement and coming into force of the two laws are an important cog in reducing affronts to Kenyans rights by improving evidence gathering thereby safeguarding Kenyans human rights including human dignity, security of the person, freedom from torture, right to life and the right to security of the person.

We therefore strongly call on the Committee to remind the Hon. Attorney General and the Cabinet Secretary for Interior and Coordination of National Government of their legal obligation to gazette the regulations for the Prevention of Torture Act and the National Coroners Service Act and set aside adequate funds for the establishment National Coroners Service Secretariat and Council.

¹

https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Mirage%20at%20Dusk_85_210518_2215.pdf?ver=2018-05-23-125203-263

² <https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Still-a-Mirage-at-Dusk.pdf?ver=2018-05-23-123451-723>

³ https://www.knchr.org/Portals/0/KNCHR_Silhouettes_of_Brutality.pdf

5. Independent Investigation by the Senate

We welcome the statement by the Chairperson of the Senate Committee on Legal Affairs and Human Rights, Hon. Samson Cherargei to conduct a fact-finding mission in the affected areas in order to better understand the problem and make appropriate recommendations.

Considering the above, the Missing Voices Initiative, the Social Justice Working Group and the Mothers of Victims Support Group proposes to facilitate the fact-finding mission by the Senate Committee responsible for security, the law and human rights in affected communities within Nairobi.

This engagement will enable the Senate Committee to meet the people on the ground as well as engage with responsible duty bearers such as police leaders in the selected areas. We intend to bring together Human Rights Defenders, Police Officers, religious leaders, media and possibly Bodaboda Association representatives.

We propose that the Committee meets and visits representatives from the following areas:

- Zone 1: Mathare, Huruma, Kamkunji, Ruaraka, Eastleigh areas.
- Zone 2: Dandora, Kayole, Mukuru, Korogocho areas.
- Zone 3: Kibera, Kawangware, Satellite areas.

Zone 4: Thika Road, Juja, Kasarani, Githurai areas.

ENDS

Wednesday, 4th March 2020

Situation of Judicial Executions (EJEs) and Enforced Disappearances (EDs) in Kenya. Human Rights Defenders, Journalists and Whistle-blowers Working on Extra

The Defenders Coalition, which is the national coalition of human rights defenders in Kenya has in the last 12 years been receiving cases of threats and reprisals against HRDs in Kenya.

The HRDs investigating, reporting and calling out the perpetrators, they have been met with glaring life threats, intimidation and evictions by landlords who collude with the trigger-happy cops.

The Coalition is worried that the HRDs who help victims of EJEs and EDs do not get state protection as the victims they assist

The Defenders Coalition has been in the forefront in offering protection to the HRDS through, medical and psychosocial support, legal support and also relocation services.

However, the cases continue to increase with increased number of killings, media interviews, release of investigative journalism pieces and dissemination of reports consolidated by HRDs on Extra Judicial Executions and Enforced Disappearances.

In 2020 alone, Defenders Coalition has responded to 5 cases of HRDs who have either been physically assaulted by the cops, threatened and others intimidated through trailing and arbitrary arrests.

Our asks to the committee:

1. The Defenders Coalition in conjunction with KNCHR have developed a model HRD Protection Policy, we request the committee to recommend for its adoption and domestication by the National Police Service, Witness Protection Agency and other relevant government institutions.
2. The state to assure the HRDs of their security as they conduct their work through investigations, arrests and prosecution of the perpetrators of these vices.

Presented to the Senate Committee on Justice, Legal Affairs and Human Rights
by Francis Ndegwa| Advocacy and Communication Officer|Defenders Coalition|
francis@hrdcoalition.org | +254 705 692 347/ +254 721 443 397

REPUBLIC OF KENYA

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P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN./12/4/JLAHRC/2020(69)

7th October, 2020

Ms. Anne Makori,
Chairperson,
Independent Policing Oversight Authority (IPOA),
ACK Garden Annex, 1st Ngong Avenue,
P.O. Box 23035 - 00100,
NAIROBI.

Dear Madam,

**RE: REQUEST FOR STATUS REPORT ON INVESTIGATIONS INTO
EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN
KENYA**

The Standing Committee on Justice, Legal Affairs and Human Rights is established under standing order 218(3) of the Senate Standing Orders and is mandated to, inter alia-

'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and, implementation of the provisions of the Constitution on human rights.'

The purpose of this letter is to request that you submit to the Committee a status report on investigations into cases of extra-judicial killings and enforced disappearances in Kenya, highlighting developments that have taken place since the meeting of the Committee that you attended on Wednesday, 4th March, 2020.

You are requested to submit the response, by email, on the address: csenate@parliament.go.ke, to be received on or before Friday, 16th October, 2020 at 5.00 p.m.

Mr. Charles Munyua, Clerk Assistant (Cell Number – 0720250607, Email - senatejlahrc@parliament.go.ke), is the Clerk to the Committee and is responsible for all arrangements relating to this matter.

Yours faithfully,

Fdx: *Ef*
J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

Copy to: -

Mr. Maina Njoroge,
Chief Executive Officer/ Board Secretary,
Independent Policing Oversight Authority (IPOA),
ACK Garden Annex, 1st Ngong Avenue,
P.O. Box 23035 - 00100,
NAIROBI.

REPUBLIC OF KENYA

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P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN./12/4/JLAHRC/2020(70)

7th October, 2020

Mr. Peter Kiama,
Executive Director,
Independent Medico-Legal Unit (IMLU),
69 Mokoyeti West Road,
P.O. Box 16035-00509,
NAIROBI.

Mr. Irungu Houghton,
Executive Director,
Amnesty International – Kenya,
Riverside Studios, Off Riverside Drive,
P.O. Box 1527 – 00606,
NAIROBI.

Mr. Hussein Khalid,
Executive Director,
HAKI Africa,
P.O. Box 42950-80100,
MOMBASA.

Mr. Francis Ndegwa,
Advocacy Officer,
Defenders Coalition,
P. O. Box 26309-00100,
NAIROBI.

Mr. Aggrey Juma,
International Justice Mission (IJM),
P.O. Box 25743 – 00603,
NAIROBI.

Mr. Wilfred Olal,
Social Justice Centres Working Group,
C/o Mathare Social Justice Centre,
NAIROBI.

Dear Sirs,

**RE: REQUEST FOR STATUS REPORTS ON CASES OF EXTRAJUDICIAL
KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA**

The Standing Committee on Justice, Legal Affairs and Human Rights is established under standing order 218(3) of the Senate Standing Orders and is mandated to, inter alia-

'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and, implementation of the provisions of the Constitution on human rights.'

The purpose of this letter is to request that you submit to the Committee updated reports on documented cases of extra-judicial killings and enforced disappearances in Kenya, highlighting developments that have taken place since the meeting of the Committee that you attended on Wednesday, 4th March, 2020.

You are requested to submit the response, by email, on the address: csenate@parliament.go.ke, to be received on or before Friday, 16th October, 2020 at 5.00 p.m.

Mr. Charles Munyua, Clerk Assistant (Cell Number – 0720250607, Email - senatejlahrc@parliament.go.ke), is the Clerk to the Committee and is responsible for all arrangements relating to this matter.

Yours faithfully,

For: 
J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.



REPUBLIC OF KENYA



IPOA/CEO/BOD/1 VOL. III

14th October 2020

J. M. Nyegenye, CBS,
Clerk of the Senate,
Clerk's Chambers,
The Senate,
Parliament Buildings,
P O Box 41842-00100,
NAIROBI.

Email: csenate@parliament.go.ke, senatejlahrc@parliament.go.ke

Dear Sir,

STATUS REPORT ON INVESTIGATIONS INTO EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA

We refer to your letter dated 7th October 2020 under Ref. No. SEN./12/4/JLAHRC/2020(69) on the above subject matter.

Attached herewith please find a status report on IPOA's investigations into extrajudicial killings and enforced disappearances in Kenya, as requested.

Yours Sincerely,

ANNE MAKORI
CHAIRPERSON,
INDEPENDENT POLICING OVERSIGHT AUTHORITY

Anne Makori - Chairperson; Jonathan Lodompui - Vice-Chairperson; Commissioners: Dr. Jimmy M. Mwithi, PhD; Doreen Muthaura, MBS; Dr. Walter Ogony; Hon. Praxedes Tororey; Fatuma Mohamed and Hon. John Waiganjo. Maina Njoroge - Director/ CEO.

Head Office: 1st Floor, 1st Avenue, P.O. Box 22035-00100, Nairobi. Tel: 254 20 606000. Email: info@ipoa.go.ke
Regional Offices: Mombasa, Kisumu, Siaya, Nakuru, Eldoret, Kericho, Meru, Wajir, Kisumu.

**STATUS REPORT ON INVESTIGATIONS INTO EXTRAJUDICIAL
KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA**

**SUBMITTED TO THE SENATE STANDING COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS (JLACHR)**

**BY THE INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA) ON
14TH OCTOBER 2020**

1. INTRODUCTION

The Independent Policing Oversight Authority (herein after the Authority) is a statutory body established by Act No. 35 of 2011. The main aim of the Authority is to provide civilian oversight over the work of the National Police Service. The objectives of the Authority are to; hold the Police accountable to the public in the performance of their functions; give effect to the provision of Article 244 of the Constitution; and ensure independent oversight of the handling of complaints by the Service.

The Authority appreciates the good work being done by the Senate in ensuring effective oversight of public institutions. This report is submitted to the Senate in response to the Senate Standing Committee on Justice, Legal Affairs and Human Rights request for a *Status Report on Investigations into Extrajudicial Killings and Enforced Disappearances in Kenya* vide a letter dated 25th February, 2020 [Ref. SEN./12/4/JLAHRC/2020 (69)].

1.1 Protection of Right to Life

Right to life is protected by our Constitution under Art. 26 which states "(1) Every person has the right to life, and (3) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law." This therefore constitutionally prohibits extrajudicial killings in Kenya.

Extrajudicial or extralegal killing or execution is arbitrary deprivation of life¹ by government authorities or individuals without the sanction of any judicial proceeding or legal process. These executions include deaths resulting from torture or ill-treatment in prison or detention; death resulting from enforced disappearances, deaths resulting from the excessive use of force by law-enforcement officials among others.

In Kenya, it remains problematic to say any killing by police is state or government-sanctioned. It is not lost on the Authority that police officers are Government agents. However, the Authority remains guided by Kenyan laws and government policies, and is hard pressed not to call reported deaths due to police action "extrajudicial killing", as this is not legally defined in our laws.

Enforced disappearance as per the International Convention for the Protection of All Persons from Enforced Disappearance² is the "arrest, detention, abduction or any other form of deprivation of

¹ See Reports by UN Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions

² See <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx> accessed on 27th February 2020

liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". Article 1 of the Convention states "No one shall be subjected to enforced disappearance". Unfortunately, Kenya has not ratified this Convention.

2. MANDATE OF THE AUTHORITY

The Authority draws its functions from IPOA Act, 2011, key among these being to investigate any complaints related to disciplinary or criminal offences committed by any member of the National Police Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities.

Every complaint and allegation of police misconduct requires an appropriate investigation. In some instances, the Authority refers some of the complaints to other state agencies with jurisdiction and oversee that investigation. The legal basis for these investigations can be found in sections 6(a), 7(a), 24 and 29 of the IPOA Act, 2011 and sections 35 (j) and 87 (4) (e) of the NPS Act, 2011.

3. MANDATE OF THE NATIONAL POLICE SERVICE

Article 244 of the Constitution clearly sets out the objects and functions of the National Police Service, key among these strive for the highest standards of professionalism and discipline among its members; comply with constitutional standards of human rights and fundamental freedoms; and foster and promote relationships with the broader society.

Under Article 245 (2) (b) of the Constitution, the Inspector General of Police exercises independent command over the Service, and perform any other functions prescribed by national legislation, including under sections 24, 27, 35 and 87 of the NPS Act, 2011.

In exercising the independent command, the Inspector General has the responsibility to ensure that his officers commit to protect the right to life of all Kenyans by adhering to the Constitution and other national legislations. Specifically, under the Sixth Schedule to the NPS Act, 2011, Part A, Para 12 on **Conditions as to the Use of Force** and Part B, Para 8 on **Conditions as to the Use of Firearms**, the Inspector General is responsible for making regulations to guide on use of force and firearms.

In execution of its civilian oversight mandate over the Service, the Authority has documented continuous abuse of use of force and firearms, and has been making the relevant and necessary recommendations, including **prosecutions** and **disciplinary** of culpable police officers, and on **improvement** of policing services (as per section 6 (k) of the IPOA Act). However, there has been restrained progress on this, the resultant being continuous abuse of use of force and firearms occasioning deaths.

4. SUBMISSIONS BY THE AUTHORITY

Based on the pertaining situation presented above, the Authority makes the following submissions:

4.1 Complaints handled by the Authority for the last 15 months

Between 1st October 2018 and 28th February 2020, the Authority received **210 cases of death** as a result of police action, death in police custody/premises and enforced disappearances. The complaints are tabulated as hereunder:

Nature of Cases	Total	Nairobi County	Other Counties
Deaths due to Police Action	146	35	111
Deaths in Police Custody	39	4	35
Enforced Disappearance	25	6	19
Total	210	45	165

4.2 Complaints handled by the Authority during the last 7 months

Between 1st March 2020 and 30th September 2020, the Authority received **124 cases of death** as a result of police action, death in police custody/premises and enforced disappearances. The complaints are as shown here below:

Nature of Cases	Total	Nairobi County	Other Counties
Deaths due to Police Action	95	16	79
Deaths in Police Custody	19	01	18
Enforced Disappearance	10	02	08

Total	124	19	105
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All the 210 cases have been admitted for investigations. (Annexed is a detailed schedule of all the cases handled by the Authority in the last 15 months)

1.1 Status update on the specific cases directly raised by the Members of the Senate involving police killing.

- (a) **Duncan GITHINJI** - This is an investigation into the shooting by a member of the National Police Service resulting into the death of the three-year-old baby - Master Dancun Githinji on the 8th November, 2019 within Soweto Slums of Kahawa West.
Status: *Investigations are complete, to be submitted to the ODPP for directions.*
- (b) **Carlton MAINA**- This is an investigation into the shooting by a member of the National Police Service resulting into the death of Mr. Carlton David Maina on 22nd December, 2018 in Kibra, Nairobi County.
Status: *Accused charged with murder on 23rd April 2020 under HCCRC/17/2020. Awaiting allocation of hearing dates.*
- (c) **Daniel MBURU**- This is investigations into death by shooting of Mr. Daniel Mburu by a member of the National Police Service on 18th February, 2020 at around 11am at Mama Lucy Hospital, Nairobi County.
Status: *Accused charged with murder on 12th March 2020 under HCCRC/16/2020. Awaiting allocation of hearing dates.*
- (d) **Ahmed MAJID**: This is an investigation into the shooting of Hemedi Majid by a member of the National Police Service at Majengo area, Kamukunji Constituency, Nairobi County on 16th January, 2020.
Status: *Accused charged with murder on 4th March 2020 under HCCRC/11/2020. Awaiting allocation of hearing dates.*
- (e) **Stephen MACHARUSI**: This is an investigation into the shooting of Stephen Macharusi by a member of the National Police Service on 15th January, 2020 within Nairobi City County.

Status: *Investigations are ongoing and at an advance stage.*

- (f) With regard to **Hon. Onesmus MURKOMEN's Personal Assistant- Benson KIPTIRE** and the **Pokot killings**, the Authority has not received any complaint or allegations that members of the National Police Service were in any way involved in the killings.

The detailed summary of what the Authority has been able to do for the last 15 months is as annexed. (Performance Reports, Case Update Matrix).

1.2 Challenges faced by the Authority in relation to taming police killings

The Authority has done its best in realization of its mandate. However, some challenges impede its much-desired success.

Some of the challenges include:

(1) Non-adherence to the rule of law:

There are various ways through which this manifests itself including;

- (a) Police not notifying the Authority on deaths and serious injuries as per section 25 of the IPOA Act, 2011; reporting deaths as per Part A, Para 5 and 7 of the Sixth Schedule to the NPS Act, 2011 and not identifying themselves when carrying out police operations as per Part A, Para 10 of the Sixth Schedule to the NPS Act, 2011 on Conditions as to the Use of Force;
- (b) Non-operationalization of the National Coroner Services Act, 2017 and Prevention of Torture Act, 2017;
- (c) Kenya not having ratified the International Convention for the Protection of all Persons from Enforced Disappearance as was noted by the Senate; and
- (d) Deployment of the Kenya Defence Forces without adhering to Article 241 (3) (c) of the Constitution of Kenya, 2010.

(2) Non-Cooperation:

Non-cooperation manifests itself through;

- (a) Inaccessibility of police documents and reports in relation to crimes committed by police officers which thwarts the Authority's investigations, and is against section 7(1)(a)(i) of the IPOA Act, 2011;

- (b) Lack of effective measures to protect witnesses before cases are admitted in courts, leading to withdrawal of witnesses from the investigations process. The Authority has no mandate and resources to protect witnesses, and Witness Protection Agency only comes in when the matter is admitted in Court;
- (3) **Duplicity of Investigations:** The Authority was constituted to provide oversight over the work of the police, which includes providing independent and objective investigations into disciplinary and criminal offences by the members of the Service. On the other hand, DCI in carrying out its investigation role, has in a number of occasions, initiated investigations into serious criminal offences committed by members of the Service. This presents duplicity of roles and poses a challenge to IPOA in carrying out its mandate effectively;
- (4) **Intimidation and threats:** there have been intimidation and threats of witnesses, the investigation officers and victims;
- (5) **Non-implementation of the Authority's recommendations:** The Service has not acted on the Authority's recommendations on disciplinary actions (interdictions) to be taken against rogue police officers as a way of deterring such conduct and this leads to a series of complaints against such officers;
- (6) **Lack of oversight of other law enforcement agencies:** Some law enforcement agencies including the Kenya Forest Service, Kenya Wildlife Service, National Prison Service and the Coast Guard Service lack external independent oversight, and in some incidents are involved in abuse of firearms;
- (7) **Inadequate skills on public order and crowd control management:** The Authority through its monitoring of police operations affecting members of the public has severally observed policing gaps during public order and crowd control management and recommended training of police officers on public order or crowd control management which have not been effectively implemented;
- (8) **Incorrect entries and updates of police records and registers:** The Authority through its inspections of police premises and detention facilities has observed incorrect entries of the OB, Cell Registers, and Arms & Ammunition Records Registers. These incorrect entries and lack of their updates affect the accuracy of evidence necessary for conclusive investigations by the Authority;
- (9) **Lack of regulations on use of force and firearms:** The Sixth Schedule to the NPS Act, 2011, Para 12 Part A on Conditions as to the Use of Force and Para 8 Part B on Conditions as to the Use of Firearms, requires the Cabinet Secretary responsible for Internal Security

and the Inspector General to make regulations on use of force and firearms. These regulations are not in place, and creates a lacuna leading to abuse of force and firearms; and

- 10) **Limited resources:** The Authority is usually faced with challenges of inadequate resources: staff capacity, financial and equipment necessary for conducting prompt and independent investigations.

5. RECOMMENDATIONS

- 5.1 Adherence to Rule of Law:** There is need for adherence to the Rule of Law by all stakeholders including the Police(especially on reporting and notification of deaths and serious injuries, and on their identification); National Assembly in deploying the KDF; the office of the Attorney General in advising and initiating the process of ratifying the International Convention for the Protection of all Persons from Enforced Disappearance and operationalization of the National Coroner Services Act, 2017 and Prevention of Torture Act, 2017. Further, investigations into police misconduct should be left to the Authority and DCI should not be investigating criminal cases touching on fellow police officers to remove the duplicity of investigation;
- 5.2 Effective cooperation:** The Inspector General should enforce cooperation between the Service and the Authority for effective oversight and accountability of the Officers. All stakeholders should also cooperate with the Authority for effective delivery of services to Kenyans, with means to protect witnesses being explored and expanded. This would also reduce intimidation and threats of witnesses, investigation officers and victims;
- 5.3 Regulations on use of force and firearms:** The Cabinet Secretary for Internal Security and the Inspector General should make regulations on use of force and firearms to guide police officers on these as required under the Sixth Schedule to the NPS Act, 2011, Para 12 Part A and Para 8 Part B. Equipping Police Officers with firearms and unclear regulations on usage results to their abuse and deaths;
- 5.4 Effective keeping of police records and registers:** The Service, through its ranks, needs to hold officers accountable and ensure all police records and registers are correctly, properly, timely and accurately entered, updated and kept. Station Commanders should be held accountable for this;

- 5.5 Alignment of all police operations under the Police Station Commanders:** A section of police officers, especially those assigned specialized duties do not report and are not accountable to the Station Commanders, and do disobey Station Commands and directions as they report directly to senior officers in the chain of command. All police operations should be aligned under the Police Station Commanders and the Station Commanders should be in charge and responsible enough to account for every action or inaction occasioned by police officers doing beat and patrols under their jurisdiction;
- 5.6 Training officers on public order and crowd control management:** The Service should train officers and increase their skills on knowledge, communication, facilitation and deployment, including tactics on escalation and de-escalation on use of force and firearms. Refresher courses around these would be required;
- 5.7 External independent oversight body:** this should be established for Kenya Forest Service, Kenya Wildlife Service, National Prison Services and the Coast Guards Services, especially to hold them accountable on any abuse of firearms;
- 5.8 Implementation of the Authority's recommendations:** The Service, through the Office of the Inspector General, should implement the Authority's recommendations, especially those on disciplinary actions against rogue police officers. This would act as a deterrence police misconduct;
- 5.9 Increase in resource allocations:** The Authority appeals for an increase in resource allocations to increase on its staff strength, equipment and training for enhanced and prompt service delivery, as per its mandate; and
- 5.10 Enhance awareness on rights and responsibilities of Kenyans:** All stakeholders (state and non-state actors) should be involved in awareness of rights and responsibilities. They should cooperate and complement each other including enhancing understanding on the mandate of the National Police Service and that of the Authority for people-centered policing.

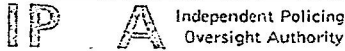
6. CONCLUSION

The Authority thanks the Senate Standing Committee on Justice, Legal Affairs and Human Rights (JLAHRC) and appreciates the opportunity granted to submit this report. Through such accountability measures, a professional and disciplined Service will be realized as advanced under Article 244 of the Constitution. The Authority looks forward to improvement of relationships between

the Service and all other actors, and elimination of deaths occasioned by police action, as each death through a police action is one too many.

7. APPENDICES

Appendix (i): Operational Statistics Since Inception

									
IPOA OPERATIONAL STATISTICS SINCE INCEPTION TO JUNE 2020									
MANDATE	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	TOTAL
COMPLAINTS MANAGEMENT									
Complaints received	594	860	1792	2529	2267	2339	3237	2991	16,609
Complaints cases forwarded to IAU	125	40	25	105	355	119	57	10	836
Complaints recommended for investigations	0	304	1608	1927	819	482	489	763	6,392
Complaints recommended for IRM	0	39	37	42	90	171	289	326	994
Complaints referred to NPS	43	59	27	63	232	415	415	271	1,525
Complaints referred to NPSC	49	39	13	39	105	90	73	68	476
Complaints referred to KNCHR	8	3	3	8	9	10	0	0	41
Complaints referred to DCI	16	20	16	49	116	12	151	108	488
Complaints referred to other agencies (EACC, CAJ, NLC, NTSA, RBA) among others	73	80	26	70	287	113	92	80	821
Preliminary inquiry conducted (Ongoing visits to respective stations, interviewing clients and fact finding) to determine the nature, solve mild complaints, and refer the rest for action depending on the subject matter.						546	795	933	2,274
Complaints closed (Due to withdrawal of complainants, matter before court, Not Actionable, insufficient information, resolved)	280	276	37	226	254	381	876	432	2,762
INVESTIGATIONS									
Total No of Cases received for investigation	0	304	1608	1927	819	482	473	693	6,306
Investigations Completed	0	27	115	157	294	197	728	777	2,295
Closed after Preliminary investigations							451	321	772
Closed after legal review							4	9	12
Cases under further investigations (cover points)							112	171	192
Ongoing Legal review							114	196	156

Cases Forwarded to ODPP	0	2	13	37	26	27	55	114	274
Cases forwarded to EACC							1	1	1
Cases forwarded to NPSC							1	3	3
Cases under Initial Investigations Assessment								2553	2,553
Cases currently under investigations	0	76	230	140	649	321	2003	1458	1,458
Cases before Courts							67	77	77
Convictions made	0		0	2	0	1	3	2	8
MANDATE	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	TOTAL
POLICE OPERATIONS MONITORED									
Public Order Management	0	2	6	8	10	33	29	24	112
Government initiated	0	2	0	1	4	3	13	41	64
Traffic Management	0	0	0	1	13	5	27	4	50
Police Recruitment	0	0	2	1	1	0	0	0	4
Cases Intake Committee (CIC) referrals / Own motion	0	0	0	1	8	4	19	1	33
Beats & Patrol	0	0	0	0	12	0	8	3	23
Elections	1	0	0	0	16	13	6	3	39
Subtotal	1	4	8	12	64	58	102	76	325
INSPECTIONS IN POLICE PREMISES									
New Inspections	25	40	181	153	94	103	336	183	1,115
Follow-up inspections		0	15	59	114	137	340	91	756
Thematic				25		3	17	196	241
Specialized Units							89	22	111
Police Training schools					1		22	1	24
Subtotal	25	40	196	237	209	243	804	493	2,247

INVITATION TO A MEETING ON WEDNESDAY 4TH MARCH 2020 AT 11.00
A.M BY SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHT AT MAIN PARLIAMENT BUILDINGS

CR 832/301/2019

WESP POKOT COUNTY

WEST POKOT SUB-COUNTY

Report was made on 21/6/2019 by a Marakwet female adult aged 35 years namely Purity Rutto, spouse to Benson Kibet Kiptire that her husband had been abducted from his shop at Kimumu area within Uasin Ngishu County by unknown people and driven towards Eldoret town using motor vehicle Reg No. KBW other digits not known aboard motor vehicle make Prado.

On 22nd June 2019 at around 1700 hrs at Kamatira Kapenguria Location, West Pokot Sub-county. It was reported by members of public that the body of unknown person who was later identified as that of Benson Kibet Kiptire was found dumped along the Kapenguria- Lodwar road opposite Kamatira School. Crime scene officer visited the scene and later the body was taken to Kapenguria County Referral mortuary, the body was later transferred to Moi Teaching and Referral mortuary for preservation and post mortem where it was established the cause of death was Asphyxia secondary strangulation. Case pending under police investigations and later to ODPP for perusal and advice.

CR 852/73/2019

ELGEYO MARAKWET COUNTY

KAPTAGAT POLICE STATION

On the 30th May 2019 at 0800hrs a group of athletes who were on their morning exercises within Sabor forest bumped on two dead bodies with gunshot wounds plus other two victims also with gunshot wounds. The victims were rushed to Moi Teaching and referral hospital; and later identified as

1. Daniel Kopiron Rono, a Pokot male adult aged 41 yrs.
2. Simon Riamangole Alias Kipyatich, a Pokot male adult aged 49 years

The dead bodies were later identified as:-

1. Kedinyang Poghisio Lotula a Pokot male adult aged between 65-70 years.
2. Abraham Longura, a Pokot male adult aged 41 years

The bodies were removed to Moi Teaching and Referral hospital morgue where post mortem was done and the cause of death were as a result of the gun shots. The victims were admitted in the facility, treated and discharged after about three weeks and never reported to the police.

Case pending under police investigations and later to ODPP for perusal and advice.

INQUEST NO. 1/2019

CR NO. 123/302/2019

ACCUSED PERSON: NO.68080 PC STEPHEN MWANGI

NO.88276 PC BENJAMIN EKAMAIS

DECEASED: DUNCAN GITHINJI

On the 8th September, 2019 the two police Officers were on duty within Soweto slum responding to a complaint made by one Moses Njoroge.

They came across a chang'aa den and poured illicit brew where a confrontation ensued between the officers and the villagers which resulted in the police firing in the air. As a result a stray bullet hit the baby Duncan Githinji fatally injuring him.

The DCI Kasarani conducted the investigations immediately and the inquiry file was forwarded to the ODPP for perusal and advice. The ODPP directed that the matter be registered before a magistrate for Public Inquest, and it was registered on the 9th September, 2019.

All the witnesses had been bonded to appear at Makadara Law Courts on 27th March, 2020 for the first hearing but the matter did not commence hearing as the courts operations were adversely affected by the Covid-19 pandemic.

INQUEST NO 4/2018

CAPITAL HILL POLICE STATION

DECEASED: CARLITON DAVID MAINA alias MICHE

Brief circumstance of the incident is that, on the 22nd December 2018 Police officers from Capitol Hill Police Station were on foot patrol within Kibera-Wasafiri area.

At around 0215 hours the officers came across a group of four young men whom they believed were gangsters terrorizing members of the public within Kibera area. Officers challenged them to stop and surrender, but the deceased defied the order prompting the officers to fatally injure him. The other two suspects escaped into the darkness while one by the name John Mwaura Kamande was arrested as he complied with the officer's order.

The officers managed to recover the following one homemade gun and one kitchen knife from the deceased and another one pen knife from the accused John Maura Kamande.

The scene was processed by the scene of crime personnel and the body of the deceased was moved to city mortuary while John Mwaura Kamande was escorted to Capitol Hill Police Station where he was later charged jointly with others not before court with the offence of preparation to commit a felony contrary to section 308 910 of the penal code vide criminal case number 1581/2018.

That an Inquest file number 4/2018 was opened. During the investigations the home made gun which was recovered from the deceased was forwarded for

Forensic analysis at Ballistic Department DCI Headquarters and was tested and confirmed to be capable of firing.

The post-mortem of the deceased was done after it was subsequently positively identified as CARLITON DAVID MAINA by the mother namely Josephine Wangari Njeri.

One male adult, namely John Mwaura Kamande was arrested at the scene while armed with a dangerous weapon namely one knife and was in the criminal gang, upon interrogation he mentioned his colleagues as Miche and another of his colleague who escaped as Boy. John Mwaura Kamande surrendered to the police and was not injured. He was charged jointly with the others not before court for the offense of preparation to commit a felony contrary to section 308 (1) of the Penal Code.

An inquest file no .4/2018 was opened to determine how CARLITON MAINA met his death.

DANIEL MBURU A BODA BODA KILLED AT MAMA LUCY HOSPITAL (KOROGOCHO)

Brief circumstances are that on the 18th day of February 2020 at around 11.00 a.m. deceased person arrived at Mama Lucy Kibaki hospital riding motorcycle registration number not taken, he was carrying a child who had been allegedly rescued after drowning, within Korogocho areas together with the grandmother. Upon arrival, he was allowed to enter with the motor bike into the hospital to drop the two at the emergency section and ride off the hospital compound as per the rules. He however did not as he too accompanied the two to the emergency section, leaving his motorcycle at the entrance of the emergency. Moments later about 5 more motorcycles arrived into the facility, forced their way in as they overwhelmed the guards and too parked their motorcycles within the compound.

On sensing they had been overwhelmed the private guards drawn from Hatari security led by their in charge Stephen Simiyu Lumbasi called for reinforcement from the armed police officer drawn from Critical Infrastructure Protection Unit (CIPU) deployed at the facility. On the arrival of the officers a confrontation ensued between the bodaboda riders in the facility the guards as they (guards) removed the motorcycle from the emergency section which they had blocked.

In the confrontation the deceased was arrested and escorted at the sentry box at the main gate. Therein, it is further alleged more confrontation ensued and in the process he was fatally shot by No. 256759 APC Zaddock O.Oyioka who was deployed alongside No.257407 APC Nicholas Ronoh. Investigations were commenced and No.256759 Apc Zaddock Oyioka was arrested on 20/02/2020 and custodial orders remanded him at Kayole Police Station obtained until 06/03/2020 to aid investigations.

Also the two firearms belonging to the two officers above have been forwarded to the ballistic examiner at DCI Headquarters for analysis, as well as the post mortem on the deceased was conducted and the doctors/pathologists for the opinion that the cause of death was a single gunshot from the back upper chest existing on the front upper chest.

Upon completing the investigations the file was transmitted to the ODPP who directed that the suspect police officer be charged with murder.

Case was registered in court on 12/03/2020 vide CR NO. 120/25/2020 C.F NO. 16/2020

ACCUSED: NO. 256759 APC ZADOCK OJUKA AYIEKO

Accused was remanded in custody. Matter fixed for hearing on 22nd, 23rd, 24th, 29th and 30th September 2020

HEMEDI MAJID OF KAMUKUNJI CONSTITUENCY AND TWO OTHERS KILLED DURING THE BURILA OF HEMEDI MAJID

On 16/1/2020 two officers namely No.718080 Pc David Mwangela and No.226657 Pc Kiprono Martim reported on duty in the morning and proceeded on patrol duties within Majengo-Mashimoni area.

They were issued with the following AK47 rifle S/no 3600666 and AK47 S/no 17187676 which they signed for respectively. At around 1300 hrs they received information that there was a house trafficking narcotic drugs.

They proceeded to the alleged place and knocked at the door but the group inside kept quite the officers peeped through an opening in the house and saw a group of young men smoking and preparing cannabis Sativa (bhang) they tried to force open the door but to no avail.

They then decided to break into the house by pulling open one of the iron sheet walls, they gained entry and arrested one suspect but the rest managed to escape. They also recovered bhang in a basin which was half full. As they were escorting the prisoner to the Police Station, the group which had earlier fled from the house emerged, regrouped and confronted the officers with the intention of forcefully freeing the arrested prisoner.

It is alleged that the deceased confronted one of the officers, assaulted him by hitting him on the upper lip with his fist, extending to the point of trying to snatch a forearm from him. In ensuing, the officer was left with no option other than to use force.

The officer fired a warning shot but that didn't deter the group of boys who were now pelting the officers with stones. The deceased who allegedly tried to snatch the firearm from the officer was shot and sustained a bullet wound on the stomach. He was rushed to Care Hospital where unfortunately he passed on while undergoing treatment. The body was removed to the mortuary to await post mortem.

An empty cartridge was recovered from the scene.

The post-mortem was conducted on the body of the deceased where a bullet head which had lodged in was retrieved. The pathologist formed the opinion that cause of death was shock due to abdominal injuries following a single gunshot wound.

The two firearms, the bullet head and the empty cartridge were all forwarded to the ballistic expert for forensic analysis. The injured officer was treated at Mediheal Hospital and later filled a P3 form.

The Inquest file was opened and forwarded to the ODPP vide DCI Shauri Moyo Inquest file No. 1/2020 for directions and advice.

On the 21st day of February 2020 the suspect No.71808 Pc David Mwongela was arrested and arraigned before Chief Magistrate Court Makadara where a charge of Murder Contrary to section 203 as read with 204 of the penal code was preferred against him vide DCI Shauri Moyo Cr 131/55/2020 where the prosecution requested for five days custodial orders for completion of investigations.

However, on 27th February, 2020 the DPP advised that since the matter is also being investigated by IPOA, it was advisable to await the recommendations of IPOA for him to make final determination.

The accused was arraigned in court for plea on 4th March 2020 vide HCCR. Matter fixed for hearing on 28th, 29th and 30th July 2020

INQUEST NO 1/2020

DECEASED: STEPHEN MACHURUSI NANDWA

ON 15TH January 2020 at around 1500 hrs, the deceased person who works as hawker within Kasarani area caught himself in the middle of protesters engaging the police in running battles. The deceased was hit in the chest where the bullet exited and he succumbed to the injuries.

The post mortem was conducted on 21/1/2020 and cause of death established to be due to chest injury due to high velocity trauma due to gun shot.

The matter is under active investigations and it is apparent that during the matatu operators' protests which was due to poor state of roads especially the Mwiki road, the situation escalated prompting reinforcement from the General Service Unit. The situation was thereafter contained but with casualties on the side of the Riot Police Officers among them; 237145 I.P Judah Muriuki who was injured on the backbone, 235865 I.P Joseph Njoroge injured on the chest, 68416 S/sgt Isaac Kiprono injured on the right hand, No.75303 Sgt/w Leah Wangechi injured on the head and C.I Harrison Kiambuthi (OCS) was injured on the knee, they were treated at St. Francis Hospital in Kasarani and subsequently referred to Kenyatta National Hospital for further treatment.

It was therefore difficult to know where the bullet which caused the death of the deceased and since no specific person or witness to identify the suspect, the matter is on the process of being placed before magistrate of competent jurisdiction to be disposed off by way of Public Inquest.

**MTITO ANDEI POLICE STATION
INQUIRY FILE NO 2/2019**

On the 26th day of March 2019 at around 1345 hrs, two Kenya Wildlife Service rangers from Tsavo West National Park namely: - No.5591 Ranger Mark Lesido and No. Driver James Simiti reported to Mtito Andei Police Station vide OB No.11/26/03/2019 that while on their normal mobile patrols within Kanga area Map/Ref:CH 056237 about 15 km East of the station, encountered a foul smell and upon searching the area, they found six (6) unknown decomposed and naked bodies kilometre from the main Nairobi-Mombasa highway. Police officers from Mtito Andei Police Station led by the OCS and S-CCIO visited the scene and found six unknown bodies scattered from one another within Tsavo National park which were naked and decomposed beyond recognition. The scene was documented and no identification was recovered from the six bodies. The six bodies were removed from the scene and taken to city mortuary Nairobi pending autopsy.

On the 29th day of March 2019, officers from DCI Mtito Andei prepared post-mortem forms and went to City mortuary to witness post-mortem of the six bodies. The six bodies were given tags as **9592 9593 9594 9595 9596 and 9597**. The post-mortem was conducted by Pathologist Njau Mwangi and Doctor Donna Nyamunga. Also, present at the time of post-mortem were personnel from government chemist Nairobi led by Mr. Henry K. Sang and one representative from Haki Africa namely Mr. Shipata Mathias. After autopsy, the cause of death was not immediately established as their body parts including nails and blood samples were taken by Government chemist personnel for analysis and DNA sampling.

However members of the public who were complaining that their relatives were missing were given a chance to identify them but no one managed and therefore their swabs were also taken for DNA sampling. Up to date the results from the Government Chemist Nairobi are yet to be received.

On 14/01/2020 at 12.00 noon, police officers from Mtito Andei police station recovered two (2) bodies of unknown male African adults at Kyulu area within the vast Tsavo East National Park and were booked under **OB NO.17/14/1/2020**. Same were ferried to Makindu Sub-county hospital mortuary for autopsy and possible identification. The bodies were partly burnt but identifiable.

On 2/2/2020, people from Kwale County, who later turned to be relatives of the deceased persons visited Makindu Mortuary where they positively identified the bodies. They objected to a post-mortem citing their religious faith, and swore and affidavit to that effect. The bodies were then released to them on 3/02/2020 for burial and were as follows: - **Alfan Suleiman Linuku** aged 27 years and **Usama Nasoro Mwachga** aged 19 years. Case PUI under Mtito Andei police station **Inquest file No. 1/2020**.

Those are the cases that we were able to retrieve police records to establish their current status.

650

THE SENATE
RECEIVED
20 MAR 2020
CLERK'S OFFICE



OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI - KENYA

Telegraphic Address: "IG, NPS"
Telephone: Nairobi 020-2221969
When replying please quote Ref.
No. and Date

Jogoo House "A"
4th Floor
P. O. Box 44249-00100
NAIROBI

NPS/IG/SEC/6/13/8 VOL.IX (115)

THE SENATE
RECEIVED
20 MAR 2020
DEPUTY CLERK

Clerk of the Senate/Secretary
Parliamentary Service Commission,
P.O. Box 41842 - 00100,
NAIROBI

REPLY TO THE SENATE COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

The Inspector General is here below responding to issues raised by members as captured in the Hansard of 20th February and 5th March 2020, in a letter SEN/12/4/JLAHRC/2020(20) dated 9th March 2020.

The National Police Service takes cognisance of the questions raised by the Committee for the Office of the Inspector General to respond. The functions of the National Police Service are stated in Article 244 of the Constitution as;

(a) strive for the highest standards of professionalism and discipline among its members;

(d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and

(2) Mr. Mungu
plse detl.
Admst
20/3/20

(1) JCom
For the Committee.

Eg
20/03/20

i. Formulation and Gazettement of regulations on use of force and firearms

The National Police Service Act No. 11A of 2011, Schedule VI conditions as to the use of force gives justifiable instances on the use of firearm by a police officer.

The National Police Service reviewed former Force Standing Orders and developed Service Standing Orders (SSO) that were launched on June 2017 and gazetted in 2018.

The SSO in Chapter 47 provides guides on lawful use of force and firearms. The NPS has endeavoured to ensure these regulations are adhered to by all officers. All cases involving firearms are reported for accountability and investigated by the police and independent bodies such as IPOA to ascertain the justifiability and liability.

ii. Cooperation with IPOA

The establishment of IPOA was mooted in the Kenya Police Force in its strategic plan 2004 - 2008 recommending the establishment of an independent civilian oversight authority to investigate cases where police officers are accused of wrongdoing. The 2007 post-election violence was a blessing in disguise as police had an opportunity to recommend the same to Philip Ransley Commission which was adopted. This culminated in the enactment of the law establishing IPOA after promulgation of the Constitution in 2010. IPOA is therefore NPS's baby.

The NPS has continued to cooperate with IPOA as stipulated by the IPOA Act. NPS has continued to give IPOA space, documents and exhibits requested for whenever they are investigating into matters pertaining to their oversight role, so far I can report the relationship between IPOA and NPS is cordial and my office has continuously sought to ensure IPOA is supported by Commanders on the ground, as such;

- NPS officers have been suspended, dismissed and even charged on IPOA's recommendations.

- Some NPS officers are currently serving jail terms in relation to misuse and abuse of their positions and firearms;
- Cases are pending in courts relating to improper use of force and firearms;

IPOA has a right to investigate any matter without consulting NPS, I would like to state that NPS will continue to cooperate with IPOA. I will personally follow up on any issue raised indicating lack of support or interference on IPOA investigations and recommendations to ensure compliance as per NPS Act 2014 and IPOA Act.

iii. Investigation of Offences relating to use of Force and Firearms

NPS recruits its' officers from the larger public. The officers are trained on good conduct, judgement and discretionary capacity expected of a good officer. However, we have officers who have been caught on the wrong side of the law as a result of poor judgement or outright criminality.

These officers are subjected to investigations in regard to the nature of offence committed by relevant agencies including Directorate of Criminal Investigations. This does not impede any other agency state or non- state from carrying out independent investigations relating to matter in question.

There are regulations which established justifiable circumstances on the use of force and firearms. Police officers by virtue of their training take individual responsibility on the use of force and firearms. I know there are situations where they make split second decisions with no room for consultations. In circumstances that a person is injured or killed an inquiry is conducted and magistrate's recommendations implemented.

Officers found to have arbitrarily and unlawfully used force and firearms are dealt with as per recommendations relevant investigating agencies following lawful procedures, many have been prosecuted and convicted of crimes relating to misuse of privileges, force and firearms entrusted to them by virtue of being police officers.

iv. Professionalism and integrity

The NPS Act 2011 (8a) provides for the functions of the Inspector General as being responsible for matters relating to command and discipline of the service.

NPS has a comprehensive curriculum on Human Rights, Use of force and firearms, Investigations, Management courses locally and internationally among others.

We have a working relationship with EACC education department which trains both the public and police on integrity issues, officers are encouraged to observe good conduct, professionalism and integrity at all times when on and off duty. We have continued to mount courses aimed at enhancing the above and improved supervisory capacity of our officers to ensure professionalism and integrity is observed.

Police officers are trained to always identify themselves and be courteous whenever they are dealing with members of the public.

- Recent restructuring of the NPS centralized command structures within the devolved units, this has minimised conflict and internal competitions that previously hampered smooth operations in the service.
- I recently reorganized operations of the NPS and put in place directives that all officers except DCI to be in uniform whenever they are out on duty. This directive has reduced complaints concerning activities by officers who cannot be identified and probably persons who impersonated the police with a view to extorting the public have been weeded out.
- NPS recently launched a pilot digital OB in selected police stations. This will be rolled out to all police stations once it is adequately tested. With this, it will be possible to monitor reports made to police stations and give prompt feedback to reportees. Currently police commanders have been instructed to carry out regular inspection of police records to ensure timely actions are taken on reports made.
- NPS has continued to use non-invasive methods in crowd control. This has been realised by use of dialogues and water canons in cases that require forceful dispersal. Special vehicles are used to erect barriers to

control access to particular places. This has resulted in reduced number of injuries from both the police and members of the public.

- Best practices across the globe require the police to have an internal regulatory body to check on discipline, integrity and professionalism. NPS established Internal Affairs Unit (IAU) as a regulatory body to receive and investigate complaints against police and promote discipline and good order within the service. To ensure it is independent officers attached to this unit are competitively selected after carrying out requisite vetting. They are housed away from police institutions to minimize interference and any sort of manipulation from the mainstream police structures. This unit is responsible for ensuring police give quality, standard and professional service to citizen.
- Ethics and Anti-Corruption Commission has worked very closely with NPS on issues of integrity and corruption, many officers have been prosecuted on matters corruption.
- My office will continue putting emphasis on integrity and professionalism through other innovative ways such as the implementation of the Service Charter.

v. Extra judicial killings

NPS takes cognisance of the fact that Kenya is a signatory to international conventions against torture and extra judicial killings. There is no policy in Kenya which supports extra judicial killings and forced disappearances. NPS through its structures, commands and operational procedures does not condone such practices.

NPS curriculum has mandatory module on human rights at all levels of its trainings. This has been complemented by continuous seminars on human rights to our officers as duty bearers locally and internationally.

We have been giving our compliance status and human rights abuse including gender based violence to conventions on human rights and laws against torture at conferences across the globe.

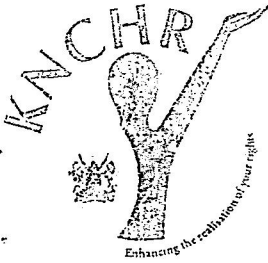
NPS does not have "a shoot to kill" policy. Officers have been trained to use minimum force to effect arrest and prevent loss of life and property as provided by the NPS Act 2011. Officers are aware they will take individual responsibility whenever they use force or firearm. Those found culpable are arrested and prosecuted.

We have had reports and recovered bodies of persons killed in circumstances that sometimes are believed to be execution. Inquiry has been instituted in all these cases and I can report most are found to result from robberies and murders orchestrated by criminal gangs. Anti-Terrorism Police Unit within the Directorate of Criminal Investigations of NPS is mandated to come up with measures and strategies to combat terrorism and protect the country from terrorism threats by detecting and dismantling their cells and plans proactively. This is done professionally and lawfully and the unit does not have special laws to direct its activities.

Finally my office takes special cognisance of the issues raised and the scenarios provided. I would encourage the agencies to share with us some of these cases for investigations to establish the truth and possibly prosecute individuals found criminally responsible. My office will continue to put in place measures that will make NPS more accountable and responsive to the aspirations of the general public and the rule of law.



HILARY N. MUTYAMBAI, MGH, nsc (AU)
INSPECTOR GENERAL
NATIONAL POLICE SERVICE



Kenya National Commission on Human Rights

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OUR REF: KNCHR/STC/PETGEN/VOL.II(57)

YOUR REF: SEN.12/4/JLAHRC/2020(9)

9th March 2020

J.M Nyegenye, CBS
Clerk of the Senate
Parliament

Dear Sir,

**RE: SUBMISSIONS ON ADVISORY REPORT TO PARLIAMENT ON EXTRA –JUDICIAL KILLINGS,
ENFORCED DISAPPERANCE AND RELATED HUMAN RIGHTS VIOLATIONS**

Warm regards from the Kenya National Commission on Human rights.

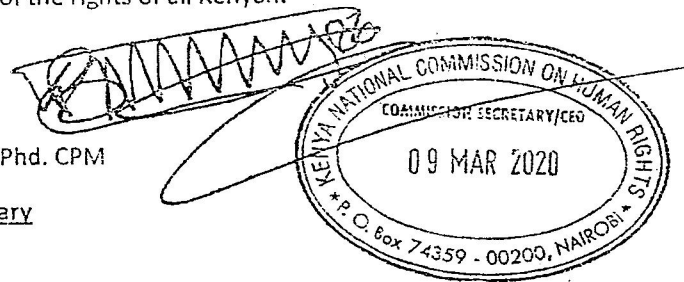
With the reference of your letter dated 25th February, 2020, the Commission would like submit advisory report on extra – judicial killings, enforced and disappearance and related human rights violations.

Please receive assurance of our highest regards and commitment to working with your office towards promotion of the rights of all Kenyan.

Yours Sincerely,

Dr. Benard Mogesa Phd. CPM

Commission Secretary



Accredited "A" Status National Human Rights Institution
Chairperson: Kagwira 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
(KNCHR)

Submissions to Parliament on Extra-Judicial Killings, Enforced
Disappearances and Related Human Rights Violations.

6th March 2020

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1. The Kenya National Commission on Human Rights (KNCHR) is a national human rights institution established under Article 59 and Chapter 15 of the Constitution of Kenya and subsequently operationalized through the Kenya National Commission on Human Rights Act, 2011. The Commission is mandated by Article 59 (1) (d) (e) of the Constitution of Kenya:
 - a. *(d) to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs;*
 - b. *(e) to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;*
2. Further, Section 8 (e) of the Kenya National Commission on Human Rights Act, 2011 mandates the KNCHR to; *"on its own initiative or on the basis of complaints investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State organs;"*
3. To enable it execute these mandates, the Commission has established procedures and systems which include a Complaints Management System that helps in preserving, processing and analysis of the complaints data. The Commission classifies the complaints data into three broad categories namely; Civil & Political Rights, Economic, Social & Cultural Rights and Group Rights. There are various subcategories under each of the three categories.
4. The information sought in your letter falls under the Civil Political Rights category and relates to violation of the right to life, freedom and security of the person; human dignity, freedom from torture, cruel, inhuman or degrading treatment; right to a fair trial and access to justice as guaranteed under the Constitution and various international human rights principles.
5. The Commission has documented and conducted investigations on numerous complaints relating to extra-judicial killings, enforced disappearances and related human rights violations. Evidence gathered by the Commission establishes a pattern of conduct by the Kenya security agencies amounting to grave violations of the law and human rights against individuals and groups suspected to be associated with various acts of criminality including terrorism.

6. Since 2013 when the Jubilee government came to power, the Commission together with its partners has documented 1040 cases (see table below) of extrajudicial killings and disappearances attributed to the security agencies. Majority of the victims, over 80%, are young male adults aged between 15-35 years.

Year	Cases
2013	143
2014	199
2015	126
2016	144
2017	152
2018	109
2019	120
2020	35
Total	1040

7. As required by law, the Commission has compiled multiple reports and presented them to relevant duty bearers including parliament for appropriate action. As evidenced by the attached reports, these violations are widespread and systematic and include but are not limited to arbitrary arrests, extortion, illegal detention, torture, killings and disappearances. KNCHR has heard multiple narratives of suspects being rounded up and detained for periods ranging from a few hours to many days in extremely overcrowded and inhumane and degrading conditions. Many have been tortured while in detention sustaining serious physical injuries and psychological harm as a result. The torture methods include beatings, waterboarding, electric shocks, genital mutilation, exposure to extreme cold or heat, hanging on trees, mock executions, and exposure to stinging by ants in the wild, denial of sleep and food.
8. The families of the disappeared have complained that they have received no assistance from government and continue agonizing as they desperately search for their kin. The Commission is especially concerned that the ongoing crackdown on terrorism continues to disproportionately target certain groups of people particularly ethnic Somalis and members of the Muslim faith. This profiling of people along ethnic or religious lines

constitute discrimination and is therefore unconstitutional and against international norms.

9. The Commission forwards to this Committee the following eight (8) investigation reports relevant to your inquiry for your consideration.

a) *The Error of Fighting Terror with Terror*- This report documents 150 cases of people who have disappeared, killed or brutalized by security forces in the ongoing counter terrorism operations. The cases were mostly reported in Nairobi, Wajir, Mandera, Garissa, Lamu, Tana-River, Kwale, Kilifi and Mombasa Counties. The counterterrorism operations are being conducted by a combined contingent of Kenya Defense Forces (KDF), National Intelligence Service (NIS), Kenya Wildlife Services (KWS), County Commissioners, Deputy/Assistant County Commissioners, Chiefs and various units of the National Police Service including the Anti-Terrorism Police Unit (ATPU), Kenya Police Reservists (KPRs), Rapid Deployment Unit (RDU) of the Administration Police, Border Patrol Unit (BPU) and the General Service Unit (GSU).

<https://www.knchr.org/Portals/0/CivilAndPoliticalReports/The%20Error%20of%20Fighting%20Terror%20With%20Terror.pdf?ver=2018-06-06-200137-237>

b) *Return of the Gulag-Report of KNCHR investigations on Operation Usalama Watch, July 2014* –

The report captures findings of KNCHR's monitoring of the Usalama Watch Security operation which commenced on 3rd April 2014. The operation was ostensibly as a government's response to escalating terrorist activities in the country especially the Westgate mall attack and the attack on worshippers in a church in Likoni, Mombasa. The operation began in Eastleigh Estate in Nairobi where it remained largely concentrated but later spread to other parts of Nairobi and later in Mombasa, Nakuru, Thika, Eldoret, Lamu, Malindi, Garissa, Mandera, and Kitale. It was characterized by massive violations of human rights by police against residents of the areas of the operation. At least 4000 people were arrested across the country, majority of who were ethnic Somalis. As evidenced by the testimonies annexed to this report, the KNCHR received multiple complaints from victims and relatives that included arbitrary arrests, extortion, theft and looting of businesses and

homesteads, sexual harassment, arbitrary detentions, illegal deportations, torture, inhuman and degrading treatment.

<https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Report%20of%20KNCHR%20investigations%20on%20Operation%20Usalama%20Watch.pdf?ver=2018-06-06-194906-830>

c) *The Cry of Blood: Report on Extra-Judicial Killings and Disappearances of Suspected Mungiki Members – September 2008 –*

This report covers KNCHR investigations into executions and disappearance of suspected Mungiki members attributed to the Kenya Police. The report details egregious violations perpetrated by the Police which may have been committed pursuant to official policy sanctioned by the political leadership, the Police Commissioner and top police commanders. That whereas initially the police mainly used firearms to execute the suspects, they subsequently changed their modus operandi and adopted such methods as strangulation, drowning, mutilation and bludgeoning of the suspects. The change of strategy was to hoodwink members of the public to believe that rival Mungiki gangs were responsible for the killings. Several witnesses told the KNCHR that the killer police squads carried machetes, iron bars, ropes and other crude weapons in their vehicles. The report documents three hundred (300) persons who were either killed or disappeared. Additionally, there were at least two hundred (200) other persons whose identity the KNCHR was unable to establish since they were merely booked in mortuaries as unknown. Many of these bodies were subsequently disposed by the respective mortuary authorities after they remained unclaimed for long.

<https://www.knchr.org/Portals/0/CivilAndPoliticalReports/The%20Cry%20of%20Blood.pdf?ver=2018-06-06-195559-793>

d) *“The Mountain of Terror”-A Report on KNCHR Investigations of Torture and Killings by the Military in Mt. Elgon-May 2008*

This report covers abuses and brutality committed by the military against suspected members of the outlawed Sabaot Land Defence Force (SLDF) in Mt. Elgon. The abuses included executions, illegal detentions and

vicious torture at the military camps. The abuses were indiscriminate and targeted many innocent civilians who were not members of the SLDF.

https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Mt_Elgon_Report.pdf?ver=2013-02-21-140244-497

e) *“You got Brains, we got Brawn”- Report on Investigations into Police Brutality Committed at the University of Nairobi*

This report covers KNCHR investigations into human rights violations by the National Police Service against the students and staff from University of Nairobi (UoN) on 28th September 2017. The investigations were triggered by media reports that the police had used excessive force against students from the University of Nairobi during protests by a section of the students. The protestors were demanding the release of Hon. Paul Ongili alias Babu Owino, the immediate former chairperson of the now defunct Students Organization of Nairobi University (SONU). The police officers indiscriminately brutalized and insulted innocent students and staff members who were not participating in the protests. Several video clips and pictures immediately went viral on social media showing scores of subdued students lined up lying on the road being viciously beaten, humiliated and tortured by the police.

https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Report%20on%20Police%20Brutality%20at%20the%20University%20of%20Nairobi_2.pdf

f) *Mirage at Dusk: A Human Rights Accounts of the 2017 General Elections*

This report covers the human rights violations documented by KNCHR during the 2017 general Elections. KNCHR documented thirty (38) deaths between 9th and 15th August 2017. Most of the fatalities were recorded in Kawangware, Mathare, Kibra, Lucky Summer, Baba Ndogo and Huruma in Nairobi City County; Kondele, Manyatta, Nyamasaria, Nyalenda in Kisumu County; Siaya town and Ugunja in Siaya County; and Rangwe in Homa Bay County. Seven (7) of the victims were minors; three girls and four boys. The youngest was a 6-months-old baby who succumbed to injuries in hospital after being beaten by police while

at home under the care of her mother. The other minors, all aged between seven and eighteen years died from gunshot wounds. The report also covers police brutality meted out on the protesters deployed to quell demonstrations. Out of the 126 documented cases, only three (3) constituted cases of civilian-to-civilian confrontation. A majority of the reported cases were as a result of police aggression towards civilians. Further, there were six (6) reported cases of sexual violence against women and girls including rape by the police.

https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Mirage%20at%20Dusk_B5_210518_2215.pdf?ver=2018-05-23-125203-263

g) Report of the Kenya National Commission on Human Rights on Violations of Human Rights in the Matter of Miguna Miguna

This report details gross violations of the fundamental rights and freedoms of Miguna Miguna which include his citizenship rights, violations of his personal security & integrity and social, economic rights. The report further highlights corrosive impunity by security agents and government officials regarding flagrant disobedience and disregard of court orders.

https://www.knchr.org/Portals/0/CivilAndPoliticalReports/KNCHR%20Report%20on%20Miguna%20Miguna%20Final_2.pdf

h) Footprints of Impunity- Counting the Cost of Human Rights Violations 2017

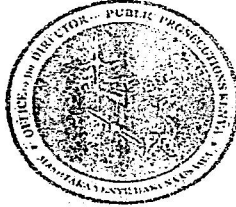
This report illustrates the heavy price paid by poor taxpayers as a result of human rights violations by the state and its agents. The report has calculated the cost of lawsuits and awards made to torture victims by the judiciary. Out of 126 suits filed by the torture victims of the infamous Nyayo House torture chambers, a whopping Kshs. 372,524, 686 was awarded as compensation. In the course of conducting this research the victims urged KNCHR to ensure personal responsibility by public officers who act in contempt of rule of law and violate human rights because the culture of impunity that prevailed under the old constitutional dispensation continues to thrive under the 'new' constitutional dispensation. It cannot be overemphasized that the prevailing culture of impunity in Kenya is unacceptable

10. The Commission is alive to the immense challenges that the government faces in combating insecurity and especially terrorism. While supporting ongoing efforts by the state to secure the country, the Commission maintains and insists that security policies and practices must be legal and consistent with human rights standards and principles. Combating insecurity through official terror is counterproductive and only serves to foment further resentment, increase radicalization and fertilizes the breeding grounds of criminals and terrorists. Indeed, Article 238(2)b of the Constitution provides that *"national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms."*
11. The security forces must forthwith stop the abuses, the perpetrators should be held to account, and an account of the missing persons must be provided. The government should expedite reparations to survivors and families of the deceased. The Commission appeals to parliament to provide sufficient budgetary allocations to compensate victims particularly those who have already been awarded by the Courts.
12. The Commission investigations work has been inhibited by various challenges key among them intimidation of victims and witnesses who are afraid of disclosing information for fear of reprisals by security agencies. Some Commission staff have also received threats while performing their legitimate duties. The Commission is unable to obtain information from relevant security agencies thus preventing us from taking appropriate actions. This is tied to denial of access to the places of detention particularly those controlled by the Kenya Defense Forces (KDF).
13. The Commission appeals to parliament to prevail on security agencies to provide KNCHR with unconditional and unfettered access to information crucial to its investigations to enable us fulfill our constitutional and statutory obligations.
14. Parliament should restrict the involvement of the military in internal affairs given the refusal by KDF to be held accountable for their actions.

15. Parliament should summon the Cabinet Secretary for Interior and Coordination of National Government and the Inspector General of Police (IGP) and sanction them for the abuses and unlawful acts of the police.

Thank you





OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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When replying please quote:

Date: 9th June, 2020

REF: ODPP/CONF/2/20A

Mr. J. M Nyegenye, CBS
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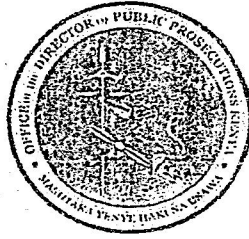
**RE: INVITATION TO A MEETING OF THE SENATE
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

The above matter refers

I have been directed by the Director of Public Prosecutions to acknowledge receipt of your letter dated 9th March, 2020.

Please, find enclosed the response to your letter on Office of the Director Public Prosecutions action on extra judicial killings and enforced disappearance.


**LILLIAN OBUO
CHIEF OF STAFF
FOR: DIRECTOR OF PUBLIC PROSECUTIONS**



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

**ODPP's ACTION ON EXTRA JUDICIAL KILLINGS AND ENFORCED
DISAPPEARANCES PRESENTED**

TO

THE SENATE STANDING COMMITTEE

ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

ON 8TH JUNE, 2020

BY

NOORDIN.M. HAJI, CBS, OGW

DIRECTOR OF PUBLIC PROSECUTIONS

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Mr. Chairman,

INTRODUCTION

The Office of the Director of Public Prosecutions (hereinafter ODPP) is Kenya's National Prosecuting Authority. The ODPP is established under Article 157 of the Constitution of Kenya 2010. The mandate of the ODPP is to institute and undertake prosecution of criminal matters and all other aspects incidental thereto. In addition, the DPP shall have the power to direct the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector General shall comply with any such direction.

In exercising prosecutorial authority, the ODPP shall have due regard to public interest, interests of administration of justice and the need to prevent and avoid abuse of the legal process. In doing so, the ODPP strives to provide quality, impartial and timely services in a manner that is professional, efficient and fair.

THE PROSECUTION FUNCTION

The ODPP prosecution function is derived from Article 157 of the Constitution of Kenya 2010 and includes:

- a) Direct the Inspector General of the National Police Service or any other investigative body to investigate any information or allegation of criminal conduct.
- b) Institute, take over and continue or discontinue, with the leave of court, criminal proceedings against any person, before any court, other than a court martial, in respect of any offence alleged to have been committed.

Pursuant to Article 157, Section 5 of the ODPP Act further outlines the powers and functions of the DPP to include the following key roles among others:

- Providing legal advice to law enforcement agencies, government ministries and departments on all criminal law matters.
- Drafting and reviewing charges.
- Conducting legal research,
- Preparing pleadings and court documentation,
- Holding pre-trial conferences with witnesses and victims of crimes,
- Determining alternative mechanisms for resolution of criminal cases.

ODPP PROSECUTION STRATEGIES

The ODPP has developed and implemented Prosecution strategies aimed at enhancing Service Delivery to the *Mwananchi*. The strategies are aimed at equipping prosecutors to ensure efficient and impactful service delivery to the public.

These adopted techniques, are also unique to specific Departments and Units that the office has established and operationalized.

The most relevant of the strategies adopted by the office to this discussion include:

- **Prosecution Guided Investigations**, where the investigative agencies work hand in hand with prosecutors from the onset of the investigations and during trial to enhance success of the cases. In this realm, the office focuses on Corruption cases, extrajudicial cases, terrorism, smuggling and drug trafficking.
- **Focus on high Impact cases**, where the office focuses on Public Interest, impact of the offences to the country's economy and the security aspect.
- **Conviction based approach to cases**. This entails making the decision to charge offenders. Only cases that meet the evidential test are admitted to court for prosecution.
- **ODPP complaints desk and hotline number**. The officers at the desk are tasked to, receive complaints from members of the public and ensure that the same are addressed.

RESPONSE TO YOUR LETTER DATED 25th FEBRUARY, 2020

Mr. Chairman,

This section of the Report contains a summary of all the actions undertaken by the ODPP in an effort to address the challenge of extra-judicial killings and enforced disappearances.

I wish to emphasize that the ODPP is keen on the prosecution of all cases involving breaches of the Bill of Rights as enshrined in the Constitution of Kenya 2010.

The public outcry, on police excesses, calls for prompt action to address the issue swiftly. On the part of the ODPP, a multi-agency approach of working has been adopted. The approach entails working in collaboration and adoption of complementary strategies between IPOA, DCI, NPS, and ODPP.

Below is an outline of the actions undertaken.

1. ESTABLISHMENT OF THE CIVIL RIGHTS DIVISION

The objective of the Division is to enhance the promotion of human rights and address cases that relate to inaction or action by law enforcers that results in criminal violations of the rights of the people living in Kenya whether citizens or non-citizens. The division is also mandated to ensure that acts constituting criminal and civil rights violations are sufficiently remedied, whether through prosecution or through recommendation of administrative actions by the National Police Service.

Through the department the office works with the civil society to conduct:

- Outreach programs involving law enforcers,
- Conduct sensitization on human rights and laws to the public, and
- Engage in community meetings with local leaders.

The department is in the process of establishing a Tri-Partite Task Force on Civil and Human Rights.

The Department has a Unit that is mandated to collect data in regard to torture and receives complaints from the public regarding allegations of police violations.

2. COLLABORATION WITH IPOA

The ODPP is working closely with IPOA in an effort to curb the challenge of civilian killings by law enforcement officers. Towards this end, the office has:

(a) Signed a Memorandum of Understanding with IPOA

The objective of the MOU is to create rules of engagement on matters of mutual concern in furtherance of each other's mandates of the Institutions.

(b) Developed Standard Operating Procedures with IPOA

The standard operating procedures are meant to guide the investigators and prosecutors on matters relating to IPOA. This will enhance efficiency and build the capacity of officers' dealing with the aforesaid matters.

(c) Establishment of an IPOA Desk

The ODPP has established an IPOA desk. Officers at the desk have been designated to follow up on all cases that come to the attention of the ODPP on police excess. The ODPP officers act as contact persons between the two institutions.

3. COMMUNITY OUTREACH PROGRAM

Further, the ODPP in conjunction with HAKI Africa and International Justice Mission (IJM) have developed a community outreach program aimed at bringing together communities and justice actors to ensure access to justice and that human rights are observed.

So far, the program has sensitized various communities on the role of various stakeholders in the criminal justice process and what they do. IEC materials on the criminal process have also been developed. The materials give an overview of the stages followed from reporting of a crime to investigations to charging and the trial process. The material is disseminated in both English and Swahili to community members.

Further, through the program public inquiries on police excesses have been conducted in the following counties:

- ◆ Nairobi County specifically in Kayole
- ◆ Lamu County
- ◆ Mombasa County
- ◆ Kilifi County
- ◆ Taita Taveta County
- ◆ Tana River County
- ◆ Isiolo County
- ◆ Kisumu County

During the engagement, members of the above communities had a platform to engage and discuss issues affecting them on access to justice with relevant stakeholders that included: DCI, IPOA, WPA, NPS, Prisons department, KWS, Judiciary and KNCHR.

The office also had an opportunity to document complaints relating to Police excesses, extrajudicial killings and enforced disappearances, among other complaints.

4. THE CRIMINAL JUSTICE ACCOUNTABILITY PROJECT

The ODPP in collaboration with the Civil Society initiated the project which was piloted at the coast. The main objective of the project was to bridge the gap of mistrust between law enforcement and communities within the Coastal region.

The most important activity undertaken during the project was community inquiries where law enforcement agencies led by the ODPP engaged the communities in all the six Counties of the Coast region.

Community members were encouraged to speak freely as there would be no victimization. All their complaints were recorded and some were acted upon immediately.

5. COLLABORATION WITH OHCHR

The ODPP and Office of the High Commissioner for Human Rights (OHCHR) carried out an evaluation of the capacity, structure, and resources within the Office to address and remedy human rights violations.

The consultancy was carried out between April and June 2019 and involved two research missions travelling to Kenya to meet with officials of the Office of the Director of Public Prosecutions (ODPP) in Nairobi, Kisumu, and Mombasa, the Independent Policing Oversight Agency (IPOA) in Nairobi, Kisumu, and Mombasa, the Witness Protection Agency (WPA), the Kenyan National Commission on Human Rights (KNCHR) in Nairobi and Kisumu, the Director of Criminal Investigations of the National Police, the head of Police Reform of the Kenyan National Police, the Head of Internal Affairs of the Kenyan Police, UNODC, and several civil society organizations. The consultancy made recommendations including joint capacity building among the stakeholders.

6. THE ODPP WITNESSES AND VICTIMS OF CRIME UNIT

The Unit works closely with the Witness Protection Agency to ensure that victims of crime and witnesses are protected from any forms of intimidation and threats by the perpetrators of crime. The Unit also conducts guidance and counseling as well as ensures that the victims of crime receive emotive support.

CONCERNS SINGLED OUT FROM THE PUBLIC ENGAGEMENTS

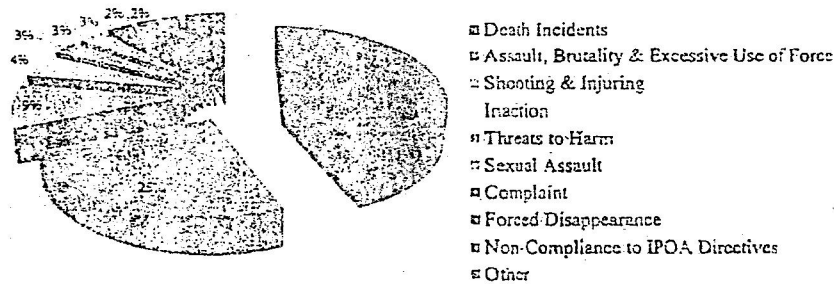
- ◆ The communities mentioned several cases of disappearances and deaths attributed to security agents.
- ◆ Individuals had information but fear sharing the same with the police for fear of victimization while others were adamant that no action is ever taken.
- ◆ In some cases, the victims suspected some attacks were by security agencies but could not confirm/identify the perpetrators.

- ◊ In some cases, there was admission of the victims being involved in criminal gangs.

STATISTICS OF FILES RECEIVED SO FAR

- So far my office has received 171 files with regards to police excesses, of which 85 cases are on-going in court. 6 convictions have already been recorded in recent years.
- In addition, the office has received 38 files from IPOA between 22nd April, 2020 and 29th May, 2020, out of which 15 I have consented for prosecution to ensue.

Figure 1: Summary statistics on files of police excesses received in the office



ACTION TAKEN BY THE ODPP

- The ODPP has also seen to it that, administrative disciplinary action is taken against some officers.
- The ODPP has also directed for investigations to be carried out by IPOA on all documented cases of excesses.
- The DCI has also been directed to take action on specific cases documented.
- The ODPP is also working closely with the **Internal Affairs Unit** of the NPS that is mandated to deal with misconduct of police officers.

CONCLUSION

Mr. Chairman,

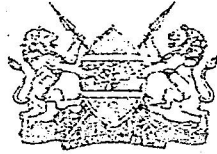
The ODPP is always ready to prosecute cases of police excesses without fear or favor

As cases of police excesses continue to rise in the country the ODPP is keen on ensuring that legal action is taken on all individuals found culpable for such actions. The office is also keen on giving support to the victims to ensure that they come forward to report such cases without fear of intimidation.

I sincerely thank the Committee for the continued support to the ODPP and look forward to further deliberations.

Thank you.

REPUBLIC OF KENYA



SUBMISSIONS BY THE OFFICE OF THE ATTORNEY GENERAL &
DEPARTMENT OF JUSTICE TO THE SENATE STANDING
COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

MAIN PARLIAMENT BUILDINGS

21ST APRIL , 2020

INQUIRY INTO THE ISSUE OF EXTRAJUDICIAL KILLINGS AND FORCED DISAPPEARANCES IN THE COUNTRY

Hon. Chairman and Members of the Committee

Pursuant to your letter dated 9th March 2020, ref no. SEN/12/4/JLLLLAHRC/2020 (19), the Committee requested the Hon. Attorney General to appear before the Senate Standing Committee on Justice, Legal Affairs and Human Rights to respond to the enquiry on extrajudicial killing and enforced disappearance in the country. The inquiry seeks to investigate why this issue is so prevalent, the responsibility of law enforcement organs and the options that are available for families and victims of extrajudicial killings and to make recommendations.

1. INTRODUCTION

Extrajudicial killing is the killing of a person by governmental authorities or individuals without the sanction of any judicial proceeding or legal process¹.

Article 2 of the International Convention for the Protection of all Persons from Enforced Disappearance “Enforced disappearance “is defined as;²

“the arrest, detention abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.

2. POSITION OF THE ATTORNEY GENERAL & DEPARTMENT OF JUSTICE

Kenya is a human rights respecting State based on a constitutional democracy and the rule of law. The Government of Kenya does not sanction any form of extrajudicial killings (EJK) or enforced disappearance (ED). The taking of life without the minimum guarantee of due process is clearly prohibited in the Constitution and national laws. However, when EJK and ED occur appropriate

¹ See Reports by UN Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions

² International Convention for The Protection Of All Persons from Enforced Disappearance, access on <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

action must be taken against perpetrators in accordance with set due process. It is the obligation of the relevant authorities to carry out exhaustive and impartial investigations into all allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, and to take effective measures to avoid recurrence of such violations. The Constitution of Kenya and national laws spell out in sufficient details situations which can attract court sanctioned capital punishment and the due processes which must be followed when the violations occur .

2.1 CONSTITUTIONAL PROVISIONS

The Constitution protects the right to life which can only be taken away when specifically authorized by written law. The life of a person can only be taken after conviction by a court of law on a criminal offence. Article 26(3) stipulates as follows;

"A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law".

To ensure the protection of persons from enforced disappearance, article 29 declares that;

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

- (a) deprived of freedom arbitrarily or without just cause;*
- (b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;*
- (c) subjected to any form of violence from either public or private sources;*
- (d) subjected to torture in any manner, whether physical or psychological;*
- (e) subjected to corporal punishment; or*
- (f) treated or punished in a cruel, inhuman or degrading manner.*

The Constitution further provides in great details the rights of an arrested persons and the procedures necessary for a fair trial.

Article 48 stipulates that;

(f) The right of an arrested persons to be brought before a court as soon as reasonably possible, to be charged or informed of the reason for the detention at first court appearance or be released, and

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

Article 50 provides for the right to a fair trial;

50(1) every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body;

50(2) (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed.

2.2 NATIONAL LEGISLATION

i. The Penal Code, Cap 63.

S. 24 (a) of the Penal Code allows the court to inflict death as a penalty.

The following offences attract the death penalty; Murder- S.204; treason- S.40 (3); Unlawful Administration of Oath to Commit Capital Offences- S. 60; and Punishment of Robbery -S.296 (2).

ii. The Kenya Defence Forces Act, No. 25 of 2012.

The following offences attract the penalty of death following a court martial: Aiding the enemy- S. 58; Communication with enemy- S. 59; Spying- S.60; Offences by service member or officer when in action -S. 61; Offences by a person in command when in action- S 62; and Misconduct in action by others- S. 63.

iii. Criminal Procedure Code (Cap 75)

The Criminal Procedure Act Cap 75, outlines the procedures necessary for the arrest, investigation, prosecution and conviction of a person suspected of committing a criminal offense. Section 385 of the CPC empowers Magistrates to hold inquests where a person has died under suspicious circumstances.

2.3. INSTITUTIONAL OVERSIGHT MECHANISMS

1. Internal Affairs Unit is an office established under section 87 of the National Police Service Act, Cap 84, with the mandate of receiving and investigating complaints against the police.
2. Independent Policing Oversight Authority (IPOA) holds the responsibility to hold the police accountable to the public in the performance of their functions; investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief.
3. The Office of the Director of Public Prosecutions (ODPP) is mandated to prosecute all criminal cases.
4. The Court hear cases against the Police and other law enforcement bodies and make decisions.

2.4. REGIONAL AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Kenya is a state party to a number of regional and international human rights treaties that prohibit the practice of extra judicial killings and enforced disappearances. The treaties include:

i. African Charter on Human and Peoples' Rights (Banjul Charter): Article 6 provides that every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law

ii. International Covenant on Civil and Political Rights (ICCPR):

a. Article 6; every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

b. Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law; 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; and 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

It is clear from the aforementioned submissions that Kenya has the necessary constitutional, legislative and institutional frameworks that direct the strict adherence to due process, enhance access to justice for all and provide oversight over law enforcement officers. The practices of EJK and ED, insofar as they occur outside the set laws are abhorrent to the Constitution of Kenya and violate human rights.

3. SUBMISSIONS BY THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

Based on the pertaining situation presented above, the OAG&DOJ makes the following submissions:

Despite the multiplicity of enacted laws and establishment of oversight institutions, various human rights advocates have been greatly alarmed at the incidences of extrajudicial killings and enforced disappearance reported as occurring in Kenya. Indeed, during the 3rd Cycle Universal Periodic Review of Kenya human rights situation in January 2020, the United Nations Human Rights Council recommended that Kenya should;

“strengthen the oversight over the state security forces and properly investigate the allegations against the state security forces of torture, extrajudicial killings and arbitrary detentions”; and

Take further steps to address all allegations of extrajudicial killings, enforced disappearances and excessive use of force by police, particularly during counter-terrorism initiatives and ensure prosecution of offenders”

The African Commission on Human and Peoples’ Rights in their 2016 Concluding Observations on Kenya’s 9th and 11th Report on the African Charter, raised their concerns about the :

“lack of statistics as to how many cases referred to the Director of Public Prosecution by the IPOA have been prosecuted”

3.1 CHALLENGES FACED IN REDUCING IMPUNITY IN THE FIGHT AGAINST EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES

- L. While there are many actors handling matters relating to complaints against law enforcement officers, there is lack of proper coordination and cooperation among agencies, and duplication of efforts in the investigation and prosecution of cases involving the EJK and ED. Indeed the IPOA in its 2012-2018 report³ identified non-cooperation by the National Police Service as one of its greatest stumbling block in ensuring accountability. The lack of cooperation by the Service has contributed to the reluctance of key experts

³ Independent Policing Oversight Authority, End term report 2012- 2018, Pg 93, Nairobi

such as prosecutors, pathologists, government analysts and hospitals to successfully investigate and prosecute cases against law enforcement officers.

- II. Further, Kenya does not have an independent forensic analysis laboratory. It is noted that IPOA relies heavily on the Police for any scene of crime analysis. Indeed the IPOA has complained of difficulties in accessing police documents and reports in relation to crimes committed by police officers which thwarts the Authority's investigations, and is against section 7(1)(a)(i) of the IPOA Act, 2011⁴.
- III. There are options for families of victims of EJK and ED to obtain monetary compensations. The Victim Protection Board (The Board) was established by section 31 (1) of the Victim Protection Act, Act No. 17 of 2014 pursuant to Article 50 of the Constitution. The Act provides for the protection of victims of crime and for reparation, compensation, among other things. The Board operates the Victim Protection Trust Fund established in Section 27 of the Victim Protection Act, 2014. The Trust Fund provides, *inter alia*, for compensation to victims of offenses. According to section 26 of the Act, compensation must be ordered by the Court alongside any other penalty that may be imposed upon the offender. Consequently, the Act only provides for compensation to victims after an accused person is convicted of an offence complained of by the victim. Cases of extra-judicial killings are treated as criminal offenses. The officer involved would be charged with murder in a court of law. In the event that there is a conviction, the court may award the victim compensation to an extent that it deems fit. The beneficiaries of the victim would be the ultimate recipients of the award of compensation. Once issued with a court order, the beneficiaries can approach the Victim Protection Board, which would vet the documents availed and pass them to the Victim Protection Board of Trustees for payment.

However, the procedure for payments or the ability to pay is at the moment not operational considering that the Victim Protection (Trust Fund) Regulations are yet to be approved by the National Treasury.

3.2 RECOMMENDATIONS

1. Establish a strong Multi-Agency Task Force to ensure better synergy, collaboration and cooperation between the various agencies that seek to hold law enforcement officers accountable for EJK and ED. The lack of inter-agency cooperation among the various oversight mechanisms contributes to the impunity of the police with regard to ensuring the right to life. The Task force should be fashioned along the lines of the Multi -Agency

⁴ Submissions of the Independent Policing Oversight Authority to the Senate Standing Committee on Justice, Legal Affairs and Human Rights on 4th March 2020.

Taskforce on Corruption which has proved very valuable in the fights against corruption. The Multi –Agency Task force will help build better synergy, collaboration and cooperation between institutions that will help end incidences of extrajudicial killings and enforced disappearances. The Task force should draw its members from the National Police Service (NPS), Office of the Director of Public Prosecutions (ODPP), the Independent Policing Oversight Authority (IPOA), National Police Service Commission (NPSC) and the National Commission on the Administration of Justice (NCAJ). The Multi Task force Agency should report to Parliament

2. The development of a monitoring and evaluation plan for the envisaged Multi-Agency Task force. The Plan should set out clear indicators to track complaints, investigations, prosecutions and final outcomes of cases on EJK and ED. In this way, each organization will own the process, make them more accountable since it will clearly indicate any weakness in the system and hence identify specific institutional issues.
3. Establishment of the National Coroners Service under the National Coroners Service Act No. 18 of 2017. The mandate of the National Coroners Service is to independently investigate and determine the cause of reported unnatural deaths in the country. It also provides independent forensic medical science services. The Service, once established, will facilitate the proper collection of forensic evidence from the scene of crime to avoid contamination, independently verify the courses of death and therefore increase the chances of the successful resolution of a criminal case and the successful prosecution of the offender. While the OAG& DOJ is responsible for setting up the National Coroners Service, the process has been the reduced budgetary allocations. We recommend that sufficient monies should be availed for the setting up of the Service.
4. Enhanced training of law enforcement officers on the respect of human rights that enable fair, just and humane treatment of persons particularly with regard to duties involving arrest, detention, search and seizure of property, surveillance, use of force and firearms. The UN International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police⁵ is an important resource to this end.
5. The Victim Protection Board can only compensate families of a victim of extrajudicial killings and enforced disappearance based on the actual conviction of an accused person in a criminal case. It is important to enhance the capacity of both the IPOA and ODDP to successfully investigate and prosecute cases of EJK and ED to increase the chances of compensation. This will entail an increase in the number of competent staff and enhanced

⁵ <https://www.un.org/ruleoflaw//document/international-human-rights-standards-for-law->

trainings to build the capacity of both institutions. Additionally, there is need to fast track the approval of the regulation by the National Treasury.

4. CONCLUSION

We thank the Committee for the opportunity to contribute to this important subject. We applaud your decision to conduct an in-depth inquiry into the practice of extrajudicial killings and enforced disappearance in the country. The matter has been of great concern to our office. The prevalence of the practice has also been raised in many national, regional and international human rights platforms. We believe that the building of closer collaboration and partnerships among the oversight agencies to hold law enforcement officers accountable, increased training and the full establishment of independent national coroner services can help to resolve the problem of extrajudicial killing and enforced disappearances in the country.