

Kenya National Commission on Human Rights

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REPORT ON EXTRA-JUDICIAL KILLINGS AND DISAPPEARANCES - OVERVIEW OF THE REPORT AND SAMPLE CASES

Ladies and Gentlemen of the Press, Mr. Hassan Omar Hassan, Vice-chair, Kenya National Commission on Human Rights, members of CSOs present, distinguished guests, colleagues and friends:

The Kenya National Commission on Human Rights have called you here today to share with you our report entitled "The Cry of Blood", which is an account of a serious blight in the state of human rights and the rule of Law in Kenya. As we release this report, we wish to declare here that the KNCHR strongly believes in the rule of law and the respect of the human rights of all Kenyans. We know that any society that opts to live by the law of the jungle where the mighty is the king always dies.

We wish to firstly disabuse the people of Kenya of the misguided notion propounded by some that our criticism of the police amounts to support for crimes. We strongly associate ourselves with and appreciate the countless police officers who serve the people of Kenya nobly, tirelessly, selflessly and at great risk to their lives and families, exemplifying courageously the moto "utumishi kwa wote". In that regard and to that extent, "Tuko pamoja".

Similarly, KNCHR strongly condemns in no unambiguous terms any violence and/or criminal activity directed against the police and/or any mwananchi of Kenya by individual criminals as well as organized gangs and militia. Such crime must be fought relentlessly.

Secondly, we wish to state, however, that KNCHR disagrees with the proposition that crime should be fought outside the framework of the law. It is the constitutional right of every Kenyan suspected of having committed or indeed preparing to commit a crime to be arrested, brought before a court of law within a reasonable time-as prescribed by the law, and tried expeditiously, being given every opportunity to defend themselves, where after they may be convicted and sentenced according to the law. Any action by the police that falls short of that mark is clearly criminal, and the allegations that the police have been involved in the extra-judicial killings and disappearances of many Kenyans are indeed serious, because the numbers of

killings involved here would lead any jurist and/or ordinary Kenyan to draw the inference that there have been cases of concerted institutional criminal activity within the Kenya police that can only be described as "Ukatili kwa wote". We hasten to add that this is not our perception of the police force as a whole, but it is certainly a matter of grave concern that some among the police consider it all right to execute suspects after arresting them and before taking them to court. Such action is clearly unacceptable and itself a breach of the law that the police should be enforcing. The situation where some localities in Kenya are inhabited by Kenyans who live in as much dread of the Police (their mandated protectors) as of the criminals, (their tormentors), is clearly untenable and must be addressed urgently.

Apart from the many cases that the KNCHR has received from ordinary Kenyans of their loved ones being last seen under arrest, in some cases by police officers known to them, and thereafter either turning up in mortuaries sometimes far from the place of arrest, or disappearing without a trace, the KNCHR received many reports of police extortion under the guise of arrest for belonging to Mungiki, some of which it followed closely. The KNCHR during the latter half of 2007 literally saved the lives of some Kenyans by responding to calls from families who had been threatened with the death of their loved ones unless they produced amazing amounts of money. Some of the cases are highlited below:

1. **Stephen Kabui:** On Wednesday 21/11/07 at around 2:30 pm, the KNCHR received a petition through a caller from Umoja estate that someone identified as Stephen Kabui had been arrested by officers attached to the Kwekwe police squad who were demanding Kshs.50,000 in exchange for his release or else they would take him to the laboratory (read mortuary). The caller feared that the police might kill Kabui since they could not raise the money and asked the KNCHR to urgently intervene given that numerous people have been killed in the area after they failed to pay up upon being arrested under similar circumstances. The caller said that the arresting officers were waiting for the money at Umoja chief's camp. The KNCHR advised the caller to tell the arresting officers to give him more time to mobilize the money while the KNCHR made its way to the chief's camp. A team of five KNCHR officials quickly left for Umoja Chief's camp to follow up on the petition. The team visited the Administration Police detention camp where they duly introduced themselves and explained the purpose of the visit. The three duty officers two of whom were visibly inebriated turned extremely hostile to the KNCHR team and at first denied holding such a suspect. The police officers flatly refused to identify themselves. One of them however said that he was the Corporal in charge of the camp. After the KNCHR team persisted, one of the officers (in uniform) called out the suspect's name who quickly responded and came out of the cell. The team interviewed the suspect who said that he was arrested by two officers at around 12:00 pm as he was attending to his pigs at a place called Riverbank around Umoja estate. He was bundled in a Matatu and taken to the detention camp. Kabui (33 years) who is married with two children, said that he was stopped by two people who were in civilian clothes and armed with pistols who accused him of being a Mungiki adherent. They arrested him and asked him to produce Kshs 50,000 to secure his release otherwise they would send him to the laboratory (mortuary) like they have done with many other Mungiki suspects. They reportedly told Kabui that time was of the essence and he should move with speed to secure his life. Kabui told the KNCHR team that he quickly called his friends and relatives who in turn informed the KNCHR. He denied being a member of Mungiki and said that he is a businessman who rears pigs and sells assorted detergents in the estates. Kabui who had swollen joints and ankles recounted how he was severely beaten by the arresting officers with wooden planks. The interview was interrupted by the police officers who whisked Kabui back to the cell amidst heightened hostility. The KNCHR team observed that Kabui had not been booked in the Occurrence Book (OB) as is the procedure. The duty officers argued that this was not their prisoner hence there was no need of booking him in the OB. Attempts by the KNCHR team to have Kabui booked in the OB were met with further hostility. Shortly after the two arresting officers arrived and the KNCHR team duly introduced themselves and the purpose of the visit. Like their AP counterparts, the arresting officers refused to identify themselves. They said that Kabui was a Munqiki extortionist and showed the KNCHR team a sachet of tobacco which they alleged was recovered from the suspect. The KNCHR team asked them why they had not booked Kabui in the OB as is the procedure. They said that they were waiting for a vehicle to transfer him to Buruburu police station where they would book him. The KNCHR team offered their vehicle to the officers for use in transferring the suspect to Buruburu station but they declined. After about thirty minutes, a police vehicle, blue Toyota land cruiser (GK A 726 A) came with five uniformed officers armed with AK 47 rifles. Kabui was bundled in the car and whisked away by the police accompanied by the two arresting officers. The officers told the KNCHR team that they were taking him to Buruburu police station. The KNCHR team followed the police car but lost it along the way. On arrival at the Buruburu police station, the police vehicle was not there neither had Kabui been booked in the Occurrence Book. The Officer Commanding the Police Division (OCPD), Mr Joseph Migwi said that he does have such a vehicle (GK A 726A) under his jurisdiction. He referred the KNCHR team to the police headquarters for assistance. By the time the KNCHR team left the police station at around 6:30 pm, Kabui had not been brought. The KNCHR team also went to Makongeni police station but the duty officer said that Kabui was not in their custody. Kabui was released on Friday 23/11/07. He told the KNCHR that he was taken to Makongeni police station but was not booked in the Occurrence Book. The officers castigated him for informing the KNCHR about his arrest. They asked him to leave Nairobi or else they will kill him. Kabui has since fled.

2. Mr. Geoffrey Guchu and Mr. Josiah Kung'u: On 12/12/07 at around 11:30 am, the KNCHR received a call from relatives of two people—Mr. Geoffrey Guchu and Mr. Josiah Kung'u—that the two had been arrested on account of being members of the proscribed Mungiki sect and taken to the Umoja Chief's camp. The callers informed the KNCHR that the police were demanding a ransom fee of one million Kenyan shillings from each of the suspects. According to the callers, the police threatened to shoot and kill the suspects if they did not produce the ransom. The KNCHR quickly assembled a team and proceeded to the Umoja Chief's camp. On arriving at the Chief's camp, the KNCHR team inquired whether the suspects were being held there. The duty officer at the Administration Police Camp informed the team that Mr. Geoffrey Guchu and Mr. Josiah Kung'u had been moved from the camp by the Police Mobile Unit Buruburu (MUB) registration number GK A 207 to Buruburu police station at around 2:00 pm. The KNCHR team proceeded to Buruburu police station. The team met with OCS, Chief Inspector William Ekasi and inquired whether Mr. Guchu and Mr. Kung'u were held at the station. The OCS informed the team that he had information that the GK A 207 had gone out on patrol but it had not reported back to the station. However, in the course of the conversation with the OCS, the GK A 207 patrol vehicle arrived at the station. On inquiring from the leader of the patrol, Inspector Laban Likolai, whether Mr. Muiruri and Mr. Kung'u were among those who had been arrested and brought to the station, Inspector Likolai responded in the affirmative. However, upon learning that officers from the KNCHR had visited the station to follow-up on the cases of Messrs Guchu and Kung'u, Mr. Likolai became very agitated. Although the officers from KNCHR had only requested to meet with the two suspects, Mr. Likolai hauled all the people who had been arrested by his patrol team to the Chief Inspector's office and started shouting at KNCHR

officers. Mr. Likolai's language and demeanor was extremely intimidating. In full view of the OCS, Mr. Likolai verbally assaulted and threatened a KNCHR official Mr. Kamanda Mucheke. Upon realizing that Mr. Kamanda had written down his name, he menacingly stepped in front of Mr. Kamanda's face and demanded to know why he had done so. When Mr. Kamanda informed him that his identification badge was publicly displayed to all members of the public, Mr. Likolai flew into a fit of fury. He violently tore the page where Mr. Kamanda had written his name and stashed the paper into his pocket. He then proceeded to threaten Mr. Kamanda in these words: "Mimi nitakufa na wewe!" (I will die with you!). Mr. Likolai later returned the torn page to Mr. Kamanda after persuasion by the OCS. Despite these threats and intimidations, the KNCHR team spoke to Messrs Guchu and Kung'u albeit briefly as they were quickly taken away. The suspects informed the KNCHR team that the police officers had asked them to produce one million Kenyan Shillings each or they would kill them like they have done other Mungiki criminals. The suspects also informed the KNCHR officers that they had been arrested while fuelling their vehicle at a petrol station in Umoja. The OCS declined a request by the KNCHR team to talk to the two suspects in private. The suspects were booked in OB Number 45/12/12/07 at 15.45 hours. Although they were initially booked on a charge of being Mungiki members, Guchu and Kung'u were charged in Makadara law court the following day (13/12/07) with touting. They pleaded guilty and were released after paying a fine of Kshs 2,000.

3. **Benson Mwangi Waraga** (55 years) a tailor along River Road, Nairobi was found dead at City mortuary on 19/5/07, two days after he was arrested by police after a shoot-out near his workplace. The shoot-out between the police and gangsters occurred on 17/5/07 at around 1.00 pm during which three alleged gangsters and a police officer were killed. The incident was prominently covered in both the electronic and print media and Mwangi was captured being bundled into the police vehicle (see below). Two eyewitnesses to the incident recorded their statements with KNCHR. They gave an account of how, while working in the deceased tailoring shop in River Road, Githaku House, policemen raided their building at around 2.30pm on 1st May 2007. The said police were allegedly looking for thieves in the building. One of the police officers ordered the two eyewitnesses and the deceased to lie down and after about 15 minutes, the three were bundled into a police Land Rover where 15 other suspects had already been bundled. The group of 18

were taken to Kamukunji Police Station. The eyewitnesses further report that while waiting to be booked in the Occurrence Book, (which they eventually were not), Waraga was ordered by one of the policemen to go to the Crime Office upstairs. The rest were released the following day, 18 May 2007. The KNCHR further received reports from Waraga's family that upon receiving the report of his arrest, Waraga's brother went to Kamukunji Police Station on 19/5/07 to see him but he was denied access since it was after 6.00 pm. The next day at 9.00 am, he went back to Kamukunji police station but could not trace Waraga. Together with other family members, they fruitlessly searched for him in all police stations within Nairobi. The following day (20th May 2007), they went to the City Mortuary where they found Mwangi's body. Attendants at the mortuary told the relatives that the deceased was brought by officers from Parklands police station having been shot as he was running away at City Park. A postmortem conducted by Dr. Peter Ndegwa revealed that Mwangi died of 'multiple organ injuries due to multiple gunshot wounds'. According to the pathologist, 'the fatal bullets were shot from behind. The victim must have been about 20 cm from his attacker. He also seems to have been on the move (i.e. the bullet traveling parallel to the femur). The other gunshot on the leg seems to have been shot at a closer range and from the front. Could he have been shot once and asked to run?' (see below).

From this examination, the cause of death to the late Benson Mwangi CAUSE OF DEATH Waraga was multiple organ injuries due to multiple gunshots.

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DR. PETER M. NDEGWA **PATHOLOGIST**

May 28, 2007



Benson Mwangi Waraga being bundled into a police vehicle on 17/5/07

4. Joseph Kimani Ruo had been arrested together with Maina Njenga, on suspicion of being members of the outlawed Mungiki sect. On 21/6/07, the two were arraigned at the High Court in Nairobi for delivery of judgment in a case where they had been charged. A friend of Kimani Ruo's recorded a statement with the KNCHR and gave an account of what transpired on the day when Ruo disappeared. The witness had attended court on the said date and confirms that Ruo was acquitted of all the charges against him at about noon. As he stepped outside, he met a group of police officers in plain clothes who waylaid him. Kimani then whispered to the eyewitness that one of the officers was from the CID department and was known to him as Njoroge. Ruo then informed the eyewitness that he had to go for an urgent meeting with the said police officers and he would have to switch off his mobile phone. Since then, the family has not seen him. They reported the matter to various police stations without much success. Kimani Ruo had not been found as at the

time of compiling this report on 11/7/08. The KNCHR was able to obtain video clips and photos taken by media houses on the arrest of Kimani Ruo, and the eyewitness was able to positively identify the said CID officer Cpl. Njoroge, who was last seen with Ruo outside the law courts.



Kimani Ruo (right) and Maina Njenga during the case ruling.



Kimani Ruo moments after his acquittal



Corporal John Njoroge (left) with Kimani Ruo moments before Ruo disappeared



Kimani surrounded by a contingent of plain clothed police officers moments before his disappearance. Cpl Njoroge is on the far left.

5. Geoffrey Kung'u who sold shoes for a living disappeared on 8/10/07 at



around 11.00 am after he had met his wife at the Country Bus Station, Nairobi. According to his wife, Kung'u was going to buy shoes then leave for upcountry (Murang'a) on the same day. A few minutes later, his wife tried to call him several times, but the phone went unanswered. At around 5:00 pm, she called again but the phone was switched off. The

next day, she went to several police stations including Kamukunji, Shauri Moyo, Makongeni and Central to no avail. On Wednesday, she went to the Industrial Area prison with no success. On Thursday and Friday she went to search for him in Langata and Ruai police stations still with no success. On Friday the 12th of October 2007, while watching news on KTN at 7:00 pm, she identified all the items and clothing belonging to her husband, more specifically his green jacket with patches of white and orange (see below) which had been discovered earlier in the day by officers of the KNCHR who were accompanied by the media to Kiserian after some bodies had been spotted by area residents. She told the KNCHR that Kung'u had previously been arrested twice by the Kwekwe

police squad on accusations of being a member of the illegal Mungiki sect. Upon the first arrest, Kung'u paid Kshs 2,000 to secure his release after the arresting officers threatened to kill him. He was reportedly arrested a second time on 7/9/07 and taken to Makongeni Police station. When she went to visit him, an officer identified only as a Mr. Muli and another one called **Peter** asked for Kshs. 10,000 in exchange for his release or else they would kill him. She pleaded with the police to give her time to mobilize the money, which she brought on 9/9/07 securing his release. A postmortem on the remains of Kung'u was conducted on 24/10/07 at the City Mortuary. The body had significantly been gnawed by predators. The whole left leg was missing from the hip-joint. All the muscle and tissue of the right lower limb and all abdominal organs were missing, leaving bare bones and some ligaments. According to the pathologist, the cause of death was 'severe head injury due to double gunshots to the head. These gunshots were fired at very close range suggesting execution'.



- 6. **Jamleck Maina**, a Matatu driver on route 17 was reportedly arrested by officers attached to the Kwekwe squad on Monday, 26/11/07. According to his wife, Maina was at home (in Kayole estate) on the material day at around 8.00 am where they were making funeral arrangements for her late mother. Maina's friend telephoned him to go and collect a donation towards the funeral. Maina left immediately promising to return soon but he did not. At around 2.30 pm, his wife severally attempted to call Maina but the cellphone would be disconnected immediately. Maina's cellphone then went off. On Tuesday at around 6.30 pm, someone called Maina's wife with a concealed number but the caller did not speak when she answered the phone. A friend of Maina's later informed her that he saw Maina on Monday 26/11/07 at about 3.30 pm in a white Toyota G-Touring vehicle. Upon inquiry at the Kariobangi Bus Stage, the friend was told that Maina had been arrested by the Kwekwe police squad. She immediately went to Pangani, Buruburu, Shauri Moyo and Makongeni police stations but did not trace him. She further reported that Maina had previously (in July) been arrested by a Kwekwe police squad officer only identified as 'Foiyo'. He was taken to Umoja Chief's camp from where Foiyo called her and demanded Kshs. 25,000 or else he would kill Maina. The family took the money and secured Maina's release. Foiyo was with another officer only referred to as Bob. In August, Maina went missing for three days. The same Foiyo called his wife and demanded Kshs.60,000 for his release which she was to take to Umoja Chief's camp where Maina was being held. She took Kshs 20,000 which Foiyo declined and threatened to kill Maina. She refused to leave and began weeping and screaming forcing Foiyo to accept the Kshs 20,000 in exchange for Maina's release. Maina's wife also stated that on 22/11/07, Maina had to run away after Foiyo trailed him while on his way home. His whereabouts were unknown at the time of compiling this report on 11/7/08.
 - 7. James Kinyanjui Njenga: On 5/12/07, at around 12:00 pm, the KNCHR



rushed to Kayole after being informed by a caller that Njenga had been arrested by five Flying Squad officers who were demanding Kshs. 200,000 for his release or they would kill him. The KNCHR team caught up with the officer's vehicle; cream Peugeot Station wagon KAQ 170 M (see below). On realizing that they were being trailed, the police quickly

sped off with the KNCHR team in hot pursuit. After several hours, Njenga was driven to Pangani police station where he was booked in as

- a Mungiki suspect. Njenga requested the KNCHR team to carry 13,400/= which he had so far mobilized before we caught up with the police. The KNCHR recorded a complaint regarding the extortion attempt vide OB number 44/5/12/07. the team also raised the matter with the head of the flying squad, Mr Musa Yego who promised to investigate. The KNCHR further learnt that the head of the arresting officers was called Corporal Katama. The suspect was released on 6/12/07 without charge. Upon release, Njenga said that the police had castigated him for contacting the KNCHR.
- 8. Anthony Mung'ang'i: On the 5/12/07 at about 2.00 p.m. while the KNCHR was following up on the James Kinyanjui Njenga case at Pangani police station, they received telephone complaint from the friends of one Anthony Mung'ang'i. They reported that Anthony had been picked up from his residence by two officers who reported that they were from Buruburu police station. Anthony had earlier made a distress call to them to raise Kshs. 50,000 informing them that the arresting officers were demanding for the sum or else they would shoot him dead for allegedly belonging to the Mungiki sect. The KNCHR team proceeded to Umoja where they were to pick a contact who knew the location of the arresting officers and from whom the officers were waiting for the cash. The contact pointed at the location which was at one of the stalls in the Mutindwa market and was dropped at a distance due to security reasons. The team then proceeded to the location. As the KNCHR team were alighting from the vehicle, the alleged officers took off through the stalls and disappeared into the dark corridors. Attempts to pursue them were not successful. The suspect also took off in fright.



FOR: KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

VICTOR KAMAU

PRINCIPAL HUMAN RIGHTS OFFICER

COMPLAINTS AND INVESTIGATIONS