



# 'The Veil of Impunity'

*EXECUTIONS & DISAPPEARANCES!!!*

*WHO IS GUILTY?*



*A Preliminary Report of the Oscar Foundation on cases of enforced disappearances, arbitrary arrests and extra-judicial executions in Kenya*

2008

## OSCAR FOUNDATION

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## About Oscar Foundation

Oscar Foundation Free Legal Aid Clinic (OFFLACK) is registered as a Foundation in Kenya, United Kingdom and the United States of America. The Foundation operates three programs namely; Research and Documentation, Training and Litigation and Advocacy and Communication. OFFLACK provides free legal services to the poor as a strategic focal point spearheading, co-ordinating and supporting all the aspects and initiatives of transitional justice, conflict resolution and human security as part of its Access to Justice Project. The goal of the OFFLACK is to contribute with its programs, projects and entire public engagement activities to the advancement and practical implementation of ideas of human rights, the rule of law and an open and democratic society in the transitional Kenya. OFFLACK projected activities are geared towards Reflection, Interrogation and Investigation of transitional processes in Kenya and their contribution to realization of constitutional and democratic reforms through research, capacity building, learning and policy dialogue workshops and conferences, public information and knowledge sharing, thematic roundtable seminars, production and publication of policy briefs and media engagement.

The Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) was set up in 1998 and formally registered in 2002 as a non-governmental Organization, on a realization that Law, Policy and judicial action that upheld Human Rights Frame work had a central role to play in effectively dealing with the spread of HIV epidemic.

The Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) has been dealing with HIV/AIDS & the Law since the year 2001 when it published its training manual on HIV/AIDS and Legal Implications in Kenya. However, the Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) continues to do much of their litigation on HIV in an adhoc manner, as and when the need arose. In the 1990's, when Kenya saw the need to deal with HIV/AIDS urgently and effectively, the Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) felt that a planned legal intervention was necessary to support PLWHA. It also felt the need to sensitize decision makers and those affected, on law and its link with the public health crisis that HIV/AIDS created. With this in mind Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) set up a mobile full time Legal Aid Clinic with a 24hours help line response number 0900 555 999 the unit started Para- legal training in Nairobi, Ruiru, Thika, Mombasa and Kakamega town and published a HIV/AIDS protocol at work place.

This was followed with setting up of a project office (PO) at China Center, Ngong Rd office No. 1 Nairobi Kenya. Telephone 2731964, 2041245.

The Foundation has a network of 150 Probono Lawyers working in their commercial offices country wide and heading Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) Local Project Advisory Group (LPAG)

The Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) mobile full time Legal Aid Clinic has two main spheres of activity: -Providing Free Legal services to persons living with/affected by HIV/AIDS and the poor as provided in the Civil Procedure Act Cap 21 Order XXXII Rule 1-18 Laws of Kenya

Advocacy and policy research on human rights and the law in order to access justice to those in custody and the poor.

## Advocacy & Policy Research

The Foundation mobile Legal Aid Clinic unit's advocacy and policy research initiatives compliment the legal services. It's through the units' advocacy effort that links are made with other Non-Governmental Organization (NGO's). Policy Research initiative attempts to keep track of policy developments on human rights in Kenya.

The Advocacy and Policy Research Initiative of the Unit include: -



1. Conducting workshops/seminars/meetings on HIV/AIDS, human rights and the Law for various sectors including PLWHA, NGO's working in the HIV/AIDS field, Lawyers, and Policy Makers. The aim of these programmes is to empower and sensitize the various sectors that deal with the epidemic on the inextricable link between it and a right-based Framework and to build capacity and knowledge on human rights. Over the years the units has conducted several such programmes including monitoring places of detention via regular visits and training of paralegals Kakamega, Nairobi, Thika, Ruiru, and Mombasa.
2. Producing reports and materials that complement the aforementioned process. This includes reports on prison conditions and posters on access to justice.
3. Conducting and participating in campaigns (Access to Justice Campaign).
4. Several other initiatives including teaming up with the judiciary, doctors, the police, and the prison department to organize and conduct training workshops, outreach activity in the form of stalls at fairs and in public, organizing monthly meetings as an opportunity monitor human rights accountability and make recommendations.

## Abbreviations

KWE KWE.....	<i>Swahili name for weed- the police execution squad was coded kwekwe to weed out the youth.</i>
IMLU.....	Independent Medico Legal Unit
OFFLACK:.....	Oscar Foundation Free Legal Aid Clinic-Kenya
IRCT:.....	International Rehabilitation Council for Torture Victims
UNCAT:.....	United Nation Convention Against Torture
OPCAT:.....	Optional Protocol to Convention Against Torture
PLWHA:.....	People Living with HIV/AIDS
KNCHR:.....	Kenya National Commission on Human Rights
ICHRO:.....	International Centre for Human Rights Observatory
UN:.....	United Nations
MPs.....	Members of Parliament
O B:.....	Occurrence Book
CP:.....	Community Policing
DSC.....	District Security Committee
ICCPR:.....	International Covenant on Civil and Political Rights
Sec:.....	Section



## **Acknowledgement**

**T**his report dubbed: *'The veil of impunity'* would not be complete without the wise guidance of the Board of Trustees of Oscar Foundation. The Executive director Kamau Kingara, offer his legal advice to the team that compiled the report. The hard work exemplified by the entire team at Oscar Foundation led by Sammy Omboko for his investigative and courageous skills, Karanja Muraya, who proof read the entire report.

This report is a tribute to the family and relatives of all those young Kenyans who were abducted from their homes and never to be seen again. Their memories and the sounds of their cry will forever not be in vain.

The *'Access to Justice'* project team consisting of paralegals and community volunteers was instrumental in tracking and making it possible for Oscar Foundation to document the various cases that we have here in illustrated.

Lastly, this report is dedicated to the missing persons, their relatives, and all those Kenyans who have stood up against all forms of police brutality and injustices in Kenya.



## Director's statement

This report outlines a culture of impunity, police ineptness in investigating cases of extra-judicial execution, abductions, arbitrary arrests and disappearances perpetrated by law enforcement agents.

The failure of the police to investigate all complaints against police abuse documented in Kenya over a period of eight months as well as subsequent surveys conducted by the Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) in Kenya where abductions, disappearances and related abuse have occurred is a direct conspiracy to undermine the rule of law and human rights.

Under principles of international law, it is incumbent upon governments to investigate when patterns of disappearances are committed by law enforcement agents. These acts of 'systematic and widespread' abductions amount to a crime against humanity under both national and international law. The failure of the government of Kenya to prosecute the perpetrators regardless of their status and standing, constitute to a culture of impunity.

The Declaration on Enforced Disappearances reaffirms this principle, known as universal jurisdiction, providing that "all States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, which are found to be in their jurisdiction or under their control.

The Oscar Foundation takes exception to the current systematic and widespread abductions committed by both private militia and law enforcement agents.

It's on this background that this report dubbed: '*The veil of impunity*' seeks to document all cases of abductions and enforced disappearances as they occur and hold the government accountable.

Of particular concern to Kenyans and well-wishers, is the behavior of the leaders serving under the current regime. It will be remembered at the height of the well coordinated execution of tens of young people in and around the central Kenya, Rift Valley and Nairobi that the Minister for Internal Security Honorable John Michuki obviously acting at the behest of a collective cabinet decision and other state machineries issued a fiery and not well thought out but surely meant statement calling for execution in cold blood of young people from a particular ethnic community.

Previously, himself having fallen victim to an attempted break in, in his rural home in Central Kenya and the dare devil killing of his area assistant chief in his rural neighborhood, obviously the minister was emotionally charged and not rational in his attempt to demonstrate the government capacity for brute force. That young people had been killed before without the state raising as much as a finger, other than issuing mere calls for peace and tolerance, shows that the minister's actions were prompted by a threat on his life and not the common security good of all Kenyans, young or old. This further depicts the current administration's selfishness and selective application of state resources including power to protect all and sundry.

Regrettably, majority of those killed during the massacre that was characterized by ritualistic beheadings and skinning of the torso were young people in the informal *matatu* industry, still they are the same ones being targeted in the current clump down. Obviously, victims of the double edged sword of injustice!

The events of recent past, where thousands of young people have mysteriously disappeared never to be found dead or alive or executed in cold blood and their bodies found dumped and often mauled by wild animals in various locations point to the arrogance, vengeance and dishonesty with which the so called operation squads such as *kwekwe*, *scorpion*, *spider* and *rhino* squads are carrying out the mandate of their license to kill with both ethnic and generation bias, and impunity.

According to documented complaints received at the OSCAR Foundation offices, over 8000 young people from Central Kenya, Nairobi and part of Rift Valley are reported to have disappeared or been executed.. Reports are also emerging that there are mass graves scattered all over the country particularly in Karura Forest, Kitengala, Nairobi National Park and Ngong Forest where most of the missing are believed to have been secretly buried after execution in cold blood.

In Kenya, there are courts and a judicial regime competent to try criminal suspects. However, events of the recent past points to the lack of confidence in our judiciary by the government to uphold the rule of Law and



promote the corrective role of the penal institutions and other law enforcement agencies in the promotion and protection of human rights and the eradication of systematic abuses.

The church has played a fundamental role in the democratization process in Kenya since independence.

However, this role has been perceived to have failed the test of time. In the months preceding the 2005 referendum, the church negated its noble principle of offering divine guidance to the faithful on political and social decisions. Led by former Archbishop of the Catholic Church in Nairobi Ndingi Mwana Anzeki, the church supported the referendum and also voiced its support for the clause seeking to retain the controversial death penalty as provided for in the proposed draft constitution.

The SUPKEM also was split over the support of controversial political discussions including the referendum and the debt on death sentence. In the wake of systematic executions and other human rights violations perpetuated by state, faith based organizations remained silent in condemning the rise in public opinion against the faith groups.

The role of the faith groups in promoting democracy and a free society has failed to impress upon the status quo allowing a pattern of selective and systematic violations.

Although the Muslim community has maintained its stand against the controversial anti-terrorism bill, it has remained silent as the government steps up its crack down on young Muslims suspected to have taken part in terror activities. The government has repatriated young Muslims to foreign countries where they have been subjected to torture and other human rights violations.

The double standard the faith based organization have demonstrated in regard to the right to life is questionable, as they only open their mouth against abortion and remain silent when tens of thousands of young men are executed by the state without due process. If life starts from conception, when our youth are being executed then where is the church at this critical time? Truly the faith based organization is in a cross road at the sanctity of life and should end the hypocrisy. The church's outcry against the reproductive health bill 2008 is unjustified and laughable.

In spite of foreign invasion, blatant arrogance and violation of the sovereignty of our Nation, the faith based organization has failed the test of time to seek divine intervention and petition the Government against Rendition of its own citizenry. The current state of hopelessness and targeted harassment of the Muslims to pledge for the return of those repatriated. Politically, the President seeks to gain political clout and lure the Muslim votes against a deteriorating human rights discourse. Political manipulation and deceptiveness displayed by the president is indicative of a failed democracy and a government that has failed to protect the sovereignty of its citizens.

The faith based organization currently preach on Success theology based on thanks giving, 'seed planting', tithes, and blessings but in fear of offending their flock they fail to preach righteousness as advocated in 2 Timothy 3:16. This scenario has made many to view the church as business entities out to make a kill in the name of Yahweh and the Almighty Allah.

The Kibaki/Raila administration continues plotting against the youths. The new generation, on the other hand, personified by uncompromising activists in the elective offices, who include 'young Turks' in the academics, the clergy, business executives, and professionals, is unshackled by the colonial and post-colonial politics. It is well educated, well grounded in political and economic issues, highly informed and critical on contemporary affairs. It is a generation that is obviously disappointed with the politics of compromise and appeasement practiced by their 'elders' during the Moi era and the arrogance of power demonstrated during Kenyatta's and now Kibaki's period. The generation is unwilling to compromise on the principles of democracy, good governance, accountability and human rights.

This generation feels that change is not the departure of the present incumbents or their replacement by self-interested parties. True change, is a total overhaul of four decades of intolerant system and replacement with a culture of democratically empowered civil society institutions, and one governed by the rule of law.

The rising culture of militarism amongst the youth, as demonstrated during post elections violence, school riots and consequent destruction of properties and loss of life, the action of disgruntled farmers to uproot and destroy tea plantations, hyped industrial actions and activism in prisons and the police force that almost led to mutiny is a clear indication that not only has the ruling class lost touch with the reality of the people, just like during times preceding the French revolution, but also exemplifies a time bomb, which if not diffused has the



potency to alter the very fabric of a civilized society as we know it. Young people have tested the strength of the state and know to what extent the government is able to offer protection and security to the people and their property.

The time to stop a revolution is at the beginning not at the end. That the vigilantes, illegal as the case may be, have grown with fodder from the ruling elite, it is time a different methodology aimed at mediation and constructive engagement was used, as opposed to use of brute force and suppression, to diffuse their potency and scuttle their militarism. That they have grown immune to death, disappearances, detention and exile of their colleagues and their loved ones, mean that they have been hardened and know best what to expect –if they hit back, they hit back with equally brute force and the bitterness of vengeance, which might leave the country blind and deteriorate into a class and intergeneration war.

Most Sincerely

Kamau Kingara  
**Executive Director**  
Oscar Foundation

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## Dedication

This report is dedicated to all victims and survivors of police abuse who despite the pain and suffering that they have endured they still live with hope. This work has been published with generous financial support from the OFFLACK-UK and USA

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## Executive Summary

Arbitrary arrests, extra-judicial execution, abductions and disappearances involving the youth continue to occur in Kenya eight months after the two protagonists signed a Peace Accord ending thirty days of post-election violence and widespread police brutality.

In a recent report, the Oscar Foundation described the disappearances as “systematic and widespread” and being perpetuated by both the police and organized gangs against specific youth groups.<sup>1</sup> The Oscar Foundation affirms that the pattern and trend of disappearances constitute crimes that are punishable under both international and national Law and they need to be investigated. The government should adopt a resolution condemning disappearances and acts of extra-judicial executions in Kenya and should disband all criminal squads operating within the police force.

In 2007, the Commissioner of Police established the “*KweKwe*” squad to suppress the youth. The group is notorious for its acts of staged abductions and executions of innocent youths which occur with impunity.

The culture of impunity in Kenya pose a fundamental human rights question. Impunity constitutes a crime against humanity that requires urgent international and national intervention to stop its widespread. The coalition government has gone to great lengths to conceal evidence implicating both the police, army and para military forces in cases of abductions and related human rights violations.<sup>2</sup>

Despite efforts to investigate and document cases of disappearances pursuant to international Law, the government on numerous occasions’ trash human rights reports without authenticating the allegations detailed therein. It is on record that the police spokesman has unwittingly come up with weird suggestions aimed at defending the force even when evidence is to the contrary. This outright

<sup>1</sup> *‘TIME BOMB’ A report of the Oscar Foundation Free Legal Aid-Kenya (OFFLACK) on disappearances of youths suspected to be long to the ‘Mungiki’*

<sup>2</sup> *President Mwai Kibaki is the Commander in Chief of the Armed Forces of the Republic of Kenya, and is responsible for the republic’s law enforcement structures.*





rejection of the numerous reports

Released by human rights organizations by the government, which maintains that the findings are not factual, clearly points to a scheme of cover up. In the past eight months, evidence has shown no sign of abating the crisis. Rather, it has increasingly spread to other parts of the country with new cases of disappearances reported in Mt. Elgon during a joint police and military operation to wipe out the SLDF militia from the area. The government contends that its operations in Mt. Elgon was a direct responsibility of its security forces to provide security and stamp out organized criminal gangs despite being accused of human rights violations committed by the Kenya armed forces against innocent civilians. This acts of extra-judicial executions, disappearances and wide spread abductions are reinforced under a climate of impunity that the government continues to supervise. These acts have not only brought untold suffering to hundred of thousands of civilians but also undermined peace and tranquility.

Law enforcement agents noticeably the police; continue to commit unspeakable acts of state sponsored terrorism against the youth. Kenya's armed forces and para military forces, together with elite crimes prevention units within the police, continue to account for numerous crimes against civilians, including extrajudicial executions, torture, rape, arbitrary detention and abductions.<sup>3</sup> Their involvement in the post-election period involving the disappearances of more than 280 youths alleged to have been arrested that has complicated the matter. According to the Oscar Foundation, over 8000 youths have "disappeared" since 2002 and remain unaccounted for.

The pattern and trend of disappearances in Kenya is evident of state involvement to perpetuate criminal activities against the citizens. These acts constitute crime against humanity. According to OFFLACK, it is evident that, these acts are part of a government policy of "militarization"<sup>4</sup> In the period under review, the police engaged in active and widespread acts of extra-judicial executions that precipitated to a conflict-like situation that replaced organized gangs that often were the main perpetrators of "disappearances" and other related human rights violations.<sup>5</sup> OFFLACK has documented over 280 cases of

Disappearances that occurred between December 2007 and August 2008, a slightly higher number than what the police have acceded to since the beginning of the year. However, human rights groups put this figure to close to 500 people following the botched up operation in the Mt. Elgon in March- August 2008 which left traces of human rights violation including "disappearances", rape and torture.

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<sup>3</sup> In the course of its research, Oscar Foundation conducted more than 200 interviews with witnesses and victims of police brutality during the post-election violence in Nairobi, Nakuru, Kisumu, Mombasa and in remote towns and villages in Rift Valley.

<sup>4</sup> Militarization refers to "the process of changing the police force from their basic duty of a civil obligation to use of military tactics in carrying out their mandate, having a police commissioner who has a military background has militarized the police force."

<sup>5</sup> In most cases documented by the Oscar Foundation, witnesses spoke of how members of the dreaded KweKwe squad arrested their victims from their homes and the police have not made any information on the arrests public. Most family members are trying to find their "disappeared" relatives through private channels. In addition to the cases that occurred during the period of the post-election violence, OFFLACK has documented 40 cases of "disappearances" that occurred between December 2007 and August 2008.



# BACKGROUND:

## The situation of disappearances

While organized crime continues to take the centre stage in the pursuit of a peaceful and democratic Kenya, active police involvement in combating crime in most parts of the country increased and the civilian population continues to bear the brunt. In Nairobi, victim's relatives repeatedly accused the police of presiding over a 'police state' and a culture of impunity that is worse than war. Survivors who escaped from the dragnet told Oscar Foundation of police brutality, arbitrary arrest, intimidation, and impunity that prevail in the police force.<sup>6</sup> In parts of Central province, the strong hold of the Kenya National Youth Alliance (KENYA), the situation during the pre and post-election appeared fragile and presented a stark picture on human rights situation in the region. Police engaged in mass arrests and imposed curfews in total violation of the right to assembly and movement. Those who dared to leave their houses got arrested at various checkpoints and are since unaccounted for. The arrest and execution of youths by the police unmasked what is now known as Kenya's "killing fields"<sup>7</sup> during which abuses, including numerous arbitrary detentions and extra-judicial executions often occurred leading to "enforced disappearances", that occur in a state that is evident of lawlessness and state institutionalized impunity.

In Nairobi's Kibera, Kariobangi, Mathare and Dandora areas, Police brutality coupled with arbitrary arrests continued unabated. And in parts of Central province, and other districts in the Rift Valley, ambushes and clashes between the youth and the police were a daily occurrence with casualty records rising higher. In 2007, the police declared war on members of the 'Mungiki' and launched a country-wide operation to wipe out members of the sect. This degenerated to a "police state" with the formation of the infamous *Kwekwe* squad. Following a series of beheadings, the government declared a *shoot-to-kill* order and ordered the police to conduct mass arrests of youths, some of whom were later found dead and dumped in Ngong forest.<sup>8</sup>

In areas under the effective control of the *Mungiki*, the fear-stricken atmosphere was astounding and people who had survived both the chaos of post-election violence and actively protested the abuses perpetrated in their villages by the sect members, were too terrified to open their doors even to their neighbours.

In most cases, people chose not to report the "abductions" of their relatives to the authorities, hoping that their silence might protect their remaining family members. One of the witnesses, a woman who chose not to file a formal complaint about a recent "abduction" of her son, told Oscar Foundation of how the police could visit her house and threaten her with arrest.<sup>9</sup>

Today, most people are increasingly reluctant to talk to human rights workers or journalists, fearing further persecution from the police. The relatives of over 100 victims of "disappearances" have refused to openly speak of the cases and have not publicized or use the information about their cases in any way. In most incidences, where the "abducted" person was released from custody or the relatives found his body, the families often refused to be interviewed and asked human rights investigators not to disclose the names of the victim and his relatives, their place of residence, or any other details that may enable the authorities to identify the witnesses.

6 'Shielding Impunity' A report of the Oscar Foundation on police accountability submitted to the Kenya National Commission on Human Rights-2006

7 Youth State Repression Report by the Oscar Foundation 2007.

8 The Kenya National Commission on Human Rights ([www.knchr.org](http://www.knchr.org)) documented the cases and called upon the police commissioner to account for the missing persons.

9 Oscar Foundation conducted the interview in Dandora on February 7, 2008. The names of the victim, witnesses and relatives as well as the exact location of the interview was withheld to protect the safety of witnesses.



## “Disappearances without trace”

In Kenya, most people have disappeared when they are taken into custody by law enforcement agents, and the authorities subsequently deny that the victim is in their custody or conceal the victim's whereabouts or fate in a way that places the victim beyond the protection of the law.<sup>10</sup> Often victims of “disappearances” also suffer torture or are summarily executed. Typically those responsible for “disappearances” try to avoid being called to account through cover-ups and by spreading misleading information about the facts.<sup>11</sup> According to international law, cases of widespread and systematic disappearances qualify to be regarded as crimes against humanity—an act or series of acts that outrage the conscience of humankind.<sup>12</sup> Evidence compiled by the Oscar Foundation is indicative of both widespread and systematic acts of disappearances and a conspiracy to conceal evidence.

According to police spokesman Mr. Eric Kiraithe in a News interview by Beatrice Marshall of KTN in September 2008, he conceded that about 3000 people are unaccounted for. This according to the police is regarded as normal disappearance. Often the victims are civilians or individuals who, when taken from their homes, checkpoints or other locations were unarmed—they are *hors de combat*. They are predominantly men between 18 and 45 years old, although, the government has also targeted females suspected to be allied to the *Mungiki sect*, women have also increasingly become victims of “disappearances.”<sup>13</sup> In most cases, the perpetrators are law enforcement agents—either elite police squads or, as is increasingly the case, local security forces who are ultimately subordinate to the police. This demonstrates the government's awareness of the scale of the problem, even if it denies responsibility, and its lack of commitment to ending “disappearances” and holding perpetrators accountable.<sup>14</sup>

## Systematic abuse of human rights

Cases of disappearances and extra-judicial executions have become an enduring hallmark of human rights violation in Kenya. Oscar Foundation has documented hundreds of cases in which the police detained people during large-scale sweep operations or targeted raids, with authorities then denying any responsibility or knowledge of the detainees' whereabouts.

Official figures on “disappearances” are inconsistent and contradictory despite numerous figures being released by human rights organizations demonstrating the appalling scale of a state conspiracy to deny responsibility.

The Oscar Foundation, a local human rights organization that send human rights monitors to Mt. Elgon, maintains a database on “disappearances” in Mt. Elgon area during and before the military operation dubbed: *Okoa Maisha*. According to OFFLACK over 80 cases documented by its staff since the beginning of the conflict in Mt. Elgon, involved militia and more than 15 involved the military and the police.

While the “disappearances” rate has fluctuated over the past two months, the rate did not decrease in 2008. In 2007 OFFLACK's staff documented the abductions of over 700 people, 430 of whom allegedly

<sup>10</sup> Declaration on the Protection of all Persons from Enforced Disappearances, United Nations, G. A. res. 47/133, U.N.Doc. A/RES/47/133, December 18, 1992, Preamble.

<sup>11</sup> The police have often refuted allegations that its officers have been involved in cases of extra-judicial executions and disappearance of youths believed to belong to the out-lawed Mungiki sect.

<sup>12</sup> A human rights violation may be classified as a crime against humanity in the context of an armed conflict or in times of peace. In modern jurisprudence the elements of “widespread or systematic” include the scale of the crime, the existence of specific patterns as to the identity of the perpetrators and the victims, the authorities' knowledge about the crime or obligation to have such knowledge, and the actions taken by the authorities in response to this knowledge.

<sup>13</sup> Mungiki- an outlawed sect group which consists of mostly unemployed Kikuyu youths.

<sup>14</sup> Under principles of international law, when a pattern of disappearances amounts to a crime against humanity, any state may prosecute their perpetrators regardless of their nationality, the nationality of victims, or the place where the offense was committed. International law states that neither a head of state nor responsible government officials enjoy immunity from criminal prosecution for crimes against humanity. The Declaration on Enforced Disappearances reaffirms this principle, known as universal jurisdiction, providing that “all States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be in their jurisdiction or under their control.”



“disappeared.”

OFFLACK monitors the situation throughout the country as part of its *Access to Justice Project*, and compiles data for tracking. The actual number of “disappearances” may be several times higher, since evidence from survivors and victims relatives across the country suggests the situation of disappearances to be similar in areas not monitored by OFFLACK.

OFFLACK affirms that the total number of cases documented in 2008 is likely to increase, since many families report the “disappearance” of their relatives to OFFLACK months after their detention, after their own efforts to find the detainee have proven futile and they often fail to get help from the relevant authorities.

## *The culture of Impunity*

Oscar Foundation has documented evidence that is indicative that “disappearances” are not random acts of criminality but rather follow a systematic pattern of impunity, whereby the victims are either civilians or *hors de combat*. The government frequently claims that members of the outlawed Mungiki sect are responsible for “disappearances,” but OFFLACK found clear evidence that law enforcement agents, military, and para military security agents are responsible for the vast majority of these crimes. In cases documented by OFFLACK between the periods covering January 24, 2008 to August 10, 2008, officers from the *Kwekwe* squad carried out mass arrests and detentions that resulted in the “disappearance” of victims. In many of these cases, witnesses indicated that the perpetrators ferried off their victims in police vehicles and others in unmarked cars which are used only by the flying squad police unit.

Often the police carried out sweep throughout the country targeting criminal gangs. For example, on the night of July 3, 2007, a large contingent of para military police arrived in Mathare slum in Nairobi. The soldiers, who witnesses said were drunk, searched the houses and took away all the males who had been staying in the houses that night. The police also committed acts of robbery including stealing money, jewellery, and committing acts of rape. Relatives learned through unofficial sources that the servicemen who carried out the operation were members of *Kwekwe* and the General Service Unit (GSU) and that the missing men were later found dead and many more remain unaccounted for although the local police office opened inquiry files into the abductions.

Recently, the police publicly denied their units’ involvement in abductions and even threatened to take action against human rights groups accusing them of such crimes.<sup>15</sup> In a number of cases documented by OFFLACK, the forces carrying out the detentions did not try to conceal their identity as members of the *Kwekwe*. For example, in December 2007 a group that detained eight members of the outlawed *Mungiki* sect openly claimed that they were acting under orders from the police commissioner.

In another case, relatives of a man who was taken away from one of the villages in Karatina in October 2007 told OFFLACK that they had recognized the unmasked men who carried out the detention as representatives of a local unit of the *Kwekwe* working with the flying squad.

Perpetrators of crimes against humanity such as “disappearances” are criminally responsible for their acts. Given the particular seriousness of these crimes, international law sets out special rules of responsibility for them. Thus, criminal responsibility cannot be avoided by invoking that the suspect holds an official position including that of head of police as is the case of Kenya. Military commanders or others with command authority are considered criminally responsible for “disappearances” carried out by their subordinates if they were aware—or should have been aware—of the abuses and failed to take effective measures to prevent them. The exception of due obedience to superior orders is not accepted as a justification for the commission of crimes against humanity.

Finally, statutes of limitations do not run in the cases of crimes against humanity and those responsible do not benefit from refuge in third countries.<sup>16</sup>

<sup>15</sup> The government spokesman posted a statement on his official website accusing the Oscar Foundation of spreading lies against the state and for inciting the public against the state.

<sup>16</sup> The failure by government to investigate and prosecute perpetrators of disappearances is no excuse. All perpetrators can be brought before an international criminal court for prosecution.



## Victim's rights

The victims of "disappearances" in Kenya fall into three main categories; mostly males between the ages of 18 and 45, from a variety of social and educational backgrounds, whom the authorities presumably believed were affiliated with or had information about outlawed groups and participated in organized crime or subversive activities.<sup>17</sup> Recently the police have also increasingly targeted women—a trend that may be linked to the fact that the Women were hiding information on their husbands.

In 2008, the wife of Mungiki's chairman Maina Njenga, also a mother, was abducted on her way home by a group of armed men believed to be police officers. Later her beheaded body was found dumped along side his driver. Her relatives have had no information to date about the circumstances that led to her death and the police have not arrested any suspect.

According to Oscar Foundation people who "disappeared" over the last six months were not connected to the alleged *Mungiki* sect. The government has proposed an anti terrorism law which would allow "counter-hostage-taking"—detaining suspects' relatives in order to force them to surrender.<sup>18</sup> The initiative was opposed by human rights organizations who promised to push amendments before implementation of such a law, should it be adopted. The government has sent a strong signal of approval for such a law. Several cases documented by OFFLACK during the 2007 post-election violence provide evidence that security forces adopted a policy of "counter-hostage-taking" commonly known as renditions.

The most renowned "counter-hostage" operation or renditions occurred in 2007, when members of anti-terrorism unit abducted and "disappeared" several Kenyans who are

Being held in prisons in Ethiopia. A number of them "reappeared" in February 2007 with no charges against them.<sup>19</sup>

## Torture and death in custody

Many of those who "disappear" in the custody of Kenyan police also become victims of torture and extrajudicial executions. Bodies of people who had been previously taken into custody and then "disappeared" are regularly found in Ngong forest. In one of the cases documented by Oscar Foundation, several men "disappeared" after they were taken away during a large-scale sweep operation conducted by police and members of the General Service Unit (GSU).

Days later most bodies were found bearing gunshot wounds to their heads, were found in shallow graves in Ngong forest. The criminal investigation opened into the cases has so far produced no results. The testimony of detainees who were eventually released after being held in unacknowledged detention strongly suggests that torture in custody is rampant in Kenya.<sup>20</sup>

In another illustrative case, on January 15, 2008, a group of armed men, some of whom in police uniform took away Felix Muiruri Ngugi from his home, in central province. According to the relatives, he has since "disappeared" after he had been arrested by the police.

OFFLACK interviewed a number of former detainees on the day following their release.

The young men had been detained between JANUARY 2008 and SEPTEMBER 2008 at various police stations, during which time their relatives actively sought but received no information of their whereabouts. While in detention, the young men were held on the concrete floor of tiny, unheated cells.

They were handcuffed the entire time. At the time of the interviews they were in varying state of shock, had difficulty speaking clearly and focusing their eyes; they spoke of how their perpetrators

<sup>17</sup> On April 25 2008 police officer broke into a house belonging to John Maina Waweru at gunpoint, took him away without even checking his documents. He has not been seen or heard from since then. The family of John Maina Waweru denied his involvement with the outlawed *Mungiki* sect.

<sup>18</sup> *Suppression of Terrorism Bill 2003.*

<sup>19</sup> *The authorities denied reports of the "arrests and disappearance," and would not even acknowledge that the arrested people had been abducted. The government later confirmed the fact of the abductions and announced that the government had launched investigation on the circumstances of arrest, but has not thus far publicized any findings.*

<sup>20</sup> *Kenya has ratified the United Nation Convention Against Torture (UNCAT) outlawing the use of torture, cruel, inhumane or degrading treatment. Subsequently, the Police Act section 14 (a) outlaws the use of torture by police officers.*



mocked them with death and were deprived sleep. They had bruises on their legs and arms, and they could not move freely. Notably, the families opted not to report the unlawful detention and torture to the authorities fearing intimidation and harassment.

## Right to rule of law

According to OFFLACK, not a single officer has been held fully accountable for a “disappearance” since the first case was ever documented. The government has failed to establish a meaningful accountability process for abuses by law enforcement officials. Notably, despite Kenya’s commitment to upholding the rule of law, complete impunity continues to prevail and the overwhelming impunity enjoyed by perpetrators of “disappearances” has doubtless encouraged others to commit untold cases of disappearance.

In recent years, the police force through an oversight board has begun opening partial investigations into most of the abductions reported by victims’ relatives. In mid-September 2007, the OFFLACK conducted investigations into the abductions of approximately over 8000 individuals reported from 2002-2007.

The few cases involving investigations of “disappearances” serves as yet further proof of the authorities’ lack of awareness of the scale of the problem, especially since these figures are not made public and none of the investigations has led to any form of findings.

The absolute lack of progress made by the police to investigate these cases is indicative of the authorities’ failure to bringing perpetrators to justice. According to a list of convictions of police officers who have been accused of crimes against civilians, compiled by the Oscar Foundation, not a single officer has been convicted in relation to a “disappearance.”<sup>21</sup> In what is also a long-standing pattern, law enforcement officer usually make no effort to conduct even the most rudimentary investigative actions, such as questioning witnesses or searching for a particular car that had allegedly been used by the perpetrators. Even in cases where the victims or witnesses have information that could easily lead to establishing the perpetrators, such as the names of unit commanders or the registration numbers of the cars, the investigators take no action to utilize this information.

In some cases, when the evidence strongly suggests the involvement of known police forces, the victim’s family tries to report the matter to the police for investigation, however, the police often refuses to take it, and the case becomes stalled because of bureaucracy.

Even after detainees are released from non gazetted detention facilities and the perpetrators are established, no accountability process takes place to hold perpetrators to account. For example, according to OFFLACK, the flying squad police unit is notorious of arresting and dumping suspects in unacknowledged facilities.<sup>22</sup> However, not a single cases involving the squad has ever been conclusively been investigated.

## Power to enforce

In 2001 the U.N. Commission on Human Rights established an intercessional open-ended working group to elaborate a draft legally binding instrument for the protection of all persons from enforced

<sup>21</sup> *Most of the criminal cases against law enforcement agents are closed or suspended after several months, “due to the impossibility of establishing the identity of the perpetrators.” According to OFFLACK, despite several officers being found criminally responsible for crimes related to abductions, “no details were provided and it is unclear whether even the case was concluded.*

<sup>22</sup> *The U.N. Declaration on the Protection of All Persons from Enforced Disappearance also terms “the systematic practice” of enforced disappearances to be “of the nature of a crime against humanity.” Declaration on the Protection of all Persons from Enforced Disappearances, Preamble. Although a non-binding standard, the Declaration reflects the consensus of the international community against this type of human rights violation and provides authoritative guidance as to the safeguards that must be implemented in order to prevent it. The Rome Statute of the International Criminal Court (ICC) also provides that enforced disappearances are a crime against humanity “when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” See, Rome Statute of the International Criminal Court, U.N. Doc. No. A/CONF. 183/9 (July 17, 1998), 37 I.L.M. 999, Article 7(1). Russia has not ratified the Rome Statute, but many of the definitions of crimes contained in the ICC are considered part of customary international law.*



disappearances.<sup>23</sup> This was the culmination of a process started by the international community as long ago as the late 1980s, in an effort to find the legal means to help eradicate the scourge of “disappearances” that had ravaged societies in all regions of the world. Since then the Working Group has been holding two sessions per year and making substantial progress towards the completion of this treaty. The current text contains important protections as well as innovative mechanisms for the prevention of “disappearances”.

While initially mildly supportive of the initiative, Kenya has become increasingly hostile to the idea of domesticating international treaties aimed at preventing and protecting all persons against human rights abuses including cases of “disappearances”. The terrifying abuses committed by the *Kwewe* deserve the most energetic condemnation, but it is clear from this report that the responsibility for “disappearances” in Kenya lies mainly with the government. Attempts to disguise such crimes as militia abuses are reprehensible; parallel efforts to distort the measures aimed at providing legal protection and remedy for such crimes further undermines both the moral and legal authority of the government.

Unfortunately a number of proposals aimed at compromise, and at accommodating Kenya’s concerns, have led nowhere. Beyond this specific issue Kenya has not engaged in substantive debate on the provisions of the draft treaty. At the same time it has become one of the major obstacles to the completion of the treaty through the systematic introduction of procedural issues aimed at delaying and derailing the debate.

## Recommendations

The United Nations Commission on Human Rights should:

- ❖ Adopt a resolution condemning ongoing violations of human rights and humanitarian law by law enforcement agents, and specifically condemn the widespread and systematic pattern of enforced disappearances in Kenya as a crime against humanity. The resolution should call on the Kenyan government to immediately end the practice of disappearances and take measures for their prevention in the future;
- ❖ Call on Kenya to invite key U.N. thematic mechanisms, particularly the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Torture, and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions;
- ❖ Insist on accountability. The resolution should call on the Kenyan authorities to ensure meaningful investigations into all reported crimes by Kenyan military, police and the Para-military units against civilians, and specifically require the prosecution of the perpetrators of extra-judicial execution and disappearances; it should call on the authorities to publish a detailed list of all current and past investigations into such abuses and indicate their current status;
- ❖ Renew its call for a national commission of inquiry to document abuses by both sides of the conflict and make clear that Kenyan authorities’ continued failure to make progress on accountability will result in the establishment of an international commission of inquiry to document and produce an official record of abuses;
- ❖ Encourage individual member states to prosecute the perpetrators of extra-judicial executions and disappearances in Kenya under the principle of universal jurisdiction over crimes against humanity;
- ❖ Ask all member states to cooperate towards the prompt completion of a strong international treaty to prevent and punish enforced disappearances.

<sup>23</sup> Resolution 3074 (XXVIII) of the General Assembly of the United Nations clearly provides for universal jurisdiction over crimes against humanity or war crimes. See *Principles of International Co-Operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity*, General Assembly resolution 3074 (XXVIII), UN doc. A/9030/Add.1 (1973). The principle of universal jurisdiction is now part of customary international law, and is also reflected in international treaties and national legislation. Moreover, in certain circumstances, according to a rule known as *aut dedere aut judicare* (extradite or prosecute), a state is obligated to either exercise jurisdiction over a perpetrator or to extradite the person to a state able and willing to prosecute, or to surrender the person to an international criminal court with relevant jurisdiction. States are obliged not to extradite to countries where the individual would be at risk of torture. The ICC Statute emphasizes that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” Rome Statute of the International Criminal Court, Preamble.



# APPENDIX

CASES OF ENFORCED DISAPPEARANCES, ARBITRARY ARRESTS AND EXTRA-JUDICIAL EXECUTION DOCUMENTED BY OSCAR FOUNDATION ACCESS TO JUSTICE PROJECT, JANUARY-AUGUST 2008



## **Naftali Irungu. (Executed)**

**N**aftali Irungu was the Mungiki National Treasurer until he met his death on 28/04/08. He was killed alongside Ndungu Wagacha (then Acting Mungiki Chairman) by police officers along the Nairobi – Naivasha Highway.

## **Enforced disappearance and extra-judicial execution of Njoroge Wagacha (8-4-08)**

**G**eorge Njoroge Wagacha was brother to Ndungu Wagacha the Acting Mungiki Chairman and David Waithaka. They hailed from Maai Mahiu area of Naivasha District. He had been tracked him for a long period of time by members of the unit with a view to eliminate them. Family members have revealed that the officers had paid numerous visits to their home and warned them of the dire consequences on the association of the brothers to the Mungiki sect.



## **Ndung'u Wagacha Executed on 28-4-08**

**N**dungu Wagacha was until he met his death the Acting Mungiki Chairman. He was killed alongside Naftali Irungu (then Mungiki National Treasurer) by police officers along the Naivasha-Nairobi Highway on 28/04/2008.

Oscar Foundation was informed that police officers from a special unit had on several occasions visited their home in Maai Mahiu in a bid to exterminate the three Wagacha Brothers but in vain never finding them until the fateful day along the said highway.

The Wagacha family is at pains to know the reason behind the senseless killings and at loss of their sons not knowing why they had to be brutally murdered by security agents.







### Disappearance of John Maina Waweru. (25-4-08)

**A**t about 3:00 a.m. on April 24, 2008, the sound of approaching car awoke Waweru while he was in his house. The two police officers broke through the gates into the yard; later the relatives also saw two police vehicles parked within a short distance of the house. About six police officers surrounded his house, and part of the group burst in. According to Waweru's relatives, the men were dressed in full police uniform. They identify themselves as police officers.

One of the police officer forced Waweru's wife to the floor and stepped on her. He cursed at her and threatened to shoot her should she attempt to move. Another group bound and gagged Waweru. The soldiers then dragged him out of the house to a police car that was waiting outside. The men also badly beat an elderly relative, who had been sleeping in another room at the time one of the relatives told Oscar Foundation:

*I could even hear the knocking of his head against the stairs.*

*He showed no signs of life. If at least he had moaned! But nothing, he was unconscious. And the trail of blood went on for about 100 meters where they had dragged him. They dragged him like a dog.*

Without looking at the men's documents, the police drove off with Waweru. The morning following the detention, Waweru's relatives begun to search for him and the family reported the incident to the police, which said it has opened investigation into the abduction. The relatives also wrote to the Oscar Foundation for intervention. Independent sources told the family that police officers from the *Kwe Kwe* squad had taken part in the operation, but did not provide any details. To date the family has received no further information on Waweru's whereabouts.

### Disappearance of James Kagwai Nderitu. (26-3-08)

**O**n the night of March 26, 2008, police offices arrested James Kagwai while on his way home. They did not introduce themselves and did not provide any explanations, but roused Kagwai and led him away, wrapping a pie of cloth over his head. One of his friends told Oscar Foundation:

*I asked them why they were taking him away and one [of them] hit me. They did not search anything, did not even say a word. I told them they could check [his] identification —maybe he is innocent. But they took him away with his identification. He only had his [casual trouser] and a T-shirt on.*

Based on some of the policemen's remarks, Kagwai's friend believes that the police might have been looking for some young men who lived in the area, but whom nobody knew about.

Kagwai has not been seen or heard from since the day of his detention. His relatives went to the local police and wrote statements about the "disappearance," but have not received any information on Kagwai's whereabouts. They are unsure whether the police have launched investigation into the abduction.





### **Disappearance of Felix Muiruri Ngugi. (15-1-08)**

**A**t about 1:30 p.m., he was walking home from work with three of his friends. As he approached his house on....., three armed men in camouflage uniforms, one of whom was wearing a mask, called him over to them.

Several of Ngugi's friends and neighbors witnessed the incident and later told Ngugi's relative that the three men, immediately forced Ngugi into a white Toyota parked nearby (license plate no). The men then left with Ngugi, accompanied by two other cars, both white, which are known in Kenya to be used by *KweKwe* squad. Ngugi has not been seen or heard from since then.

### **Extra-judicial execution and disappearance of Eliud Gatundu. (11-03- 2008)**

**O**n 11<sup>th</sup> March, 2008, Eliud Gatundu left his house to go shopping. According to his family, he was going to a local shop to buy some foodstuff. When Eliud failed to return that day, his family started searching for him.

Villagers told the family that Gatundu did not make it to the shop that day. A group of young boys who saw him walking towards the shop told the family that they saw him being stopped by a group of armed men in plain clothes, who put a sack on his head and threw him in one of two cars parked nearby. The eyewitnesses told the family that both cars were white Peugeot commonly used by the flying squad.

The matter was reported to the authorities and investigation was launched. Later his body was found in Machakos Mortuary on 30<sup>th</sup> April, 2008 with bullet wounds.



### **Disappearance of Stephen Kamau (23<sup>rd</sup> May 2008)**

**S**tephen Kamau Maina was in the electrical appliances business with a shop in Nairobi. He disappeared on the morning of 23/05/2008, exactly ten days after the burial of his brother, ELIUD GATUNDU MAINA. Eliud had disappeared prior to his death on 11/03/2008 and the body later found in Machakos Mortuary on 30/04/2008. Search for him has not been successful despite statement having been recorded with the police. He is listed as missing.





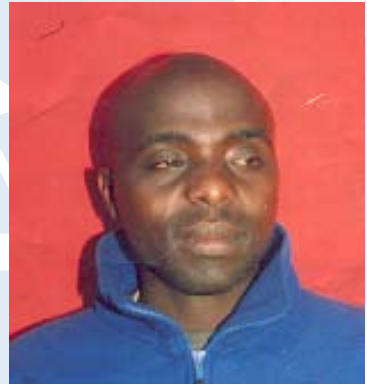
### John Ndung'u Ngiure

**R**elative of John Ndung'u Ngiure told Oscar Foundation: *When we were sleeping. They broke down the doors, burst in, yelling, and pointed their submachine guns at us, [shouting], "Everyone get down! We'll shoot!"... Ngure leaped up, started showing them his papers, asking whom they wanted, and why, and who they were—they were all in masks. He was begging them, "Why are you [doing this]?"... They did not explain anything, just handcuffed [Ngure], and drove him away... An investigator [then] came and questioned us, and looked for footprints in and outside the house, but we still do not know where [Ngure] is.*

### Enforced disappearance of Paul Njuguna Ndung'u- Missing

**W**e were all very scared, and kept asking them, "Why, why [are you taking him]?" but they did not respond. *They said they would "find out" and then bring him back. I grabbed him and was holding him, not to let them take him away, but they told me, "If you continue resisting, we'll take you and the kids away as well." And then they threw me to a sofa and hit me with the butt of a submachine gun.*

The family tried unsuccessfully to find Njuguna through unofficial channels and searched for him in local prisons, hospitals and police cells. The relatives then reported the "abduction and disappearance" to the Oscar Foundation for assistance in making an appeal. They said that an investigator had come once to question the family, but they were not sure if the police had opened investigation into the abduction. To date the family has received no information about Njuguna's fate or whereabouts.



### Enforced disappearance of James Kariuki Wangui-Missing

**A** relative of James Kariuki told Oscar Foundation: *Three or four days ago [in the beginning of February 2008], I talked to the investigator. He asked for [Kariuki's] photo, and told me they had sent inquiries everywhere, but everybody was saying, "We don't have him." He said, "Do you know anything or not? Have you found out anything?" They are asking us!*





### **Enforced disappearance of Charles Kimathi- Missing**

**W**e also went to a [local] commandant—he said [that Kimathi] was not listed [as wanted] anywhere in the computer. We say, if he is guilty, let them bring him to trial, but just let us know where he is, so that we could at least deliver a parcel for him. But there is no trace and no response...

The police informed the family that they have opened investigation into Kimathi's abduction and an investigator came once to question the family. In June 2008, the police informed the family that the time period for the investigation was extended till August 2008, but at the time of the interview the family was unaware whether the case had been suspended or extended further. So far, the investigation has yielded no results, and Kimathi's fate remains unknown to the family.

### **Enforced disappearance of Lenny Kivuti- Missing**

**T**he family of Lenny Kivuti told Oscar Foundation: *I knew they were taking him away. I ran out and shouted, "Where are you taking him?" I couldn't really see--they just clustered around him. I tried to show to them his papers, but they did not look at them. They led him away. Since that day the family has not heard from him and they do not know where he is.*



### **Extra-Judicial execution of Jackson Mburu Executed**



**Charles Maina Wambui**

### **Enforced disappearance of Martin Kamau Kamande- Missing**

**T**hey burst in and just asked, "Where are your men?" They pushed all women and children into a corner here, and went to the bedroom, and started beating [the men] mercilessly. Everything was [covered] with blood in that room, their beds, and the curtains. They did not even ask for their names or documents...They took Martin Kamau Kamande away and his friends. Then [the police] walked all four of them out of the house and drove them away in unmarked car [Peugeot 504]. Since then he has never been seen again.





**Enforced disappearance of John Karanja Njuguna- Missing**

**Enforced disappearance and execution Nahashon Wachiuri Ndegwa. Arrested on 30-6-07 and body dumped in Njiru**



**Enforced disappearance of Julius Thiong'o- Missing**



**Arbitrarily arrest and Extra-Judicial execution of Kennedy Mungai Muhoho**

**Enforced disappearance of Gikong'u Gicere-Missing**



**Execution of Karis- Killed and dumped in Kitengela**





**Enforced disappearance of Boniface Githaiga Theuri. Missing since 18-8-07**

**Enforced disappearance of Simon Irungu Githinji. Missing since 29-08-07**



**Enforced disappearance of James Githiri Ngwenyi- Missing**





## Arbitrary arrest and extra-judicial execution

**M**r. Peter Maina Wachira. Arrested on 30 June 2008, body dumped in Ngong. Peter Maina Wachira, a matatu crew plying on route 19/60 of Nairobi-Kayole route, was arrested on the 30/06/2008 during a crackdown on rioting hawkers in the city in full view of the local press. Photographs of the arrest were splashed in the local dailies the following day. Also arrested alongside Peter Maina Wachira were Peter Mwangi Gitau and Julius Irungu Mwangi.

Mystery is why were they arrested while they were not among the rioting hawkers? Relatives of the three persons nabbed found the mutilated bodies of Wachira and Gitau at the City Mortuary after a tireless search in all the police stations within the city. The mortuary register indicates that they were booked by police at 5.40 pm on 01/07/08. The mutilated bodies of the deceased

were allegedly found in Ngong Forest. The whereabouts of Julius Irungu Mwangi is still unknown. He has been listed as missing.

## Enforced disappearance of Kinyanjui-Missing

**D**avid Njuguna Kinyanjui was arrested in Kayole on 15/09/07 by members of the “kwekwe” squad. He was severely beaten before being bundled in an unmarked car and driven away to an unknown location. To date nothing has been heard of him.

He, too, is listed as missing.



## Enforced disappearance of Jamlick Maina Waititu. Missing

**J**amleck Maina worked as a matatu driver on route 17 and is believed to have been arrested by police from the dreaded “kwekwe” squad on the morning of 26/11/07. Reliable sources told Oscar Foundation that he had not reported to work as usual since he was finalizing the funeral arrangements of her late mother. He had left the house in Kayole Estate in a hush after receiving a phone call from a friend to go and collect a donation towards the funeral and had promised to be back in the afternoon. On that afternoon, calls made to his cellphone were disconnected and soon it had it had gone off.



The following day, an unknown person called his wife on a concealed number but the caller did not speak when she picked the phone. After making several inquiries, his wife was told by a friend that Maina had been arrested by people believed to be members of the “kwekwe” and was last seen inside a white Toyota G-Touring station wagon car at around 3.30pm within the Kariobangi Bus Stage on the same day he had left his house.

Attempts to trace Jamleck Maina Waititu at Pangani, Makongeni, Shauri Moyo and Burburu police stations bore some fruits when the wife revealed that her husband been arrested by officers attached to the “kwekwe” squad and that one of them popularly known as Boiyo. The said Boiyo in the company of another officer known only as Bob took Maina to the Umoja Chief’s Camp and prevailed upon Maina’s wife to part with Kshs 25,000 or else he would eliminate Maina. The family secured the release of Maina after taking the said sum of money.

Sometime back in August, Maina went missing for a period of three days and the said Boiyo called Maina’s wife and demanded Kshs 80,000 to be delivered at the Umoja Chief’s Camp. The wife looked for money and managed to get Shs 20,000, which the officer refused citing the bribe to be too “small” and threatened to kill Maina if his demands were not met. The wife then let out a loud scream afraid of his husband’s life being in jeopardy. Boiyo was forced to release Maina in return of the Shs 20,000.

Several days before the disappearance of Maina, on 22/11/08, while going home Maina had to flee away from Boiyo who is said to have been hot on heels in pursuit of Maina.

The fate of Maina is still not known up to date. He is listed as missing.



### **Enforced disappearance of Maina Kaboro- Missing since 20-10-07**

**D**AVID MAINA KABORO had been missing since 20/10/2007. Kaboro feared for his life after sensing that unknown persons had been trailing him. Suddenly he went missing. Efforts by his wife to locate him in every place yielded no fruits. She was asked to go to Kitengela to a pawn broker’s motor yard where she found her husband motor vehicle displayed for sale.

### **Enforced disappearance of Peter Mbugua Mungai- missing since 16-9-2007**





### Enforced disappearance of Edward Chira Mbiu- Missing

**E**dward Chira Mbiu was arrested by police on 10/11/07 at Mwiki, Kasarani. He was last seen at Kangundo Road and has never been seen since then.

### Enforced disappearance of James Irungu Wanjiru- Missing

**James Irungu Wanjiru** was nabbed in Dandora Estate while taking a soda outside a kiosk in September 2007. While being whisked away by armed police officers, Irungu tried to resist arrest pleading innocence. He was driven away never to be seen again. His whereabouts are unknown.



## List of Persons reported missing and families consented for publication

No.	NAME	PLACE OF ORIGIN	STATUS
1.	David Guchu Ndungu	Kandara-Muruka-Ngirima	Missing
2.	Antony Kamau	Kiambu-Githiga	Missing
3.	James Karanja Kibe	Kahuro-Gathinja	Dead
4.	Martin Maina Mbenu	Kangema	Dead
5.	Martin Maina Gitu	Mukrweini	Dead
6.	Paul Ndemi Waganjo	Kiharu-Gacharu	Dead
7.	David Njuguna Kinyanjui	Nakuru	Missing
8.	John Ndungu Nyambura	Thika	Missing
9.	Joseph Kungu Kariuki	Molo	Dead
10.	Ephantus kanja mwangi	Kangema githiga	Dead
11.	Joseph kangethe	Kangema githiga	Dead
12.	Peter waweru ndungu	Limuru-ngarariga	Dead
13.	Stephen Kariithi kangethe	Kirinyaga-ndia	Dead



14.	Martin Mahinda Maina	Karatina	Missing
15.	Antony Kamau	Kiambu-githiga	Missing
16.	Daniel Muchoki Gitau	Muranga-gikiindu-githuru	Dead
17.	William gikunju	Nyeri	Missing
18.	Issac njeru	Mbeere	Missing
19.	David kiarii	Ngurweini	Missing
20.	Ayubu ndangara	Kahuro-gathinja	Dead
21.	Peter wanjohi mwangi	Githiga	Dead
22.	Simon Kiragu Kariuki	Maeza	Missing
23.	Daniel Bubii Nderitu	Maran	Missing
24.	Daniel Murithi Gitonga	Muiga	Missing
25.	Robinson Mwangi	Kangema-githiga	Missing
26.	Stephen Maina Muhia	Subukia	Missing
27.	Johnson Ndungu Muthoni	Kandara	Dead
28.	Justus Kinyua	Kandara	Dead
29.	Samuel Ndungu Kamau	Kikuyu	Dead
30.	Peter Ndegwa (kapa)	Kandara	Dead
31.	Peter Maina Wachira	Othaya	Dead
32.	Benard Kibe Kamau	Gaturi	Dead
33.	Fredrick Ciuma (malele)	Mukurweini	Dead
34.	Fredrick Muiruri	Othaya	Dead
35.	John Kiai Mwangi	Kandara	Missing
36.	Paul Ngoroge Gitau	Mathiyoa-gitugi	Missing
37.	John Kivuta	mwea	Missing
38.	John Kahumba Kamore	mwea	Dead
39.	John Mwenda Wambugu	Mwea	Dead
40.	John Kungu Pastor	Mwea	Missing
41.	John Njoroje Wanjohi	Mwea	Missing
42.	John Maina (Rua)	Mwea	Missing
43.	Paul Kamau Kaguma	Nyeri	Missing
44.	Joseph Kariki Kigera	Muranga	Missing
45.	Mwangi Kariki	Muranga	Missing
46.	Laurence Macharia Kirubi	Muranga	Missing
47.	John Muriigi	Muranga	Missing
48.	Patrick Mwara Kuhia	Muhia	Missing
49.	John Gatitu	Nyakahuro	Dead
50.	Stanley Kimani Kaguire	Nyakahuro	Dead
51.	Simon Muiruri Juakali	Nyakahuro	Dead
52.	Benard Kariuki	Nyakahuro	Dead
53.	Mwangi ( Mburuto )	Nyakahuro	Dead
54.	Simon	Nyakahuro	Dead
55.	Charles Mwangi Munyaka	Nyakahuro	Dead



56.	Gerald Kihoro Muchoki	Nyakahuro	Dead
57.	Gideon Mwangi	Gikandu	Dead
58.	Gideon Muiruri.	Elibagon	Dead
59.	Paul Kamau Kaguma	Arrested at muthurua	Missing
60.	Mustfa Kariuki	Arrested at muthurua	Missing
61.	Jamlick Maina Ngoro	Arrested at kayole	Missing
62.	Ezekiel Muiruri Thuo	Arrested at kayole	Missing
63.	Simon Kihumba Kamore	Arrested at Kayole	Dead
64.	James Mwenda Wambugu	Arrested at Kayole	
65.	Joseph kimani ruo	Arrested outside high court.	Missing
66.	Mark mwenesi	Kayole	Dead
67.	Joseph waweru mbugua	muranga	Dead
68.	Samuel gitau mwangi	eastleigh	Missing
69.	Jackson mburu	mathare	Dead
70.	John wachira	Kosovo slums	Dead
71.	William nyamu	Ruaka	Dead
72.	David mugaka	Kitengela	Missing
73.	Eliud maina kariuki	Githurai	Missing
74.	Christopher kimani	Mathare	Dead
75.	Joseph gathanwa ndungu	Mathare	Dead
76.	Peter wahome mwangi	Bondenii	Dead
77.	Joseph githutha	Kibera	Dead
78.	Fredrick gichane	Narok	Dead
79.	Jackson ndungu kifuli	Nairobi	Missing
80.	Jackson njoroje wangare	Nairobi	Dead
81.	Charles mungai gathumbi	Nairobi	Dead
82.	George waweru kamwene	Nairobi	Dead
83.	Francis irungu njau	Baba dogo	Missing
84.	Simon irungu ndechu	Nairobi	Missing
85.	Meshack wainana kamau	Kiambu	Dead
86.	John njuguna	Kiambu	Missing
87.	David maina kaboro	Kitengela	Missing
88.	Jame machuki	Nairobi	Dead
89.	Naftali osiemo	Nairobi	Dead
90.	Jared osolo	Nairobi	Dead
91.	Clement ntabo	Nairobi	Dead
92.	James nyacheo	Nairobi	Dead



93.	Geofrey muchiri mwangi	Gikomba	Missing
94.	Peter karanja githura	Ngara-nairobi	Missing
95.	John ngugi kinga	eastLeigh	Missing
96.	Edward chiira mbiu	Mwiki-kasarani	Missing
97.	Jane wamaitha kabue	Ruai	Missing
98.	George otieno odhiambo	Nairobi	Missing
99.	Mr gachuhi	kawangware	Dead
100.	Anthony kungu	Nairobi	Missing
101.	David maina kaboro	Allsops	Missing
102.	Issac njeru nyaga	kayole	Dead
103.	Pius nganga muhia	embakasi	Missing
104.	Samuel wachira	Kosovo-mathare	Dead
105.	Julius mburu	Kosovo-mathare	Dead
106.	John Murigi	Muranga	Missing
107.	Benson mwangi wanga	Nairobi	Dead
108.	Festus gikonyo	Nairobi	Dead
109.	Macharia kirubi	nairobi	Missing
110.	David muiruri muchoki	muranga	Missing
111.	Joseph kagata kamau	nairobi	Missing
112.	Patric mwangi	Githurai	Missing
113.	Titus nyamu	Arrested by police	Dead
114.	David kiarie ngugi	Arrested by police	Dead
115.	David mutahi	dandora	Missing
116.	Patric mwangi	Dandora	Missing
117.	John mungai kamande	Arrested by police	Dead
118.	Anthony kimotho	Arrested by police	Dead
119.	Obadiah muchai rugiri	Arrested by police	Dead
120.	Jamleck maina	kayole	Missing
121.	Kagunda wambui	Beaten by police	Dead
122.	Peter maina wachira	Arrested by police	Dead
123.	Peter mwangi gitau	Arrested by police	Dead
124.	Julius irungu mwangi	Arrested by police	Missing
125.	Kagiri wachira	Arrested by police	Dead
126.	Joseph kangethe kimani	Tortured by police	Alive



127.	James irungu wanjiru	dandora	Missing
128.	David karanja gichehu	Nairobi	missing
129.	Edward kangethe	karanja	Missing
130.	Joseph ndungu	longonot	Missing
131.	Priscilla wanjiru	Longonot	Missing
132.	David njuguna kinyajui	kayole	Missing
133.	Stephen Kamau maina	Nairobi	Missing
134.	Geoffrey mbugua	wangige	Missing
135.	Alfred njoroge	Thika road	Missing
136.	Njoroge wanjohi	Donholm	Missing
137.	Peter kariuki njuguna	Donholm	missing
138.	Maina waweru	kibera	Missing
139.	Anthony Ngige	Nairobi	Dead
140.	Vincent munene Chege	kidnaped	Missing
141.	Maina kangethe	Nairobi	Dead
142.	Josphat waruinge	Nairobi	Dead
143.	Daniel gitu maina	Nairobi	Dead
144.	Jaseph mwangi waruinge	Nairobi	Dead
145.	Daniel kangethe mugo	Nairobi	Dead
146.	Pascal musembi	Nairobi	Missing
147.	Stephen muriithi mwebia	dandora	Missing
148.	Patrick kinyua	Kayole	Missing
149.	Robert mwangi	Nairobi	Dead
150.	Simon nderitu mathenge	Nairobi	Missing
151.	Victor muriithi gitonga	Nairobi	Missing
152.	Peter mwangi kigotho	Nairobi	Missing
153.	Joseph nene warui	Umoja	Dead
154.	James muchiri	Umoja	Dead
155.	Samuel ndirangu	Nairobi	Missing
156.	Ndungu wagacha	Nairobi	Dead
157.	Naftali irungu	Nairobi	Dead
158.	Yusuf kibe maina	Nairobi	Missing
159.	Josphat Kamau	South c	Dead
160.	Joshua mwaniki	South c	dead



161.	Benard wainana njogu	Nairobi	Dead
162.	Kamitu muremi	Nairobi	Dead
163.	Saire		Dead
164.	Samuel maina njoga alias		Dead
165.	Virginia nyakio maina	Nairobi west	Dead
166.	Tosh(nick name)	Githurai	Dead
167.	siuma	South c	Dead
168.	shimoli	Nairobi	Dead
169.	Zacharia Njoroge Maina	Dandora	Missing
170.	Wagithaiga		Dead
171.	Waweru Nyamakima	Voi	Missing
172.	Wilfred Mwaura		Missing
173.	William Nyamu	Ruaka Kiambu	Dead
174.	Titus Nyamu	maragua	Dead
175.	Victor Gitonga	Kayole Soweto	Dead
176.	Simon Nderitu Mathenge	South C	Dead
177.	Simon matheri.	mlolongo	Dead
178.	Simon kihumba kamore	Njoro	Dead
179.	Silas maina gichora	Kangema	Missing
180.	Sergent murimi	Dead	Nairobi
181.	Samuel mwangi ngikonya	kibwezi	Dead
182.	Peter gakindu mwangi	Maragua	Dead
183.	Paul kibuti ireri	Kayole	Missing
184.	Patric kinyua gaichama	Kayole	missing
185.	Ngugi nyoike	Saba saba	Dead
186.	Nderi njagi	mathare north	Dead
187.	Mwaura falla	Nairobi	Dead
188.	mwaura	Ngong	Dead
189.	Mwaniki kamau	Nairobi	missing
190.	Mwangi kigutho	Nairobi	Missing
191.	Masakuru	Matuu adm	Dead
192.	musili	Dead	Dead
193.	muigai	Dead	nairobi
194.	Mugambi ndege	kanunga	Dead



195.	mwalimu	Nairobi	Dead
196.	Mohammed ngugi	kanunga	Dead
197.	Martin njoroge nguru	maragua	Dead
198.	Maina mutual	Nairobi north	Dead
199.	Mahinda	dandora	missing
200.	Lukas ndege mwangi	Kayole	Dead
201.	Lukas gathugu munga	Nyeri	Dead
202.	Lukas Kamau muiruri	Kayole	Dead
203.	Kirembu njoki	Nairobi	Dead
204.	Kiroiro	Kiambu	Dead
205.	Kiganjo	Nyeri	Dead
206.	Kivuti kaboy	Kiambu	missing
207.	Kibuthia brown	Kiambu	Dead
208.	Kiarie kimama	Kayole	Dead
209.	Kennedy mwaura	Ngong	Dead
210.	Kennedy kariuki	Kayole	Dead
211.	Kamaa silvyia	Kayole	Dead
212.	Kaniithi	Kiambu	Dead
213.	Kababa	Kandara	missing
214.	Julius henia maina	Nairobi	Dead
215.	Julius thiongo	Kandara	Dead
216.	Josphat muriranja	Mathare north	Dead
217.	John bosco githiomi	Kijiando	Dead
218.	Jack	Kiambu	Dead
219.	James irungu gachache	dandora	missing
220.	Godhard mungai mbithia	Nairobi	Dead
221.	Ian ayub ndaragwa	Nairobi	Dead
222.	Arthur Kamau	Kinamba	Dead
223.	Awillo	Kinamba	Missing
224.	Bernard Buku Mwangi	Kinamba	Dead
225.	Bernard Nduati Mbithia	Kinamba	Dead
226.	Boniface Githiri Ngwenyi	Kinamba	Missing
227.	Caost	Kinamba	Dead
228.	Carlos (University Student)	Kinamba	Dead



229.	Charles Kimathi	Nairobi	Missing
230.	Chege Ngone Peter	Kayole	Dead
231.	Dominus Maina	Kerugoya	Dead
232.	Ephantus Kanja	Zimmerman	Missing
233.	Ezekiel Mwangi	Kiserian	Dead
234.	Geoffrey Mwangi Nyacomba	Wangige	Missing
235.	George Ng'ang'a	Ngong	Dead
236.	George Otieno	Kayole	Missing
237.	Gerald Kamau Gitonga	Kiambu	Missing
238.	Gibson Kiragu	Kiambu	Dead
239.	Gichimu Irungu	Kiambu	Dead
240.	Gidraph Muchai	Mathare North	Missing
241.	Mere	Maragua	Missing
242.	Martin Njoroge Nguru	Maragua	Dead
243.	Martin Marathi Mwangi	Maragua	Dead
244.	Mante	Mathare North	Dead
245.	Maina Gachiengo	Kayole	Dead
246.	Maina BK	Kayole	Missing
247.	Mahinda	Kayole	Missing
248.	Irungu Karosh	Mathare North	Missing
249.	James Gacheru Kiago	Nairobi	Dead
250.	James Githinji Kanugi	Nairobi	Missing
251.	James Irungu Gachache	Dandora	Missing
252.	James Kibucha Ndirangu	Dandora	Dead
253.	James Ndirangu Kibocha	Gatundu	Dead
254.	Jamleck Maina	Kayole	Missing
255.	John Maina Kaibere	Umoja	Dead
256.	John Maina Waigwa	Umoja	Dead
257.	John Muriu Muriu	Huruma	Missing
258.	John Ngugi Kinga	Eastleigh	Missing
259.	Joseph chalo Migwi	Dandora	Dead
260.	Eric maina	Dandora	Dead
261.	Jane Wamaitha Kabue		missing



262.	Jackson Ndung'u Kiburi		
263.	David Njuguna Kinyanjui		Missing
264.	Fredrick Gichane		Dead
265.	John Kaii		missing
266.	Anthony Kamau	Banana	
267.	Samuel Gitau Mwangi	Nairobi	
268.	John Njuguna	Nairobi	
269.	Peter Karanja	Githurai Nairobi	
270.	Fredrick Gichane		
271.	John Ngugi Kinga	Eastleigh	
272.	Joseph Irungu Wanjiru	Dandora	
273.	Edward Chiira Mbiu	Kasarani	
274.	David Guchu Ndungu	Kandara-Muruka-Ngirima	
275.	Ephantus Kanja Mwangi	Kangema - githiga	
276.	Antony Kamau	Kiambu Githiga	
277.	Ayubu Ndangara	Kahuro Gathinja	
278.	Robinson Mwangi	Kangema Githiga	
279.	Samuel Ndungu Kamau	Kikuyu	
280.	John Kaii Mwangi	Kandara	
281.	Joseph Kariki Kigera	Muranga	
282.	John Gatitu	Nyakahuro	
283.	Gideon Muiruri	Elburgon	
284.	William Nyamu	Ruaka	
285.	Gachuhi	Nairobi	
286.	Festus Gikonyo	Nairobi	
287.	Lenny Kivuti	Kiambu	
288.	Alfred Njoroge	Thika Road	
289.	Titus nyamu	Police custody	
290.	Nderi Njagi	Mathare North	
291.	Ngugi Nyoike	Sabasaba	
292.	Peter Mwangi Kigotho	Nairobi	
293.	Joseph Nene warui	Umoja	
294.	John Njuguna	Kiambu	
295.	Joseph Waweru Mbugua	Muranga	



296.	Charles Mungai Gathumbi	Nairobi	
297.	Christopher kimani	Mathare	
298.	Simon Kihumba Kamore	Kayole	

## Observations

### *The government should act*

**W**ith “disappearances” continuing on a wide scale in parts of Kenya, the practice is now being perpetuated with impunity and pose a serious form of human rights violations. Acts of criminality are often perpetuated by law enforcement agencies that target criminal gangs and members of outlawed groups.

In periods preceding to the December 27 general elections, acts of disappearances were reported in various parts of the country with victims often falling between the age of eighteen and forty five years old. The most affected parts of the country were Mt. Elgon district, Central and in Nairobi provinces. The government must adopt a strong resolution condemning all acts of abduction and investigate all cases of disappearances.

The practice of ‘disappearances’ being perpetuated by state agents threatens human rights and democracy. The government which was voted on the platform for change and respect of human rights has failed to uphold the right to protect all persons from enforced disappearances.

Despite documented evidence implicating known police officers for abducting suspects from their homes and the more than 280 unaccounted for persons, the police have declined to take no action on the officers implicated. The government has turned a blind eye while state agents commit crimes against humanity with full impunity.

According to international law, such criminal activities may qualify to be prosecuted under international law, and perpetrators of such acts that outrage the conscience of humankind may face prosecution.

Over 8000 people have ‘disappeared’ in Kenya since 2002, with the full knowledge of the government. According to hundreds of witnesses, the environment under which these crimes occur is characteristic of widespread impunity.

In 2007, all cases under investigation opened into the “disappearances” yielded no results and no prosecutions or investigation report has been produced. A case in mind is the arrest and subsequent prosecution of Joseph Kimani Ruo 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 of their case. An eyewitness account told OFFLACK that Ruo was acquitted of all charges against him by the Honourable Court on the said date. On the corridors of justice, Kimani was accosted by a group of police officers in plainclothes believed to be from the CID. One of them is said to be known as Corporal Njoroge and that he was well known to Kimani. Kimani whispered to the witness that they were going for a meeting with the officers. Later on his phone went dead and since then he has not been seen or heard of. Can the police give an insight into the disappearance of Joseph Kimani Ruo while in the custody of police office, even after being captured in the full glare of the press?

The relatives of the ‘disappeared’ have no redress and no hope of finding their loved ones, as the police continue to issue unfounded and misleading information about the missing persons. Relatives are often reluctant to even report the ‘disappearances’ to the authorities, fearing for the safety of their remaining family members as observed in a number of cases.

“The police continue to perpetuate fear and intimidation of innocent youths on the pretext of dealing with crime. In an incident in *Umoja* estate in Nairobi, two criminal suspects were executed after a three hour shooting spree. The OFFLACK attributed this incident to lack of intelligence and coordination by the police while dealing with ‘organized crime. According to OFFLACK, the police resort to extra-judicial execution as a means of silencing suspects and engaging in a criminal conspiracy.



Although cases of police misconduct are linked to criminal intent, there are no internal monitoring mechanisms in the police force that protects the rights of the suspects against abuse by rough officers. In Kenya, Law Enforcements Agents arbitrarily kill suspects and violate the UN Basic Principles on the Use of Fire Arms which calls for maximum restraint by law enforcement officers to use weapons 'only when its strictly necessary' and often after shooting no inquests are opened and no police officer are held accountable for the killings.<sup>24</sup>

OFFLACK urges the government to invite key U.N. thematic mechanisms, particularly the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on Torture to visit Kenya and conduct investigations in to the "disappearances" its would be practical for U.N. member states to press Kenya to issue the invitations to also the ICRC mission to assist in tracking the "disappearances".

The December post-election violence, now under a fragile truce, has brought untold suffering to hundreds of thousands of civilians, who have fallen victim to abuses perpetrated by both the police and private militias. In Mt. Elgon SDLF militias committed unspeakable acts of torture, abductions and rape and in similar patterns, the military and the police committed gross human rights violations. In addition to enforcing disappearances, the military, together with police, also committed numerous other crimes against civilians, including extrajudicial executions, torture, arbitrary detention and rape. The overwhelming majority of these crimes remained uninvestigated and unpunished and the government has defended the actions of the military.

In 2007, the Oscar Foundation published numerous reports urging the government to stop abuses, establish a meaningful accountability process and invite the UN monitoring mechanisms to the country to investigate cases of alleged disappearances. OFFLACK believes that the government has defied a number of international treaties that it has acceded to and has failed to comply with the majority of recommendations proposed by human rights bodies to protect and promote human rights.

We are in no way looking down upon on the very important role that the police play in this country in upholding law and order. Neither are we ignoring the many who have lost their lives in the line of duty for the love of the country, but the point of focus on this report is the realization of the police and the government of the impending catastrophe that awaits on the road to ensuring maturity of the rule of law caused by legislative handicap in the police laws and the Criminal procedure laws in general.

The role of police is carrying out investigations after apprehending the offenders<sup>25</sup>. The police are responsible for investigation in order to provide the prosecution with evidence for presentation to the judiciary. The aim is whether a case has been established and if it meets the standard beyond reasonable doubt to sustain a conviction. The penal code <sup>26</sup>does provide all offences with which an accused person may be charged with in a court of law. The Constitution under the bill of rights provides that everyone has a right to liberty.<sup>27</sup> Other laws directly significant to their operation include the Traffic Act, the Evidence Act, and the Prisons Act.

However, policemen have operated in blatant disregard of these laws. This legal framework under which the Kenya Police operate grants them wide discretionary powers, without providing adequate mechanisms to check excesses. Reasonable force, for instances, is permitted by the Criminal Procedure Code where a suspect resists arrest, but the code does not specify what amounts to unreasonable force. Due to this loop hole, the police often find a justification for every excessive force used in the course of performing their duties.

As much as "disappearances" has become normality to the acts or omissions of the police officers, other felonies include holding accused persons in order to extort evidence (recent amendments to the Evidence Act notwithstanding). Corruption is entrenched in the police force that a number of criminal cases are scuttled by shoddy investigations done by police officers who have been compromised by suspects. Cover up of offences committed by police officers has also contributed to the indiscipline exhibited within the rank and file in the police force.

24 OFFLACK report on Mungiki

25 S.14 Cap 84 Laws of Kenya

26 Cap 63 Laws of Kenya

27 S.72 Constitution of Kenya (S.72 goes ahead to give a detailed procedure to be followed in case a person is arrested.)



The ruthlessness, blatant disrespect of the law and the crude behaviour of the police is a good indicator of these mistakes attributed to several factors. These include lack of qualifications during recruitment, wrong judgements, political interference, abuse of power, lack of enthusiasm in investigations, lack of motivation, abuse of due process shown by inadequate, shoddy and lengthy investigations,

The accused often faced serious charges and are subjected to informal repression, torture and inhuman and degrading treatment at the hands of these police officers. This act is indicative of a corrupt and manipulated police system that thrives on hand-outs. OFFLACK takes great exception to these killings whereby they sometime use power saws and machetes to inflict deep cuts on their victims. In addition, the assailants bludgeon their prey using clubs, crow bars, wheel spanners and even building stones. This new tactic adopted by the police officers is a scheme aimed at depicting the Mungiki adherents being at war against themselves reminiscent of scripts taken from the 1930's gang war in Chicago fighting for control of bootlegging.

It is important to note that all suspects of any crime are innocent till proven otherwise by a competent court of law. To portray the youth as criminals based on their ethnic background and /or social affiliation is symptomatic of a society whose morals have eroded. In this age and time, to be a youth has become synonymous to being a criminal – not knowing one's fate the next minute. No killing can be attributed to error, save that the police rely on mistaken identity or a stray bullet whenever faced with a prima facie case of negligence. The rogue and trigger happy police officers mostly engage in moonlighting and when the deals go sour they end up executing their partners in an organized crime.

Ostensibly, in their quest to justify their execution acts, the police stage manage a raid where in pre-arranged meetings with the media houses who get invited to cover the imaginary foiled crime/ robbery attempt. The police immediately in the scene of crime issue press statements without any investigation to warrant the killings. Neither do they open inquest files as required by law. In most cases, the media abet to these criminal activities perpetuated by the law enforcement agents by misreporting the incident without verification of facts and give credence to the police theory.

These conspiracies to harden evidence and justify the killings by the police have occasionally duped the media in publishing propaganda and public relations materials aimed at whitewashing the already tarnished name of the police force. Today the community policing initiative has failed drastically. Our preliminary enquiries have scrutinised the conduct of all the officers involved, OFFLACK affirms that most of the killings are occasioned by misinformation and lack of any intelligence report to justify the loss of lives.

We also take great exception in the conduct of the police investigations which is evident of errors precipitated by the fact that rogue police officers and trigger happy are shielded from prosecution by their superiors. The only disciplinary action taken against the said officers is transferring them to different stations where they continue with their heinous acts with impunity. It is important that lessons are learned from badly planned and executed police operations.

The culture of impunity and lawlessness within the police force threatens the ability of the police to uphold law and order, and exacerbates brutality and corruption. The failure by the Kibaki / Raila grand coalition government to guarantee protection of the rights to life, human rights and peaceful co-existence among the ethnic communities of Kenya has compromised fundamental human rights.

Corruption and police brutality are the common endemic characterizing our police system hence threatening development and social justice. Lack of administrative and judicial measures to deal with police misconduct have entrenched the culture of impunity among police officers that escape punishment in the face of their victims.

The establishment of the Public Standing Oversight Committee (popularly known as the Office of the Ombudsman) and the Police Oversight Board has set a good precedent in the Governance, Justice, Law and Order Sector reforms. The composition, character, competence, integrity, academic qualification, professional status and managerial skills are unquestionable and of high repute. Despite these credentials, all what an ordinary Kenyan is yearning for is none other than justice taking its course regardless of any institution that will deliver. Cynism and mistrust abound as the common man waits to



see results of the much awaited reports of Commissions of Inquiry and Probe Committees. As is evident in the performance of the weak-kneed Kenya Anti Corruption Authority, which has never prosecuted with success any high profile case where millions worth of resources have been siphoned to offshore accounts and huge tracts of land amassed irregularly. These institutions need laws to govern their operations for them to acquire the much needed independence in order to avoid external pressure and mainly from the Executive. Simply put, for the ordinary Kenyan to have faith in these institutions, the same institutions must be established on a foundation of trust and confidence.





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