



**African Commission on Human and Peoples' Rights
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**Report on Enforced Disappearances in the Republic of Kenya
Under the African Charter on Human and Peoples' Rights
in response to
The Combined 8th-11th Periodic Report of the Republic of Kenya
presented at
The 57th Ordinary Session of the Commission
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prepared by

**The Advocates for Human Rights
An NGO with Observer Status at the African Commission on Human and Peoples' Rights
since 1991**

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Reporting Organization

The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates has worked extensively with members of the Somali diaspora in the United States, both in the context of asylum and other immigration proceedings and for purposes of documenting human rights conditions in Somalia, as well as in other countries where members of the Somali diaspora reside.

EXECUTIVE SUMMARY

1. The Advocates for Human Rights is gravely concerned about human rights violations committed by Kenyan authorities against people of Somali ethnicity, as reported by human rights organizations monitoring conditions in Kenya, credible sources in the news media, members of the Somali diaspora living in the United States, and witnesses on the ground in Kenya. This report identifies four specific cases of enforced disappearances of ethnic Somalis by the Kenyan Government.
2. This report does not address all of the human rights violations occurring in Kenya. Rather, it focuses on those human rights violation that have been brought to the attention of The Advocates for Human Rights by people from the Somali diaspora.
3. The conclusion of this report offers suggested questions and recommendations that the African Commission on Human and Peoples' Rights should consider making to the Kenyan Government during the upcoming review.

I. Kenya's International, Regional, and Domestic Human Rights Commitments Call for an End to Enforced Disappearances and Extrajudicial Executions.

4. In its Combined 8th-11th Periodic Report, the Kenyan Government states that "Kenya is committed to ensuring the enjoyment of all rights and freedoms by all citizens."¹ Kenya's human rights obligations derive from the African Charter on Human and Peoples' Rights as well as the other regional and international human rights instruments set forth below.

African Charter on Human and Peoples' Rights

5. Under the African Charter on Human and Peoples' Rights (African Charter), all people regardless of race, ethnic group, language, religion, or national and social origin are entitled to the protections provided by the charter.² It is the duty of the Member States to promote and protect the human rights and fundamental freedoms outlined in the charter.³
6. Article 4 of the African Charter also recognizes the importance of human life: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."⁴ The African Commission on Human and Peoples' Rights (African Commission) has recognized that "The right to life is ... the foundational, or bedrock human right,"⁵ requiring States "to both respect and ensure the right to life."⁶
7. Article 5 of the African Charter states that "every individual shall have the right to the respect of the dignity inherent in a human being and the recognition of his legal status."⁷

¹ Republic of Kenya, Combined 8th- 11th Periodic Report (2008-2014) on the African Charter on Human and Peoples' Rights, November 2014 (submitted 11 March 2015), at para. 13.

² African Charter on Human and Peoples' Rights, Adopted June 27, 1981; Entered into Force October 21, 1986, art. 2 [hereinafter African Charter].

³ Id., art. 1.

⁴ Id., art. 4.

⁵ *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, AHRLR, para. 138 (ACHPR 2006) (emphasis added).

⁶ Id., para. 139.

⁷ African Charter art. 5.

Article 5 explicitly prohibits torture and cruel, inhuman, or degrading punishment and treatment.

8. Article 6 of the African Charter states: “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”⁸
9. The African Commission has observed that a “deprivation of liberty that falls outside the strict confines of the law, or for reasons that are not acceptable or simply arbitrary, will amount to a violation of Article 6 of the Charter.”⁹
10. The African Commission has further established in the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, regarding the right to liberty and security of the person, that:

“States must ensure that no one shall be subject to arbitrary arrest or detention and arrest, detention or imprisonment shall only be carried out strictly in accordance with the law...pursuant to a warrant, on reasonable suspicion or for probable cause.”¹⁰
11. In its *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines)*, the African Commission stated that persons should be deprived of liberty only on grounds and procedures established by law; laws and their implementation must be consistent with international standards. “Detention must always be an exceptional measure of last resort.”¹¹
12. Specifically, the Luanda Guidelines state that:

“Arrests must not be carried out on the basis of discrimination of any kind such as on the basis of race, **ethnic group**, colour, sex, language, religion, political or any other opinion, **national and social origin**, fortune, birth, disability or any other status.”¹²
13. Both the Luanda Guidelines and the *Resolution On Guidelines and Measures for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines)* set forth basic procedural safeguards for those deprived of their liberty, including that anyone who is arrested shall be informed at the time of arrest of the reasons for the arrest, informed promptly of the charges against him/her, as well as the right to notify relatives/appropriate third persons of the arrest, an independent medical exam, and access to a lawyer.¹³
14. Article 60 of the African Charter directs the Commission to look to international laws and charters. Kenya has ratified or acceded to several other human rights instruments. Like the African Charter, these instruments commit the Government of Kenya to guarantee the

⁸ Id., art. 6.

⁹ *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, AHRLR, para. 103 (ACHPR 2015).

¹⁰ African Commission on Human & Peoples’ Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003, available at <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>.

¹¹ African Commission on Human & Peoples’ Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, adopted at 55th Ordinary Session (May 2014), at para 1(a).

¹² Id., para 2(b).

¹³ Id., paras. 4-5. African Commission on Human & Peoples’ Rights, *Resolution On Guidelines and Measures for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines)*, adopted at 32nd Ordinary Session (October 2002), paras. 20-32.

equality of all citizens and promote their fundamental right to life, freedom, security, respect, and dignity.

International Covenant on Civil and Political Rights

15. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) recognizes that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹⁴ The right to life is a core principle of international human rights law has been widely expressed in international law, including most recently in the U.N. General Assembly Resolution 69/182 on Extrajudicial, Summary or Arbitrary Executions.¹⁵
16. The right to life concerns the right for individuals to be free from acts intended to cause their premature death as well as their right to enjoy a dignified existence. The right of life is guaranteed to all, “including persons suspected or convicted of serious crimes, such as terrorist crimes.”¹⁶
17. In interpreting ICCPR Article 6, the Human Rights Committee stated in General Comment No. 36 that enforced disappearances “intend to remove an individual from the protection of the law, resulting in a flagrant violation of the right to life.”¹⁷ It stresses that state parties must take measures to prevent disappearances and establish “prompt and effective procedures to investigate thoroughly, by independent and impartial procedures, cases of disappearances.”¹⁸
18. General Comment No. 36 also notes that, in order to ensure the right to life for all persons, State Parties to the ICCPR must take “exceptional measures of protection towards vulnerable persons,” including members of ethnic and religious minorities, displaced persons, and asylum seekers and refugees.¹⁹
19. General Comment No. 36 further declares that “State parties are expected to take reasonable long-term measures intended to prevent arbitrary deprivations of life by their law-enforcement organs, such as police training.”²⁰ All law enforcement operation should

¹⁴ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, [hereinafter ICCPR], art. 6.

¹⁵G.A. Res. 69/182 U.N. Doc. A/RES/69/182 (Jan. 30, 2015). U.N General Assembly Resolution 69/182 on Extrajudicial, Summary or Arbitrary Executions states that extrajudicial executions constitute “flagrant violations of international human rights and humanitarian law.” (see Preamble) All states are expected to investigate suspected cases of extrajudicial, summary or arbitrary executions and identify individuals responsible for such killings. (see para. 3) Victims and their families must also be granted compensation. States should promptly investigate impartial investigations into enforced disappearances and extrajudicial executions of specific groups such as those of a particular race, national, ethnic or religious minorities. States are also expected to bring the perpetrators of extrajudicial executions and any others “committed for discriminatory reasons” to justice before national or international judiciary bodies. States must ensure that such killings are “neither condoned nor sanctioned by State officials or personnel. (see para. 6(b)).

¹⁶Committee on Civil and Political Rights, *General Comment No. 36* (Sept. 2, 2015), U.N. Doc. CCPR/C/GC/R.36/Rev.2, para. 3.

¹⁷ *Id.*, para. 6.

¹⁸ *Id.*

¹⁹ *Id.*, para. 26.

²⁰ *Id.*, para. 19.

comply with “relevant international standards, including the Code of Conduct for Law Enforcement Officials.”²¹

20. ICCPR Article 7 prohibits all cruel, inhumane, or degrading treatment or punishment. Article 9 of the ICCPR recognizes the right to liberty and security of person. It states that “no one shall be subject to arbitrary arrest or detention.”²² It upholds the right of the arrested to be informed of the reason behind their arrest, the charges against them, and the right to have a prompt trial.²³ Article 9 also states that a victim of unlawful detention has an “enforceable right to compensation.”²⁴ Article 10 affirms the right of detained persons to be “treated with humanity and with respect to the inherent dignity of the human person.”²⁵ Article 14 recognizes the right of a fair and public hearing.²⁶ All persons have the right to presumed innocent until proven guilty, to be “informed of promptly and in detail in a language which he understands of the nature and cause of the charge against him,” and to be tried without undue delay.”²⁷
21. Pursuant to the ICCPR, States should investigate all violations of the right to life, “promoting accountability and preventing impunity.”²⁸ States should “explore the legal responsibility of superior officials for violations of the right to life committed by their subordinates” and conduct independent and transparent criminal investigations, not simply administrative or disciplinary measures.²⁹

Convention Against Torture

22. The Convention Against Torture (CAT) prohibits torture “for any reason based on discrimination of any kind³⁰.” In General Comment No. 2, the Committee against Torture recognized that States have the obligations to protect marginalized individuals and populations, who are especially at risk of torture. The Committee Against Torture stated that the obligations under the CAT must be applied to all persons regardless of “race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin.”³¹ State Parties must also uphold these obligations for detained persons regardless of the “reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum seekers, refugees or others under international protection.”

²¹ Id. See also U.N. Code of Conduct for Law Enforcement Officials Article 2, which states that law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. Article 7 states that “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.” U.N. Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979).

²² ICCPR, art 9(1).

²³ Id., art. 9(2-3).

²⁴ Id., art. 9(5).

²⁵ Id., art. 10(1).

²⁶ Id., art. 14(1).

²⁷ Id., art. 14(2-3).

²⁸ Id., art. 1(29).

²⁹ Id., art. 1(29-30).

³⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987 [hereinafter CAT], art. 1(1).

³¹ Committee against Torture, *General Comment No.2* (Jan 24, 2008), U.N. Doc. CAT/C/GC/2, para. 21.

23. The CAT affirms that State Parties must take measures to prevent acts of torture anywhere within its jurisdiction.³² Article 2 states that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”³³ In General Comment no. 2, the Committee Against Torture stated that “if the measures adopted by the State Party fail to accomplish the purpose of eradicating acts of torture, the Convention requires that they be revised and/or that new, more effective measures be adopted.”³⁴
24. Article 10 obligates State Parties must educate and train law enforcement officials on information regarding prohibition of torture.³⁵

International Convention for the Protection of All Persons from Enforced Disappearance

25. The International Convention for the Protection of All Persons from Enforced Disappearances states that “No one should be subjected to enforced disappearance” even under exceptional circumstances. The Convention declares that “no exceptional circumstances whatsoever, whether a state is at war or a threat of war, internal political instability or any other public emergency, may be invoked of as a justification for enforced disappearance.”³⁶ The convention also demands that all state parties holds criminally responsible “any person who commits, orders, solicits or induces the commission, of, attempts to commit, is an accomplice to or participates in an enforced disappearance.”³⁷

Domestic Law

26. The Constitution of Kenya guarantees a right to liberty and security of persons. “Every person has the right to liberty and security of person, which includes the right not to be deprived of freedom arbitrarily or without just cause; detained without trial, except during a state of emergency...[or] subject to any form of violence from either public or private sources.”³⁸
27. Article 238 states that “national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.”³⁹
28. Article 49 of the Constitution states, “An arrested person has the right to be informed promptly, in a language that the person understands of the reason for arrest, to be brought before a court as soon as reasonably possible but not later than twenty-four hours after being arrested; or if the twenty-four hours ends outside ordinary court hours, or on a day that it is not an ordinary court day, the end of the next court day.”⁴⁰
29. Article 244 states that police forces must be educated on human rights standards. “The National Police Service comply with constitutional standards of human rights and

³² CAT, art. 2(1).

³³ Id., art. 2(2).

³⁴ Committee against Torture, *General Comment No.2* (Jan 24, 2008), U.N. Doc. CAT/C/GC/2, para. 4.

³⁵ CAT, art. 10.

³⁶ International Convention for the Protection of All Persons from Enforced Disappearance, G.A. res 61/177, U.N. Doc. A/RES/61/177 (2006), *entered into force on* 23 December 2010, art. 1.

³⁷ Id. art. 6.

³⁸ CONSTITUTION, Art. 29 (2010) (Kenya).

³⁹ Id., Art. 238(2b).

⁴⁰ Id., Art 49.

fundamental freedoms; train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.”⁴¹

30. Kenya is bound to abide by the Conventions to which it is a party, by the terms of those conventions and the constitution of Kenya. “The general rules of international law shall form part of the law of Kenya. Any treaty or convention ratified by Kenya shall form part of the law of Kenya.”⁴²

II. Kenya’s Periodic Report Fails to Acknowledge the Growing Problems of Enforced Disappearances and Extrajudicial Executions and Impunity for Such Human Rights Violations.

31. The Government of Kenya’s 8th-11th Periodic Report states that the Government of Kenya has made “remarkable progress” in safeguarding the human rights in the African Charter.⁴³ The Periodic Report states that the Government of Kenya “respects the right to life and has been unequivocal in condemning acts of extrajudicial killings by the police...because these are some of the most serious human rights violations.”⁴⁴ The report asserts that allegations of extrajudicial killings are investigated by authorities and perpetrators are tried and convicted. The Kenyan Government alleges that officers are held responsible for their actions.⁴⁵
32. The Periodic Report states that the Government of Kenya is “committed to the prevention of torture and other ill-treatment in the country.”⁴⁶ In response to the African Commission’s recommendations, the Government of Kenya has taken efforts to implement the Robben Islands Guidelines and has ratified or acceded to various international and regional mechanisms that prohibit torture.⁴⁷
33. The Periodic Report also details Kenya’s counter-terrorism efforts. The Periodic Report states that “The Government of Kenya has put in place considerable effort to protect security and to stem terrorism in the country,” but contends that “National security can only be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.”⁴⁸ The report references the Prevention of Terrorism Act No. 30 of 2012 and states that the law “contains strict guidelines to be followed in any action to combat terrorism.”⁴⁹
34. During the African Commission’s last periodic review of Kenya, the Commission recommended that Kenya “demonstrate in its next periodic report necessary measure taken to fully implement the Robben Island Guidelines.”⁵⁰
35. During Kenya’s last UPR, Kenya received several recommendations regarding extrajudicial executions, human rights violations by police officers, and prosecution of

⁴¹ Id., Art 244.

⁴² Id., Art 2.

⁴³ Republic of Kenya, Combined Eight through Eleventh Periodic Report on the African Charter on Human and Peoples’ Rights, November 2014, para. 1.

⁴⁴ Id., para 38.

⁴⁵ Id.

⁴⁶ Id., para. 41.

⁴⁷ Id.

⁴⁸ Id., para. 296.

⁴⁹ Id.

⁵⁰ African Commission on Human and Peoples’ Rights, 41st Ordinary Session, Concluding Observations of the Initial Report of the Republic of Kenya (16-30 May 2007), para 26(e).

perpetrators of extrajudicial executions.⁵¹ Kenya accepted 128 out of 150 recommendations, including those concerning extrajudicial killings. In its midterm report to the Human Rights Council, Kenya stated that it had made significant progress concerning recommendations on police reform through the Constitution and legislative revisions, including a Police Code of Conduct.⁵² These reforms “criminalize acts of torture or any cruel, inhuman and degrading treatment of punishment committed by police officers,”⁵³ and provide accountability for police officers who are the perpetrate human rights violations and train police officers in human rights standards.⁵⁴ The Government of Kenya also prepared a Prevention of Torture Bill which sought to “provide the necessary legal framework for the prevention, prohibition and punishment of acts of torture and ill treatment.”⁵⁵ As of the 8th-11th Periodic Report, the bill has yet to be signed into law.⁵⁶

36. The Government of Kenya’s 8th-11th Periodic Report states that “the Government of Kenya respects the rights to life and has been unequivocal in condemning acts of extrajudicial killings by the police whenever they are alleged to have occurred because these are some of the most serious human rights violations.”⁵⁷ It further states that any allegation of unlawful killing is investigated by authorities and perpetrators are tried and convicted. This statement does not reflect the reality that very few Kenyan officials have been charged in cases of extrajudicial executions.
37. The 8th-11th Periodic Report also stresses Kenya’s enactment of the National Police Service Act in 2011, which “trains staff to the highest possible standard of competence and integrity and to respect human rights and fundamental freedoms and dignity.”⁵⁸ Despite the measures taken in the National Police Service Act, there are continued reports of police abuse, and such abuse is rarely investigated.⁵⁹

III. The Government of Kenya’s Practice of Enforced Disappearances and Extrajudicial Executions Violates the African Charter, Other International Human Rights Standards, and the Constitution of Kenya.

38. The Kenyan Government’s Periodic Report asserts that “the Government of Kenya is committed to ensuring the enjoyment of all rights and freedoms by all citizens.”⁶⁰ As demonstrated in this section, however, the Kenyan Government is not upholding its human rights obligations.

⁵¹ United Nations Human Rights Council, 15th Session, Report on the Working Report on the Universal Periodic Review of the Republic of Kenya (15 June 2010), paras. 101.43, 101.44, 101.16, 103.3, 103.4, 106.

⁵² The Republic of Kenya, Universal Periodic Review of the United Nations Human Rights Council, National Midterm Report (September 2012), at 6-7.

⁵³ *Id.* at 8.

⁵⁴ *Id.* at 10.

⁵⁵ *Id.* at 7-8.

⁵⁶ Republic of Kenya, Combined Eight through Eleventh Periodic Report on the African Charter on Human and Peoples’ Rights, November 2014, para. 42(b).

⁵⁷ *Id.*, para. 38.

⁵⁸ *Id.*, para. 39.

⁵⁹ Human Rights Watch, World Report, Kenya (2015), <https://www.hrw.org/world-report/2015/country-chapters/kenya>, (last visited 6 Oct. 2015).

⁶⁰ Republic of Kenya, Combined Eight through Eleventh Periodic Report on the African Charter on Human and Peoples’ Rights, November 2014., para. 13.

39. The Kenyan Government is using counter-terrorism techniques that violate human rights standards, despite the assertion in the Periodic Report that all counter-terrorism efforts would be “pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.”⁶¹ In 2014, the Kenyan Government passed the Security Laws (Amendment) Act of 2014, which amended sections of twenty security related laws and aimed at giving the government more powers in combatting terrorism.⁶² These amendments violated a number of human rights protected by the Kenyan Constitution. The Security Laws Act extended the time that the government could hold “terror suspects” without trial to almost a year.⁶³ The law also allowed the prosecution to withhold evidence from the defense until the trial, and allowed the police to tap phone conversations and investigate bank accounts without court order.⁶⁴ The law stated that journalists could be jailed if their reporting “undermines investigations” or if they publish material that would “likely cause public alarm, incitement to violence or disturb public peace.”⁶⁵ In January 2015, the Kenyan High Court struck down eight parts of the law, including the sections mentioned above⁶⁶; however, the initial passage of this law shows that the Kenyan Government is willing to suspend constitutionally guaranteed human rights under the pretext of fighting terrorism.
40. Kenyan police have carried out enforced disappearances and extrajudicial executions, in violation of international and regional human rights obligations, constitutional guarantees to the right to life and freedom from torture, and police reforms outlined in Kenya’s Periodic Report. They have directed these actions disproportionately at refugees and Kenyan citizens of Somali origin, due to suspicions that individuals may be involved with the Somali terrorist group Al-Shabaab. Human rights defenders and journalists report that terrorism suspects have been held in inhumane conditions and tortured, and some have been disappeared and executed.⁶⁷
41. There is strong, corroborated evidence that Kenyan Anti-Terrorism Police Unit has carried out enforced disappearances and extrajudicial executions of Somali refugees suspected of

⁶¹ Id., para. 296.

⁶² Kenya National Commission on Human Rights (KNCHR), *The Error of Fighting Terror with Terror*, September 2015, at 4, available at <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last visited October 25, 2015).

⁶³ Aljazeera, *Kenya President Signs Tough ‘Anti-Terror’ Law*, 19 Dec 2014, <http://www.aljazeera.com/news/africa/2014/12/kenya-passes-divisive-anti-terror-law-2014121974313523159.html>, (last visited 20 Oct. 2015).

⁶⁴ Daily Nation, *High Court Suspends Eight Parts of Controversial Security Laws*, 2 January 2015, <http://www.nation.co.ke/news/High-Court-suspends-parts-of-controversial-security-law/-/1056/2576396/-/pfa2brz/-/index.html>, (last visited 21 Oct. 2015)

⁶⁵ Republic of Kenya, *The Security Laws (Amendment) Act, 2014*.

⁶⁶ Daily Nation, *High Court Suspends Eight Parts of Controversial Security Laws*, 2 January 2015, <http://www.nation.co.ke/news/High-Court-suspends-parts-of-controversial-security-law/-/1056/2576396/-/pfa2brz/-/index.html>, (last visited 21 Oct. 2015).

⁶⁷ Kenya National Commission on Human Rights (KNCHR), *The Error of Fighting Terror with Terror*, September 2015, at 6, available at <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last visited October 25, 2015); Human Rights Watch, *World Report 2015: Kenya*, 2015, <https://www.hrw.org/world-report/2015/country-chapters/kenya>, (last accessed 21 Oct. 2015).

having connections with the Al-Shabaab terror group.⁶⁸ Through reporting in Kenya and the Somali diasporic community in the United States, The Advocates has documented four cases of enforced disappearances by the Kenyan Government, as well as one case of harassment and mistreatment by the police. There is evidence that these disappearances are tied to the Anti-Terrorism Police Unit. The Advocates' reporting is corroborated by evidence found by other human rights organizations. Human Rights Watch has documented at least 10 cases of extrajudicial executions, 10 cases of enforced disappearances, and 11 cases of mistreatment or harassment of terrorist subject. Human Rights Watch also tied these human rights violations to the Anti-Terrorism Police Unit.⁶⁹ The Kenya National Commission on Human Rights (KNCHR), in a recent report titled "*The Error of Fighting Terror with Terror*," documents 25 extrajudicial killings and 81 enforced disappearances by various agencies within the Kenyan Government.⁷⁰

42. Almost no one has been tried or convicted for extrajudicial executions or enforced disappearances, despite assertions in the Periodic Report that "any alleged unlawful killing is investigated by the authorities and perpetrators are tried and convicted by a competent court if they have used unreasonable force." In 2014, only one police officer was charged for his role in extrajudicial executions.⁷¹ The Kenyan Government created the Independent Policing Oversight Authority (IPOA) to provide accountability for human rights violations by the police; however, this mechanism remains weak. The IPOA issued a report on the "Usalama Watch" operation, in which the National Police Service targeted alleged terror subjects and committed numerous human rights violations.⁷² Although the IPOA report described 29 accounts of police abuse, no officials have been disciplined or prosecuted for these actions.⁷³ Although the Periodic Report states that mechanisms have been created to end enforced disappearances and extrajudicial executions and hold those responsible accountable, these mechanisms have not been effective, and extrajudicial executions and enforced disappearances continue to take place with impunity.

⁶⁸ Human Rights Watch, Kenya: Killings, Disappearances by Anti-Terror Police. 18 Aug. 2014, <http://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>, (last visited 6 Oct. 2015); Aljazeera, Exclusive: Kenyan counterterrorism police admit to extrajudicial killings, 8 Dec. 2014, <http://america.aljazeera.com/articles/2014/12/8/kenyan-counter-terrorism-police-confess-to-extrajudicial-killings.html>, (last visited 6 Oct. 2015).

⁶⁹ Human Rights Watch, Kenya: Killings, Disappearances by Anti-Terror Police. 18 Aug 2014, <http://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>, (last visited 6 Oct. 2015)

⁷⁰ Kenya National Commission on Human Rights (KNCHR), *The Error of Fighting Terror with Terror*, September 2015, at 6, available at <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last visited October 25, 2015).

⁷¹ Human Rights Watch, World Report, Kenya (2015), <https://www.hrw.org/world-report/2015/country-chapters/kenya>, (last visited 6 Oct. 2015).

⁷² Independent Policing Oversight Authority, Monitoring Report on Operation Sanization Eastleigh Publically Known as "Usalama Watch," June 2014, <http://rckkenya.org/index.php/resources/reports3/item/1183-ipoa-report-on-usalama-watch/1183-ipoa-report-on-usalama-watch>, at 11-14 (last accessed 21 Oct. 2015).

⁷³ Human Rights Watch, World Report 2015: Kenya, 2015, <https://www.hrw.org/world-report/2015/country-chapters/kenya>, (last accessed 21. Oct. 2015).

IV. Accounts Corroborate Allegations that Kenyan Officials Are Conducting Enforced Disappearances of Ethnic Somalis under the Pretext of Counter-Terrorism Efforts.

43. The Advocates found evidence of four cases of enforced disappearances of ethnic Somalis in Kenya. In all cases, the disappeared individuals were last seen in the custody of plain-clothed men believed to be Kenyan police officers. The circumstances of the arrests demonstrate that Kenyan authorities have violated prohibitions against arbitrary arrest and detention, and that the men are being arbitrarily deprived of their liberty.
44. These four case studies corroborate the conclusions of the Kenya National Commission on Human Rights in its September 2015 preliminary report, *“The Error of Fighting Terror with Terror.”*⁷⁴ That report finds that “Kenya security agencies have continued to conduct abusive operations against individuals and groups suspected to be associated with terror attacks in various parts of the country. . . . [T]hese violations are widespread, systematic and well-coordinated and include but are not limited to arbitrary arrests, extortion, illegal detention, torture, killings and disappearances.”⁷⁵ The preliminary report concludes that “the Commission is gravely concerned that the Kenyan security forces continue to violate the law and provisions of the bill of rights with pernicious impunity in the ongoing crackdown against terrorism.”⁷⁶
45. The four case studies that follow illustrate the practice of enforced disappearances targeting people of Somali ethnicity in Kenya. Two of the case studies further suggest that individuals may be targeted based on their role as respected religious instructors in their community. The arrest of one of the individuals suggests that he was targeted for disappearance in part for his work as a human rights defender attempting to document enforced disappearances in the Somali community.

Hamza Muhamed Bare

46. On approximately March 8, 2015 Hamza Muhamed Bare was seized in the mobile phone shop where he works in Garissa.⁷⁷ Bare and a co-worker were in the shop when four men in plain clothes entered.⁷⁸ At first, the men appeared to be customers, pretending to be interested in purchasing mobile phones, but after a few minutes the men jumped over the counter, forcefully removing Bare from the store and placing him into their car.⁷⁹ One of the men was armed with a gun.⁸⁰ While removing Bare, one of the men yelled at the other people in the shop to clear the vicinity and leave the store.⁸¹ A video of shop surveillance camera footage corroborates this description of the abduction.⁸² Approximately three months ago, a member of parliament told Bare’s family that Bare is alive and currently

⁷⁴ Kenya National Commission on Human Rights (KNCHR), *The Error of Fighting Terror with Terror*, September 2015, available at <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last visited October 25, 2015).

⁷⁵ *Id.* at 6.

⁷⁶ *Id.* at 36.

⁷⁷ Interview with The Advocates for Human Rights, August 5, 2015, on file with The Advocates for Human Rights.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Video of surveillance camera footage, March 8, 2015, on file with The Advocates for Human Rights.

detained in a military camp.⁸³ The Advocates attempted to speak to this Member of Parliament but was unsuccessful. Bare's family has not heard from him since his abduction, despite efforts to find him.⁸⁴

47. The Kenya National Commission on Human Rights' recent report, "*The Error of Fighting Terror with Terror*," corroborates much of the above information about Bare's abduction.⁸⁵

Mahat Muhamed Dakane

48. Mahat Muhamed Dakane has been missing since approximately April 11, 2015.⁸⁶ Plain-clothed armed men took him into custody in front of the Quranic school where he worked in Garissa at approximately 11:00 am on that day.⁸⁷ The armed men forcefully tackled and handcuffed Dakane and then loaded him into the black Land Cruiser SUV they were driving.⁸⁸ He has not been seen or heard from since his abduction.⁸⁹ The Kenya National Commission on Human Rights is investigating Dakane's disappearance.⁹⁰
49. Approximately 11 days after Dakane's disappearance, unidentified armed men took Mahat Dakane's wife, Amav Abdullahi Sheik, from her home.⁹¹ One of the men was in a police officer's uniform, one was an ethnic Somali in plain clothes, and the other men were also in plain clothes. The men approached Sheik's, refused to identify themselves, forced Sheik to hand her infant child to a neighbor, and then forcibly handcuffed her, brought her into their car, and blindfolded her.⁹² The men brought her to what she perceived to be a cell, where a Somali-speaking man interrogated her.⁹³ The man asked her questions related to her husband and their clan affiliation, and then he examined her mobile phone for contact information.⁹⁴ He asked her whether she had her husband's telephone.⁹⁵ She was then driven for five or six hours to a new cell, where she spent approximately nine days, still blindfolded.⁹⁶ She shared a cell with another woman who was being beaten and tortured.⁹⁷ Sheik was transferred to another cell for 28 days, where she was no longer blindfolded.⁹⁸ There, Kenyan officials charged Sheik with possessing radical Muslim speeches and literature on her mobile phone.⁹⁹ Sheik was unaware of this information on her phone and

⁸³ Interview with The Advocates for Human Rights, August 5, 2015, on file with The Advocates for Human Rights.

⁸⁴ Id.

⁸⁵ Kenya National Commission on Human Rights (KNCHR), *The Error of Fighting Terror with Terror*, September 2015, at 21-22, available at <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last visited October 25, 2015).

⁸⁶ Interview with The Advocates for Human Rights, July 23, 2015, on file with The Advocates for Human Rights.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Kenya National Commission on Human Rights (KNCHR), *The Error of Fighting Terror with Terror*, September 2015, at 34, available at <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last visited October 25, 2015).

⁹¹ Interview with The Advocates for Human Rights, July 27, 2015, on file with The Advocates for Human Rights.

⁹² Id.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Id.

is not involved in radical Islamic activity.¹⁰⁰ Sheik is currently in Nairobi awaiting her next court appearance.¹⁰¹

Abdikadar Ahmad Anshur

50. Abdikadar Ahmad Anshur has been missing since approximately July 25, 2015.¹⁰² Anshur is a janitor at the Dadaab refugee camp, but he was arrested when he and his family were visiting Nairobi.¹⁰³ The arrest took place at a home the family was renting in Nairobi.¹⁰⁴ Two men in plain clothes approached the home and demanded that Anshur lie down, one pointing a gun at him.¹⁰⁵ The two men did not identify themselves as police, and witnesses at the scene were unwilling to provide more detail, fearing retaliation.¹⁰⁶ The two men took Anshur's mobile phone and demanded he produce identification.¹⁰⁷ Anshur has not been heard from since his arrest.¹⁰⁸ His family's efforts to locate him have been unsuccessful.¹⁰⁹

Abdirahman Ahmed Dakane

51. On August 22, 2015, Abdirahman Ahmed Dakane, the brother of Mahat Dakane, was arrested.¹¹⁰ Dakane had been assisting The Advocates throughout the fact-finding process for this report, and he was instrumental in acquiring the video evidence in Hamza Muhamed Bare's case (see paragraph 46 above).¹¹¹ The people who abducted Dakane mentioned his work with The Advocates during his abduction.¹¹² According to one source, Dakane was arrested at Dugsi School in Garissa where he works as a teacher.¹¹³ Teachers and students witnessed his arrest; men in plain clothes took Dakane, forced him into the car they were driving, and then drove away.¹¹⁴ Sources believe that he was arrested by the Anti-Terror Unit of the Kenyan Police and suspect that Dakane is being held in Nairobi.¹¹⁵ Dakane's relatives went to police stations in Garissa in an attempt to locate him, but were

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Interview with The Advocates for Human Rights, August 19, 2015, on file with The Advocates for Human Rights.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Interview #1 with The Advocates for Human Rights, August 25, 2015 on file with The Advocates for Human Rights; Interview #2 with The Advocates for Human Rights, August 25, 2015, on file with The Advocates for Human Rights.

¹¹¹ Interview #1 with The Advocates for Human Rights, August 25, 2015 on file with The Advocates for Human Rights.

¹¹² Interview #1 with The Advocates for Human Rights, August 25, 2015 on file with The Advocates for Human Rights; Interview #2 with The Advocates for Human Rights, August 25, 2015, on file with The Advocates for Human Rights.

¹¹³ Interview #2 with The Advocates for Human Rights, August 25, 2015, on file with The Advocates for Human Rights.

¹¹⁴ Id.

¹¹⁵ Interview #1 with The Advocates for Human Rights, August 25, 2015 on file with The Advocates for Human Rights; Interview #2 with The Advocates for Human Rights, August 25, 2015, on file with The Advocates for Human Rights.

unsuccessful.¹¹⁶ A relative provided additional detail about the arrest.¹¹⁷ She said that officers told Dakane that they had been listening to his phone calls with human rights attorneys from the United States.¹¹⁸ The officers said that they knew about the information Dakane had told the attorneys.¹¹⁹ They expressed great interest in the surveillance video showing Bare's arrest and demanded that Dakane give them the video.¹²⁰ This witness said that the men told Dakane that he was being arrested for cooperating with the enemy outside of Kenya, and that it was illegal for him to be communicating with human rights lawyers in the United States.¹²¹ She said that the men beat Dakane before forcing him into the car and driving away.¹²²

V. Conclusion

52. Enforced disappearances such as those described above violate international and domestic human rights standards, violating the ICCPR, United Nations General Assembly resolution 69/182, the United Nations Code for Law Enforcement Officials, The African Charter on Human and Peoples Rights, and the Kenyan Constitution.

Suggested questions

53. The Advocates offers the following suggested questions for the Kenyan Government:

- Under what legal authority are ethnic Somalis being arrested and detained in secret, without access to family members or an attorney?
- Under what legal authority are Kenyan officials authorized to conduct arrests while in plain clothes, without disclosing their identity or the basis for their authority to arrest? What is the reason for conducting arrests in such a manner?
- Where are the following individuals being detained and what are the charges against them: Hamza Muhamed Bare, Abdikadar Ahmad Anshur, Mahat Muhamed Dakane, Abdirahman Ahmed Dakane?
- What measures do Kenyan authorities take to ensure that individuals are not being arrested, detained, or otherwise profiled based on their religion or ethnicity?

Suggested recommendations

54. The Advocates suggests the following recommendations for the Kenyan Government:

- Fully implement all of the recommendations offered by the Kenya National Commission on Human Rights in its September 2015 report, "*The Error of Fighting Terror with Terror.*"¹²³

¹¹⁶ Interview #1 with The Advocates for Human Rights, August 25, 2015 on file with The Advocates for Human Rights.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

¹²² Id.

¹²³ Kenya National Commission on Human Rights (KNCHR), *The Error of Fighting Terror with Terror*, September 2015, at 39-40, available at

- Grant the Kenya National Commission on Human Rights full and unfettered access to all places of detention, including detention facilities under the control of the Kenya Defense Forces.
- Direct the Kenya Defense Forces, the Ministry of Interior, the National Intelligence Service, and the National Police Service to offer their full cooperation and assistance to the Kenya National Commission on Human Rights as it investigates reports of enforced disappearances and extrajudicial executions of Muslims and ethnic Somalis.
- Ensure that the Inspector General of Police, the Independent Policing Oversight Authority, and the military police fully investigate allegations of enforced disappearances and extrajudicial executions conducted by individuals under their respective mandates and ensure that those responsible are held accountable.
- Issue clear directives to all security personnel that arbitrary arrests, torture, and extrajudicial killings are illegal and will not be tolerated.
- Order the immediate release of all individuals who are being detained as a result of their efforts to report on human rights violations in Kenya.
- Immediately release or transfer to the general jail population any individuals who have been arrested and held in any secret detention facility, and ensure that those individuals are able to communicate freely with their family members and legal counsel.
- Immediately release any individual who has been detained without being timely charged for a specific criminal offense.
- Enforce existing laws regarding limits on detention before charge and before trial. In particular, require all places of detention to create and maintain systematic data on the date, time, and reason for incarceration of each individual being held, and require each facility to conduct weekly audits to determine whether individuals are being held unlawfully.
- Ensure that all detained individuals of Somali ethnicity are guaranteed their right to a prompt and fair trial, and that they are provided with legal counsel to defend them in court.
- Stop the targeting of people of Somali ethnicity, and ensure that all law enforcement and security officials who harass or target Somalis based on their ethnicity are held accountable.