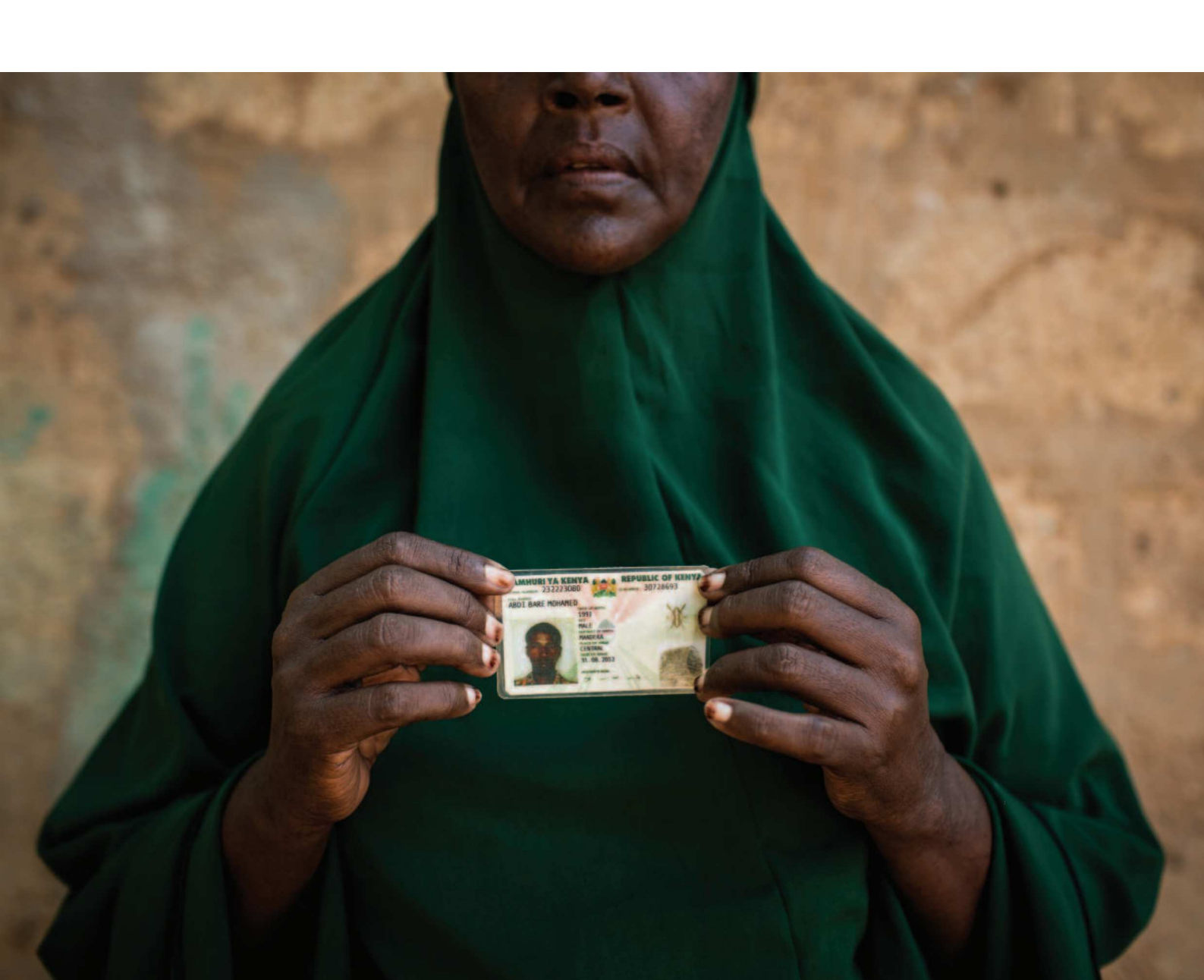




HUMAN  
RIGHTS  
WATCH

## DEATHS AND DISAPPEARANCES

Abuses in Counterterrorism Operations in Nairobi  
and in Northeastern Kenya



# **Deaths and Disappearances**

**Abuses in Counterterrorism Operations in Nairobi and in  
Northeastern Kenya**

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## Deaths and Disappearances

### Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya

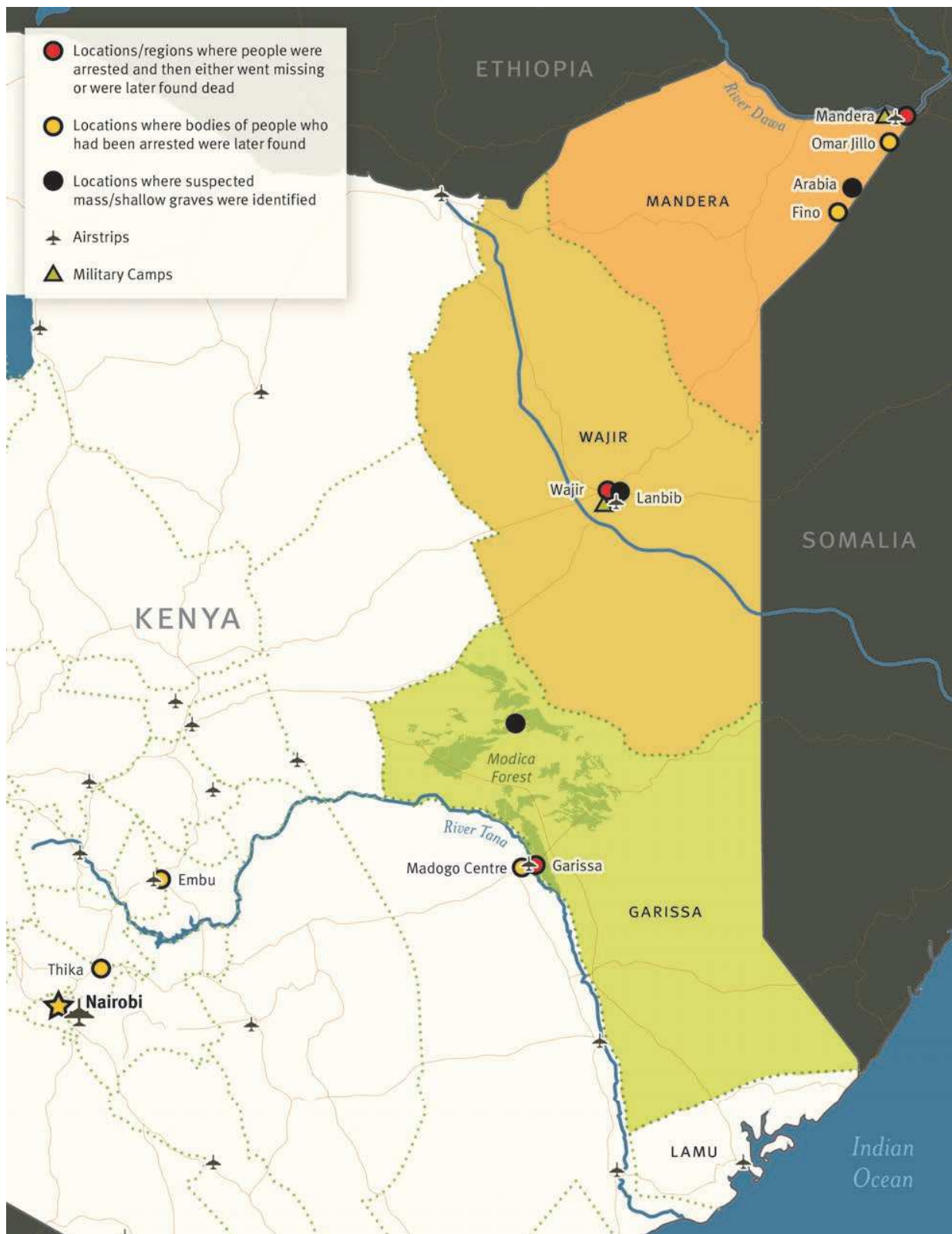
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## List of Acronyms and Abbreviations

|        |                                                                                                                                                                                                        |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AMISOM | African Union Mission to Somalia.                                                                                                                                                                      |
| AP     | Administration Police, one of the two branches of the Kenya Police Service initially used for administrative purposes by the defunct provincial administration but now largely deployed as VIP guards. |
| ATPU   | Anti-Terrorism Police Unit, a unit within the Directorate of Criminal Investigation with the primary function of countering terrorism.                                                                 |
| CID    | Criminal Investigation Department, a department of the Kenya Police Service, now known as Directorate of Criminal Investigation (DCI).                                                                 |
| CPF    | Counterterrorism Partnership Fund, a fund within the US Department of Defense for supporting counterterrorism.                                                                                         |
| DCI    | Directorate of Criminal Investigation (formerly CID), a department of the Kenya Police Service.                                                                                                        |
| DMI    | Directorate of Military Intelligence, a department of the Kenyan Defense Forces.                                                                                                                       |
| GSU    | General Service Unit, an anti-riot police unit with paramilitary training.                                                                                                                             |
| IMLU   | Independent Medico Legal Unit, a Kenyan nongovernmental organization.                                                                                                                                  |
| IPOA   | Independent Policing Oversight Authority, a civilian police accountability mechanism established by an act of parliament.                                                                              |
| KDF    | Kenya Defense Forces, the Kenyan military.                                                                                                                                                             |

|       |                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| KNCHR | Kenya National Commission on Human Rights, a statutory body that is government-funded and has a mandate to monitor and investigate human rights abuses throughout Kenya.                                                                                                                                                                                                                                |
| KPR   | Kenya Police Reservists, also known as National Police Reservists under the 2010 constitution, Kenyan reserve police recruited on two year contracts to support police in specific regions. They were called Home Guards in the colonial era.                                                                                                                                                           |
| KPS   | Kenya Police Service, the Kenyan police comprised of the administration police and the regular police.                                                                                                                                                                                                                                                                                                  |
| KWS   | Kenya Wildlife Service, a statutory body charged with conserving and protecting Kenya's wildlife resources.                                                                                                                                                                                                                                                                                             |
| NCTC  | National Counter Terrorism Council, a statutory Kenyan multi-agency organ created in 2014 to coordinate counterterrorism efforts countrywide.                                                                                                                                                                                                                                                           |
| NIS   | National Intelligence Service, a department of the Kenya Police Service that is responsible for intelligence gathering, but it is not directly answerable to the Inspector General of Police (IGP). NIS is answerable to the president with oversight by parliament.                                                                                                                                    |
| NSC   | National Security Council, the most senior security organ in Kenya, responsible for national security policy and strategy, chaired by the president.                                                                                                                                                                                                                                                    |
| OB    | Occurrence Book, an official register book in each police station where officers record what occurs, including the arrests made during the hours they are on duty. Any arrests or pending charges against someone held in the police jail is required by law to be recorded in the OB. It is also an official record of complaints made to police which require police follow-up action. By law, an "OB |

number” is supposed to be issued for each complaint filed with police.

|      |                                                                                                  |
|------|--------------------------------------------------------------------------------------------------|
| OCS  | Officer Commanding Station, officer in charge of a police station.                               |
| RBPU | Rural Border Patrol Unit, a unit of the Administration Police deployed to patrol Kenyan borders. |
| RDU  | Rapid Deployment Unit, a unit of the Administration Police for rapid response to hot spots.      |

## Summary

No one here reports to police because they fear for their lives. . . . There are people who have been missing for more than nine months. Some are taken for a few weeks or days for questioning and then returned, so it is a situation that disturbs every Wajir resident. People fear and keep asking themselves who the next victim will be.

-Wajir resident, October 22, 2015

On June 29, 2015, three men went to the home of 45-year-old Farah Ibrahim Korio, an ethnic Somali Kenyan and teacher of Islamic education in Wajir, northeastern Kenya. When they did not find him, they threatened to arrest his wife and five children if they did not disclose his whereabouts. The men had no uniforms that could have identified them as police men, neither did they reveal their identity nor divulge why they were looking for Farah. They then arrested and whisked away the shopkeeper at a nearby shop, mistaking him for Farah, but dumped him on the road miles away when they realized their error. The men later directed the area chief to find Farah for them.

When Farah learned that some unknown people were looking for him, he reported the matter at the Wajir police station. When his family approached Wajir county police commander on his whereabouts, he said he did not have any categorical information about who was looking for Farah, as there were many officers from different Kenyan security agencies in Wajir, many of whom were not under his command, including the police's anti-terrorism unit (ATPU), military intelligence and administration police.

Farah agreed to meet the area chief at Wajir police station the next day and shortly after arriving, and within minutes of the area chief's arrival at the station, the same three men drove into the police compound, according to witnesses. A uniformed police officer told some of Farah's family members that the three men were military intelligence officers. The family briefly went to pray just outside the police station as the officers talked to Farah. That was the last time Farah's family saw him.



Back at the police station, the police informed them that the three officers had taken Farah to the ATPU offices nearby. The ATPU denied to the family having seen him and suggested that he might be in Wajir military camp.

Farah's family has been searching for him for over a year. He is one of at least 34 people, including two women, according to Human Rights Watch research, taken into custody by security forces during counterterrorism operations in northeastern Kenya between 2013 and 2015, whose whereabouts remain unknown. Families of those missing have searched detention facilities far and wide, sought help from political and religious leaders, complained to the state-funded Kenya National Commission on Human Rights and in some cases, boldly taken to social media in attempts to locate their loved ones. Kenya authorities have denied knowledge of the missing people, failed to acknowledge credible evidence of abuses during counterterrorism operations, failed to investigate the allegations and in some instances, intimidate and harass those seeking information and accountability.

Human Rights Watch believes that these 34 people are victims of enforced disappearance, defined in international law as any deprivation of liberty by state agents followed by the state's refusal to acknowledge the detention or concealing of the fate or whereabouts of the person. In addition, bodies of at least 11 people previously arrested by state agents have been found in the last two years, in some instances far from the location of their arrest. As far as Human Rights Watch is aware, police have not meaningfully investigated these deaths. A body was exhumed in Mandera in December 2015 at the initiative of area leaders and nongovernmental organizations and even then, there has been no inquest, as required by Kenyan law.

Witness statements suggest the 34 believed to have been disappeared and the 11 killed, predominantly ethnic Somali Kenyans, may have been under investigation for alleged links to or knowledge of Al-Shabab, the Somalia-based Islamist armed group. The group has carried out numerous deadly attacks on civilians in Kenya in recent years, including the brutal killing of at least 142 students at Garissa University in Garissa county, northeastern Kenya in April 2015. Such attacks are criminal and unjustifiable at all times, regardless of motivation.

Governments have a duty under international human rights law to take all reasonable steps to protect people within their jurisdictions from acts of violence. Governments also

have a duty to ensure that alleged abuses by security forces result in impartial investigations into abuses by security forces, which identify those responsible, and suspects are prosecuted before independent courts. Under international law, all suspects, including those linked to terrorism, are supposed to receive due process. These obligations require ensuring fairness and due process in investigations and prosecutions, as well as humane treatment of those in custody.

This report documents abuses involving law enforcement agencies related to operations aimed at thwarting the threat posed by Al-Shabab in counties in northeastern Kenya between December 2013 and December 2015.

Contrary to Kenya's obligations under international human rights law, the operations of security agencies have sometimes, been marked by killings, enforced disappearances, torture and arbitrary arrests of ethnic Somali Kenyans.

For this report, Human Rights Watch interviewed over 117 people in Garissa county in September, Wajir county in October and Mandera county in December 2015, as well as Nairobi in July and November 2015 and January 2016, and spoke to victims of arbitrary arrests, illegal detentions and mistreatment, witnesses to arrests and raids, security officials, including KDF and police officers with inside knowledge of the operations, political leaders in the national and county government, human rights defenders, clerics and journalists.

This report documents how security officers from various units raided homes and compounds, business premises and schools to arrest individuals and conduct searches, sometimes in the middle of the night. Some of those arrested have never been seen again. The security officers who carried out arrests or searches documented in this report were, in most cases, not uniformed and did not have identification insignia and failed to identify themselves, making it difficult for families to trace their relatives or seek justice. In some cases, security officers wore balaclavas or masks during arrests and, in a majority of cases they blindfolded those they detained for long periods, further compounding problems of identifying units or individual officers.

Relatives and friends of victims believed the individuals behind these operations are Kenyan security forces because in a few instances, they wore uniforms associated with

Kenyan security – either police or military – while in others, even when they were not uniformed, they carried identity cards from either police or military or drove vehicles with official government insignia. In a few cases documented by Human Rights Watch, arresting officers were spotted driving with arrestees into police stations or military bases/camps. The targets of these operations are most often males between 20 and 40 years old and some are either imams or Islamic education teachers (also locally known as *dugsior duksi* in Somali) and their students, or have some responsibilities in their local mosques.

In all of the cases documented in this report, families of those arrested and witnesses of operations said that security officers did not present a search or arrest warrant. Although Kenya's Criminal Procedure Act provides for arrest without a warrant, it requires police to bring any such suspect to court within 24 hours. Officers have regularly failed to present suspects in court in a timely way during the ongoing law enforcement operations in the northeast.

Families have sought in vain for information regarding the whereabouts of those arrested. In some cases, families have filed habeas corpus petitions, seeking a court order to compel the state to provide information. Each time, even where there is a court order, officials have denied any knowledge of the detainees' whereabouts.

In the course of research, Human Rights Watch wrote letters to the Kenyan police, military, wildlife service, and each agencies' respective ministers, querying the whereabouts and well-being of those who had been arrested and providing approximate dates and locations of where each person was last seen. The wildlife service replied and denied any knowledge of the arrestees. No other government official responded to the queries.

Past research by Human Rights Watch and Kenyan human rights non-governmental organizations over the past four years has implicated the ATPU and Kenya's anti-riot police, known as the General Service Unit (GSU), in killings and disappearances in Nairobi and at the Kenyan coast. Since Al-Shabab attacks escalated in late 2014 in the northeastern region, officers from numerous security units – the Kenya Defense Forces, Kenya police, National Intelligence Service and Kenya Wildlife Service (KWS) rangers – have deployed their forces in the region. Journalists and local politicians have raised numerous allegations of enforced disappearances, killings, arbitrary arrests, and unidentified bodies found in shallow graves, according to media reports and witness accounts.

The Kenyan government should urgently address allegations of abuses in counterterrorism operations, provide information regarding the identities, and whereabouts of people arrested in these operations, and ensure basic due process rights for all individuals arrested or currently in custody.

Kenya should comply with the provisions of its own constitution and fulfil its obligations under international human rights law. The government should ensure that the law is followed during all operations and that members of the military and Kenya Wildlife Service, who have no legal mandate to make arrests, do not arrest and detain people. The government also should ensure that all those arrested by police are properly registered in police records and detained in police stations, not in military facilities or the bush as has sometimes occurred.

President Uhuru Kenyatta should publicly acknowledge the scope and gravity of the numerous allegations and condemn any such abuses by security forces. He should direct security forces to comply with international human rights law, end enforced disappearances, extrajudicial killings and torture, and direct the security agencies and prosecutors to take all necessary steps to hold those responsible to account. Furthermore, he should establish an independent and credible multi-agency commission to investigate and report on the scope of abuses in counterterrorism operations country-wide.

Despite numerous reports of serious abuses from diverse sources over several years, Kenya remains a critical partner in counterterrorism efforts in East Africa, and the recipient of significant donor assistance from the United States, the United Kingdom and to a lesser extent, the European Union, among others. Human Rights Watch urges Kenya's international partners to publicly denounce these abuses, call for investigations and accountability, and to ensure any support to Kenya's security forces – including training, logistics, and other material support – does not go to units or commanders implicated in enforced disappearances, extrajudicial killings or torture. Donors should consistently press for credible investigations and prosecutions of perpetrators, and consider providing forensic support for such investigations.

## **Key Recommendations**

### **To the President of Kenya**

- Direct security forces to end enforced disappearances, torture, extrajudicial killings and arbitrary arrests of suspects. Direct relevant officers and prosecutors to take all necessary steps to investigate allegations of abuse and hold those criminally responsible to account.
- Urgently establish an independent and credible multiagency commission to investigate and regularly report on the ongoing cases of enforced disappearances, extrajudicial killings and torture in northeastern Kenya and other parts of Kenya.
- Appoint someone of high-standing with demonstrable commitment to human rights and rule of law to serve as the focal point of information for families searching for their relatives.

### **To the Security Forces**

- Urgently provide information on the whereabouts of the disappeared people. Promptly charge those against whom there is credible evidence, in proceedings that adhere to international due-process standards, and release all others, providing compensation to those unlawfully detained.
- Ensure that anyone detained in Kenya, including those suspected of links to Al-Shabab, are detained in compliance with Kenyan law, including being held in officially gazetted places of detention, are brought promptly before a judge, and are provided prompt access to legal counsel and family members.

### **To Kenya's Parliament**

- Hold a debate on the abuses by security forces in the northeastern region and other parts of the country with the view to adopting a motion to compel the Kenyan government to establish an independent, impartial, multiagency commission of inquiry to investigate the abuses.

- Initiate a parliamentary commission of inquiry into the abuses in the northeast either to complement investigations by the independent commission to be established by the Executive or serve as an alternative in the event that the Executive fails to initiate credible investigations.

### **To the United States, United Kingdom and European Union**

- Publicly denounce human rights abuses in Kenya as and when information is available and underscore the importance of respect for human rights as a requirement of working with the Kenyan security forces.
- Ensure that any support to Kenya's security forces – including training, logistics, and other material support – does not go to units or commanders implicated in torture, enforced disappearances and extrajudicial killings.

## Methodology

This report is based on Human Rights Watch research in Nairobi, Garissa, Wajir and Mandera counties in northeastern Kenya – all counties in which community members had raised concerns about the whereabouts of people who had been arrested in law enforcement operations. Researchers visited and conducted interviews in villages and towns in Garissa for two weeks in September 2015, in Wajir for one week in October 2015, and in Mandera for two days in December 2015. Follow-up interviews with victims, witnesses, national government officials, members of the diplomatic community, human rights defenders, Somali community leaders and political leaders took place in Nairobi between July 2015 and March 2016. Most interviews were conducted in person but some were carried out by telephone.

Human Rights Watch interviewed 117 people in total, of whom 53 described themselves as victims of arbitrary arrests, illegal detentions and mistreatment and who witnessed others similarly treated while in detention. Six victims provided credible statements that they were tortured in military camps and bases, which was further corroborated by both physical evidence and other witnesses.

We also interviewed nine security officials, including Kenyan Defense Forces and police officers with inside knowledge of counterterrorism operations, eight political leaders at both national and county government level, 11 human rights defenders who have been involved in the search for the victims or have documented abuses, six clerics, and four journalists who have investigated cases of disappearances and killings in northeastern Kenya. Some of the cases investigated further corroborate those documented by the state-funded Kenya National Commission on Human Rights (KNCHR) in their report “The Error of Fighting Terror with Terror” published in September 2015.

Human Rights Watch has withheld the identities of the interviewees in order to protect them from possible reprisals by Al-Shabab and Kenyan security agencies or officials. Where necessary, names have been withheld or replaced by randomized initials in order to protect identities. All interviews with victims and witnesses were conducted confidentially, in safe locations away from their homes or communities, in English, Swahili or Somali, with the aid of interpreters where necessary. Interviews with police, KDF, Kenya Wildlife

Service (KWS) and other government officials were conducted in English, either in person or through a questionnaire mailed to the relevant officials. The identities of some KDF and police officers who were interviewed have been concealed for security reasons, in most cases at the request of the interviewees. No compensation for interviews was requested and none was provided. The victims of abuses discussed in this report who are ethnic Somali Kenyans are identified by their first names, in line with the Somali naming tradition.

Human Rights Watch received allegations of more than 100 cases of killings and enforced disappearances in the three counties. In many cases, Human Rights Watch could not fully corroborate the allegations due to several factors, including challenges in accessing remote parts of the region, security concerns, difficulties in tracing individuals with specific first-hand information of events, and a pervasive fear of reprisals which limited the number of people willing to be interviewed. Human Rights Watch omitted any case in which there was only a single source of information. The list of individuals contained in this report (see Annex 1) includes only those for whom there were multiple sources of information and corroboration.

On March 24, 2016, Human Rights Watch wrote to the Inspector General of Police, the Chief of Kenya Defense Forces and the Director General of the Kenya Wildlife Service setting out preliminary research findings and requesting information on the wide range of human rights concerns contained in this report, including the whereabouts of detainees (see Annex 2). At time of writing, we have not received a response from the officials of the Kenya Police Service and Kenya Defense Force. The relevant officials from the two agencies also did not reply to our request for in-person meetings to discuss the findings. KWS director general Kitili Mbathi responded on June 28, 2016. He noted that while Kenyan law allows KWS to carry out law enforcement operations alongside other security agencies, it has restricted its work to anti-poaching and has no knowledge of whereabouts of the people alleged to have been arrested by his officials (see Annex 3). Some names and dates as listed in letters from Human Rights Watch to government actors have been edited in this report at the chart in annex 1 to ensure accuracy in spelling.

On April 27, 2016, Human Rights Watch wrote follow-up letters to the cabinet secretary for Interior and National Coordination who oversees police, the cabinet secretary for Defense, who oversees the military and the cabinet secretary for Environment, Natural Resources and Regional Development Authorities, who oversees the Kenya Wildlife Service (see



Annex 4), urging a response to the research queries and re-stating Human Rights Watch's desire and willingness to discuss the cases of concern. At time of writing, we have not received a response from any of the cabinet secretaries.

# I. Background

## Kenya's military role in Somalia

On October 15, 2011, Kenya sent troops across the border to pursue the Somalia-based Islamist armed group Al-Shabab, which Kenyan authorities blamed for a spate of kidnappings of mostly foreign tourists and aid workers along the Indian Ocean coast and in Dadaab refugee camp.<sup>1</sup> Even though Kenyan authorities cited the kidnappings in 2011 as the motive for the deployment to Somalia, Al-Shabab's activities had long generated security concerns.<sup>2</sup>

Between 2009 and 2011, gun and grenade attacks in Kenya's capital, Nairobi, at the coast, and in the northeastern region – which Kenyan authorities blamed on Al-Shabab – killed or injured scores of people, including security officers.<sup>3</sup> The deployment of Kenyan military forces to Somalia triggered warnings from Al-Shabab that it would begin waging attacks inside Kenya in retaliation for what it considered an act of aggression by an “occupation

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<sup>1</sup> Daniel Howden, “Kenya sends in troops to Somalia in pursuit of Al-Shabab militants,” *Independent*, October 16, 2011, <http://www.independent.co.uk/news/world/africa/kenya-sends-in-troops-to-somalia-in-pursuit-of-al-shabaab-militants-2371620.html> (last accessed May 26, 2016).

<sup>2</sup> Robert Reich, “Kenya Aid Workers Kidnapping: Country Will Track Al-Shabab in Somalia,” *Huffington Post*, October 15, 2011 [http://www.huffingtonpost.com/2011/10/15/kenya-aid-workers-kidnapping\\_n\\_1012696.html](http://www.huffingtonpost.com/2011/10/15/kenya-aid-workers-kidnapping_n_1012696.html) (last accessed May 26, 2016).

<sup>3</sup> “Israel – Kenya deal to help fight Somalia's Al-Shabab,” *BBC*, November 14, 2011 <http://www.bbc.com/news/world-africa-15725632>. “Why Am I Still Here? The 2007 Horn of Africa Renditions and the Fate of Those Still Missing,” Human Rights Watch, October 2008. <https://www.hrw.org/sites/default/files/reports/eastafrica1008web.pdf> (last accessed May 26, 2016).

force.”<sup>4</sup> Mandera and Garissa counties, the coastal counties of Lamu and Mombasa, and Nairobi, are some of the regions most affected by the attacks blamed largely on Al-Shabab.<sup>5</sup>

Kenyan troops are now part of the African Union mission, known as AMISOM, aimed at uprooting Al-Shabab and propping up the embattled Somalia government which has been in power since 2012.<sup>6</sup> Five years after Kenya entered Somalia, Al-Shabab continues to control significant swathes of territory inside Somalia, and to carry out deadly attacks throughout Somalia and inside Kenya.

## Al-Shabab Attacks in Kenya and Kenya’s Response

In recent years, Al-Shabab has launched a number of high profile attacks in Kenya, and publicly claimed responsibility for them.<sup>7</sup> In September 2013, for example, in an attack on the upmarket Westgate mall in Nairobi, Al-Shabab militants killed at least 67 people and injured hundreds of others.<sup>8</sup> This was followed by another high-profile attack at the

---

<sup>4</sup> Even before Kenyan forces entered Somalia in late 2011, Kenya was known to be supporting at least two Somali militia groups fighting Al-Shabab for territory in southern Somalia. The proxy war across the border did not appear to be as effective as had been projected, especially with gun and grenade attacks on the rise inside Kenya and other neighboring countries. Kenyan leaders increasingly came under local and international pressure to help curb cross-border activities of Al-Shabab to improve security. In June 2014, for example, following Al-Shabab’s attack on Mpeketoni Centre in the coastal town of Lamu, Al-Shabab officially declared Kenya a “war zone” and warned about the “Kenyan military’s continued invasion and occupation of our Muslim lands and the massacre of innocent Muslims in Somalia. To the tourists visiting Kenya we say this: Kenya is now officially a war zone and as such any tourists visiting the country do so at their own peril.” Athman Omar, Zoe Flood and David Smith, “Kenya is a war zone, warns Al-Shabab after Somali Islamists massacre 48,” *Guardian*, June 16, 2014 <http://www.theguardian.com/world/2014/jun/16/kenya-war-zone-alshabaab-islamist-militants-massacre> accessed May 26, 2016).

<sup>5</sup> “Terrorist Attacks in Kenya Reveal Domestic Radicalisation,” Combating Terrorism Centre, US Military Academy, October 29, 2012, <https://www.ctc.usma.edu/posts/terrorist-attacks-in-kenya-reveal-domestic-radicalization> (last accessed May 26, 2016).

<sup>6</sup> In 2007, the African Union Peace and Security Council deployed a regional peace support force to Somalia mandated by the UN Security Council and supported by the AU’s Peace and Security Operations Division to provide protection for Somali government officials and infrastructure and contribute to the secure delivery of humanitarian assistance. Since then, AMISOM’s mandate, size, and geographical presence have all steadily increased. See UN Security Council, Resolution 1744 (2007), S/RES/1744 (2007), <http://www.un.org/News/Press/docs/2007/sc8960.doc.htm> (last accessed May 26, 2016), and Trevor Analo, “Somalia: To Leave KDF in Somalia or Not? That is the question but all agree on the terror threat,” *East African*, September 7, 2015 <http://allafrica.com/stories/201509071727.html> (last accessed May 26, 2016).

<sup>7</sup> Paul Cruickshank, “Al-Shabab breaks new ground with complex Nairobi attack,” *CNN*, September 23, 2013. <http://edition.cnn.com/2013/09/22/world/meast/kenya-mall-al-shabaab-analysis/> (accessed May 26, 2016). See also, Brigitte Rohwerder, “Conflict Analysis of Kenya,” University of Birmingham, May 2015. <http://www.gsdrc.org/wp-content/uploads/2015/12/KenyaConflictAnalysis.pdf> (last accessed May 26, 2016).

<sup>8</sup> Daniel Howden, “Terror in Nairobi: The full story behind Al-Shabab’s mall attack,” *The Guardian*, October 4, 2013 <http://www.theguardian.com/world/2013/oct/04/westgate-mall-attacks-kenya> (last accessed May 26, 2016).

Kenyan coast that started with a night raid on Mpeketoni centre, Lamu county, on June 14, 2014 in which at least 48 were killed.<sup>9</sup> Over the subsequent six weeks there were other attacks in Lamu county and neighboring Tana River county in which Al-Shabab killed at least 87 people. Government forces were seemingly unable to respond effectively to protect residents.<sup>10</sup>

In November 2014, an Al-Shabab attack on a bus killed 28 people in Mandera.<sup>11</sup> The following month, the group attacked quarry workers in Mandera town, killing 36, all of them non-Muslims and non-locals.<sup>12</sup> In April 2015, Al-Shabab launched its most lethal attack yet, in a dawn massacre on Garissa University College in northeastern Kenya, killing 147 people, including at least 142 students.<sup>13</sup> Since then, Al-Shabab has claimed responsibility for sporadic attacks in Lamu and Mandera.<sup>14</sup>

On June 14, 2015, the Kenyan military claimed it killed 11 Al-Shabab fighters after an attempted attack on a military base in Lamu county during which at least two Kenyan soldiers were also killed.<sup>15</sup> On July 7, 2015, suspected Al-Shabab fighters attacked and

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<sup>9</sup> Al-Shabab ordered residents of Mpeketoni to cite an Islamic creed as proof they were Muslim and killed those who failed to recite it.

<sup>10</sup> "Kenya attack: Mpeketoni near Lamu hit by Al-Shabab raid," *BBC*, June 16, 2014 <http://www.bbc.com/news/world-africa-27862510> (last accessed May 26, 2016). "Insult To Injury: The 2014 Lamu and Tana River Attacks and Kenya's Abusive Response," Human Rights Watch and Kenya Human Rights Commission, June 15, 2015. <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response> (last accessed July 6, 2016). "IPOA Report Following Mpeketoni Attacks," Redacted Version, section 5.o.7, Independent Policing Oversight Authority, September 2014 <http://reliefweb.int/sites/reliefweb.int/files/resources/MpeketoniAttackMonitoringReport.pdf> (last accessed July 6, 2016).

<sup>11</sup> "Al-Shabab massacres 28 Kenya bus passengers," *Al Jazeera*, November 23, 2014 <http://www.aljazeera.com/news/africa/2014/11/killed-kenya-bus-attack-201411226446296802.html> (last accessed May 26, 2016).

<sup>12</sup> "Gunmen kill 36 quarry workers," *Deutchweller News*, December 2, 2014 <http://www.dw.com/en/gunmen-kill-36-kenya-quarry-workers/a-18105000> (last accessed May 26, 2016).

<sup>13</sup> Jessica Hatcher and Kevin Sief, "Al-Shabab attacks Kenyan University, killing at least 147," *Washington Post*, April 2, 2015 [https://www.washingtonpost.com/world/africa/70-killed-hundreds-rescued-after-kenya-university-attack-by-al-shabab-militants/2015/04/02/oc554516-d951-11e4-ba28-f2a685dc7f89\\_story.html](https://www.washingtonpost.com/world/africa/70-killed-hundreds-rescued-after-kenya-university-attack-by-al-shabab-militants/2015/04/02/oc554516-d951-11e4-ba28-f2a685dc7f89_story.html) (last accessed May 26, 2016).

<sup>14</sup> "Al-Shabab massacres 28 Kenyan bus passengers," *Al Jazeera*, November 23, 2014 <http://www.aljazeera.com/news/africa/2014/11/killed-kenya-bus-attack-201411226446296802.html>; See also "Kenya attack: Gunmen kill at least 48 people," *The Guardian*, June 16, 2014. <http://www.theguardian.com/world/2014/jun/16/kenya-attack-gunmen-kill-48-mpeketoni> (last accessed May 26, 2016); See also, "Al-Shabab militants claim responsibility for Garissa University attack," *Daily Nation*, April 2, 2015. <http://www.nation.co.ke/counties/-Garissa-University-attack-Shabaab/-/1107872/2673832/-/dwvrhdz/-/index.html>.

<sup>15</sup> Joseph Akwiri, "Somali Islamists Attack Kenya Military Base, 11 Militants, Two Soldiers Dead," *Reuters*, June 14, 2014. <http://www.reuters.com/article/us-kenya-attack-idUSKBN0OUoD420150614> (Last accessed July 11, 2016); See also Joseph

killed 14 people believed to be quarry workers in Mandera. The 14 were killed at night in their houses just next to Mandera military camp.<sup>16</sup>

Al-Shabab militants often singled out victims, at least in Kenya, based on religion, killing those who could not recite *shahada*,<sup>17</sup> the Islamic creed, in what was seen by some political and security analysts as Al-Shabab's attempt to stoke religious tensions in Kenya.<sup>18</sup>

When claiming responsibility for these attacks, Al-Shabab leadership in press statements or via social media often cited the presence of Kenyan troops in Somalia and threatened to launch further attacks inside Kenya if the country failed to withdraw its military from Somalia.<sup>19</sup> During the Westgate attacks, for example, Al-Shabab operatives stated on Twitter that “[f]or long we have waged war against the Kenyans in our land, now it’s time to shift the battleground and take the war to their land.”<sup>20</sup>

In most cases, alleged Al-Shabab attackers who were killed during attacks were later identified as being neither Somali Kenyans nor Somali nationals.<sup>21</sup> Some alleged

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Muraya, “Al-Shabab dares attack on Lamu KDF base, 11 killed,” Capital news, June 14, 2015 (last accessed July 11, 2016). <http://www.capitalfm.co.ke/news/2015/06/al-shabaab-dares-attack-on-lamu-kdf-base-11-killed/>.

<sup>16</sup> “Kenya: Al-Shabab kills Quarry Workers in Mandera Gun Attack,” BBC, July 7, 2015 <http://www.bbc.com/news/world-africa-33421902> (last accessed May 26, 2016).

<sup>17</sup> See Berkley Center for Religion, Peace and World Affairs, “Shahada” <https://berkleycenter.georgetown.edu/essays/shahada> (last accessed May 26, 2016).

<sup>18</sup> “Kenya: Al-Shabab-Closer to Home,” *International Crisis Group*, September 25, 2014. [http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/kenya/b102-kenya-al-shabaab-closer-to-home.pdf](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/kenya/b102-kenya-al-shabaab-closer-to-home.pdf) (last accessed May 26, 2016).

<sup>19</sup> “Kenya: Al-Shabab Kills Quarry Workers in Mandera Gun Attack,” BBC, July 7, 2015 <http://www.bbc.com/news/world-africa-33421902>. <http://www.nytimes.com/2013/09/24/world/africa/kenya-shabab-assault-against-militants-in-mall.html> and others (last accessed May 2016). See also Mohamed Yusuf, “Al-Shabab Vows to Fight Inside Kenya,” VOA, May 22, 2014. <http://www.voanews.com/content/al-shabab-vows-to-fight-inside-kenya/1920198.html> (last accessed May 26, 2016).

<sup>20</sup> “Al-Shabab Vows to Take war to Kenya,” IGIHE, May 2014. [http://en.igihe.com/spip.php?page=mv2\\_article&id\\_article=14562](http://en.igihe.com/spip.php?page=mv2_article&id_article=14562). See also <http://www.pbs.org/newshour/extra/2013/09/attack-nairobi-highlights-ongoing-conflict-east-africa/> (last accessed May 26, 2016).

<sup>21</sup> “One of the Al-Shabab attackers in Garissa University was a brilliant upcoming lawyer,” *Sahan Journal*, April 5, 2015. <http://sahanjournal.com/one-al-shabaab-attackers-garissa-university-brilliant-upcoming-lawyer/#.Vok8xE32bIU> (last accessed May 26, 2016).

“masterminds” of attacks in Kenya, such as Somali national Adan Garar, have reportedly been killed in US drone strikes in Somalia.<sup>22</sup>

Kenya has responded to attacks with abusive and discriminatory operations targeting Somali refugees, ethnic Somali Kenyans and Muslims.<sup>23</sup> Kenyan authorities have publicly blamed refugees, and in most cases targeted Somali Kenyans and Muslims in law enforcement operations. However, those arrested for some of the attacks include non-Somali Kenyans and in a few cases, non-Kenyans.<sup>24</sup> To some extent, Al-Shabab has been able to exploit local grievances in Kenya, including the government’s discriminatory law enforcement operations, to propagate its agenda and justify its attacks. The government has announced that Dadaab refugee camp,<sup>25</sup> which is currently home to over 300,000 Somali refugees, will be closed later this year, a move that Kenyan human rights organizations have said was not only unlawful but counterproductive to Kenya’s security.<sup>26</sup>

Human Rights Watch and Kenyan human rights organizations have over the years documented the Kenyan government’s abusive counterterrorism operations. In late 2013, Muslims for Human Rights and Open Society Justice Initiative documented several cases of

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<sup>22</sup> Helene Cooper, “Pentagon Confirms Strike Killed Shabab militant leader in Somalia,” *New York Times*, March 18, 2015. [http://www.nytimes.com/2015/03/19/us/politics/pentagon-confirms-strike-killed-shabab-militant-leader-in-somalia.html?\\_r=0](http://www.nytimes.com/2015/03/19/us/politics/pentagon-confirms-strike-killed-shabab-militant-leader-in-somalia.html?_r=0) (last accessed May 26, 2016).

<sup>23</sup> “Flavie Halais, “Nairobi’s solution to terrorism: Blame the Somalis,” Open Security: Conflict and Peace Building, April 17, 2014. <https://www.opendemocracy.net/opensecurity/flavie-halais/nairobis-solution-to-terrorism-blame-somalis> (last accessed May 29, 2016). See also, Malkhadir Muhumed, Cracking down on Nairobi’s Somalis,” *Al Jazeera*, April 22, 2014. <http://www.aljazeera.com/indepth/features/2014/04/cracking-down-nairobi-somalis-201442012628685801.html> (last accessed May 26, 2016). George Okore, “Kenyan Security Forces Accused of Stoking Tensions,” *IWPR*, May 12, 2014. <https://iwpr.net/global-voices/kenyan-security-forces-accused-stoking-tensions> (last accessed May 26, 2016). “Kenya: End Abusive Round –Ups,” Human Rights Watch news release, May 12, 2014. <https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups>.

<sup>24</sup> Ralph Ellis, Ben Brumfield and Christian Purefoy, “Five arrested in deadly attack on Kenyan college,” *CNN*, April 3, 2015. <http://edition.cnn.com/2015/04/03/africa/kenya-garissa-university-attack/>. See also, “Five more held in deadly Westgate mall attack on Kenya,” *CNN*, October 30, 2013. <http://edition.cnn.com/2013/10/30/world/africa/kenya-mall-attack/> (last accessed May 26, 2016).

<sup>25</sup> “UN Concerned by Kenyan threat to close refugee camps,” *Reuters*, May 9, 2016. <http://af.reuters.com/article/topNews/idAFKCN0Y01WC> (last accessed May 26, 2016).

<sup>26</sup> Paul Wafula, “Kenya has experienced 100 terror related attacks in three years,” *The Standard*, August 18, 2014. <http://www.standardmedia.co.ke/article/2000131848/kenya-has-experienced-100-terror-related-attacks-in-three-years> (last accessed April 12, 2016). Adow Mohamed, “Why Kenya’s Counter Terrorism Strategy is Failing,” *The Star*, September 16, 2015. [http://www.the-star.co.ke/news/2015/09/16/why-kenyas-counter-terrorism-strategy-is-failing\\_c1180658](http://www.the-star.co.ke/news/2015/09/16/why-kenyas-counter-terrorism-strategy-is-failing_c1180658). Nanjala Nyabola, “Closing Dadaab,” The Rift Valley Institute, 2015. <http://riftvalley.net/publication/closing-dadaab#.V2gXtE32bIU> (Last accessed June 20, 2016); Africa Focus, “Kenya: Refugee Crackdown Counterproductive,” March 19, 2014. <http://allafrica.com/stories/201405210995.html> (last accessed June 20, 2016).

enforced disappearances and extrajudicial killings of Muslim clerics and youth at the Kenyan coastal city of Mombasa by the Anti-Terrorism Police Unit (ATPU).<sup>27</sup> In August 2014 Human Rights Watch reported on at least ten cases of enforced disappearances and another ten cases of extrajudicial killings by the ATPU in Nairobi's Majengo neighborhood.<sup>28</sup>

In April 2014, Kenyan security forces launched "Usalama Watch," which according to then Interior Minister Joseph Ole Lenku, was an operation involving a 6,000 strong police contingent deployed to Nairobi's Eastleigh neighborhood to arrest foreign nationals who were in the country unlawfully and anyone suspected of terrorist links.<sup>29</sup> The operation largely targeted Somalis and ethnic Somali Kenyans but also Ethiopians, South Sudanese, and Kenyan Muslim populations in Nairobi's Eastleigh and "South C" neighborhoods, Mombasa's Likoni area, and in other towns in central Kenya and the coast region.<sup>30</sup>

Human Rights Watch found that government security forces raided homes, buildings, and shops, looted cell phones, money, and other goods, harassed and extorted money from residents, and detained thousands – including Kenyan citizens and international workers – without charge and in appalling conditions for periods well beyond the 24-hour limit set by Kenyan law.<sup>31</sup>

In the aftermath of the attack on Mpeketoni center and other villages in Lamu and Tana River in 2014, Human Rights Watch and Kenya Human Rights Commission had found that Kenyan security forces were slow to respond, leaving villages unprotected. When they eventually responded, their actions were often discriminatory, beating, arbitrarily detaining and stealing personal property from Muslim and ethnic Somalis in the two counties. Despite numerous law enforcement operations along the coast, hundreds were

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<sup>27</sup> "We are tired of taking you to court: Human Rights Abuses By Kenya's Anti-Terrorism Police Unit," Muslims for Human Rights and Open Society Justice Initiative, November 20, 2013 <https://www.opensocietyfoundations.org/reports/were-tired-taking-you-court-human-rights-abuses-kenyas-anti-terrorism-police-unit> (last accessed April 12, 2016).

<sup>28</sup> "Kenya: Killings, Disappearances By The Anti-Terror Police," Human Rights Watch press release, August 18, 2014 <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police> (last accessed May 26, 2016).

<sup>29</sup> "Kenya: End Abusive round-ups," Human Rights Watch press release, May 12, 2014. <https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups> (last accessed May 26, 2016).

<sup>30</sup> Human Rights Watch interviews with multiple Somali refugees during Usalama Watch operation, Nairobi's Eastleigh neighborhood, June 15 and 22, 2014.

<sup>31</sup> "Kenya: Halt Crackdown on Somalis," Human Rights Watch press release, April 11, 2014 <https://www.hrw.org/news/2014/04/11/kenya-halt-crackdown-somalis> (last accessed May 27, 2016).

arrested and mistreated only to have charges dropped for lack of evidence and no one held responsible for the attacks.<sup>32</sup>

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<sup>32</sup> “Kenya: End Abusive Round – ups,” Human Rights Watch press release, May 12, 2014  
<https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups> (last accessed May 27, 2016).



## II. Counterterrorism operations in Northeastern Kenya

### Operational units and agencies

In the northeast counties of Mandera, Wajir and Garissa, multiple security agencies and units, with varied and conflicting command hierarchies and very limited effective civilian oversight, are operational. Some forces are arresting and detaining suspects without any legal mandate. As multiple police units, military and wildlife services are deployed, it is increasingly unclear who is commanding operations and where families should go to locate relatives in custody.

Under Kenya's constitution, the police are mandated to preserve law and order and to prevent and detect crime. Currently, Kenya's police force is comprised of the regular police and the Administration Police, each headed by a deputy inspector general, who both report to the Inspector General of Police.<sup>33</sup>

The National Counter Terrorism Centre (NCTC), created through an amendment to a set of Security Laws in December 2014,<sup>34</sup> is responsible for coordinating the counterterrorism efforts of all the security forces and compiling information they are to use in such efforts.<sup>35</sup> The center's director is appointed by the National Security Council, which is chaired by the president, and NCTC has the prerogative to expand the membership of the center to include other government agencies.

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<sup>33</sup> The Constitution of Kenya 2010, Chapter 14, Articles 243, 244 and 245. The Administration Police is a unit created by British colonial authorities before Kenya's independence in the early 1960s to support the now defunct provincial administration. Attempts to merge the Administration and regular police succeeded only partially due to internal resistance from the Administration Police. See Administration Police Service, *The history and mandate*, service website <http://www.administrationpolice.go.ke/2015-02-16-09-14-42/history.html> (last accessed May 27, 2016) "Insult to Injury: The 2014 Lamu and Tana River Attacks and Kenya's Abusive Response," Human Rights Watch report, June 15, 2015. <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response> (last accessed May 27, 2016).

<sup>34</sup> The Special Issue, Kenya Gazette Supplement No 167 (Acts No.19), Republic of Kenya, December 22, 2014 [http://counterterrorism.go.ke/downloads/NCTC\\_Establishment.pdf](http://counterterrorism.go.ke/downloads/NCTC_Establishment.pdf) (last accessed May 27, 2016).

<sup>35</sup> According to the Security Laws Amendment Act of December 22, 2014 which created the Centre, NCTC is comprised of the director appointed by the National Security Council, National Intelligence Service, Kenya Defense Forces, the Attorney General, the Directorate of Immigration and Registration, the National Police Service and any other agencies that may be determined by the National Security Council.

The exact role of the NCTC and the National Security Council, which has legal authority to supervise all security organs,<sup>36</sup> in the law enforcement operations ongoing at time of writing in the northeast remains unclear. Given their legal mandate, it is very likely the two are pivotal, if not altogether responsible for supervisory control, for the operations.<sup>37</sup>

Numerous units that are by law coordinated by the National Counterterrorism Center are involved in carrying out the operations in the northeast. Unlike the past when their involvement was peripheral, Criminal Investigations Department (CID) officers are directly involved in counterterrorism operations in the northeast.<sup>38</sup> CID is headed by a director who reports directly to the Inspector General of Police.<sup>39</sup> The ATPU,<sup>40</sup> which is a specialized counterterrorism police unit that was created within CID in 2003 is also active in northeastern operations.<sup>41</sup>

The National Intelligence Service, which is the intelligence branch of the police and at time of writing headed by a former military intelligence officer, as well as other units from the Administration Police (AP) are also actively involved.<sup>42</sup> In particular, the Rapid Deployment Unit (RDU) and the Rural Border Patrol Unit (RBPU), both units of the Administration Police, have allegedly been involved in the abuses in the northeast.<sup>43</sup>

Human Rights Watch research indicated that, unlike in the past, the involvement of the General Service Unit (GSU), which is the anti-riot police whose head reports to the deputy inspector general in charge of the regular police, in the ongoing abuses in the northeast

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<sup>36</sup> See Chapter 14, article 240 (3) on the Establishment of the National Security Council.

<sup>37</sup> Human Rights Watch interviews with a police officer, Wajir town, September 22, 2015 and a military officer, Mandera, September 9, 2015. Article 240 of the Constitution of Kenya 2010 provides for membership of the National Security Council as the president, deputy president, the cabinet secretary for defense, cabinet secretary for foreign affairs, cabinet secretary for interior and national coordination, Attorney General, Chief of Kenya Defense Forces, director general of the National Intelligence Service and Inspector General of the Kenya Police Service.

<sup>38</sup> Human Rights Watch interviews with W.M., and U.M., Mandera town, December 8, 2015.

<sup>39</sup> Kenya Police Service Act, 2011, Part IV, Articles 28 – 29.

<sup>40</sup> “Kenya: Killings, disappearances by the anti-terror police,” Human Rights Watch press release, August 18, 2014 <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police> (last accessed May 27, 2016).

<sup>41</sup> Human Rights Watch interviews with P.O., and H.D., Wajir town, October 18 and 20, 2015.

<sup>42</sup> Human Rights Watch interviews with K.L., and V.L., Garissa town, July 21, 2015 and with Q.R., Nairobi’s Eastleigh neighborhood, November 17, 2015.

<sup>43</sup> Human Rights Watch interviews with K.V., and H.D., Wajir town, October 19, 2015 and with B.U., Mandera town, December 8, 2015.

has been very limited, and mainly in Garissa county.<sup>44</sup> Officers of the Kenya Police Reservist (KPR), also known as the National Police Reservists (NPR) or the home guards in some cases, have also beaten and arrested alleged suspects in Wajir and Mandera.<sup>45</sup>

Based on credible evidence available to Human Rights Watch, the Kenyan military's involvement in the northeast counterterrorism operations is much more intensive and elaborate than its role in operations in Lamu and Tana River counties a year ago.<sup>46</sup> The Directorate of Military Intelligence (DMI),<sup>47</sup> is at the forefront of these operations, according to one police and one military officer who spoke to Human Rights Watch.<sup>48</sup> The DMI detains those arrested, apparently in large numbers, inside military bases and camps in Wajir, Garissa, Mandera and even Lamu and Nakuru counties.<sup>49</sup>

Human Rights Watch found that police officers routinely handed over detainees to the military – including in at least six instances to the detachments of KDF troops based in Somalia and those deployed to Garissa, Wajir and Mandera – whom evidence suggests are in charge of the interrogations and determining the fate of detainees.<sup>50</sup>

Witnesses in Wajir said victims would be driven by their captors to Wajir military camp, while in Mandera witnesses said victims would be driven to Mandera military base. Others said they were regularly moved around between detention facilities in the northeast and even Nairobi or forests as far as Lamu county.

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<sup>44</sup> Human Rights Watch interviews with P.K., R.K., and B.V., Taqwa neighborhood, Garissa county, September 11, 2015.

<sup>45</sup> The National Service Act, articles 110- 115, provide for the establishment of the National Police Reserves to be recruited by the National Police Service Commission on short renewable contracts of up to two years to support police on security matters in specific regions.

<sup>46</sup> Human Rights Watch interview with P.O., Wajir town September 18, 2015; interview with H.D., Garissa town, October 16, 2015; with K.K., Mandera town, December 9, 2015; with Q.R., Eastleigh, Nairobi, November 17, 2015 and with N.D., Nairobi town, February 25, 2016.

<sup>47</sup> "Breaking: Charles Mwai appointed the acting director of military intelligence to replace Kameru Wachira," *Kenya Today*, September 13, 2014 <http://www.kenya-today.com/news/brigadier-charles-mwai-appointed-ag-director-military-intelligence-replace-kameru-wachira> (last accessed May 27, 2016).

<sup>48</sup> Human Rights Watch interviews with B.U., and D.K., Wajir town, October 22, 2015.

<sup>49</sup> Ibid.

<sup>50</sup> Human Rights Watch interviews with D.K., Wajir town, October 22, 2015 and with M.O., and Y.U., Mandera town, December 8 and 9, 2015.

The involvement of the Kenya Wildlife Service (KWS) rangers in the operations in the northeast, especially in Garissa and Wajir, continues to be a matter of concern.<sup>51</sup> KWS rangers are wildlife agents responsible for wildlife conservation and protection and the head, a Director General, reports to the cabinet secretary for environment.<sup>52</sup> The KWS has no legal mandate to arrest or detain suspects in counterterrorism operations.

The patterns of abuses and the type of security agencies implicated varied from county to county. The involvement of some members of KDF and the two AP units, the RBPU and the RDU – was more apparent in Wajir and Mandera. The role of some KWS rangers and ATPU officers, who were nonetheless operational across the northeast, was clearer in Garissa county.

## Obstacles to identifying abusers

Security forces carrying out arrests in northeast made considerable efforts to conceal their identity during operations.<sup>53</sup> The security officers who carried out the arrests or searches, for example, did not often wear uniforms and did not have identification insignia as required both under Kenyan law and under security force regulations.<sup>54</sup> In some cases, arresting officers wore balaclavas or masks during arrests, and failed or refused to identify themselves or disclose the police stations or military camps or bases to which they were attached thus making it difficult for families to trace their relatives or seek justice.<sup>55</sup> This violates section 57 of the National Police Service Act which requires arresting officers to identify themselves beforehand and record the arrest in an occurrence book.

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<sup>51</sup> Human Rights Watch interviews with D.S., Garissa town, September 18, 2015 and with U.V., Wajir town, October 20, 2015.

<sup>52</sup> The director general is interviewed by the board of KWS but officially appointed by the Cabinet Secretary of Environment and Natural resources, which is currently the line ministry, in consultation with the office of the president. In the past, however, KWS was under the office of the president.

<sup>53</sup> Human Rights Watch interviews with A.A., Garissa town, September 10, 2015; with U.V., Garissa town, September 17, 2015; with P.O., Wajir town, October 22, 2015; with K.L., Mandera town, December 8, 2015 and interview with K.K., Mandera town, December 9, 2015.

<sup>54</sup> National Police Service Act, 2011, Cap.84, section 57 (5) (a).

<sup>55</sup> In a few cases, they would introduce themselves as Kenyan security, or even where they did not, ended up driving with suspects to military facilities. In some cases, those who were released told Human Rights Watch they were being held in military facilities together with others.

In many cases, people being arrested were blindfolded for long periods thus making it difficult for them to identify arresting officers or know where they were being held.<sup>56</sup> Long periods of blindfolding for up to two or three months in some instances also had health implications, such as visual impairment, which affected detainees' abilities to identify their location in detention. Three arrestees told Human Rights Watch they had eyesight problems months after their release.<sup>57</sup>

At least seven of the eleven people who were later found dead were arrested by officers using hired taxicabs during operations.<sup>58</sup> In many instances, security officers drove unmarked cars, in most cases without registration number plates or, in the few cases where the cars had registration plates, it appears that the plates were regularly exchanged between different vehicles.<sup>59</sup>

Security agencies, particularly the police, violated procedure by failing to identify themselves, notify those being arrested of their rights or present them to court within the required time.

Witnesses and victims told Human Rights Watch that the arrests were physically brutal, treatment that violates standard procedures established in law. Officers appear to have gone out of their way to place victims out of the protection of the law. For example, security officers failed to register the arrests in the police occurrence books and denied detainees access to family and lawyers. Many people were arrested by military intelligence officers, who are not authorized to arrest people under Kenyan law, and detained in military

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<sup>56</sup> Human Rights Watch interviews with H.D., and D.B., Wajir town, October 23, 2015 and with F.D., Garissa town, September 19, 2015.

<sup>57</sup> Human Rights Watch interviews with R.V., Garissa town, September 19, 2015; with P.U., Wajir town, October 22, 2015 and a M.S., Mandera, December 9, 2015, respectively.

<sup>58</sup> Human Rights Watch interview with R.V., Wajir county, October 23, 2015 and with Q.R., Nairobi's Eastleigh neighborhood, November 17, 2015.

<sup>59</sup> Human Rights Watch interviews with R.V., P.U., and P.O., Wajir county, October 22, 2015. For example, the registration plate number KBZ 409L has regularly been seen on a white Toyota four-wheel drive Land Cruiser, which was used in the arrest of Farah Ibrahim Korio at Wajir police station. But the same plate number has also been seen on a white Toyota Probox saloon car. Multiple witnesses also told Human Rights Watch the same registration plate has also been seen on a white sedan in Wajir town.

facilities in Wajir, Garissa, Mandera or in some cases were airlifted to military detention facilities as far as Lamu or Nakuru counties, both more than 500 kilometers away.<sup>60</sup>

Human Rights Watch found that on at least six occasions, KDF detained and interrogated people in makeshift camps in forests in Garissa, Wajir and Mandera or in some cases in Boni forest, which includes parts of Garissa, Tana River and Lamu counties.<sup>61</sup> Apart from being unlawful, because these areas are not designated as detention facilities, this practice also confused those who had been arrested as to which security unit or agency was detaining them.

## The profile of victims

Those targeted for arrest in the cases Human Rights Watch documented are mostly men in their 20s, with a few in their 30s and 40s, and it appears that some were either imams or Islamic education teachers in madrasas, locally known as *dugsi*, or their students or other Muslims with responsibilities in their local mosques.<sup>62</sup> Imams in mosques or Islamic schools where youth had previously been arrested for alleged links with Al-Shabab, as was the case of Mandera Islamic Centre, said they and their colleagues were frequently targeted for questioning, arbitrary arrests and, in some cases, enforced disappearances and extrajudicial killings.<sup>63</sup>

In all the cases documented, the victims were either under investigation over offences related to their links with Al-Shabab or only learned at the time of arrest that they were suspected of links with Al-Shabab.<sup>64</sup> At least some of those arrested appear to have been targeted because they were relatives or friends of others who had been suspected of links

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<sup>60</sup> Human Rights Watch interview with H.D., Wajir county, October 23, 2015 and D.I., Nairobi's Eastleigh neighborhood, November 17, 2015.

<sup>61</sup> Human Rights Watch interview with a man interrogated from a forest 10 kilometers from Wajir town, Wajir town, October 19, 2015. In two cases in Wajir and three cases in Mandera, Human Rights Watch heard evidence indicating that security officers took their detainees to forests for interrogations. Those interviewed said they were interrogated in the forest along with many other suspects. Human Rights Watch interview with P.O., Wajir town, October 20, 2015, M.O., Mandera town, December 9, 2015, and with S.M., Mandera town, December 9, 2015.

<sup>62</sup> Human Rights Watch interviews with V.D., Wajir town, October 19, 2015 and U.M., Mandera town, December 8, 2015.

<sup>63</sup> Human Rights Watch interview with U.M., Nairobi town, July 21, 2015 and a man whose relative is missing, Mandera town, December 9, 2015.

<sup>64</sup> Human Rights Watch interviews with P.O., in the outskirts of Wajir town, September 20, 2015 and with S.D., Wajir town, September 18, 2015.

with Al-Shabab. In some instances arrestees had publicly called for respect for the rights of those arrested or protested the detention of their friends.<sup>65</sup>

Two security operatives privy to the operations in the northeast told Human Rights Watch that security officers, in most cases military intelligence officers, often decide how detainees should be treated, including if they should be executed, based on their judgement of the individual's guilt.<sup>66</sup> Some interviewees said that they believe that after interrogations, security agencies allegedly subject some detainees to mock trials and release those they assessed as "innocent," but detained those believed to be at the initial stages of recruitment by Al-Shabab to help with investigations and executed those they believed to be deeply involved.<sup>67</sup> Human Rights Watch was unable to verify these allegations.

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<sup>65</sup> Human Rights Watch interviews with Y.H., M.O., and S.M., Mandera County, December 9, 2015. At least one person who was allegedly tortured by the military in Mandera had been reported to the military officers as an Al-Shabab sympathizer in what looked like an attempt by some members of the community to settle a personal score. The military officers targeted the individual without adequately verifying his identity or the reason for the allegations against him.

<sup>66</sup> Human Rights Watch interview with M.O., Mandera town, December 9, 2015 and with P.O., Wajir town, September 20, 2015.

<sup>67</sup> Human Rights Watch interviews with W.M., Mandera town, December 9, 2015 and P.O., Wajir town, September 20, 2015.

## III. The Abuses

### Enforced Disappearances

This is the government disappearing our people. How can we trust them with fair investigations and trial? It is meaningless to expect anything from the police or the courts.

-Man in Garissa, September 10, 2015

Human Rights Watch documented 34 cases of enforced disappearances in Nairobi and northeastern Kenya, 16 from Garissa county, eight from Mandera county, six from Wajir county and four from Nairobi. Relatives have continued to look for these 34 individuals, making numerous inquiries at police stations but each time, authorities have failed to acknowledge arresting, or detaining the missing person. In most cases, these individuals were never registered as detained at the nearest police station as required by Article 50 of the National Police Service Act on police records.

The International Convention for the Protection of All Persons from Enforced Disappearance, which Kenya has signed but not ratified, defines an enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of the liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”<sup>68</sup> Signing a treaty creates an obligation to refrain, in good faith, from acts that would defeat the purpose of the treaty. Kenyan officials’ failure to acknowledge arresting or detaining the missing people or investigate their whereabouts does just that.

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<sup>68</sup> UN General Assembly, Declaration on the Protection of all Persons from Enforced Disappearance, 18 December 1992, A/RES/47/133. <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>. Signing a treaty creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. See Vienna Conventions on the Law of Treaties, art. 18. See also, Section 33 of the Criminal Procedure Code, read along with article 49 of the Constitution, require police to take those arrested without an arrest warrant to court within 24 hours (last accessed May 27, 2016).



## The Mandera cases

### *Abdiwelli Ibrahim Sheikh and Feisal Mohamed Ibrahim*

Abdiwelli and Feisal, together with two other young men from the same neighborhood in Mandera town were arrested from their houses on March 18, 2015 and taken to Mandera military camp. A report of the Kenya National Commission on Human Rights notes that some of those who arrested them were driving in an armored military vehicle.<sup>69</sup>

A man who witnessed the arrest told Human Rights Watch that four non-uniformed security officers driving a white Toyota Probox car and armed with pistols arrested Abdiwelli at around 2 p.m. One remained outside the house, according to the man, and three went inside. He said: “They handcuffed Abdiwelli and said they were police officers but they went to the military camp. I saw them enter the military camp because my house is near.”<sup>70</sup>

Another person who witnessed the arrests, said that the same group of officers later arrested Feisal from his house and later learned from someone who saw Feisal in detention that he had been taken to the Mandera military camp.<sup>71</sup> The officers who arrested Feisal did not say why or where they were taking him. According to this person, the security officers said “they wanted to ask him a few questions and then they would release him. We never knew he was being taken away for good.”<sup>72</sup>

Although security officers said during arrest that they were suspected of having links with Al-Shabab, relatives told Human Rights Watch they believed Abdiwelli’s and Feisal’s arrest could have been linked to a demonstration in August 2014 during which some youth in Mandera, including Abdiwelli and Feisal, protested a plan to transfer Omar Yusuf Mohamed, a young man who had been arrested on suspicion of links to Al-Shabab, from Mandera Police Station to Nairobi (see details of his case below).<sup>73</sup> The crackdown happened just days before Omar Yusuf went missing after being arrested by people believed to be security officers.

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<sup>69</sup>Kenya National Commission on Human Rights, “Error of Fighting Terror with Terror,” pp 18, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last accessed May 27, 2016).

<sup>70</sup> Human Rights Watch interview with U.M., Mandera town, December 9, 2015.

<sup>71</sup> Human Rights Watch interview with K.K., Mandera town, December 9, 2015.

<sup>72</sup> Human Rights Watch interview with U.M., Mandera town, December 8, 2015.

<sup>73</sup> Human Rights Watch interview with M.O., Mandera town, December 9, 2015.

A resident of Mandera explained that during the protests:

Youth were demanding that, rather than be ferried to Nairobi where they feared he would likely be disappeared, Omar Yusuf be taken to court and tried. The protests only delayed the plan to transfer Omar Yusuf to Nairobi for a day as the military and police battled protesters. He was however transferred the next day after protests had been quelled, and was released after 20 days.<sup>74</sup>

Relatives have not seen or heard from Abdiwelli and Feisal since March 2015. Although the matter was reported at Mandera police station and police issued an occurrence book (OB) number, 40/21/4/2015,<sup>75</sup> there has been no follow up from the police. The commander of Mandera police station told the families two days later that Abdiwelli and Feisal were being held by the military over links with Al-Shabab and there was nothing he could do. Subsequently, officers at Mandera military camp denied knowledge of their whereabouts, referring relatives back to the police. “They simply said it is the police who arrest people, not the military, and we should ask the police,” said one family member. “They threatened to shoot us if we went back.”<sup>76</sup>

### *Omar Yusuf Mohamed*

Omar Yusuf Mohamed was arrested at Baquli restaurant in Mandera town on April 26, 2015 by several non-uniformed security officers. Witnesses recognized three officers attached to CID and ATPU among those carrying out the arrest.<sup>77</sup>

According to a neighbor, Omar had stopped by Baquli restaurant when he received a call from someone who wanted to know where he was and Omar told him.<sup>78</sup> Witnesses said that,

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<sup>74</sup> Human Rights Watch interview with K.K., Mandera town, December 9, 2015.

<sup>75</sup> An Occurrence Book (OB) is the official book within the police station where officers record what happened, including the arrests made, during the hours they were on duty. In the case of arrests, it is useful in determining who was being held at the station at any one was given time and the offence for which they were being held. It is also an official record of complaints made to police requiring action.

<sup>76</sup> Human Rights Watch joint interview with M.O., W.M., and U.M., Mandera town, December 9, 2015.

<sup>77</sup> Human Rights Watch interview with F.K., Mandera, December 8, 2015.

<sup>78</sup> Human Rights Watch interview with O.R., Eastleigh, November 17, 2015 and W.M, Mandera, December 9, 2015; Human Rights Watch phone interview with a M.N., July 27, 2015.

shortly after the call, a white Toyota Probox car pulled up at the restaurant and its passengers, called for Omar to come to them. One man said he overheard the conversation:

They told Omar that they wanted to ask him questions related to national security after which they would set him free. They did not introduce themselves but they are well known CID officers so Omar did not ask them to identify themselves. That was the last time we saw him.<sup>79</sup>

Since April 26, 2015 Omar's family and friends have gone to countless government offices, police stations, military camps in the northeastern region and to court in Nairobi in an unsuccessful attempt to either trace him or compel police to produce him.

As one witness said:

We went to Mandera police station to report about Omar's arrest. We told them that he was arrested by CID officers but the police insisted that maybe Omar had crossed the border to Somalia. They refused to record it in the OB as an arrest but instead recorded it as a missing person under OB number 29/05/05/2015.<sup>80</sup>

The relatives sought recourse in the courts, filing a habeas corpus petition. In the court records seen by Human Rights Watch, the commander of Mandera police station submitted a sworn affidavit denying arresting Omar, denying knowledge of his whereabouts or knowledge of anyone who had disappeared in the commander's jurisdiction.<sup>81</sup>

The court directed the military to respond to the petition but the military also denied holding Omar or having any knowledge of his whereabouts. The hearing of the case has been postponed three times and at time of writing had yet to occur amid reports of witness intimidation.<sup>82</sup>

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<sup>79</sup> Human Rights Watch interview with Q.R., Eastleigh neighborhood, Nairobi, November 17, 2015.

<sup>80</sup> Human Rights Watch interview with F.K., Mandera town, December 8, 2015.

<sup>81</sup> See the habeas corpus application for Omar Yusuf Mohamed, the High Court of Kenya, On file with Human Rights Watch; Also see "The Error of Fighting Terror with Terror" p. 17, Kenya National Commission on Human Rights, September 2015 (last accessed May 27, 2016).

<sup>82</sup> Human Rights Watch interview with O.R., Eastleigh neighborhood, Nairobi, November 18, 2016.

A report of the Kenya National Commission on Human Rights (KNCHR) found that the CID officers who arrested Omar had threatened witnesses who ultimately went into hiding.<sup>83</sup> The KNCHR also reported that police and military officers threatened Omar's family and that they are now reluctant to continue with the case.<sup>84</sup>

At time of writing, those who witnessed his arrest were withdrawing from testifying after they reportedly received death threats.<sup>85</sup> One man who was with Omar in the restaurant on the day of the arrest told Human Rights Watch, "A day after I had been contacted to testify, I received an anonymous call warning me to keep off the case if I wanted to be alive. I decided not to testify."<sup>86</sup>

Omar had previously been arrested by Kenya's ATPU officers in August 2014 after being suspected of links with Al-Shabab and reportedly held at the ATPU offices in Upper Hill, Nairobi, for 20 days and released without charge. The authorities suspected that Omar, who at the time of his arrest worked with Makkah bus company, had been approached to help transport Al-Shabab militants to Nairobi, but later said he was not involved and released him.<sup>87</sup>

A relative told Human Rights Watch that when Omar was released, family members had wanted to file a case against the state for wrongful arrest and detention but ATPU officers discouraged them from doing so. "The ATPU said they had cleared Omar of any wrongdoing and he was therefore innocent," the relative said. "They told us there was no need to file a

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<sup>83</sup> Kenya National Commission on Human Rights, "Error of Fighting Terror with Terror" p 17, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (accessed May 27, 2016). See Also, Catrina Stewart, "Kenyan Police Murdering Terror Suspects as they battle menace of Al-Shabab Islamist group," *The Independent*, September 15, 2015. <http://www.independent.co.uk/news/world/africa/kenya-police-murdering-terror-suspects-as-they-battle-menace-of-al-shabaab-islamist-group-10502641.html> (last accessed May 27, 2016).

<sup>84</sup> Kenya National Commission on Human Rights, "Error of Fighting Terror with Terror, p 17,, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>.

<sup>85</sup> Human Rights Watch interview with R.D., Mandera, December 8, 2015. Omar's family also started a Twitter hashtag, #WhereisOmar, to bring attention to the case, which gained some coverage in the media. See [https://twitter.com/heart\\_cooler\\_/status/616902690946306048](https://twitter.com/heart_cooler_/status/616902690946306048) (last accessed May 27, 2016).

<sup>86</sup> Human Rights Watch phone interview with D.S., January 17, 2016.

<sup>87</sup> Human Rights Watch interview with Q.R., a relative, Mandera town, December 8, 2015. Also, this is a violation of his constitutional rights under Article 49 of the Constitution of Kenya 2010 on the rights of accused persons, which requires suspects to be brought before court within 24 hours of arrest.

case, as this would only complicate matters. Knowing what is going on in Mandera, we decided not to pursue the matter.”<sup>88</sup>

### *Mohamed Mohamud Musa*

Mohamed, a money changer at the Kenya-Somali border in Mandera, was arrested at around 10 a.m. on April 9, 2015. A 52-year-old witness told Human Rights Watch that Mohamed and colleagues were in the Suqa Sarifka area of Mandera town waiting for customers when a vehicle with an AP insignia pulled up near them. Three male passengers who introduced themselves as police officers accused Mohamed of working for Al-Shabab. The three men confiscated his money, arrested him, took him to the vehicle and blindfolded him.<sup>89</sup>

Mohamed was first taken to a place where a former co-detainee said they could hear dogs barking and that it felt more like a makeshift camp or a forest.<sup>90</sup> They described sitting under a tree during their time in custody. It was there, according to someone who was with him in detention, that the three arresting officers who were in an AP vehicle, introduced themselves as ATPU police officers and told Mohamed he would be flown to Nairobi for questioning.<sup>91</sup>

Later the same day, more officers joined the team in the interrogation. Interrogators wanted to know how often Mohamed traveled to Nairobi, if he supported Al-Shabab with money, and whether the identities of his money-changing clients at the border were known to him.<sup>92</sup>

Several officers eventually forced Mohamed to lie down on his stomach and started kicking him.<sup>93</sup> He was later transferred to Mandera military camp where the beatings

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<sup>88</sup> Human Rights Watch interview with Q.R., Mandera, December 8, 2015.

<sup>89</sup> Human Rights Watch phone interview with N.D., January 25, 2016. See also “The Error of Fighting Terror with Terror,” pp 18 Kenya National Commission on Human Rights, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last accessed May 27, 2016).

<sup>90</sup> Human Rights Watch phone interview with D.S., January 17, 2015.

<sup>91</sup> Human Rights Watch interview with Q.R., Mandera, December 9, 2015.

<sup>92</sup> Human Rights Watch phone interview with D.S., January 17, 2016.

<sup>93</sup> Human Rights Watch phone interview with N.D., January 25, 2016.

continued. One person said some of the participants in the beatings may have been military officers.<sup>94</sup>

Later that evening, the officers returned Mohamed's money to one of his fellow money-changers at the Mandera border with Somalia. The officers told them that the money should be returned to Mohamed's family because "Mohamed will never be seen again."<sup>95</sup> His whereabouts at time of writing remained unknown.

## The Garissa cases

### *Mahat Ahmed, Ismail Mohamed, Rahma Ali and Anab Abdullahi*

On the evening of April 20, 2015, more than 20 non-uniformed men armed with pistols raided a residential compound in Taqwa neighborhood of Garissa town. Shortly after, around 50 uniformed security officers scaled the compound's walls and forced their way into houses, arresting Mahat Ahmed, Ismail Mohamed, Rahma Ali, and Anab Abdullahi, and beating others with sticks and gun butts.

The neighbors who witnessed the arrest described the second team as wearing jungle green uniforms usually associated with the KDF, and wielding sub-machine guns.<sup>96</sup>

Security officers held guns to peoples' heads, and blindfolded two women who were in the house. The security officers threatened to kill them all if they did not reveal the location of Al-Shabab fighters.<sup>97</sup> At least two residents were arrested from the compound and later released after being beaten and threatened. A witness told Human Rights Watch that some people might have been targeted for arrest after they telephoned individuals whose cellphones were being monitored by security officers over links with Al-Shabab.<sup>98</sup>

Some of the relatives and neighbors Human Rights Watch interviewed said that police officers at Garissa police station were reluctant to take our statements. A 37-year-old mother of two and relative of one of the missing said:

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Human Rights Watch interview with K.L., and V.L., Taqwa neighborhood, Garissa, September 10, 2015.

<sup>97</sup> Human Rights Watch interview with B.O., and K.L., Taqwa neighborhood, Garissa, September 10, 2015.

<sup>98</sup> Human Rights Watch interview with B.B., and K.L., Taqwa neighborhood, Garissa town, September 10, 2015; interview with R.L., Wajir town, October 20, 2015.

We could not understand why the police officers were reluctant to take our statements. In the end, we just informed them of what had happened but no one was willing to take a statement from us.<sup>99</sup>

A 56-year-old village elder told Human Rights Watch that local human rights organizations, witnesses and relatives to the victims who had initially attempted to trace those who had been arrested and pursue the matter with police had been threatened by anonymous callers and now no one wanted to be involved.<sup>100</sup> Mahat Ahmed, Ismail Mohamed, Rahma Ali, and Anab Abdullahi have not been seen since their arrest.

### *Hassan Abdullahi Adan, Yusuf Abdi Iman and three others*

On March 26, 2015, two armored personnel carriers (APCs) full of men in camouflage uniforms suspected to be Kenyan soldiers pulled up at the Durdur restaurant in Garissa Ndogo neighborhood at around 9:30 a.m. One witness said that the armored personnel carriers had insignia of the African Union Mission in Somalia, but Human Rights Watch was not able to further corroborate this.<sup>101</sup> The uniformed men jumped out and started firing at people inside the restaurant, injuring three and killing two people,<sup>102</sup> prompting a stampede.<sup>103</sup>

At least three people who witnessed the shooting told Human Rights Watch that initially Hassan Abdullahi, who was a customer, Yusuf Abdi who was a restaurant employee, as well as Mohamed Geni, the restaurant owner, and Keynan, a waiter – both identified only by one name – may have been injured in the shooting but soon after the shootings saw the suspected soldiers take them away in the APCs. A 50-year-old businessman in Garissa who was present that day said:

The officers carried the five men and threw them in the Land Cruiser-like vehicles that had AMISOM insignia and drove away. We later came to

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<sup>99</sup> Human Rights Watch interview with M.N., Taqwa neighborhood, Garissa county, September 10, 2015.

<sup>100</sup> Human Rights Watch interview with B.B., Taqwa neighborhood, Garissa, September 10, 2015.

<sup>101</sup> Human Rights Watch interview with B.R., Garissa town, September 17, 2015.

<sup>102</sup> Human Rights Watch interview with G.F., Garissa town, September 17, 2015.

<sup>103</sup> Human Rights Watch interview with B.K., Garissa town, September 10, 2015; with K.E., Wajir town, October 22, 2015 and with R.V., December 8, 2015.

understand from various accounts of those who spotted the vehicles on the road, [that they were moving] in the direction of Somalia.<sup>104</sup>

Relatives of the victims and witnesses to the raid recounted their frustrations searching for the missing men and trying to obtain information from the Kenyan police. Although relatives and witnesses said they reported the incident to Garissa police station several times, multiple people Human Rights Watch spoke to said that police have not investigated or supported the families' efforts to find their relatives.<sup>105</sup>

As in other cases investigated by Human Rights Watch, two witnesses said there had been anonymous intimidation and threats against relatives, witnesses, human rights defenders and, in some cases, police officers, who attempted to follow up on the missing men.<sup>106</sup>

A 25-year-old witness who is a relative of one of the victims said:

Police at Garissa police station have never helped us and I don't think they care. They told us that on that day they also heard gunshots but they denied knowledge of what had happened. The Garissa county commissioner told us he knew nothing about what had happened but he was clearly not willing to help find out. A National Intelligence Service officer told us that he had tried to call police on phone after he heard gunshots to inquire what was happening. Within minutes, he received a call from a concealed line ordering him to vacate the area and never talk about the issue again.<sup>107</sup>

### *Mohamed Farah Muhumed, Siad Mahat Ahmed and Sugu Apkea*

In February 2014, at around 9:30 p.m., more than 10 armed Kenya Wildlife Service (KWS) rangers in a Toyota Land Cruiser with KWS insignia arrested Siad Mahat Ahmed, Sugu Apkea and Mohamed Farah Muhumed from their houses in Garissa's Bula Tawakal

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<sup>104</sup> Human Rights Watch interview with B.K., Soko Ng'ombe market, Garissa town, September 17, 2015.

<sup>105</sup> Human Rights Watch interview with G.F., Garissa town, September 10, 2015 and with T.A, Mandera county, December 8, 2015; Human Rights Watch interview with P.K., and K.E., Wajir county, October 22, 2015.

<sup>106</sup> Human Rights Watch interview with G.G., Garissa town, September 10, 2015.

<sup>107</sup> Human Rights Watch interview with G.F., Garissa town, September 17, 2015.



neighborhood. A witness said that the wildlife police went to arrest Siad Mahat Ahmed in his house and that Siad, who was accommodating Sugu Apkea as his guest, cried out for help. Ahmed Farah Muhumed, a nearby neighbor, went to Siad's home.

A 32-year-old who witnessed the incident that night told Human Rights Watch, "The officers were heavily armed. The three men were beaten by the officers, who blindfolded them and took them to the waiting Land Cruiser. We have never seen them since that night."<sup>108</sup>

Witnesses said they reported the incident to officers at Garissa police station but that the officers did not take any statements from them. A 27-year-old relative of one of the disappeared men said, "We have given up looking for them. We doubt they are still alive. It is heartbreaking because police have not been interested in investigating the matter."<sup>109</sup>

In a letter to Human Rights Watch, KWS director general, Kitili Mbathi, said KWS had no knowledge of the alleged disappearance of the three men and denied that KWS was involved in any alleged disappearances country-wide.

Human Rights Watch heard other accounts of enforced disappearances implicating Kenya Wildlife Service rangers in Garissa, particularly in Danyere, Damajale, Dadaab and Mbalambala, but did not include them in this report for lack of sufficient corroborating evidence. Those cases, however, did fit patterns of abuses documented in this report.<sup>110</sup>

## Nairobi case

### *Abdifatah Odowa Adan*

In May 2014, Abdifatah and some friends were at Kilimanjaro Hotel in Eastleigh, Nairobi, having tea when he received an anonymous call asking him to immediately meet a group of people outside.<sup>111</sup> A 20-year-old witness who was with Abdifatah told Human Rights Watch that when he and his friends, including Abdifatah went out of the hotel, they were

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<sup>108</sup> Human Rights Watch interview with A.A., Garissa county, September 11, 2015.

<sup>109</sup> Human Rights Watch interview with G.R., Bula Tawakal neighborhood, Garissa county, September 11, 2015.

<sup>110</sup> Human Rights Watch interviews with B.D., Danyere village, Garissa county, September 22, 2015; with B.R., Dadaab village, Garissa county, September 23, 2015 and with S.D.N., Danyere village, Garissa county, September 22, 2015.

<sup>111</sup> Human Rights Watch interview with A.A., S.D.N., and G.R., Bula Mzuri, Garissa town, September 11, 2015.

confronted by three men in civilian clothes in a white car that turned out to be a taxicab the men had rented:

The people asked him to get into the cab but he declined and demanded that they introduce themselves. They showed their service IDs and they turned out to be officers attached to the National Intelligence Service. That was when he agreed to get into the car, thinking that these were genuine officers who would follow the law. Now we know that there is no law here.<sup>112</sup>

Abdifatah was a manager with E-Coach Bus service that plied the Garissa-Nairobi route, and witnesses said police may have suspected him of helping to transport Al-Shabab militants to Nairobi. Some of the friends who were with him at the hotel told Human Rights Watch that some of them wanted to get into the cab along with Abdifatah but the officers declined, saying that Abdifatah was wanted for interrogation at Pangani Police station and they could trace him at the station.<sup>113</sup>

One of the friends told Human Rights Watch:

Some of us looked for a different cab and drove to Pangani police station. We found neither Abdifatah nor the officers there. We looked for the taxi driver, since we had taken the registration numbers of the car. The cab driver later told us that, along the way to Pangani, the officers switched into a different car and drove away with Abdifatah. They then ordered the cab driver to proceed to Pangani police station without them.<sup>114</sup>

Relatives reported the incident at Pangani station, but the officers there denied involvement or knowledge of the arrest. The relatives filed a habeas corpus claim in Nairobi but the police and the ministry of interior and national coordination denied knowledge of Abdifatah's whereabouts.<sup>115</sup>

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<sup>112</sup> Human Rights Watch interview with A.A., Bula Mzuri neighborhood, Garissa county, September 11, 2015.

<sup>113</sup> Human Rights Watch interview with G.G., and K.L., Taqwa neighborhood, Garissa county, September 10, 2015.

<sup>114</sup> Human Rights Watch interview with G.R., Garissa town, September 11, 2015.

<sup>115</sup> See habeas corpus application for Abdifatah Odhwa, The Kenya High Court, Nairobi, May 2015, on file with HRW.

Later in May 2015, the Member of Parliament for Ijara, Ahmed Ibrahim Abbas, filed a motion in parliament demanding that government disclose Abdifatah's whereabouts. The office of the Inspector General of Police and Cabinet Secretary for Interior and National coordination denied any knowledge.<sup>116</sup> "We are now stuck. They arrest and deny they have him, but they do nothing to find him," said one of the young men, also a relative, who was with him at the time he was taken.<sup>117</sup>

## The Wajir cases

### *Ali Duale Keynan*

Five security officers in plain clothes arrested Ali Duale, a young madrasa teacher, from a cyber café in the Wagbare area of Wajir town on April 14, 2015.<sup>118</sup> A witness said that the five were driving two vehicles, a white Toyota Hilux Pickup with no registration number plates, generally known in Wajir town to be used by RBPU officers, and a white Toyota Land Cruiser, also without registration number plates but generally known to be used by the ATPU.<sup>119</sup>

A 51-year-old relative told Human Rights Watch:

The officers raided the cyber café and started firing in the air, causing a stampede. Ali Duale was inside and started running like all the others. The officers pursued, arrested and forced him to sit down. One of the officers just shot him in the right knee even though he was already seated.<sup>120</sup>

Two people who were there that day told Human Rights Watch that one of the arresting officers was a senior superintendent of police attached to the Rapid Deployment Unit, a unit within the Administration Police.<sup>121</sup> The officers immediately blindfolded Ali Duale and took him away, but they neither recorded him as a detainee in Wajir police station nor booked him into the OB as required by law.<sup>122</sup>

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<sup>116</sup> See Parliamentary Hansard, Kenya National Parliament, May 28, 2015.

<sup>117</sup> Human Rights Watch interview with G.R., Garissa town, September 11, 2015.

<sup>118</sup> Human Rights Watch interview with V.A., Wajir town, October 18, 2015.

<sup>119</sup> Human Rights Watch interview with C.O., Halane village, Wajir county, October 18, 2015.

<sup>120</sup> Human Rights Watch interview with C.O., Halane village, Wajir county, October 18, 2015.

<sup>121</sup> Human Rights Watch interview with P.K., and C.O., Wajir town, October 18, 2015.

<sup>122</sup> Ibid.

While addressing the media the next day, then-Wajir county commissioner Fredrick Shisia admitted that Ali Duale was in the custody of government security agencies but failed to state where he was being held or by which unit.<sup>123</sup> The state-funded KNCHR reported that the Wajir county commissioner had informed the family that Ali Duale was in the custody of the government.<sup>124</sup> Witnesses told Human Rights Watch that, once the commissioner admitted publicly that Ali Duale was in custody of the state, the matter stalled for over a year and the family has not been able to establish his whereabouts since then.<sup>125</sup>

### *Hussein Ali Abdullahi*

Security officers in plain clothes driving a black truck with the Government of Kenya insignia arrested Hussein Ali Abdullahi from his shop in Wajir town next to Wajir market on May 8, 2015. Witnesses told Human Rights Watch that four days prior to his arrest, Border Patrol Unit police officers had arrested both his wife, Ebla Abdullahi Abdirahman, and his brother, Afey Ali Abdullahi. The officers had directed the two to “produce” Hussein Ali Abdullahi and, when they could not, they immediately arrested them.<sup>126</sup>

Police took Hussein’s wife and brother to Wajir police station where they were held together for three days. On May 8, the day Hussein Ali was arrested, his brother was transferred to Wajir military camp and his wife was released.

A 43-year-old male witness told Human Rights Watch:

The officers photographed Afey, blindfolded him and then moved him to Wajir military camp before releasing Hussein’s wife. It was only when

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<sup>123</sup> Stephen Astariko, “One held as police fight Wajir gang,” *Star newspaper*, April 29, 2015. [http://www.the-star.co.ke/news/2015/04/29/one-held-as-police-fight-wajir-gang\\_c1126621](http://www.the-star.co.ke/news/2015/04/29/one-held-as-police-fight-wajir-gang_c1126621) (last accessed May 28, 2016).

<sup>124</sup> “The Error of fighting terror with terror” pp 9, Kenya National Commission on Human Rights, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last accessed May 28, 2016).

<sup>125</sup> “The Error of Fighting Terror with Terror”, Kenya National Commission on Human Rights, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last accessed May 28, 2016).

<sup>126</sup> Human Rights Watch interview with R.D., Wajir town, October 19, 2015. See also “Error of Fighting Terror with Terror,” p 9, Kenya National Commission on Human Rights, September, 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last accessed May 28, 2016).

Hussein's wife returned home that she was told by neighbors that her husband had just been arrested by the Border Patrol Unit.<sup>127</sup>

The police Border Patrol officers, according to witnesses privy to what transpired, took Hussein Ali directly to Wajir military camp where, in the first five days of his arrest, he was held together with his brother, Afey Ali Abdullahi, who was later released. The two were blindfolded and could not see each other, but could talk during meals. Soldiers removed Hussein Abdullahi Ali from Wajir military camp two days after his arrest, according to his brother, but it is not known where he was taken. He has not been seen since.

### *Ali Warsame*

Kenya Police Reservists (KPR) whom multiple witnesses in Wajir town recognized arrested Ali Warsame at Urale market, in Wajir town, at 8 a.m. on April 9, 2015. They handed him over to a commander of the Rapid Deployment Unit (RDU) in Wajir. The RDU commander and the KDF officers were waiting at the County Commissioner's office from where they immediately drove away with Ali Warsame in a Toyota Land Cruiser that had RDU insignia. A human rights activist who was near Wajir Police station told Human Rights Watch that he later saw the same vehicle head towards Wajir military camp.

The activist who witnessed the arrest told Human Rights Watch that the KPR officers wrapped traditional Somali kikoi cloth around Ali Warsame, and forcefully dragged him and another man whose name is given only as Hassan to the compound of the then county commissioner. A KDF officer then ordered the two men who had been arrested to lie down outside the compound. The witness said: "They used Ali Warsame's turban to blindfold him while Hassan was blindfolded with his shirt."<sup>128</sup> The whereabouts of Ali Warsame, whose arrest was neither reported nor recorded in the OB by the arresting officers, remain unknown.

## **Torture, inhuman and degrading treatment**

Human Rights Watch documented six cases of serious abuse of detainees that appeared to amount to torture in the military camps and bases in Garissa, Wajir and Mandera. Torture is defined in the Convention against Torture as any act by which severe pain or suffering,

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<sup>127</sup> Human Rights Watch interview with M.D., Wajir town, September 22, 2015.

<sup>128</sup> Human Rights Watch interview with N.I., Barnako village, Wajir county, October 22, 2015.

whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, or as punishment. The actual number of torture victims in the region could be much higher because several other people who Human Rights Watch had reasons to suspect were victims of torture declined to be interviewed because of fear of reprisals.<sup>129</sup>

In mid-May 2015, ATPU officers arrested a 47-year-old man from the outskirts of Garissa town and detained him for four months.<sup>130</sup> Human Rights Watch observed visible signs of physical abuse, including scars, on his back, but he declined to be interviewed.<sup>131</sup> A relative told Human Rights Watch that the man, who could not describe where he had been held because he was blindfolded non-stop for four months, still had difficulty with his eyesight.<sup>132</sup> The relative said, “We don’t have money to pay for his healthcare but we know that if he doesn’t get medical attention soon, he might lose his eyesight.”<sup>133</sup>

The relative said that the man thought he was being held in Nairobi because the officers had told him and the other people he was being held with that they were there, but the inmates could not see each other or confirm their location due to being blindfolded.<sup>134</sup>

In Wajir, a 48-year-old man, a Quranic teacher, was arrested on April 1, 2015 by officers who were looking for his brother and detained for 15 days in Wajir military camp. The man told Human Rights Watch that the military officers continuously beat him with gun butts and whips.<sup>135</sup>

The man said he had first been detained for two nights at Wajir Police station without being registered into OB and then handed over to the military. The man said that, at the

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<sup>129</sup> The UN Convention Against Torture, which Kenya ratified in 1997, defines torture as “any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person or any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in the official capacity.”

<sup>130</sup> Human Rights Watch interview with T.U., outskirts of Garissa town, September 18, 2015.

<sup>131</sup> Human Rights Watch interview with R.S., outskirts of Garissa town, September 17, 2015.

<sup>132</sup> Human Rights Watch interview with F.K., outskirts of Garissa town, September 18, 2015.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid

<sup>135</sup> Human Rights Watch interview with F.E., Wajir town, October 19, 2015.

military camp, the military officers repeatedly shocked him with electricity, and injected him with unknown substances (Human Rights Watch saw marks on his back, chest, hands and legs). When Human Rights Watch visited the man in October 2015, the whip marks on his thighs, ribs, head, back and head had not healed.<sup>136</sup> He said that all the toenails on his left foot had been removed and his artificial leg had been broken by the military officers during his detention.<sup>137</sup>

The man said:

It was not an ordinary whip they were beating me with. It would penetrate my flesh and I would feel a lot of pain. They hit my head until I fainted. They took away my artificial limb and removed all the toenails from my other leg. They hit my head with gun butts and I bled profusely for three consecutive days until I fainted. They would also force injections into my body. I don't know what they were injecting me with. At some point, my condition was so bad that they brought in a doctor. After the doctor treated me they took me away and started beating me again.<sup>138</sup>

After 15 days, the man's condition was so bad that he could not walk on his own when the military officers left him inside Wajir police station. During the interrogation, the military officers asked him about the location of Al-Shabab fighters, where guns are being hidden and the whereabouts of his brother, who Kenyan security was yet to locate.

A relative told Human Rights Watch that the man looked like he would die. The relative recounted: "Some people thought he was already dead, with his motionless body lying outside the station. When a crowd that thought he was already dead started gathering at the station, the officer in charge of Wajir police station ordered him to immediately begin to walk back home. A well-wisher volunteered to take him back on a personal motor bike."<sup>139</sup>

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<sup>136</sup> Human Rights Watch observation of the body of F.E., Wajir town, October 19, 2015.

<sup>137</sup> Human Rights Watch interview with J.V., Wajir town, September 20, 2015.

<sup>138</sup> Human Rights Watch interview with F.E., Wajir town, October 19, 2015.

<sup>139</sup> Human Rights Watch interview with D.U., Wajir town, September 18, 2015.

In Mandera, a 41-year-old man told Human Rights Watch he was arrested by KDF officers on April 22, 2015 and taken to Mandera military camp where he was tortured continuously for two days.<sup>140</sup> The man, who was being detained together with a 28 year-old man, said the military officers applied electric shocks, submerged them in hot and cold water, and beat them to try and force them to confess to being Al-Shabab members.<sup>141</sup>

A 55-year-old man privy to what went on inside the military camp told Human Rights Watch:

They had just been held for two days but their condition was bad. They had been given electric shocks several times, beaten with sticks, gun butts and whips and kicked in the ribs. They were being made to sit on electric coils placed inside cold and hot water. They had to alternate between sittings on the coils inserted in cold water for a while before being taken to coils inside hot water. This has totally destroyed their manhood.<sup>142</sup>

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<sup>140</sup> Human Rights Watch interview with V.T., Mandera town, December 9, 2015.

<sup>141</sup> Ibid.

<sup>142</sup> Human Rights Watch interview with U.M., December 8, 2015 and with M.O., Mandera town, December 9, 2015.



## IV. Suspected cases of extrajudicial killings

Police did not even visit the family when his body was discovered miles away. In any case, there are many families with such cases and police have done nothing. Death is the order of the day here.

-Human rights defender in Mandera, December 8, 2015.

Human Rights Watch documented 11 cases in which bodies found in shallow graves, mortuaries or dumped in various locations in Kenya were ultimately determined to be individuals last seen in with Kenyan security officers. These cases raise serious concerns that at least in some instances, those who have been arrested and reported missing or feared disappeared have been killed while in custody. Among the 11 cases, four people were last seen in the custody of the KDF and seven were last seen being arrested or detained by various units of the Kenyan police.

In 2015, allegations of new graves in Garissa, Wajir and Mandera began to emerge in the media.<sup>143</sup> Some suggested that the graves could contain the remains of the disappeared – those who had been reported as missing at various police stations throughout the region.<sup>144</sup> In May 2015, the local media, community elders and human rights activists in Garissa county reported six bodies found in a suspected mass grave in Modica forest, nearly 10 kilometers from Garissa town, and two other mass graves in Lanbib, Wajir county, one with 11 bodies and another with seven bodies.<sup>145</sup> In December 2015, similar allegations

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<sup>143</sup> Adow Mohamed, “Mass Graves found in Wajir, 11 bodies thought to be of terror suspects found in Lanbib,” *The Star*, May 1, 2015. [http://www.the-star.co.ke/news/2015/05/01/mass-grave-found-in-wajir-town-11-bodies-thought-to-be-of-terror\\_c1128018](http://www.the-star.co.ke/news/2015/05/01/mass-grave-found-in-wajir-town-11-bodies-thought-to-be-of-terror_c1128018). Also see, Manase Otsialo, “Herders stumble on Mandera mass grave,” *Daily Nation*, December 8, 2015. <http://www.nation.co.ke/news/Police-discover-three-sites-in-Mandera/-/1056/2987564/-/ie1xoh/-/index.html> (last accessed May 28, 2016).

<sup>144</sup> “Concerned citizens raise their voice following discovery of shallow mass graves in Mandera,” *NEP Journal*, December 7, 2015 <http://nepjournal.com/condemnation-continue-to-flow-following-discovery-of-mass-shallow-graves-in-mandera/> (last accessed May 28, 2016).

<sup>145</sup> Adow Mohamed, “Mass Graves Found in Wajir Town, 11 bodies thought to be of terror suspects found in Lanbib,” *The Star*, May 1, 2015 [http://www.the-star.co.ke/news/2015/05/01/mass-grave-found-in-wajir-town-11-bodies-thought-to-be-of-terror\\_c1128018](http://www.the-star.co.ke/news/2015/05/01/mass-grave-found-in-wajir-town-11-bodies-thought-to-be-of-terror_c1128018) (last accessed May 28, 2016).

surfaced in Mandera after a woman's body was discovered in a shallow grave in the bushes of Arabia location, off Mandera-Wajir road.<sup>146</sup>

Each time, Kenya's government and security officials denied responsibility for the deaths, and failed to conduct meaningful investigations.<sup>147</sup> In some cases, families traced, identified, and recovered the bodies of their relatives, largely without the assistance of the police, and buried them.

In several instances, Kenyan police did not secure sites of suspected mass graves and communities were often unsure about the identities of the bodies found. As a result, important evidence has likely been lost. Exhumations without forensic experts can destroy critical evidence and greatly complicate determining the cause of death and identification of bodies.<sup>148</sup>

Police and the military appear to obstruct investigations, particularly in Mandera, by bringing dead bodies to the mortuary but refusing to record the name of the officers or to share information with mortuary officials, such as exactly where the body was found. For example, in December 2015, Human Rights Watch examined mortuary records in Mandera general hospital and counted reports of at least six bodies – not among the cases documented in this report – all without an officer's name, a cause of death or any indication of where the body was found. Of the six bodies, one had been brought into the Mandera mortuary by uniformed KDF officers, suspected to be from the Mandera military base, but no name of any of the officers is recorded.<sup>149</sup> A staff member at Mandera general hospital told Human Rights Watch that security officers frequently checked bodies into the

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<sup>146</sup> "Outrage as shallow graves with fresh corpses found in Mandera," *The Standard*, December 7, 2015 <http://www.standardmedia.co.ke/article/2000184738/outrage-as-shallow-graves-with-fresh-corpses-found-in-mandera> (last accessed May 28, 2016).

<sup>147</sup> Joseph Muraya, "Nkaissery Furious Over Mandera Grave Claims," *Capital FM*, December 9, 2015. <http://www.capitalfm.co.ke/news/2015/12/nkaissery-furious-over-mandera-grave-claims/> (last accessed May 28, 2016). See also Joseph Muraya, "What Executions? Police Spokesman Asks," *Capital FM online*, September 16, 2015. <http://www.capitalfm.co.ke/news/2015/09/what-executions-kenyas-police-spokesman-asks/> (accessed May 28, 2016).

<sup>148</sup> See State Obligations in Exhumations, Enforced Disappearances Information Exchange Centre, an online collection of information on disappearances, AC Utrecht, Netherlands. <http://www.ediec.org/areas/state-obligations/exhumations/> (last accessed May 29, 2016).

<sup>149</sup> See the mortuary records at Mandera General Hospital, photos on Human Rights Watch file. Based on the description of the hospital staff, the numbers could be more, but the mortuary records were badly kept and many pages had either fallen or were falling off while some pages were barely legible.

mortuary without signing their names as is required under the law.<sup>150</sup> He also said that KDF officers have twice assaulted the mortuary attendant and threatened to shoot hospital staff who attempted to insist that officers sign their names in the registry when they dropped off dead bodies.<sup>151</sup>

Witnesses in the 11 cases documented by Human Rights Watch said that police failed to secure the location where bodies had been unearthed or to collect material evidence from the scene, or to ensure there was an autopsy in order to determine the actual cause of death, as required under Kenyan law.<sup>152</sup>

In few cases where bodies of the dead have been identified, the great distances between where people were arrested and where their bodies are ultimately found, means that those whose loved ones are missing have difficulties tracing them. For example, one body of someone arrested in Garissa county was found in Thika town 320 kilometers away.<sup>153</sup> The body of another person also arrested in Garissa was found in the outskirts of Embu town, also more than 300 kilometers away.<sup>154</sup> One person was found in a shallow grave nearly 50 kilometers from Mandera town he had been last seen. Another body was discovered in an area called Fino, nearly 90kms from Mandera County where the victim had been arrested.<sup>155</sup>

Kenyan authorities have in some instances suggested that the victims were killed by Al-Shabab.<sup>156</sup> But locations where the bodies were found show that the perpetrators traveled to the interior of Kenya to dispose of the bodies, rather than move in the direction of the Kenya-Somalia border. By moving toward the interior and closer to the capital, Nairobi, the perpetrators would have gone through the numerous police check points – more than 15

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<sup>150</sup> Human Rights Watch interview with R.U., a staff member at Mandera general hospital, December 8, 2015.

<sup>151</sup> Human Rights Watch interview with R.V., an official at Mandera general hospital, Mandera town, December 8, 2015.

<sup>152</sup> The Criminal procedure Act, 1930, Section 385.

<sup>153</sup> Human Rights Watch interview with K.L., Taqwa neighborhood in Garissa county, September 10, 2015.

<sup>154</sup> Human Rights Watch interview with A.A., Garissa town, September 9, 2015.

<sup>155</sup> Human Rights Watch interview with Z.F., Mandera town, December 8, 2015.

<sup>156</sup> Joseph Muraya, "Nkaissery Furious Over Mandera Grave Claims," *Capital FM*, December 9, 2015.

<http://www.capitalfm.co.ke/news/2015/12/nkaissery-furious-over-mandera-grave-claims/> (last accessed May 29, 2016).

See also Joseph Muraya, "What Executions? Police Spokesman Asks," *Capital FM online*, September 16, 2015.

<http://www.capitalfm.co.ke/news/2015/09/what-executions-kenyas-police-spokesman-asks/> (last accessed May 28, 2016).

check points between Garissa and Thika town alone – without being detected transporting a corpse.<sup>157</sup> Given the intensity of the presence of security forces, this seems very unlikely.

In the 11 named cases documented by Human Rights Watch, Kenyan authorities failed to ensure that, where necessary, inquests were held to establish the circumstances under which the victims died despite media reports and concerns expressed by families and human rights organizations, as well as widespread calls by local leaders to government to ensure accountability for those responsible for the killings. Human Rights Watch is not aware of any investigations into the causes of these deaths or anyone arrested as an alleged perpetrator of these deaths, leaving victims' families without answers. Human Rights Watch did not receive any response to letters sent to government authorities asking questions regarding the status of any investigations.

## Cases from Mandera

### *Abdiwahab Noor Abdi Diis*

On April 22, 2015, a group of uniformed masked KDF officers arrested Noor Abdi Diis at around 10 a.m. from his retail shop in Omar Jillo, about 40 kilometers from Mandera town along Mandera-Nairobi road. The KDF officers drove an armored personnel carrier and a military tanker.<sup>158</sup>

Noor Abdi Diis was arrested along with five other people, also from Omar Jillo, witnesses said, but the identities of the five were not known.<sup>159</sup> Community members in Fino later discovered Noor Diis's body on April 27, 2015, close to 50 kilometers from where he was arrested. But witnesses said the whereabouts of the other five people who were arrested with him have remained unknown.<sup>160</sup>

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<sup>157</sup> Human Rights Watch field observations, Thika-Garissa road, September 7, 12, 17 and 20, 2015.

<sup>158</sup> Human Rights Watch phone interview with N.D., January 25, 2015.

<sup>159</sup> Human Rights Watch interview with N.S., Nairobi, July 27, 2015.

<sup>160</sup> Human Rights Watch interview with D.B., Nairobi town, July 21, 2015 and phone interview with N.D., January 25, 2016.

A 68-year-old man who witnessed the arrests and was also among those who went to Fino to try and identify the body said:

When people received reports that a body had been discovered in Fino area, the families of all the victims who had been arrested with Noor Diis went there to check and see whether it was that of their relative. We found it was Noor Diis because he had a photocopy of the Kenya national identity card in one of his trouser pockets. His wife, mother and brother also identified physical marks on him.<sup>161</sup>

A man who was involved in searching for Noor Diis told Human Rights Watch that Noor had three bullet wounds in his head and one bullet in each shoulder, all shot from behind.<sup>162</sup> Community members reported the discovery of Noor Diis' body to Fino Police Station and officers from the station visited the scene, saw the body and left. The officers did not secure the scene, gather any evidence or carry out any investigations.<sup>163</sup>

An elder who accompanied the family in most cases during the search said:

We accompanied the family to the station with the hope of reporting the matter and recording a statement, but police refused to take our report or even give us the OB number for the case. They also refused to come and collect the body. We just collected the body ourselves and went and helped the family to bury it in Arabia area, which is where his mother lives.<sup>164</sup>

### *Isnina Musa Sheikh*

Four masked men in plainclothes arrested Isnina at around 1 p.m. on December 3, 2015 as she served customers at her food kiosk in Mandera town. The men failed to identify themselves but were carrying pistols and M16 assault rifles, commonly used by KDF officers.

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<sup>161</sup> Human Rights Watch phone interview with N.D., January 25, 2016.

<sup>162</sup> Human Rights Watch interview with X.O., Mandera town, December 9, 2015.

<sup>163</sup> Ibid.

<sup>164</sup> Human Rights Watch interview with D.X., Mandera town, December 8, 2015.

Witnesses said that the four men who arrested her ordered everyone in the food kiosk to lie down, pointing their guns at some customers' heads and threatening to shoot them.<sup>165</sup>

Isnina, a mother of five, was then driven away in a white Toyota Probox car driven between two Land Cruisers that had KDF insignia on the doors. On December 4, 2015, family members made a report about her arrest at Mandera police station. Herders discovered her body on December 6 in a shallow grave in Arabia, some 50 kilometers from Mandera town and later taken to Mandera hospital mortuary.<sup>166</sup>

Witnesses told Human Rights Watch that Isnina had previously been arrested twice, once in 2014 and also in 2015, by ATPU officers over alleged links with Al-Shabab, but she was released without charge both times.<sup>167</sup>

A source privy to the security operations in Mandera told Human Rights Watch that Kenyan security had monitored Isnina's phone communications and, as far as the military intelligence and the ATPU were concerned, there was no doubt that Isnina was linked to Al-Shabab.<sup>168</sup> Human Rights Watch could not determine the veracity of that allegation.

The Kenyan cabinet secretary for interior and national coordination, Joseph Ole Nkaissery, denied that government security agencies could have been responsible for her death. The minister's public statements again accused her of links with Al-Shabab, without providing evidence. Nkaissery said at a press conference: "She was a well-known Al-Shabab cook, so who knows, maybe they killed her."<sup>169</sup>

According to the postmortem, seen by Human Rights Watch and conducted by a pathologist hired by a Nairobi-based non-governmental organization, the Independent Medico Legal Unit (IMLU), and witnessed by government pathologists, Isnina had been hit

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<sup>165</sup> Human Rights Watch interview with S.T., Duse village, Mandera, December 8, 2015.

<sup>166</sup> Human Rights Watch interview with X.O., Duse village, Mandera, December 8, 2015.

<sup>167</sup> Human Rights Watch follow up interview with N.S., Mandera town, December 8, 2015.

<sup>168</sup> Human Rights Watch interview with X.O., Mandera town, December 8, 2015.

<sup>169</sup> Joseph Muraya, "Nkaissery Furious Over Mandera Grave Claims," *Capital FM*, December 9, 2015 <http://www.capitalfm.co.ke/news/2015/12/nkaissery-furious-over-mandera-grave-claims/> (last accessed May 28, 2016).

on the head and chest by a blunt object that caused internal bleeding.<sup>170</sup> The report further noted that her body had soft tissue injuries on the back, arm, head and chest consistent with torture.<sup>171</sup>

### *Abdi Bare Mohamed*

On August 13, 2015, Abdi Bare Mohamed, was walking to Mandera county headquarters to seek employment with a relative when he encountered a CID officer he had met before. A relative who witnessed the encounter told Human Rights Watch that the CID officer accused Abdi of having links with Al-Shabab and demanded he pay Ksh50,000 (US\$500) as protection fee or be killed. The officer, according to the relative, hit Abdi and boasted that it was just a matter of time before he would disappear. The CID officer said that when Abdi eventually goes missing, the family should call him on a telephone number, which he said was his personal line.<sup>172</sup>

A woman who saw the exchange between Abdi and the officer told Human Rights Watch:

Abdi pleaded with him for over 30 minutes as he was being bullied on the road. He said he was just a job seeker and could not raise Ksh50, 000 [US\$ 500]. The man just laughed, snatched the envelope Abdi was carrying and scribbled the phone number he said the family should call when Abdi goes missing. When officer released the young man, his ear was bleeding and Abdi was scared.<sup>173</sup>

Witnesses said that Abdi was last seen on August 18, 2015 leaving his mother's house to head to the market in Mandera.<sup>174</sup> Relatives reported his disappearance at Mandera police

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<sup>170</sup> Political leaders from the north eastern region, through the County Government of Mandera, secured a court order to exhume the body of Isnina from Duse village where she had been buried for medical examination, which was done by the graveside. Human Rights Watch and other human rights organizations were present during the postmortem.

<sup>171</sup> See a medical examination report into the death of Isnina Musa Sheikh as conducted on December 8, 2015 by the Independent Medico Legal Unit, on file with HRW.

<sup>172</sup> Human Rights Watch interview with Y.H., and Z.H., Mandera town, December 9, 2015.

<sup>173</sup> Human Rights Watch interview with Z.F., Mandera town, December 9, 2015.

<sup>174</sup> Human Rights Watch interviews with Z.F., Q.F., and K.K., Mandera town, December 9, 2015.

station on August 19, 2015 but this report was missing from the police records when the family wanted to refer to it a few days later.<sup>175</sup>

Abdi's relatives found his body on September 5, 2015 at Mandera hospital mortuary. A witness at Mandera general hospital told Human Rights Watch that two people suspected to be security officers dropped off Abdi's body at the mortuary that day, but refused to identify themselves.<sup>176</sup>

The day after Abdi's body was discovered, the same CID officer described above called the family and directed that they report to him at the station. A witness said: "The family was scared and just could not summon the strength to go to the station. They have never gone there because they fear meeting the same fate as Abdi Bare."<sup>177</sup>

## A Garissa case

### *Abdimalik Mohamed (alias Ibrahim)*

In late April 2013, 50 uniformed police officers armed with what neighbors who witnessed the raid described as HK G3 assault rifles with spotlights arrested Abdimalik from his house in Taqwa neighborhood, Garissa, at the end of April 2013. The officers raided the compound and searched each house in an operation that lasted nearly two hours, during which they arrested Abdimalik and his 18-year-old brother, with whom he shared a house.

A 27-year-old witness, a neighbor who was also harassed by security officers during the raid, told Human Rights Watch:

Some of them remained outside the compound but others jumped over the perimeter wall to get into the compound. They ordered everyone to lie down as they searched one house after another. They seemed to know who they were looking for. I heard a man identify Abdimalik and his brother. These were the only people they arrested from the compound that night.<sup>178</sup>

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<sup>175</sup> Ibid.

<sup>176</sup> Human Rights Watch interview with R.V., Mandera General Hospital, Mandera, December 8, 2015.

<sup>177</sup> Human Rights Watch follow up interview with N.S., Mandera town, December 8, 2015.

<sup>178</sup> Human Rights Watch interview with K.L., Taqwa neighborhood, Garissa, September 10, 2015.



In the ensuing period, relatives and witness tried to search for the two brothers at police stations within Garissa but they could not find them and, according to witnesses, officers from Garissa station were not interested when they reported the disappearance there. Abdimalik's body was found near Thika town, close to Nairobi, over 300 kilometers from Garissa town three days later.<sup>179</sup> Although a medical examination of the body was never conducted – as police never secured the scene or took the body for examination – and the body was barely recognizable, the family identified him using body marks.

A 43-year-old witness said:

The body was soaked in blood, the face was swollen as if he had been beaten badly and parts of his back and chest had dark depressions in the skin and wounds. One of the arms was broken while his neck had strangle marks. He had bullet wounds in the head but I don't know how many. His shirt was torn and soaked in blood while the trouser looked like it was being pulled on the ground and was sagging yet it still had his ID inside.<sup>180</sup>

Witnesses told Human Rights Watch that the discovery of Abdimalik's mutilated body was reported at Thika central police station, but neither the Garissa police where his arrest was first reported nor the police in Thika recorded statements from the family. The family and relatives buried the body in Thika cemetery, in central Kenya.<sup>181</sup> His 18-year-old brother has never been found. The family has since moved from Garissa out of fear.

## Nairobi case

### *Mohamud Abdi*

On June 23, 2014, three men believed to be members of the police's DCI seized Mohamud Abdi at around lunch time on 12th street in Nairobi's Eastleigh neighborhood. Witnesses told Human Rights Watch that the three men officers in plainclothes first approached Mohamud who was walking with his two friends just near Barclays Bank, and asked for

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<sup>179</sup> Human Rights Watch phone interview with D.B., July 21, 2015.

<sup>180</sup> Human Rights Watch interview with K.L., Taqwa neighborhood, Garissa, September 10, 2015.

<sup>181</sup> Human Rights Watch interview with B.F., Garissa town, September 11, 2015.

someone called Black, which was Mohamud's nickname.<sup>182</sup> They then asked for Mohamud's identity card and looked at his picture to confirm he was indeed the one they were looking for.

When Mohamud and friends demanded that the officers identify themselves, they showed cards indicating they were attached to the DCI, but they were traveling in a white taxicab.

The officers said they were taking Mohamud to Pangani Police station. Two friends who were with him during the arrest offered to accompany him to the police station but the security officers declined to share the taxicab with them, according to witnesses. A 55-year-old man told Human Rights Watch, "They told the two friends to use a different vehicle. They looked for a different vehicle and quickly followed them up to Pangani Police station but were surprised to be told by officers at Pangani station that Mohamud had not been seen there."<sup>183</sup>

Human Rights Watch learned that the friends then started searching for the white taxicab, whose registration numbers they had recorded. It was only then that they realized what had happened, according to a 27-year old witnesses:

They found the cabdriver who said that the officers had switched to a new car together with Mohamud just before reaching Pangani police station and instead forced the cabdriver to continue driving to the station. We think this must have been their way of shaking off anyone who might have been following them.<sup>184</sup>

Relatives and friends, according to someone who was close to the family, then embarked on a rather painful process of searching for Mohamud, including, with the assistance of Pangani police, tracking his phone number. The phone could however be tracked only up to the roundabout next to Pangani police station, which meant the SIM card had been removed and the phone disabled around that area. Relatives searched for him in all public mortuaries in Nairobi, central Kenya and Machakos to the eastern region without success.

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<sup>182</sup> Human Rights Watch interview with L.M., Wajir town, October 21, 2015 and P.Q., Nairobi town, November 17, 2015.

<sup>183</sup> Human Rights Watch interview with L.M., Wajir town, September 22, 2015.

<sup>184</sup> Ibid.

According to one witness:

On June 24, the family, accompanied by an officer from Pangani station, asked for the closed circuit television footage from the area where Mohamud was arrested but the bank declined. On June 25 the family got a court order for Barclays to release the footage, but the bank has refused to obey the court order. They have not been sanctioned for failing to comply.<sup>185</sup>

Another witness told Human Rights Watch that the family, in a bid to monitor his financial transactions during the period he was missing, examined his account at Kenya Commercial Bank. The witness said: “There was an ATM withdrawal of Ksh40,000 (US\$ 400) from Kenya Commercial Bank, Murang’a Branch in Central Kenya on the night of June 23 and another Ksh1,800 (US\$18) from KCB’s Total Branch in Nairobi on June 24.”<sup>186</sup>

The family eventually found Mohamud’s body at Nairobi’s city mortuary on July 17, 2014. Human Rights Watch perused the records at city mortuary and found that, in fact, Mohamud’s body was checked in on June 25, just two days after he was arrested, by two police officers, including one written in the records as “Inspector Makau.”<sup>187</sup>

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<sup>185</sup> Human Rights Watch interview with L.M., Wajir town, September 22, 2015.

<sup>186</sup> Human Rights Watch interview with Q.R., Nairobi’s Eastleigh neighborhood, November 18, 2015.

<sup>187</sup> See the records of the Nairobi City Mortuary, June 25, 2014.

## V. Government Response

“The State cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives.”

-UN Working Group on Enforced or Involuntary Disappearances, “General Comment on the Right to the Truth in Relation to Enforced Disappearance,” July 22, 2010.

Despite widespread reports by the media, local human rights organizations and local political leaders, Kenyan authorities have failed to investigate or even acknowledge the killings and disappearances in northeast. The government has routinely denied that there are cases of enforced disappearances and extrajudicial killings and defended the security agencies, ignoring mounting evidence of serious abuses.<sup>188</sup> Government officials have also criticized and verbally attacked those pushing for investigations, such as members of the media and civil society organizations.

### Failure to adequately investigate

In the 45 cases documented in northeast and Nairobi by Human Rights Watch, family members or witnesses had in one way or another made reports to the police and, in some cases, had OB numbers from police stations, but in no case was there evidence that police had made efforts to investigate the incidents with the view to ensuring justice.

Other than recording the relevant OB numbers for some cases, police failed to take statements from families or relatives who took the initiative to formally report their missing or dead relatives. In two instances in Mandera, the relevant page where the case was recorded had been ripped off, forcing relatives to make fresh reports. In some of the cases, relatives told Human Rights Watch that either police had declined to take statements from them or, for lack of trust and confidence in the police, the relatives and witnesses simply did not bother to report.

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<sup>188</sup> Joseph Muraya, “Nkaissery Furious Over Mandera Mass Grave Claims,” *Capital FM*, December 9, 2015 <http://www.capitalfm.co.ke/news/2015/12/nkaissery-furious-over-mandera-grave-claims/> (last accessed May 28, 2016).

A 27-year-old journalist who corresponds for an international television station from Garissa said:

We have interviewed many affected families and certainly there are those that have reported their cases to police. They complain that police are taking the reports too casually and are not keen on investigating. Other than taking note of the reports, police don't do anything else.<sup>189</sup>

The journalist told Human Rights Watch that this had resulted in mistrust between police and the communities. "The only reason families keep going to report to the police," he said, "is that those who arrest their relatives often introduce themselves as security officers."<sup>190</sup>

A 38-year-old mother of three, whose husband's dead body was found, expressed her frustrations to Human Rights Watch:

After my husband was kidnapped, we went to report the incident at Garissa police station, but police said that they did not know anything about him. When we tried to have the case taken down as that of a missing person, police declined to take the report. They did not enter it in the OB as should be the case. When we found his body, we again reported the matter to Embu police station but they did not bother. They did not even come to the scene or collect the body. We took his body and buried him and the matter ended there. We have not heard from the police since.<sup>191</sup>

Human Rights Watch heard similar accounts from other relatives of those who are missing or found dead. By failing to act on these reports so doing, Kenyan police deliberately either violate or ignore relevant national and international laws. The Kenya Criminal Procedure Act of 1930 requires police to, upon receiving reports of a missing or dead person, immediately proceed to the place where the body of the deceased is, investigate and

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<sup>189</sup> Human Rights Watch interview with F.G., an Al Jazeera journalist who has regularly reported on killings and disappearances in north east, Garissa town, July 21, 2015.

<sup>190</sup> Ibid.

<sup>191</sup> Human Rights Watch interview with B.O., Garissa town, September 9, 2015.

prepare a report on the apparent cause of death.<sup>192</sup> The Act further says the report shall “describe such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, and by what weapon or instrument, the marks appear to have been inflicted; and the report shall be forwarded forthwith to the nearest magistrate empowered to hold inquests.”<sup>193</sup>

The relatives who did not report the incidents of missing or dead persons told Human Rights Watch that they were either afraid of being targeted themselves or did not believe they would get justice from police or any other government institution.<sup>194</sup> Even among those who reported, including victims of torture who had been released, Human Rights Watch heard of cases of intimidation by police and the military officials against anyone who would otherwise contemplate seeking justice.

In at least five cases, both the military and some police officers either concealed evidence, interfered with scenes of crime or intimidated potential witnesses. A 40-year-old man told Human Rights Watch about how officers at Garissa police station handled reports of the alleged enforced disappearance of his 33-year-old brother:

The management of the restaurant where my brother worked recorded a statement about the incident on the same day, but when I went to the station two days later, we could not trace the statement. Up to now no one knows where the statement went. I also decided to officially record a statement about the disappearance of my brother. My statement too has disappeared.<sup>195</sup>

According to Kenyan law, it is an offence for a police officer to fail to record and report any complaint and requires all complaints made against police officers to be recorded and reported to the Independent Policing Oversight Authority (IPOA), a statutory civilian police

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<sup>192</sup> Section 384.

<sup>193</sup> See Section 386 (1), (a), (b), (c), (d) of the Kenya Criminal Procedure Act, Cap 75, 1930.

<sup>194</sup> Human Rights Watch interview G.R., Bula Mzuri village, Garissa, September 11, 2015, Human Rights Watch interview with G.F., Garissa Ndogo village, Garissa town, September 17, 2015. Human Rights Watch interview with L.M., Wajir town, October 23, 2015; Human Rights Watch interview with T.A., Mandera town, December 8, 2015.

<sup>195</sup> Human Rights Watch interview with R.G., Garissa Ndogo neighborhood, September 8, 2015.

oversight mechanism, for investigation and prosecution.<sup>196</sup> Commanders in Kenya's north eastern region consequently have failed to record and report complaints against security officers which is a critical step to investigations to ensure accountability.

## Failure to acknowledge

The government's failure to acknowledge the abuses which have occurred in counterterrorism operations and its hostility to any allegations that members of its forces are implicated has undermined the possibility for justice for the victims and accountability for the perpetrators.

The state-funded Kenya National Commission on Human Rights released a report in September 2015 documenting 25 extrajudicial killings and 81 enforced disappearances in Kenya.<sup>197</sup> The Kenya Police Service spokesperson described such reports as "cheap propaganda" and suggested that those reported as missing are likely in Somalia with Al-Shabab.<sup>198</sup> He argued that those making such claims are Al-Shabab agents who want security agencies to ease off, so that Al-Shabab can continue killing civilians in Kenya.<sup>199</sup>

Charles Owino, the police spokesperson, said:

What surprises me is that the government agents and the general public that are getting killed seem not to have rights in the eyes of the Kenya National Commission on Human Rights. The government has all the machinery. It is not real (sic) that people would be killed in a military camp and then buried behind the camp in a shallow grave. If truly the military has killed, they have the capacity to hide you somewhere that is not a shallow grave.<sup>200</sup>

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<sup>196</sup> See Section 50 (3) and (4) of the Kenya Police Service Act, 2011.

<sup>197</sup> "Error of Fighting Terror with Terror," Kenya National Commission on Human Rights, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last accessed May 29, 2016).

<sup>198</sup> Joseph Muraya, "What Executions? Police Spokesman Asks," *Capital FM online*, September 16, 2015. <http://www.capitalfm.co.ke/news/2015/09/what-executions-kenyas-police-spokesman-asks/> (last accessed May 29, 2016).

<sup>199</sup> Joseph Muraya, "What Executions? Police Spokesman Asks," *Capital FM online*, September 16, 2015. <http://www.capitalfm.co.ke/news/2015/09/what-executions-kenyas-police-spokesman-asks/> (last accessed May 29, 2016).

<sup>200</sup> Joseph Muraya, "What Executions? Police Spokesman Asks," *Capital FM online*, September 16, 2015. <http://www.capitalfm.co.ke/news/2015/09/what-executions-kenyas-police-spokesman-asks/> (last accessed May 29, 2016).

President Uhuru Kenyatta and the National Security Council, in response to an Al Jazeera investigative story on December 7, 2014, which quoted Kenyan security officers as saying that the order to kill and disappear people comes from the National Security Council, flatly denied any possibility that Kenyan security agencies could be implicated.<sup>201</sup>

In November 2015, while responding to a report by a Kenyan non-governmental human rights organization about the conduct of KDF officers in Somalia, the president again defended Kenyan security agencies and denied the claims against them.

Kenyatta said:

Instead of commending our security forces who are making major sacrifices to defend and guard the country against terrorists, some Kenyan leaders are discouraging them by supporting the misplaced allegations. We will stand firm with our security agents because we know the important role they play in keeping our country safe. That is why we insist that our military and other Kenyan security agents must be give room to carry out their work without political interference.<sup>202</sup>

## Threats to families, witnesses, media and human rights campaigners

Government officials and security officials have threatened and intimidated those seeking to report disappearances and other abuses, witnesses, local political leaders and human rights organizations calling for investigations and accountability for abuses occurring in the context of Kenya's counterterrorism operations. Journalists and media houses reporting on killings and enforced disappearances in response to attacks in the country have also faced threats.

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<sup>201</sup> "Members of Kenya's counterterrorism police admit to eliminating radical Muslims," Aljazeera Investigates, December 7, 2014 <http://www.jamiiforums.com/threads/al-jazeeras-investigative-unit-kenyan-counter-terrorism-police-confess-to-extrajudicial-killings.770782/> (last accessed May 28, 2016).

<sup>202</sup> Presidential Service Communications Unit, "Uhuru Says Claims Against KDF Ridiculous, Assures Support," *Daily Nation*, November 14, 2015 <http://www.nation.co.ke/news/politics/Uhuru-says-claims-against-KDF-ridiculous--assures-support/-/1064/2956574/-/88bfbpz/-/index.html> (last accessed May 28, 2016). This was in reference to a report by *The Journalists for Justice*, whose investigations echoed previous allegations of the United Nations Monitoring Group in Somalia and Eritrea that the KDF was collaborating with Al-Shabab in a multibillion shilling charcoal trade in Somalia. The full report is available here: <http://www.jfjustice.net/userfiles/file/Research/Black%20and%20White%20Kenya's%20Criminal%20Racket%20in%20Somalia.pdf> (last accessed May 28, 2016).



In December 2015, the cabinet secretary for interior and national coordination, Joseph Nkaissery, threatened to arrest anyone linking the military and other security agencies to killings, enforced disappearances and the purported mass graves in the northeastern region.<sup>203</sup> He also reprimanded a well-regarded Kenyan investigative journalist, Mohamed Ali, for his coverage of abuses in the northeastern region.<sup>204</sup>

Nkaissery warned:

Anybody who makes allegations must provide proof or else he or she will face dire consequences. This young man called Mohamed Ali has a habit of permanently putting the interests of the security organs of this country behind those of Al-Shabab. He has been portraying the Kenyan security in the negative and Al-Shabab in the positive. He shows Al-Shabab training and our people in the opposite. Kenyans should know that there are numerous interests that seem inclined to destroy the nation.<sup>205</sup>

On December 10, 2015, just a day after that warning by Nkaissery, four political leaders from northeastern Kenya, including Mandera Senator Billow Kerrow, were arrested and released without charge over claims they had made regarding the existence of mass graves in Mandera.<sup>206</sup> Other than the shallow grave in which the body of Isnina Musa Sheikh was found 50 kilometers from Mandera town, a search team of security officers, human rights activists, local leaders, villagers and the media found no bodies in the seven sites marked as potential locations for mass graves.<sup>207</sup> The Kenyan authorities, which have not

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<sup>203</sup> "You must apologise! Nkaissery tells Mandera leaders over mass grave claims," *K24 news*, December 9, 2015. <https://www.youtube.com/watch?v=asFOvVrh2s> (last accessed May 28, 2016).

<sup>204</sup> Joseph Muraya, "Nkaissery Furious Over Mandera Mass Grave Claims," *Capital FM Online*, December 9, 2015. <http://www.capitalfm.co.ke/news/2015/12/nkaissery-furious-over-mandera-grave-claims/> (last accessed May 28, 2016). See also "Nkaissery Furious over Mandera grave claims," *Citizen TV*, December 9, 2015. <https://www.youtube.com/watch?v=k4wC8Z91oqo> (last accessed May 28, 2016).

<sup>205</sup> Joseph Muraya, "Nkaissery Furious Over Mandera Mass Grave Claims," *Capital FM Online*, December 9, 2015. <http://www.capitalfm.co.ke/news/2015/12/nkaissery-furious-over-mandera-grave-claims/> also "Nkaissery Furious over Mandera grave claims," *Citizen TV*, December 9, 2015. <https://www.youtube.com/watch?v=k4wC8Z91oqo> (last accessed May 28, 2016).

<sup>206</sup> Aggrey Mutambo, "Senator Kerow, three MPs arrested in Mandera mass graves saga," *The Daily Nation*, December 11, 2015. <http://www.standardmedia.co.ke/lifestyle/article/2000059178/only-god-can-stop-me> (last accessed May 28, 2016).

<sup>207</sup> Angira Zadock, "Police did not dig up any more bodies during search at 15 sites," *Daily Nation*, December 9, 2015. <http://www.nation.co.ke/news/Police-chief-says-no-bodies-in-Mandera-grave/-/1056/2989240/-/jdl2boz/-/index.html> (last accessed May 28, 2016).

adequately investigated other claims of mass graves in northeastern region, blamed local leaders for spreading what authorities argue are false reports of mass graves. Kenyan media reported that the leaders who were arrested were questioned on incitement to violence and giving false information.<sup>208</sup>

In November 2014, following the investigative documentary by Al Jazeera, Kenyan authorities ordered an investigation into Al Jazeera but never investigated the actual allegations.<sup>209</sup> The ministry of interior and national coordination accused the makers of the documentary of supporting Al-Shabab and “terrorism.” Monica Juma, the principal secretary for interior and national coordination, said in a statement:

The timing of the documentary is suspicious and appears meant to derail Kenya’s efforts to fight terrorism. The tone and subjective nature of the documentary was deliberately skewed to support and empathize with terrorists and their sympathizers without any consideration for the hundreds of innocent Kenyans who have died in the hands of terrorists.<sup>210</sup>

The practice of public officials threatening victims of abuse and families of the victims who seek justice, intimidating human rights activists and exerting pressure on the media reporting on the abuses appears to be replicated by security officials across the country.

As previously indicated, all the 45 cases of disappearances and deaths documented in this report were reported in one way or another to police stations within their jurisdictions as required under law. But in 30 cases, the families said they had ultimately opted not to actively pursue justice beyond the initial report. More than half cited fear of reprisals by Kenyan security agents as the reason for not pursuing justice, with six of the 30 saying

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<sup>208</sup> Zadock Angira, “Senator Billow Kerrow, Three MPs arrested over Mandera Mass Grave Claims,” *Daily Nation*, December 10, 2015. <http://www.nation.co.ke/news/Senator-Kerrow-three-MPs-arrested/-/1056/2991146/-/obxf3lz/-/index.html> (last accessed May 28, 2016).

<sup>209</sup> “Kenya investigates Aljazeera over “death squads” report”, *BBC*, December 10, 2014. <http://www.bbc.com/news/world-africa-30406061> (last accessed May 28, 2016).

<sup>210</sup> “Kenya to probe Aljazeera on death squad story,” *Sapa news*, December 10, 2014. <http://www.enca.com/africa/kenya-probe-al-jazeera-death-squad-story> (last accessed May 28, 2016).

they had been turned away from police stations.<sup>211</sup> Ten families said they did not trust the Kenyan police to investigate and prosecute the cases well.<sup>212</sup>

The 15 families who reported cases to police and decided to actively pursue the cases said they had been either intimidated or threatened with death by Kenyan security officers.<sup>213</sup> Many families had stopped pursuing the cases altogether. None of the victims of torture and ill treatment had attempted to pursue justice out of fear, and nearly all of them saying they had been warned of dire consequences if they either sought justice or revealed what had happened to them.<sup>214</sup>

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<sup>211</sup> Human Rights Watch interviews with A.A., and K.L., Garissa town, September 17, 2015; V.T., Mandera town, December 9, 2015 and R.C., Wajir town, October 20, 2015

<sup>212</sup> Human Rights Watch interview with U.M., and V.T., Mandera town, December 9, 2015; interview with T.U., Taqwa neighborhood, Garissa county, September 18, 2015.

<sup>213</sup> Human Rights Watch interview with D.R., and D.K., Garissa town, September 10 & 11 and with K.K., Mandera town, December 9, 2015.

<sup>214</sup> Human Rights Watch interview with B.V., and R.M., Garissa town, September 8, 2015; A.A., and F.E., Wajir town, October 18, 2015 and V.T., Mandera town, December 9, 2015.

## VI. In Pursuit of Justice

Kenya's accountability institutions and framework have failed to stem the ongoing human rights abuses by the security forces deployed in response to Al-Shabab attacks in the country.<sup>215</sup> One key obstacle is the entrenched lack of political will to support or respect the work of Kenya's accountability institutions, established specifically to respond to allegations of abuses by security forces.<sup>216</sup> Without significant and clear commitment from all branches of the Kenyan government, and persistent support specifically for accountability from key donors to the security sector, abuses such as those documented in this report are very likely to continue.

The evidence of the impunity problem in Kenya is overwhelming. Many groups including Human Rights Watch, other international and Kenyan human rights organizations, government institutions such as the Kenya National Commission on Human Rights, and the media have documented torture, disappearances, extrajudicial killings, and arbitrary arrests among other violations, during counterterrorism law enforcement operations for years.<sup>217</sup> Despite the avalanche of reports, Kenyan authorities have rarely investigated security forces for their conduct. Human Rights Watch is unaware of a single conviction of

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<sup>215</sup> "Local Policing Accountability in Kenya: Challenges and Opportunities for Action," Centre for Human Rights and Policy Studies and African Policing Civilian Oversight Forum, 2014. <http://www.chrips.or.ke/docs/publications/local-policing-accountability-in-kenya.pdf> (accessed May 28, 2016). In August 2014, Human Rights Watch documented 10 cases of extrajudicial killings and another 10 cases of enforced disappearances in Nairobi by the Anti-Terrorism Police Unit. The Human Rights Watch research came within months of a similar report by Open Society Justice Initiative and Muslims for Human Rights (MUHURI) on disappearances and extrajudicial killings at the coast – again implicating the ATPU. In September 2015, Kenya National Commission on Human Rights report implicated multiple security units in extrajudicial killings and disappearances in the northeast.

<sup>216</sup> John Kiarie, "Is the Policing Oversight Authority (IPOA) the new toothless bulldog in town?" *The Standard newspaper*, February 22, 2014. <http://www.standardmedia.co.ke/article/2000105207/is-the-independent-policing-oversight-authority-ipoa-the-new-toothless-bulldog-in-town> (last accessed May 28, 2016). See also, Human Rights Watch, *World Report 2014*; Kenya. <https://www.hrw.org/world-report/2015/country-chapters/kenya>.

<sup>217</sup> Human Rights Watch and Kenya Human Rights Commission, "Insult to Injury: The 2014 Lamu and Tana River Attacks and Kenya's Abusive response," June 2015. <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response>. See, "We are tired of taking you to court," Open Society Justice Initiative and Muslims for Human Rights (MUHURI), November 20, 2013. <https://www.opensocietyfoundations.org/reports/were-tired-taking-you-court-human-rights-abuses-kenyas-anti-terrorism-police-unit> (last accessed May 28, 2016). See also, "Error of fighting terror with terror," Kenya National Commission on Human Rights, September 2015. <http://www.knchr.org/Portals/o/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (last accessed May 28, 2016).

any member of the Kenyan security forces for a human rights abuse in the context of counterterrorism operations.

Security sector reforms as envisaged under the 2010 Constitution and the accompanying laws were partly meant to help address the long-standing accountability challenges of the security forces, especially the police.<sup>218</sup> Consequently, the National Police Service Act, the National Police Service Commission Act and Independent Policing Oversight Authority (IPOA) Act, alongside the Constitution itself, have elaborate provisions on procedures and accountability requirements for the police. Laws establishing the Kenya Defense Forces and the Kenya Wildlife Services do not have adequate accountability requirements.<sup>219</sup> It is not clear, for example, to whom or where relatives and victims of KDF and KWS abuses/violations would report complaints or how such complaints would be investigated.

## Independent Policing Oversight Authority (IPOA)

IPOA, the civilian police accountability mechanism, was specifically founded in 2012 to address and improve accountability in the police force. IPOA is mandated to hold the police accountable to the public and to ensure independent oversight of complaints. According to the law establishing IPOA, it can “investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations.” It can also “monitor and investigate police operations affecting the public.”<sup>220</sup>

IPOA has received 4,075 complaints of police abuse across the country since it started operations in 2013. It has successfully prosecuted only 10 cases in the past three years, despite initiating at least 19 investigations against the police at the coast, in the

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<sup>218</sup> Security Research and Information Centre, “Security Sector Reforms in Kenya,” Nairobi, 2013. [http://www.srickenya.org/index.php?option=com\\_content&view=article&id=92&Itemid=108](http://www.srickenya.org/index.php?option=com_content&view=article&id=92&Itemid=108) (accessed May 28, 2016).

<sup>219</sup> See the Kenya Defense Forces Act, 2012. <http://www.cickenya.org/index.php/legislation/acts/item/220-kdf-act>. See also Kenya Wildlife Conservation and Management Act, 2013. <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2013/WildlifeConservationAndManagementBill2013.pdf> (last accessed May 28, 2016).

<sup>220</sup> The Independent Policing Oversight Authority Act, Laws of Kenya, No. 35 of 2011, on file with Human Rights Watch.

northeast, Nyanza and Nairobi.<sup>221</sup> For example, following Usalama Watch, an IPOA investigation identified at least 29 cases of abuses by police officers during operations.<sup>222</sup> This was probably a conservative figure,<sup>223</sup> but nonetheless, there is so far no evidence that any of the officers implicated in the IPOA report has been held to account, either through an internal police process or through courts of law.

On several occasions, police, politicians allied to the ruling party and senior government officials have publicly called for the disbandment of IPOA when it has attempted to investigate police abuses.<sup>224</sup> With regard to abuses in counterterrorism operations, for example, Human Rights Watch learned that IPOA had investigated at least five cases in northeastern Kenya and found sufficient evidence to recommend prosecutions, but the oversight body has yet to take any measures to ensure justice with regard to the cases. The government has also proposed amendments to increase the powers of the executive in the appointment of the top officials and board of IPOA.<sup>225</sup> The amendments have been criticized by, among others, the Law Society of Kenya, as an attempt to strip the authority of independence and essentially weaken the oversight mechanism.<sup>226</sup>

Rather than investigate, Kenyan government officials have denied that the abuses occur or that security forces could be involved.<sup>227</sup> The authorities demonize those who express concerns, branding them as being sympathetic to “terrorism,”<sup>228</sup> while at the same time

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<sup>221</sup> Human Rights Watch interview with an official of the Independent Policing Oversight Authority, Nairobi town center, May 3, 2015.

<sup>222</sup> Immaculate Akello and Cyrus Ombati, “IPOA Faults Crackdown on Refugees in Eastleigh,” *The Standard*, July 14, 2014. <http://www.standardmedia.co.ke/article/2000128162/ipoa-faults-crackdown-on-refugees-in-eastleigh> (last accessed May 28, 2016).

<sup>223</sup> Human Rights Watch, “Kenya: Halt Crackdown on Somalis,” April 11, 2014. <https://www.hrw.org/news/2014/04/11/kenya-halt-crackdown-somalis>.

<sup>224</sup> “Police officers want IPOA disbanded,” *The Citizen Weekly*, October 13, 2014. <http://weeklycitizennewspaper.blogspot.co.ke/2014/10/police-officers-wants-ippoa-disbanded.html>. See also “Nkaiserry wants NPSC, IPOA disbanded,” *Smart Kenya*, March 28, 2015. <http://smartkenya.co.uk/nkaiserry-wants-npsc-disbanded/> (last accessed May 28, 2016).

<sup>225</sup> Fred Mukinda, “Experts criticize proposed amendments to police laws,” *Daily Nation*, October 11, 2015. <http://www.nation.co.ke/news/Experts-criticise-proposed-amendments-to-police-laws/-/1056/2907708/-/xes2bc/-/index.html> (last accessed May 28, 2016).

<sup>226</sup> Fred Mukinda, “Experts criticize proposed amendments to police laws,” *Daily Nation*, October 11, 2015. <http://www.nation.co.ke/news/Experts-criticise-proposed-amendments-to-police-laws/-/1056/2907708/-/xes2bc/-/index.html> (last accessed May 28, 2016).

<sup>227</sup> “Police deny extrajudicial killings in Mandera,” *Tuko News*, December 6, 2015. <https://tuko.co.ke/74045-police-deny-involvement-mandera-shallow-graves-found-fresh-corpses.html> (last accessed May 28, 2016).

<sup>228</sup> Justus Wanga, “NGOs lose license over terrorism claim,” *Daily Nation*, May 28, 2015. <http://www.nation.co.ke/news/NGOs-lose-licences-over-terrorism-claim/-/1056/2731888/-/3ggvonz/-/index.html>

reducing budgetary support to accountability institutions such as KNCHR and IPOA and weakening the legislation that could enable the institutions to investigate the allegations and bring evidence to light.<sup>229</sup> These institutions should have the opportunity to carry out their mandates free of interference or intimidation to be effective.

## The Case for a Special Commission of Inquiry

The government, and in particular President Kenyatta, should change course and ensure accountability for abuses like those documented in this report. One significant step forward would be for him to establish a new mechanism specifically to examine abuses in counterterrorism operations, alongside publicly pushing for criminal investigations of officers who are alleged to have been involved in abuses.

The Commissions of Inquiry Act allows the president to appoint a special commission to “inquire into the conduct of any public officer or the conduct or management of any public body, or into any matter into which an inquiry would, in the opinion of the President, be in the public interest.”<sup>230</sup> A special commission of inquiry, whether judicial and/or parliamentary, and if well-supported and free of political manipulation, could respond to the pressing national challenge of addressing the root causes of Kenya’s impunity gap. Kenyan law allows parliament to institute its own inquiry through a parliamentary commission, which is an option Kenyan legislators should pursue if the president fails to commission an independent inquiry.

As multiple government agencies and units are increasingly working together in counterterrorism operations, handing over suspects to one another, and detaining suspects arrested by various units, a commission of inquiry with a broad mandate to investigate the actions of multiple agencies is critical. Currently, there is no government

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(accessed May 28, 2016). See also, “Kenya: Administrative harassment of Haki Africa, MUHURI and Agency for Peace and development,” FIDH, June 5, 2015. <https://www.fidh.org/en/region/Africa/kenya/kenya-administrative-harassment-of-haki-africa-muslims-for-human> (last accessed May 28, 2016).

<sup>229</sup> Benard Momanyi, “Plot to weaken police commission revealed,” *Capital FM online*, March 24, 2015. <http://www.capitalfm.co.ke/news/2013/03/plot-to-weaken-police-commission-revealed/> (accessed May 28, 2016). See also, “Rights body opposes changes to police laws,” Kenya National commission on Human Rights, May 30, 2013. <http://www.businessdailyafrica.com/Rights-body-opposes-changes-to-police-laws/-/539546/1867210/-/11sjmja/-/index.html> (last accessed May 29, 2016).

<sup>230</sup> Commission of Inquiry Act No. 11 of 1962, L.N. 2/1964, L.N. 124/1964, Act No. 21 of 1966, Act No. 29 of 1967, Act No. 5 of 2010 revised in 2012, section 3 (1).

accountability mechanism which has a mandate to investigate the actions of all security organs, including the military and the wildlife service. As stated previously, those seeking information from the KDF, for example, regarding the whereabouts of detainees believed to be held in military compounds, have no clear avenues for asking even basic questions.

IPOA's mandate is limited to police and therefore the institution can do nothing in the face of allegations of KDF abuses. There is also no organization or mechanism with mandate and sufficient clout to routinely visit and investigate reports of illegal detention facilities inside military compounds or barracks. There are also real questions about IPOA's capacity to handle proper investigations given the geographic range of allegations against police and the complexity of police's involvement with the military in the context of counterterrorism operations specifically.

To ensure independence and credibility of its findings, the commission should draw its membership from multiple agencies, sectors and expertise. It should also have powers to summon commanders and officers from any agencies, including the police, military and the KWS, and any government office. Senior government leadership including the president and cabinet ministers should insist on compliance with the Commission's summons.<sup>231</sup> The Commission's findings should be made public to the greatest extent possible, and handed over to a judicial authority to pursue possible prosecutions.

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<sup>231</sup> Parliamentarians have raised concerns that some security agencies refuse to comply with parliamentary summons. See for example, Alphonse Shiundu, "Military, spy agency ignore queries on El Adde attack, refuse to give budget details," The Standard, May 31, 2016. <http://standardmedia.co.ke/article/2000203635/military-spy-agency-ignore-queries-on-el-adde-attack-refuse-to-give-budget-details> (last accessed July 11, 2016).



## VII. Kenya Government's Legal Obligations

### International Legal Obligations

The government's failure to act decisively against human rights abuses in the northeast violates its international legal obligations. International human rights law obligates governments to end impunity for serious human rights violations by undertaking prompt, thorough, and impartial investigations of alleged human rights violations, ensuring that those responsible for serious crimes are prosecuted, tried, and duly punished.<sup>232</sup>

International treaties that Kenya is party to obligate the government to deter and prevent gross violations of human rights, and to investigate, prosecute, and remedy abuses.<sup>233</sup> This also entails addressing the victim's rights to justice, knowledge, and reparations.<sup>234</sup>

The International Covenant on Civil and Political Rights (ICCPR) requires that governments adopt measures, including through the legal system, to protect fundamental rights.<sup>235</sup> According to the UN Human Rights Committee, the independent expert body that monitors compliance with the ICCPR, a state's failure to investigate and bring perpetrators to justice, particularly with respect to crimes such as killings, torture and other ill-treatment, is in itself a violation of the covenant.<sup>236</sup>

Further, the African Charter on Human and Peoples' Rights obligates states to ensure protection of rights enshrined in the charter, and for individuals to have rights violations against them heard by competent national institutions.<sup>237</sup> Various international standards

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<sup>232</sup>UN Commission on Human Rights, "Report of the independent expert to update the set of principles to combat impunity," E/CN.4/2005/102/Add.1, February 8, 2005.

<sup>233</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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 March 23, 1976; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc.CAB/LEG/67/3 rev.5, 21 I.L.M. (1982), entered into force October 21, 1986.

<sup>234</sup>Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15.

<sup>235</sup> ACCPR No 14668, Article 2 (3), 1966.

<sup>236</sup> Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, (2004), arts. 15 & 18.

<sup>237</sup> African Charter, arts. 1 & 7.

also seek to promote state efforts to obtain justice for victims. For instance, the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions call upon governments to remove officials implicated in such crimes from direct or indirect power over the complainants, witnesses and those conducting the investigation.<sup>238</sup>

Identification of the specific perpetrators of the violations is crucial in ensuring accountability. The doctrine of superior or command responsibility imposes liability on superiors for the unlawful acts of their subordinates, where the superior knew or had reason to know of the unlawful acts, and failed to prevent or punish those acts.<sup>239</sup>

In addition to the obligation to investigate and prosecute, governments have an obligation to provide victims with information about the investigation into the violations. Victims should be entitled to seek and obtain information on the causes and conditions resulting in rights violations against them.<sup>240</sup> The former UN Commission on Human Rights adopted principles stating that “irrespective of any legal proceedings, victims, their families and relatives have the imprescriptible right to know the truth about the circumstances under which violations took place.”<sup>241</sup>

Under the ICCPR, states also have an obligation “to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy” “determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy.”<sup>242</sup>

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<sup>238</sup> Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions: Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No.1) at 52, U.N. Doc E/1989/89 (1989), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx> (accessed May 29, 2016), principle 15.

<sup>239</sup> Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, entered into force July 1, 2002, article 28 (Kenya ratified in March 2005).

<sup>240</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, paras. 11(c) and 24.

<sup>241</sup> UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 3.

<sup>242</sup> ICCPR, art. 2 (3)(b); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d).

Authorities have a special obligation in cases of enforced disappearance to provide information to the victims' relatives. The right of victims' families to know the truth in cases of disappearances is guaranteed by international law,<sup>243</sup> and included in the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>244</sup> In addition, the Committee against Torture has affirmed that the right of victims to obtain "redress" – guaranteed by article 14 of the Convention against Torture<sup>245</sup> – includes the right to the following remedies:

[E]ffective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.<sup>246</sup>

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<sup>243</sup> International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in Geneva June 8, 1977, entered into force December 7, 1979, art. 32, "In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives."

<sup>244</sup> UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, adopted January 12, 2007, G.A. res. 61/177, UN Doc. A/61/177 (2006), entered into force December 23, 2010.

<sup>245</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, 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.

<sup>246</sup> UN Committee against Torture, General Comment No. 3, Implementation of Article 14 by States Parties, CAT/C/GC/3 (2012), para. 16.

The UN Human Rights Committee has held that state failure to pursue cases or provide information about the fate of a disappeared person to families can inflict extreme anguish upon relatives of the disappeared, which make them victims of the violation as well.<sup>247</sup> For the families, not knowing what happened to a relative is a source of ongoing suffering, and may even amount to torture, according to the UN Working Group on Enforced Disappearance.<sup>248</sup>

According to the African Principles and Guidelines on the Right to a Fair Trial and Legal Assistance,<sup>249</sup> to which Kenya is a party, anyone arrested or detained on a criminal charge should be brought before a judge and should be entitled to trial within a reasonable time or to release.<sup>250</sup> Any person deprived of liberty should be held in an officially recognized place of detention.<sup>251</sup> Accurate information on the detention of such persons and their place of detention, including transfers, should be promptly available to their family members, their legal representative or to any other persons having a legitimate interest in the information.<sup>252</sup> The principles further note that the accused has a right to legal assistance assigned to him or her in any case where the interest of justice so require.<sup>253</sup> Furthermore, the African principles states that governments shall ensure that anyone who has been the victim of unlawful arrest or detention is enabled to claim compensation.<sup>254</sup>

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<sup>247</sup> In the case of *Quinteros v. Uruguay*, which was brought before the UN Human Rights Committee by the mother of a woman who was allegedly disappeared by members of the Uruguayan military, the Committee recognized, “the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. [The mother] has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of article 7.” *Quinteros v. Uruguay*, UN Human Rights Committee, communication no. 107/1981, July 21, 1983, para. 14. The UN Human Rights Committee concluded that the mother was entitled to compensation as a victim for the suffering caused by the failure of the state to provide her with information.

<sup>248</sup> UN Working Group on Enforced or Involuntary Disappearances, “General Comment on the Right to the Truth in Relation to Enforced Disappearance,” July 22, 2010, [http://www2.ohchr.org/english/issues/disappear/docs/GC-right\\_to\\_the\\_truth.pdf](http://www2.ohchr.org/english/issues/disappear/docs/GC-right_to_the_truth.pdf) (last accessed May 29, 2016).

<sup>249</sup> African Commission on Human and People’s Rights, “Principles and Guidelines on the right to a Fair Trial and Legal Assistance, 2003. <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>.

<sup>250</sup> ACHPR, “The right to be brought promptly before a judicial officer,” section M(3).

<sup>251</sup> ACHPR, “Right to be detained in a place recognised by law,” section M(6).

<sup>252</sup> ACHPR, “Right to be detained in a place recognized by law,” section M(6)(a).

<sup>253</sup> ACHPR, “Legal Aid and legal assistance,” section (H) (a).

<sup>254</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle M(1)(h).

## Kenya's Obligations under the Constitution and Domestic Statutes

The Constitution of Kenya provides for the protection of the freedom and security of an individual, including the right not to be deprived of freedom arbitrarily or without just cause.<sup>255</sup> It also provides for the right not to be detained beyond 24 hours without charge, subjected to any form of violence from either private or public sources, subjected to torture in any manner, whether physical or psychological, subjected to corporal punishment or treated or punished in a cruel, inhuman or degrading manner.<sup>256</sup>

Police have an obligation to follow the law while investigating and prosecuting those responsible for crime, including the forms of violence in the northeast for which Al-Shabab has claimed responsibility.<sup>257</sup> The National Police Service Act of 2011 obligates police to, while maintaining law and order, provide assistance to the public when in need, including responding to public complains about abusive officers and a copy of such a report should be submitted to the Independent Policing Oversight Authority.<sup>258</sup>

The law also requires police stations to establish a facility to receive, record and report complaints against police misconduct.<sup>259</sup> Police are also required to make a report of all daily occurrences and incidents encountered and make such a report available to their superiors.<sup>260</sup> The law further obligates the police to record all complaints and charges preferred, the names of all persons arrested and the offences with which they are charged.<sup>261</sup>

KDF officers are ordinarily not allowed to arrest civilians and any such arrests and detention are in violation of the law. The military may however be deployed to “restore peace in any part of Kenya affected by unrest or instability” with the approval of the National Assembly,

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<sup>255</sup> The Constitution of Kenya, 2010, art 29(a).

<sup>256</sup> The Constitution of Kenya, 2010, arts 29 (b) – (f). Also, see the National Police Service Act, 2011, the National Police Service Commission Act, 2011 and the Independent Policing Oversight Authority Act, 2011. Under the 2014 Security Laws (Amendment) Act allows police can detain terrorism suspects for 90 days, but only with the permission of the court. The rights of accused persons as outlined under Kenyan and international law remain applicable. Human Rights Watch is not aware of any evidence that police have sought court permission for cases documented in this report. The Security Laws Amendment Act of December 22, 2014.

[http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws\\_Amendment\\_Act\\_2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws_Amendment_Act_2014.pdf)

<sup>257</sup> See the National Police Service Act, signed into law by the president of Kenya in 2011.

<sup>258</sup> National Police Service Act, Section 24 (1), signed into law by the president of Kenya in 2011.

<sup>259</sup> National Police Service Act, Section 40 (7).

<sup>260</sup> National Police Service Act, Section 49 (3).

<sup>261</sup> National Police Service Act, Section 50 (1).

but even then the law does not explicitly allow KDF to arrest and detain.<sup>262</sup> The ongoing operations in the northeast by KDF are without parliamentary approval.

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<sup>262</sup> Kenya Defense Forces Act, Section 8 (c), signed into law by the president of Kenya in 2012.

## VIII. Donor Security Assistance to Kenya

“Promises about human rights are not enough. Not nearly enough. . . . the actions we take, the methods we choose, to protect human rights are absolutely critical . . . . Government leaders, politicians, the police, the judiciary, and their partners in civil society must all take action to stop injustices. They must investigate allegations. They must provide protection to victims and witnesses. And they must hold those responsible for these injustices accountable. This is a shared imperative for both the United States and Kenya.”

-US Ambassador to Kenya Robert Godec, May 28, 2015.<sup>263</sup>

Donor officials have raised the importance of human rights protections and concerns for abuses during Kenya’s counterterrorism operations, but it appears to have had little concrete impact on the Kenyan government’s response to or investigations of abuses thus far. And yet, Kenya continues to receive significant security sector support from various bilateral and multilateral partners.

US officials including Secretary of State John Kerry publicly highlighted respect for human rights in counterterrorism operations in speeches in Kenya in the run-up to President Obama’s visit in July 2015.<sup>264</sup> Secretary Kerry called attention to the fact that “President Kenyatta reinforced his agreement with us that human rights and the rule of law have to be respected in the counterterrorism efforts.”<sup>265</sup> British and EU officials have similarly raised the fundamental importance of respect for human rights in efforts to “counter violent extremism.”<sup>266</sup>

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<sup>263</sup> Ambassador Godec Remarks at the Launch of the Laikipia University Human Rights Center, Laikipia University, Nyahururu, Kenya, May 28, 2015, <http://nairobi.usembassy.gov/spo52815.html> (last accessed May 27, 2016).

<sup>264</sup> Ambassador Godec Remarks for the Launch of the Independent Policing Oversight Authority Strategic Plan, Kenyatta International Conference Centre, Nairobi, September 11, 2014. <http://nairobi.usembassy.gov/ipoa2014.html> (last accessed May 29, 2016).

<sup>265</sup> Secretary John Kerry’s remarks during a joint press briefing with President Uhuru Kenyatta ahead of President Obama’s Kenya visit, Nairobi, May 4, 2015. <http://www.state.gov/secretary/remarks/2015/05/241822.htm> (last accessed May 29, 2016).

<sup>266</sup> High Commissioner Christian Turner’s speech to Supreme Council of Kenya Muslims (SUPKEM) National Conference on Security and countering violent extremism, Nairobi, January 17, 2014. <https://www.gov.uk/government/speeches/counter-violent-extremism-communities-beat-terrorism> (last accessed May 29, 2016). In his speech at the SUPKEM National

But the absence of political will from senior Kenyan officials, including President Kenyatta, illustrated by repeated denials, intimidation of witnesses and victims' families, interference with IPOA and the absence of investigations should be specifically raised and condemned. The actions of the Kenyan government indicate that donors' rhetorical comments, though important, are not prompting change in the conduct of Kenyan security forces. The multiplicity of units involved in the abuses documented in this report show that the types of abusive and unlawful long documented in operations led by police, is being perpetuated by at least some units of the KDF and, to a lesser extent, the KWS.

If donors wish to continue support to Kenya's security forces – the most likely course of action given Kenya's location, role in the region and the threat to Kenyan and Somali civilians posed by Al-Shabab – they should not provide assistance that may directly contribute to abuses. They should also support, including through their financial assistance, effective measures to investigate abuses, including those documented in this report. Without those steps, the actions of donor countries have and will continue to run contrary to their own public statements and in some cases, legal obligations, to support human rights standards.

## The United States

Kenya has benefited from US funding for decades, but the relationship has been strengthened by the US, like numerous other donors, relying on and collaborating with Kenya in operations aimed at countering Al-Shabab in Somalia and in Kenya in recent years. The close working relationship, particularly for counterterrorism interrogations and intelligence was notable for example in 2007, when Human Rights Watch research raised concerns regarding the US Central Intelligence Agency and the Federal Bureau of Investigations interrogating suspected Somali fighters alongside Kenyan forces.<sup>267</sup>

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Conference on Security and Countering Violent Extremism, Christian Turner noted that "We also know that respect for human rights is a vital element of this work. As then- Foreign Secretary William Hague said in a speech last year, all of us "must remember that in standing up for freedom, human rights and the rule of law ourselves, we must never use methods that undermine these things. As a democracy we must hold ourselves to the highest standards. This includes being absolutely clear that torture and mistreatment are repugnant, unacceptable and counter-productive. Our bottom line is always that we are determined to uphold the law." "Measures taken to counter terrorism must be in full compliance with international law, in particular human rights law, refugee law, and international humanitarian law." EU Counter-terrorism Action Plan for the Horn of Africa and Yemen, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52012JC0024>.

<sup>267</sup> "Why Am I Still Here? The 2007 Horn of Africa renditions and the fate of those still missing," Human Rights Watch, October 2008. <https://www.hrw.org/sites/default/files/reports/eastafrica1008web.pdf> (last accessed May 29, 2016).



Although the US has increasingly voiced its concern over human rights violations, particularly in its fight against terrorism, the US maintains Kenya as “a strategic partner and anchor state in East Africa, and as critical to counterterrorism efforts in the region.”<sup>268</sup> According to the US Congressional Research Service, the US provides Kenya with over \$8 million in anti-terrorism law enforcement support annually, the largest such allocation to any sub-Saharan African country.<sup>269</sup> While funding to the police has remained more or less steady over the last three years, funding to the KDF particularly for counterterrorism-related training and equipment has increased more than three-fold since 2013, and will reach over 120 million USD in financial year 2016.<sup>270</sup> Kenya also received \$750,000 annually in 2013 and 2014 in combating wildlife trafficking from the US, and this rose to \$2.050 million in 2015.<sup>271</sup>

A sizeable portion of US assistance to Kenya goes to support both police and military working on border security via the Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR) and the foreign military assistance, respectively.<sup>272</sup> Given the allegations of abuses by the police’s Rural Border Patrol Unit and the KDF operating in Mandera along the Somali border, questions remain about how closely these units have been vetted, under the Leahy Law, which is designed to prevent or stop US assistance to units responsible for human rights violations, or whether they should be vetted again or scrutinized more closely to ensure there are no violations of US law underway.<sup>273</sup> Human

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<sup>268</sup> Lauren Ploch Blanchard, “Kenya: Current Issues and US Policy,” Congressional Research Service, February 26, 2013. <http://fpc.state.gov/documents/organization/206141.pdf> (last accessed May 29, 2016).

<sup>269</sup> Lauren Ploch Blanchard, *Kenya*, In Focus, Congressional Research Service, July 6, 2016.

<sup>270</sup> Lauren Ploch Blanchard, *Kenya*, In Focus, Congressional Research Service, July 6, 2016.

<sup>271</sup> See Kenya State Department Assistance from the US government, FY2013 – 2015. And Brian Bender, “Pentagon muscles out State Dept. on foreign aid” Politico, March 23, 2016, <http://www.politico.com/story/2016/03/general-diplomats-tussle-over-pentagons-growing-military-aid-portfolio-221177> (last accessed July 1, 2016).

<sup>272</sup> Lauren Ploch Blanchard, *Kenya*, In Focus, Congressional Research Service, July 6, 2016. “The Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR) account supports a broad range of U.S. national interests by funding critical, security-related programs. NADR programs serve as an important tool for working with foreign nations to reduce transnational threats to America’s security, as well as to mitigate local threats that cause regional instabilities and humanitarian tragedies.” Nonproliferation, Anti-terrorism, Demining, and Related Programs, p. 1 <http://www.state.gov/documents/organization/28971.pdf> (last accessed May 27, 2016). Foreign Military Financing refers to congressionally appropriated grants given to foreign governments to finance the purchase of American-made weapons, services and training. <http://fas.org/asmp/profiles/aid/aidindex.htm>.

<sup>273</sup> Leahy Law fact sheet, <http://www.humanrights.gov/dyn/03/leahy-fact-sheet/> (last accessed May 29, 2016). The US law, commonly known as the “Leahy Law,” prohibits support to a unit of foreign security forces if the Secretary of State has “credible information” that the unit has committed a “gross violation of human rights.” Once aid is suspended, it can only

Rights Watch has previously raised concerns for US support to the ATPU because of credible reports of numerous abuses.<sup>274</sup> While the US has not publicly stated that it has ended support to the ATPU, Human Rights Watch understands that the US is not currently providing assistance to the unit. If the ATPU comes under consideration for future assistance, US officials told Human Rights Watch that it would carefully review all available information in order to determine whether to assist the unit.<sup>275</sup>

The mounting evidence of abuses carried out by members of the KDF, as documented in this and other reports, should prompt serious questions regarding the US's sharp and consistent increases in support to KDF units operating in Garissa, Mandera and Wajir.<sup>276</sup> Those units should also be vetted as required under the Leahy Act, or re-vetted in light of evidence in this and other reports.

At times, US officials have told human rights organizations they need more evidence of individual officers to withhold support as required by the Leahy Act. While identifying the names of individual officers can be challenging, particularly as the officers allegedly involved in disappearances and other abuse often wear civilian clothes, conceal their identity, and conduct operations with many diverse Kenyan security units, the evidence is overwhelming that some unit's officers are involved in serious abuses. The mounting evidence indicates that more consistent and proactive efforts are required to ensure compliance with the Leahy Act.

Kenya is one of the six African countries that are now receiving support from the Security Governance Initiative (SGI), which was established in 2014.<sup>277</sup> The US government has set

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resume if the recipient government "is taking effective steps to bring the responsible members of the security forces unit to justice.";

See also, <https://www.hrw.org/news/2014/07/11/human-rights-watch-testimony-house-foreign-affairs-subcommittee-africa-global-health> (last accessed May 29, 2016).

<sup>274</sup> "Killings, Disappearances by the anti-terror police," Human Rights Watch press release, August 18, 2014.

<https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police> (last accessed May 29, 2016).

<sup>275</sup> Human Rights Watch email communication with US government official, Washington DC, June 15, 2016.

<sup>276</sup> According the Congressional Research Service, the US support from the Department of Defense to the KDF was 21 million USD in FY 2013, 28 million USD in FY 2014, and then jumped to 76 million in FY 2015. See also Statement of Lauren Ploch Blanchard, Specialist in African Affairs, Congressional Research Service, before the Senate Foreign Relations Committee Subcommittee on Africa and Global Health Hearing: U.S Security Assistance in Africa, June 4, 2015.

<sup>277</sup> Security Governance: 2015 Review, US Department of State, Bureau of African Affairs, March 2, 2016 <http://www.state.gov/p/af/rls/2016/253906.htm> (last accessed May 29, 2016).

aside an initial Ksh6.582 billion (\$65 million) to finance partner countries to improve the management, oversight, accountability, and sustainability of security sector institutions.<sup>278</sup> Kenya and the US signed financial support documents during Barack Obama's visit to Nairobi in July 2015 and Kenya was set to start receiving its share of the funds in 2016.<sup>279</sup> Although this funding is marginal compared to other tranches of US security assistance, the agreements can provide a roadmap for raising concerns about how the security forces more generally are both conducting operations and investigating and prosecuting allegations of wrongdoing.

## The United Kingdom

The United Kingdom is a key bilateral partner and continues to provide security sector assistance to Kenyan forces.<sup>280</sup> Although human rights organizations and the media have in the past criticized the UK's role in Kenya's counterterrorism operations, the UK authorities have only occasionally expressed public disapproval of the ongoing abuses.<sup>281</sup> Where UK authorities raised concerns, they have talked only of their commitment to human rights, calling on Kenya to investigate "any credible allegations" without condemning specific and well-documented instances of abuses in Kenya.<sup>282</sup> It may be that British officials are consistently expressing such concerns to Kenyan officials in private, but that

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<sup>278</sup> Security Governance: 2015 Review, US Department of State, Bureau of African Affairs, March 2, 2016 <http://www.state.gov/p/af/rls/2016/253906.htm> (last accessed May 29, 2016).

<sup>279</sup> See "Second High – Level Steering Committee Meeting of the White House's Security Governance Initiative," The US Embassy press release, Nairobi, November 16, 2015. <http://nairobi.usembassy.gov/pr-111615.html> (last accessed May 29, 2016).

<sup>280</sup> Vikram Dodd, "Britain Accused of complicity in Kenyan death squad of terrorism suspects," December 7, 2014. <http://www.theguardian.com/world/2014/dec/07/britain-accused-complicity-kenyan-death-squad-terrorism-suspect-killings>. See also, Stella Cherono, "Kenya on the spot over human rights violations," November 8, 2015. <http://www.nation.co.ke/news/Kenya-on-the-spot-over-human-rights-violations/-/1056/2947716/-/w5m49az/-/index.html> (last accessed, May 29, 2016).

<sup>281</sup> Vikram Dodd, "Britain Accused of complicity in Kenyan death squad of terrorism suspects," December 7, 2014. <http://www.theguardian.com/world/2014/dec/07/britain-accused-complicity-kenyan-death-squad-terrorism-suspect-killings> (last accessed, May 29, 2016).

<sup>282</sup> See response to a question in the House of Lords by Baroness Anelay of St Johns to a question by Baroness Kinnock of Holyhead, March 21, 2016. "We take human rights very seriously and strongly oppose human rights abuses in all circumstances. We continue to believe that a human rights compliant approach is the most effective way to secure long-term peace and stability. Where allegations of abuses have been made, we urge the Kenyan government to fully investigate any credible allegations of non-compliance and hold those responsible to account; See also, "UN Criticises UK Rendition Role, report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism," 2009. <http://oppenheimer.mcgill.ca/UN-criticises-UK-rendition-role?lang=fr> (last accessed May 29, 2016).

approach hasn't led to positive reforms or accountability. The absence of progress and the quantity of money flowing to Kenyan forces should prompt the UK to reevaluate its approach in Kenya, specifically regarding counterterrorism operations.

Such public statements by the UK officials, however rare, have not been followed by strong calls for investigations and accountability for the security units that the UK supports. The UK funding to Kenyan security agencies has been increasing each year over the last three years.<sup>283</sup> In 2013, for example, the total UK financial support to the Kenya Defense Forces was \$930,000 and \$200,000 went to the Kenya Police Service, all totaling \$1.13 million to Kenyan security agencies.<sup>284</sup> The funding to the Kenya Police Service over that period was mainly for police reforms and strengthening accountability for the police.<sup>285</sup>

Although the UK does not have direct financial support to the Kenya Wildlife Service, it is partnering with KWS on three projects on Illegal Wildlife Trade Challenge Fund, which is a fund managed by the department for environment, food and rural affairs. Under this fund, the UK has allocated Kenya over \$1.105 million and a further \$150,801 for training between 2014 and 2018.<sup>286</sup>

## The European Union

The EU has provided and pledged increased support to Kenyan police and military for counterterrorism efforts in recent years.<sup>287</sup>

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<sup>283</sup> Response to a question in the House of Lords by Baroness Anelay of St Johns by Baroness Kinnock of Holyhead, March 21, 2016.

<sup>284</sup> Ibid. According to Baroness Anelay, UK support to Kenya rose in the subsequent years to 1.49 million USD (1.26 million USD for KDF and 230,000 million USD for police) in 2014/15 and, in the financial year 2015/2016, to 2.13 million USD (1.61 million USD to KDF and 520,000 million USD to police). This does not include money going to KDF in Somalia.

<sup>285</sup> Ibid.

<sup>286</sup> See response to a question in the House of Lords by Baroness Anelay of St Johns to a question by Baroness Kinnock of Holyhead, March 21, 2016.

<sup>287</sup> "Fact Sheet: EU's Work in Rwanda, Kenya and Uganda," [https://ec.europa.eu/europeaid/sites/devco/files/factsheet-eu-cooperation-rw-ken-ug-20150916\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/factsheet-eu-cooperation-rw-ken-ug-20150916_en.pdf) (last accessed July 5, 2016). EU High Representative to the Members of European Parliament, September 16, 2015. <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-011137&language=EN> (last accessed July 5, 2016); see also answer given by Vice-President Mogherini on behalf of the Commission, July 15, 2015. <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-006669&language=EN> (last accessed July 5, 2016). Aggrey Mutambo, "EU parliament recommends antiterrorism mission in Kenya," Daily Nation, April 29, 2015. <http://www.nation.co.ke/news/European-Union-supports-anti-terrorism-mission-in-Kenya/-/1056/2703036/-/m74ryvz/-/index.html> (last accessed May 29, 2016).

In April 2015, for example, members of the European parliament pledged support for African forces, including Kenya, in combating terrorism.<sup>288</sup> Weeks after the Garissa University College attack, European parliamentarians issued a statement saying they “advocate setting up an EU military training mission in Kenya and supplying Kenya’s military and police forces with modern equipment and training to fight terrorism and prevent the expansion of Al-Shabab.”<sup>289</sup>

Soon after the Westgate mall attack in September 2013, the EU started supporting Kenya and other countries in the region with counterterrorism and anti-money laundering efforts, under a program worth 19 million euros (\$21.1 million), which is known as Instrument Contributing to Security and Peace. This includes 11 million euros (\$12.2 million) aimed at “strengthening regional counter-terrorism law enforcement.”<sup>290</sup> The program has been running since 2014 and will expire in 2020.<sup>291</sup>

The EU has also been supporting allowances of African Union forces in Somalia, which include the Kenyan police and military among other AMISOM forces, at the cost of \$200

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<sup>288</sup> See European Parliament resolution of 30 April 2015 on the persecution of Christians around the world, in relation to the killing of students in Kenya by terror group Al-Shabab.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2015-0178%2bo%2bDOC%2bXML%2bVo%2f%2fEN&language=EN>. See EU press release, “The European Union announces more than 124 million pounds to increase security in Somalia,” September 9, 2013. [http://europa.eu/rapid/press-release\\_IP-13-816\\_en.htm](http://europa.eu/rapid/press-release_IP-13-816_en.htm) (accessed May 29, 2016). See also Kevin Kelly, “AU tells security council of grave concern over pay cut for AMISOM soldiers,” The Daily Nation, January 29, 2016. <http://www.nation.co.ke/news/-/1056/3053596/-/qk83vtz/-/index.html>. See also “Security cooperation,” the European Union site.

[http://eeas.europa.eu/delegations/kenya/eu\\_kenya/security/index\\_en.htm](http://eeas.europa.eu/delegations/kenya/eu_kenya/security/index_en.htm) (last accessed May 29, 2016); also was raised in the Human Rights Watch email communication with EU official, June 8, 2016. The official explained that the money is managed by an EU delegation in Ethiopia.

<sup>289</sup> See European Parliament resolution of 30 April 2015 on the persecution of Christians around the world, in relation to the killing of students in Kenya by terror group Al-Shabab. See also, Aggrey Mutambo, “EU parliament recommends antiterrorism mission in Kenya,” Daily Nation, April 29, 2015. <http://www.nation.co.ke/news/European-Union-supports-anti-terrorism-mission-in-Kenya/-/1056/2703036/-/m74ryvz/-/index.html> (last accessed May 29, 2016). “Kenya Attack: 147 killed in Garissa University assault,” BBC, April 3, 2015. <http://www.bbc.com/news/world-africa-32169080> (last accessed May 29, 2016).

<sup>290</sup> “Fact Sheet: EU’s Work in Rwanda, Kenya and Uganda,” [https://ec.europa.eu/europeaid/sites/devco/files/factsheet-eu-cooperation-rw-ken-ug-20150916\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/factsheet-eu-cooperation-rw-ken-ug-20150916_en.pdf) (last accessed July 5, 2016).

<sup>291</sup> EU email communication with Human Rights Watch on security sector support to Kenya, July 1, 2016.

million.<sup>292</sup> While the money is not given to Kenya directly,<sup>293</sup> it goes to maintaining Kenyan forces deployed in Somalia.

Until 2015, the EU was providing Kenya with \$2.2 million to build houses and other infrastructure in Dadaab refugee camp for the Kenya police, to train police, enhance community policing and advocacy on coexistence between police, refugees and host communities.<sup>294</sup> The EU has also provided Kenya Wildlife Service (KWS) with \$14.4 million for the construction of roads and bridges within National Parks. Although the money may not have been meant to support KWS's policing work, it has gone into improving the wildlife agency's operational efficiency.<sup>295</sup> The EU has also supported human rights organizations to train police on human rights.<sup>296</sup>

Between 2014 and 2016, the EU provided \$338,303 to the Kenya National Commission on Human Rights to carry out training of law enforcement agencies on human rights, investigations and redress as well as advocacy work on police accountability.<sup>297</sup>

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<sup>292</sup>See EU press release, "The European Union announces more than 124 million pounds to increase security in Somalia," September 9, 2013. [http://europa.eu/rapid/press-release\\_IP-13-816\\_en.htm](http://europa.eu/rapid/press-release_IP-13-816_en.htm) (accessed May 29, 2016). See also Kevin Kelly, "AU tells security council of grave concern over pay cut for AMISOM soldiers," The Daily Nation, January 29, 2016. <http://www.nation.co.ke/news/-/1056/3053596/-/qk83vtz/-/index.html>. See also "Security cooperation," the European Union site. [http://eeas.europa.eu/delegations/kenya/eu\\_kenya/security/index\\_en.htm](http://eeas.europa.eu/delegations/kenya/eu_kenya/security/index_en.htm) (last accessed May 29, 2016).

<sup>293</sup> Human Rights Watch email communication with EU official, June 8, 2016. The official explained that the money is managed by an EU delegation in Ethiopia.

<sup>294</sup> EU Response to Human Rights Watch on security sector support to Kenya, July 1, 2016.

<sup>295</sup> EU Response to Human Rights Watch on security sector support to Kenya, July 1, 2016.

<sup>296</sup> Human Rights Watch email communications with EU official in Brussels, June 8, 2016.

<sup>297</sup> Human Rights Watch email communication with an EU official, Nairobi, June 8, 2016.

## **IX. Recommendations**

### **To the Office of the President and the Executive arm of government**

#### *Protect rights of the arrested and all other detained persons*

- Publicly acknowledge the scope and gravity of abuses during counterterrorism operations in Kenya and condemn impunity for such abuses.
- Direct security forces to end the torture, enforced disappearances and extrajudicial killings and arbitrary arrests and direct Kenya's Police, Kenya Defense Forces and Kenya Wildlife rangers, to ensure prosecutors can take all necessary steps to investigate allegations of abuse and hold those responsible to account.
- Ensure that all those who have been arrested, including those suspected of links to Al-Shabab, are detained in recognized places of detention and are afforded their full rights as detainees, including the rights to be free from torture or ill-treatment and to have prompt access to a lawyer and family members.
- Ensure that all those who have been arrested and are reasonably suspected of an offence are credibly charged and promptly brought to justice in a fair and public trial before a competent, independent, and impartial court.
- Direct that all those who have already been in custody beyond the Constitutional limit of 24 hours and for whom permission of the court has not been sought are either promptly released or are charged before a court of law. Ensure that anyone determined to have been unlawfully detained receives compensation.
- Direct that all security officers involved in the security operations either identify themselves during operations as required under the law or wear identifying insignia at all times.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED).

### *Accountability for the abusive operations*

- Immediately establish an independent multi-agency and cross-sector commission of inquiry to investigate the ongoing cases of torture, enforced disappearances and extrajudicial killings in northeastern Kenya and other parts of the country with a mandate to summon commanders and any officer of any government agency, including the military.
- Ensure that the Commission of Inquiry summons are respected, complied with and its recommendations promptly implemented.
- The Commission should, where necessary, be mandated establish the fate or whereabouts of those “disappeared,” alive or dead, provide information to family members, and make recommendations for prosecutions. The Commission should have adequate resources and expertise to investigate individual cases, and its findings should be made public to the greatest extent possible, and handed over to a credible judicial authority to pursue possible prosecutions.
- Ensure regular and credible investigation of police abuses by accountability mechanisms such as the Independent Policing Oversight Authority (IPOA), National Police Service Commission and the Internal Affairs Unit to and, in the case of KDF and KWS, review the current accountability regime with the view to creating a strong and effective accountability mechanism for abusive military officers and wildlife rangers.
- Direct that wildlife rangers, police and military officers implicated in the disappearances, extrajudicial killings, arbitrary arrests and torture in northeastern Kenya be suspended pending comprehensive investigations, disciplinary action or criminal prosecution. Those found to be responsible for serious abuses should be removed from the Kenya Police Service and Kenya Defense Force in addition to any other punishment they may receive from a judicial process.
- Direct that any wildlife rangers, police and military officers responsible for extrajudicial executions, enforced disappearances, arbitrary and other unlawful arrests and detention, and torture in northeastern Kenya, including officials who may bear command responsibility be investigated and prosecuted as appropriate, in fair and credible trials.
- Immediately initiate a process for repeal of recently enacted police and military laws that expand their power to arrest, detain, stop and search while at the same



time undermine the rights of accused persons and weaken accountability mechanisms as set out in the 2010 Constitution of Kenya.

### *Support Families of Victims and Protect Their Rights*

- Create information and support desks in each of the affected counties to provide information to families on the fate or whereabouts of all the disappeared relatives, and possibly provide counselling support to families struggling with the disappearance or killing of their relatives.
- Ensure that families seeking justice for their relatives who have been killed, disappeared or tortured are protected and encouraged to seek recourse under the law.
- Ensure that Kenya Police Service officers, wildlife police and military officers found responsible for discouraging, intimidating and threatening families that want to seek justice for their relatives who have been abused are investigated and prosecuted or disciplined as appropriate, and removed from the service.

### *Respond to Al-Shabab attacks through lawful means*

- Ensure that the Kenya Police Service carry out effective criminal investigations into future attacks to ensure that those responsible are brought to justice in accordance with the law.
- Ensure that Kenyan security officers are trained on effective policing in line with international standards, and provide them with adequate resources to respond effectively and lawfully to the security challenges Kenya is facing.
- Strictly prohibit Kenya Wildlife Service rangers, police and military officers from engaging in the now rampant practices of torturing, disappearing and killing. Instead, improve the investigative capacity of the police.

**To the Inspector General of Police, the Independent Policing Oversight Authority (IPOA), National Police Service Commission and Internal Affairs Unit**

- Ensure that reports of abuses by security agencies involved in operations in the northeastern Kenyan counties of Garissa, Wajir and Mandera are adequately and genuinely investigated, including by IPOA, the Internal Affairs Unit and Kenya Police Service and that the officers found to be responsible are held to account.
- Investigate reports of police officers who unlawfully failed to discharge their responsibilities in Garissa Police station, Madogo Police station in Garissa county, Wajir Police station, Mandera police station and Fino Police station in Mandera county, among many others, by turning away victims who went to report abuses, threatening witnesses and failing to investigate reports made at the stations. Commanders of these police stations during the periods in question should particularly be suspended from the service, investigated and prosecuted or, where necessary, removed from the service.
- Prepare a comprehensive register of all police officers, including the County Commissioners and the County Police Commanders, who served in the northeastern region during the period in question. The register should be made available to the independent multi agency Commission to be set up to investigate the abuses in the northeastern region.
- Carry out a fresh round of vetting of police officers who have been deployed to the northeastern region over the past four years when the abuses were most rampant, including all officers attached to the Anti-Terrorism Police Unit across the country.
- The Inspector General of Police should exercise his power under Section 385 of the Criminal Procedure Code to arrange for inquests into all cases of extrajudicial killings in the northeastern region.
- Ensure that the law is followed in all operations and that military officers and Kenya Wildlife Service rangers, who are not legally authorized to carry out arrests or detentions, do not arrest and detain people, and that all those arrested by police are properly booked in police records and detained within police stations as opposed to military facilities or in the bush. Any ranger who engages in unlawful detention should be prosecuted.

- Ensure that during arrests, police do not wear masks covering their faces, wear identifiable nametags on their uniforms, and drive vehicles with genuine license plates.
- Ensure that police carry out arrests on the basis of arrest warrants issued by legally recognized courts of law as required by Kenyan law or that those arrested are immediately brought before court and charged.
- Ensure that police inform those they arrest of their rights, including their right to be assisted by a lawyer; that those arrested are not held incommunicado and that evidence is obtained only through lawful means and not through torture.

## **To The Chief of Kenya Defense Forces**

- Investigate reports of KDF involvement in torturing, disappearing and killing of people in the ongoing counter terrorism campaign in the northeastern region and ensure that the KDF officers and their commanders implicated in their abuses are held to account.
- Disclose the identities, whereabouts and any charges of anyone being held inside a military barracks or compound in northeastern Kenya.
- Investigate the Commanders of KDF bases/camps in Garissa, Wajir and Mandera for illegally authorizing the arrests, detention and torture of people within KDF facilities in the northeastern region.
- Prepare and submit a register of all KDF officers and commanders deployed to the northeastern region and who may have been involved in the abuses to an independent Commission formed by Kenyan authorities to investigate the abuses.
- Establish a mechanism to receive and investigate civilian complaints against KDF personnel that is independent of the military chain of command, such as a civilian oversight body similar to the Independent Policing Oversight Authority (IPOA).
- Compensate victims who have suffered physical injury or material loss at the hands of KDF personnel.

## **To the Director of Public Prosecutions**

- Direct the Inspector General of Police to order for public inquests into all the cases of extrajudicial killings that occurred in northeastern Kenya during the period under question.
- Direct the Kenya Police Service to investigate reports of abuses by the security forces in Garissa, Wajir and Mandera counties.
- Prosecute any members of the security forces where there is prima facie evidence of criminal wrongdoing in connection with the abuses in northeastern Kenya, as well as the officers responsible for abuses in other regions of Kenya.

## **To the Parliament of Kenya**

- Adequately deliberate the abuses by Kenya Defense Forces and the Kenya Police Service in the northeastern region and other parts of the country with the view to adopting a motion to compel the Kenyan government to establish an independent multi agency Commission of inquiry to investigate the abuses.
- Liaise with the office of the Attorney General to enact a law and create adequate accountability mechanisms that can effectively respond to the rising cases of abuses by the Kenya Defense Forces and Kenya Wildlife Service rangers whenever deployed internally.
- Parliament should initiate its own Parliamentary Commission of inquiry into the abuses in the north east either to compliment investigations by the independent Commission to be established by the Executive or serve as an alternative in the event that the Executive fails to initiate credible investigations into the abuses.

## **To Kenya's International Donors and the United Nations**

- Publicly and privately denounce serious human rights abuses committed by the Directorate of Military Intelligence, Directorate of Criminal Investigations, Anti-Terrorism Police Unit, Rapid Deployment Unit and Rural Border Patrol Unit of the Administration Police, National Intelligence Service and the Kenya Wildlife Service rangers.

- Publicly and privately urge the Kenyan government to take concrete steps to investigate, arrest, and prosecute those responsible for the torture, disappearances and extrajudicial killings in northeastern Kenya, including those bearing command responsibility. Monitor the progress of these steps regularly.
- Ensure material support to Kenya's security forces – including training and logistics – does not go to units or commanders implicated in the torture, enforced disappearances and extrajudicial killings. Should support, including through financial assistance, effective measures to ensure adequate and effective investigation of abuses of this nature countrywide, including those documented in this report, and urge accountability for the perpetrators.
- Ensure financial support does not go to abusive units or officers associated with the Directorate of Military Intelligence, Directorate of Criminal Investigations under the police, the Anti-Terrorism Police Unit, Rural Border Patrol Unit, Rapid Deployment Unit of the Administration Police, the National Intelligence Service and Kenya Wildlife Service.
- Support the establishment of an independent commission, as proposed in this report, to provide information on the fate or whereabouts of those killed and forcibly disappeared in northeastern Kenya and other parts of Kenya and to support judicial proceedings against those allegedly responsible for the abuses.
- Support the establishment of a special vetting mechanism, in addition to the slow but ongoing police vetting process, to remove police, military, wildlife rangers and secret service officers found responsible for serious human rights abuses.
- Encourage Kenyan authorities to respond to Al-Shabab attacks in accordance with international human rights standards.

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## ANNEX 1: Cases of disappearances and suspected killings documented by Human Rights Watch

| NO  | FULL NAMES AND APPROX AGE (WHERE POSSIBLE) | APPROX DATE OF ARREST | COUNTY WHERE ARREST OCCURRED | SECURITY FORCE ALLEGEDLY INVOLVED | NATURE OF SUSPECTED HUMAN RIGHTS ABUSE | CURRENT STATUS OF CASE |
|-----|--------------------------------------------|-----------------------|------------------------------|-----------------------------------|----------------------------------------|------------------------|
| 1.  | Sheikh Hassan                              | March 2015            | Mandera                      | KDF                               | Enforced disappearance                 | Missing                |
| 2.  | Abdiwelli Ibrahim Sheikh                   | March 18, 2015        | Mandera                      | Suspected to be KDF               | Enforced disappearance                 | Missing                |
| 3.  | Feisal Mohamed Ibrahim                     | March 18, 2015        | Mandera                      | KDF                               | Enforced disappearance                 | Missing                |
| 4.  | Mohamed Mohamud                            | April, 2015           | Mandera                      | KDF                               | Enforced disappearance                 | Missing                |
| 5.  | Omar Yusuf Mohamed, 26 years old           | April 26, 2015        | Mandera                      | ATPU, CID                         | Enforced disappearance                 | Missing                |
| 6.  | Abdinassir Ahmed Mohammed                  | May, 2015             | Mandera                      | ATPU & other police units         | Enforced disappearance                 | Missing                |
| 7.  | Abdirizak Mohamed Haji, 29 years old       | October 24, 2015      | Mandera                      | KDF                               | Enforced disappearance                 | Missing                |
| 8.  | Isaack Kusow Mohamed, 37 years old         | November 30, 2015     | Mandera                      | Unknown                           | Enforced disappearance                 | Missing                |
| 9.  | Abdilatif Mohamed, 18 years old            | April, 2013           | Garissa                      | Multiple units                    | Enforced disappearance                 | Missing                |
| 10. | Ahmed Farah Muhumed, 42 years old          | February, 2014        | Garissa                      | KWS                               | Enforced disappearance                 | Missing                |
| 11. | Siad Mahat Ahmed, 23 years                 | February 2014         | Garissa                      | KWS                               | Enforced disappearance                 | Missing                |
| 12. | Sugu Apkea, 40 years old                   | February, 2014        | Garissa                      | KWS                               | Enforced disappearance                 | Missing                |
| 13. | Yusuf Abdi Iman, 25 years                  | March 2015            | Garissa                      | KDF                               | Enforced disappearance                 | Missing                |
| 14. | Keynan Abdullahi, late 20s                 | March 26, 2015        | Garissa                      | KDF                               | Enforced disappearance                 | Missing                |
| 15. | Hassan Abdullahi Adan, 42 years old        | March 26, 2015        | Garissa                      | KDF                               | Enforced disappearance                 | Missing                |
| 16. | Mohamed Geni                               | March 26, 2015        | Garissa                      | KDF                               | Enforced disappearance                 | Missing                |
| 17. | Asman Abdi Dakane                          | April 2015            | Garissa                      | KDF/ATPU                          | Enforced disappearance                 | Missing                |
| 18. | Hamza Mohamed Bare, 26 years old           | April 8, 2015         | Garissa                      | ATPU & KDF                        | Enforced disappearance                 | Missing                |
| 19. | Siyat Rage Jama, 40 years old              | April 9, 2015         | Garissa                      | ATPU & KDF                        | Enforced disappearance                 | Missing                |
| 20. | Mahat Ahmed, late 30s                      | April 20, 2015        | Garissa                      | Multiple units                    | Enforced disappearance                 | Missing                |
| 21. | Ismail Mohamed, 23 years old               | April 20, 2015        | Garissa                      | Multiple units                    | Enforced disappearance                 | Missing                |
| 22. | Rahma Ali, 24 years old                    | April 20, 2015        | Garissa                      | Multiple units                    | Enforced disappearance                 | Missing                |

|     |                                           |                   |         |                        |                        |            |
|-----|-------------------------------------------|-------------------|---------|------------------------|------------------------|------------|
| 23. | Anab Abdullahi (Mahat's wife), mid 20s    | April 20, 2015    | Garissa | Multiple units         | Enforced disappearance | Missing    |
| 24. | Omar Salat Kathie, 47 years               | Mid-June 2015     | Garissa | KDF                    | Enforced disappearance | Missing    |
| 25. | Abdifatah Odowa Adan, 30 years old        | May 2014          | Nairobi | NIS, CID               | Enforced disappearance | Missing    |
| 26. | Ibrahim Bilkan Ayilow, 26 yrs old         | June 10, 2015     | Nairobi | Suspected KDF, CID     | Enforced disappearance | Missing    |
| 27. | Mohammed Abdullahi, 35 years old          | June 10, 2015     | Nairobi | Suspected KDF, CID     | Enforced disappearance | Missing    |
| 28. | Ms Asha Abdisalam Abdullahi, 30 years old | July 17, 2015     | Nairobi | AP, other police units | Enforced disappearance | Missing    |
| 29. | Mahat Issak, 30 years old                 | March 15, 2015    | Wajir   | KDF                    | Enforced disappearance | Missing    |
| 30. | Hassan Derow, 35 years old                | March 17, 2015    | Wajir   | KDF                    | Enforced disappearance | Missing    |
| 31. | Ali Warsame, 35 years old                 | April 9, 2015     | Wajir   | KPR, RDU & KDF         | Enforced disappearance | Missing    |
| 32. | Ali Duale Keynan, 21 years old            | April 14, 2015    | Wajir   | ATPU                   | Enforced disappearance | Missing    |
| 33. | Hussein Ali Abdullahi, 46 years           | May 8, 2015       | Wajir   | KDF                    | Enforced disappearance | Missing    |
| 34. | Farah Ibrahim Korio, 45 year old          | June 29, 2015     | Wajir   | KDF & ATPU             | Enforced disappearance | Missing    |
| 35. | Abdiwuhab Noor Diis                       | April, 2015       | Mandera | KDF and ATPU           | Extrajudicial killing  | Body found |
| 36. | Hassan Adan Yarrow, 26 years              | April 4, 2015     | Mandera | KPR & KDF              | Extrajudicial killing  | Body found |
| 37. | Hassan Ndimit Isaak                       | July, 2015        | Mandera | KDF                    | Extrajudicial killing  | Body found |
| 38. | Abdi Bare Mohamed, 22 years               | August 13, 2015   | Mandera | CID                    | Extrajudicial killing  | Body found |
| 39. | Isnina Musa Sheikh, 38 years old          | December 3, 2015  | Mandera | KDF                    | Extrajudicial killing  | Body found |
| 40. | Abdilmalik Mohamed (alias Ibrahim)        | April, 2013       | Garissa | Multiple units         | Extrajudicial killing  | Body found |
| 41. | Mohamed Omar, 32 years old                | August 2014       | Garissa | ATPU                   | Extrajudicial killing  | Body found |
| 42. | Ali Omar, 24 years old                    | December 2014     | Garissa | RDU unit of AP         | Extrajudicial killing  | Body found |
| 43. | Farah Mohamed Ali, 33 years old           | December 2014     | Garissa | Multiple units         | Extrajudicial killing  | Body found |
| 44. | Sheikh Mohamed Ali Kher, 55 years old     | December 25, 2014 | Garissa | Suspected ATPU         | Extrajudicial killing  | Body found |
| 45. | Mohamud Abdi, 30 years old                | June 23, 2014     | Nairobi | NIS                    | Extrajudicial killing  | Body found |



## Annex 2: Letters to KDF, Police, and KWS

### Letter to KDF

March 23, 2016

General Samson Mwathethe,  
The Chief of General Staff,  
Kenya Defense Forces,  
Ulinzi House, Lenana Road,  
P.O Box 40668 – 00100,  
Nairobi, Kenya.

Tel: +254 020 2712054

Email:



Dear General Mwathethe,

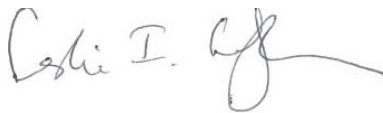
I am writing to solicit your views and input regarding our ongoing research on human rights abuses in the north eastern counties of Garissa, Wajir and Mandera over the last two years. As you may know, Human Rights Watch is an international nongovernmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective.

We have not yet had an opportunity to meet with you since you began as Chief of Kenya Defense Forces. Given the breadth of our work in Kenya and the importance of the military in the ongoing operations in north eastern Kenya, we would very much appreciate an opportunity to meet and discuss our ongoing concerns for human rights issues in Kenya as well as the specific queries attached to this letter.

Your response is especially important so that we can accurately reflect your views in our forthcoming research. In order for us to include your response in our work, we would very much appreciate a written answer to the attached questions by April 25, 2016.

Please communicate your response to Maria Burnett at:...We would also be pleased to discuss the research findings in person should you be available to meet with us. Alternatively, we would be happy to collect a written response from your offices at your convenience, prior to April 21.

Sincerely,



Leslie Lefkow  
Deputy Director - Africa  
Human Rights Watch  
Amsterdam, Netherlands

## **I. Questions and cases of suspicious deaths**

We are concerned that at least four people eventually found dead were last seen by multiple eyewitnesses in the custody of KDF officers. In these cases, families of the individuals listed below eventually managed to trace and identify the bodies of their relatives, in most cases without the assistance of the police, and buried them. We would appreciate any information you might have on the circumstances leading to the death of the individuals below and also your response on some of the specific questions regarding KDF command structure and allegations of extrajudicial killings in north eastern Kenya:

### *Questions*

1. In the four cases listed below, concerned relatives and friends reported an individual as missing to both the police, and in two of the cases to KDF, while searching for the person and then later when their body was found. We would appreciate any information regarding when, how and why these individuals were arrested by the KDF?
2. What measures, if any, have been taken to investigate the cause of these deaths and hold those responsible to account?

3. Have there been any internal investigations of KDF officers who may have been implicated in cases of disappearances and extrajudicial killings in the north eastern region?
4. Human Rights Watch research indicates that KDF officers threatened and intimidated witnesses to the arrests and those who want to pursue justice for the victims of these killings. Has KDF investigated these claims and, if so, what measures have been taken to ensure that officers implicated in the obstruction of justice are held to account?
5. Kindly share information on the internal accountability mechanisms for officers who may be implicated in human rights abuses and how often this has been applied in the past?

## **The Cases**

- a. Hassan Adan Yarrow, 26 years old

Yarrow was last seen by eyewitnesses around 6pm on April 18, 2015 in the custody of Kenya Police Reservists and KDF officers, who were interrogating him, while beating him outside his family home outside Mandera town. Police later booked him into Mandera Police station same day. He was released the next day and hospitalized for injuries he had sustained. He died on April 20 at Mandera Referral Hospital. Human Rights Watch understands that the postmortem report indicates Hassan died from internal bleeding.

- b. Abdiwahab Noor Diis, 35 years old

Noor was last seen alive on April 22, 2015 while being arrested from his retail shop in Omar Jillo, about 40kms from Mandera town, by people in KDF uniforms driving one APC and one tanker. He was arrested along with five other people. Noor's body was found on April 27, 2015 around Fino area, some 90kms from Mandera town. Noor's body had three bullet wounds in the back of his head and two others from the back of his shoulders – one bullet in each shoulder.

c. Hassan Ndimbil Isaak, 35 years old

Hassan was last seen alive on July 8, 2015 in the company of KDF officers who picked him from his Quranic School in Mandera and informed his students that they were taking him to the police. A few days earlier, people who introduced themselves as ATPU officers had gone to the school, searched it and left after they did not find Hassan. The ATPU officers asked the area chief to trace and present Hassan to the police, but Hassan and another man, Yusuf Isaak, were arrested by KDF before the chief could do so. Hassan's body was found buried in a shallow grave in Omar Jillow Location, but the whereabouts of the man with whom he was arrested remain unknown.

d. Isnina Musa Sheikh, 38 years old

Isnina was last seen alive on December 3, 2015 around lunch time at her food kiosk in Mandera town as she was being arrested by four masked men in plainclothes who were carrying pistols and M16 guns, most commonly seen with KDF officers in Mandera. She was driven away in a white Toyota Probox car escorted by what appeared to be two Land Cruisers with KDF insignia. On December 4, 2015, a report about her arrest by unknown people was made to Mandera Police Station. On December 6, Isnina's body was found in a shallow grave in Arabia, some 50kms from Mandera town, and later taken to Mandera Hospital Mortuary. Witnesses told Human Rights Watch that ATPU officers had arrested Isnina twice before over alleged links with Al-Shabab in 2016, but she was never charged with any crime.

Human Rights Watch is also concerned about the circumstances that surrounded the deaths of the following people. There is no clear evidence of KDF involvement in these cases, but they occurred in an area where KDF is operational and Human Rights Watch has also been made to understand that police units have previously handed detainees to KDF soon after arrest. We would appreciate any information you could share regarding the cases below:

a. Ibrahim Abdimalik, 38 years old

Ibrahim Abdimalik was picked from his house in Taqwa neighborhood, Garissa, at the end of April 2013 by up to 50 masked people in uniforms who introduced themselves as police officers and were armed with spotlighted HK G3 Rifles. The 50 people raided the house and searched the compound in an operation that lasted

nearly 2 hours before arresting Ibrahim Abdimalik and his 18 year old brother who shared a house with him and whose whereabouts remain unknown. Ibrahim's mutilated body was found near Thika town, close to Nairobi, over 300km from Garissa town. The matter was reported at Garissa and Thika Central Police stations, but relatives are still awaiting information on the findings of the investigations.

b. Mohamed Omar Said, 32 year old

He was picked from his house in Bula Punda neighborhood of Garissa town in early August of 2014 at around 10pm by people in plainclothes. A report of his being arrested was made at Garissa Police station. Three days later, his body was found at Bangale area, nearly 70km from Garissa town along Garissa- Nairobi highway. All the joints of his limbs and the skull were broken. The death was reported at Madogo Police station but the matter has not been investigated.

c. Sheikh Mohamed Ali Kher, 55 years old

Sheikh Kher was kidnapped by unknown people along Posta Road, Garissa town, on the morning of December 25, 2014. His body was found by residents in Embu area, more than 200km from Garissa town, on December 27, 2014. His body was later identified by family members because of documents found on him. He had been a preacher at Jamia Mosque in Garissa. The matter was reported to the police but relatives are still awaiting information on the investigations.

e. Mohamud Abdi, 30 years old

Mohamud was last seen alive on June 23, 2015 on 12<sup>th</sup> street, Eastleigh, where he was arrested by three people in plainclothes in hired white taxi. The three people showed Mohamud and two other young men who were with him identification cards for National Intelligence Service and said they were taking him to Pangani Police station. In July his body was found at City Mortuary, Nairobi, where records showed that it had been signed in by someone named Inspector Makau on June 25. DNA tests confirmed the body was that of Mohamud.

f. Abdi Bare Mohamed, 22 years old

Abdi Bare Mohamed was first threatened by a CID officer who linked him with Al-Shabab and demanded Ksh50,000 as protection from being killed. The officer told

the family to call him on 0722 92 47 79 to pay to protect Abdi's life. Abdi Bare was last seen alive on August 18, 2015 and a report about his absence was made at Mandera Police station on August 19, 2015. On September 5, 2015, Abdi Bare's body was taken to Mandera Hospital Mortuary by individuals who refused to identify themselves. Another report on Abdi Bare was made at Mandera Police Station on December 9, 2015 (OB No. 21/09/12/2015). The matter has not been investigated, according to witnesses.

## **II. Questions and cases of suspected "enforced disappearances"**

Relatives and friends of the individuals listed below cannot locate these individuals in detention anywhere. Multiple eyewitnesses told Human Rights Watch that the individuals were either last seen in the custody of the KDF or were seen being taken to a KDF facility. We are concerned that these cases may constitute an enforced disappearance. Under international law, an enforced disappearance occurs when someone is deprived of their liberty by agents of the state or those acting with its acquiescence, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.

We would appreciate any information you can provide on the whereabouts, legal status and health of the individuals described below. We would also appreciate your response to these general questions about police and KDF response to cases of disappeared or missing individuals.

1. What is the appropriate procedure if someone believes that their relative is being held in a military facility, barrack or other location under the control of the KDF? To whose attention should this be raised and how can families gain access to basic information regarding their legal status and visit the detained person?
2. Considering that under Kenyan law KDF officers are not authorized to arrest and detain people, and also considering that military camps or barracks are not legally designated as detention facilities, could you clarify the legal basis of the arrests and detentions by KDF?
3. Relatives of the individuals listed below have in many cases made reports of a missing person to their respective police stations as per the law, but have not received help, including where the individuals are alleged to have been arrested or

are in the custody of KDF officers. How does KDF coordinate with police to investigate allegations of missing people in situations where the person may be in the custody of KDF?

4. Families and friends of missing individuals have alleged threats, harassment and intimidation by security agencies in the families' pursuit for justice. Is your office aware of these types of allegations and, if so, could you please share information on the outcome of any internal investigations or other efforts on this issue? If not, what should families do when facing threats for pursuing such information?
5. We would appreciate if you could share information on any cases where KDF officers have been investigated for a case of an enforced disappearance or an extrajudicial killing in north eastern Kenya. How many such cases have been there in the past three years and could you please share any relevant information about the status of such investigations and/or any court process?
6. During operations to arrest alleged terrorism suspects in Wajir, Mandera and Garissa, which part of the Kenyan state security forces is operationally in command and how do police and military coordinate? What measures are taken to ensure due process and fair trials for the alleged terrorism suspects in the custody of KDF?

### ***The Cases***

1. Mohamed Farah Muhumed, 42, Siad Mahat Ahmed, 23, and Sugu Apkea, 40 years old

They were arrested in February of 2014 by more than 10 armed Kenya Wildlife Service rangers from Bula Tawakal, Garissa, at around 9.30pm and the matter of disappearance reported at Garissa police station. Their whereabouts remain unknown.

2. Hassan Derow, 35 years old

Hassan Derow was arrested from his small retail business in the middle of Wajir town on March 17, 2015 by security officers using a silver taxicab. Two of the officers, suspected to be military intelligence officers, were in plain clothes and armed with a pistol. The third man was a uniformed Administration Police officer. He was held at Wajir Military camp for four days, according to sources

privity to his case, but he was moved to an unknown location. The whereabouts of Hassan Derow remain unknown.

3. Abdiwelli Ibrahim Sheikh, 28 years old, and Feisal Mohamed Ibrahim, 27 years old

Witnesses say they were arrested from their homes in Bulla Jamhuria, Mandera, on the night of March 21, 2015 by people who wore jungle green uniforms normally associated with the military and allegedly taken to Mandera military camp. The whereabouts of Abdiwelli and Feisal remain unknown. Their disappearance was reported to Mandera Police Station (OB No. 40/21/4/2015).

4. Hassan Abdullahi Adan, 42 years old, Yusuf Abdi Iman and three others

Hassan, who is from Shabaha village, Garissa county, had taken his six year old child to Garissa Nursing Home in Garissa Ndogo neighborhood on March 26, 2015. He had gone to Durdur Hotel a few steps away from the nursing home when more than 20 military officers in two AMISOM vehicles raided it and started shooting. The officers carried away five people, among them Hassan Abdullahi and Yusuf Abdi, an employee at the restaurant, the owner of the restaurant, Mr Geni, his waiter, Mr Keynan and a fifth person who is unidentified. The matter was reported at Garissa Police Station. Their whereabouts remain unknown.

5. Sheikh Hassan Ahmed, 43 years old

Sheikh Hassan Ahmed was last seen at the Mandera Islamic Centre, an orphans' home, in the hands of KDF officers a few days after the attack on Garissa University College on April 2, 2015. Uniformed KDF officers in two military tankers (large, heavily armored combat vehicles) allegedly took him to Mandera military camp, but his current whereabouts are unknown.

6. Osman Abdi Ali Dagane, early 30s, formerly a security guard at Garissa University College

He was arrested at Garissa University College where he was a security guard on April 3, 2015 by KDF officers who took him to Nairobi and charged with aiding the attack on the university. Friends and relatives have not received



information of his whereabouts since and their efforts to trace him have not borne fruit.

7. Hamza Mohamed Bare, 26 years old

He was arrested from a mobile phone shop in Garissa Ndogo neighborhood in the outskirts of Garissa town where he worked by four people in plainclothes carrying handcuffs on April 8, 2015. The incident was captured on CCTV cameras installed in the shop and aired on local TV stations. The matter was reported to Garissa Police station where the footage from the CCTV cameras was also handed to police. Police at Garissa Police station allegedly told those reporting his arrest that he was in the custody of military intelligence. His whereabouts remain unknown.

8. Mohamed Mohamud Musa, 23 years old

A money changer at the Kenya- Somali border in Mandera, he was arrested at around 10am on April 9, 2015 by people who did not identify themselves. According to eyewitnesses, the two were last seen being taken to Mandera military camp by a combined team of officers in plainclothes and others in Administration Police uniforms. His whereabouts remain unknown.

9. Siyat Rage, 40 years old

Siyat Rage was arrested at around 10am on April 9, 2015 from a restaurant where he worked in Garissa Ndogo neighborhood in the outskirts of Garissa town by plainclothes security agents driving a vehicle with the official government of Kenya registration plates. Some eyewitnesses asserted that the arresting officials were known to be members of the ATPU and military intelligence. His whereabouts remain unknown. The incident was reported to Garissa Police station the same day but no further information has been forthcoming.

10. Ali Warsame, 35 years old

Uniformed officers from the Kenya Police Reservists arrested Ali Warsame from Urale market, Wajir town, on April 9, 2015. He was handed over to the Commander of the Rapid Deployment Unit in Wajir, a Mr Mohamed Sheikh aka Hambarsade,

who is now the County Commander of Administration Police in Wajir, and KDF officers. The whereabouts of Ali Warsame remain unknown.

11. Ali Duale Keynan, 21 years old

Five security officers in plain clothes arrested Ali Duale Keynan from a cyber café in Wagbare area in Wajir town on April 14, 2015. The five were driving two vehicles: one was a white Toyota Hilux Pickup with no registration number plates. Several eyewitnesses told Human Rights Watch that this vehicle is known in Wajir town to be used by Border Patrol Unit Police officers. The other was a white Toyota Land Cruiser, also without registration number plates, known in Wajir town to be used by the ATPU. Human Rights Watch was also told that Mr Mohamed Sheikh, a senior superintendent of police attached to the Rapid Deployment Unit, was part of the team that arrested Ali Duale Keynan. The whereabouts of Ali Duale remain unknown.

12. Mr Mahat Ahmed, 38 years old, Mr Ismail Mohamed, 23 years old, Ms Rahma Ali, 24 years and Ms Anab Abdullahi, 25 years old

The four men and women were picked up from their houses in Taqwa neighborhood, Garissa town, by suspected security officers who were armed, with some wearing plainclothes and others military uniforms, on April 20, 2015. The matter was reported at Garissa Police station but the whereabouts of the four remain unknown.

13. Abdifatah Othowa Adan, 30 years old

A manager with E-Coach Bus Service, Abdifatah was picked up from Kilimanjaro Hotel in Nairobi's Eastleigh neighborhood on April 20, 2015. The people who picked him showed identification cards from the National Intelligence Service. The matter was reported both at Garissa police station and in Nairobi's Pangani police station and later raised in parliament by Wajir West legislator, Abdikadir Ore Ahmed. Abdifatah's whereabouts remain unknown.

14. Abdilatif Abdimalik, 18 years old

He was picked up at night together with his elder brother, Abdimalik, from their house in Taqwa neighborhood, Garissa town, around April 25, 2013 by more than

50 uniformed officers who introduced themselves as police. Abdimalik 's body was found in Thika three days later, but the whereabouts of Abdilatif remain unknown.

15. Omar Yusuf Mohamed, 26 years old

Was arrested from Baquli restaurant in Mandera town during the day on April 26, 2015 by several security officers, among them three CID officers familiar to the residents of Mandera. His case was reported to Mandera Police Station and recorded as missing person under OB No 29/05/05/2015. His whereabouts remain unknown. Omar Yusuf had previously been arrested by the ATPU in August 2014 and held at the ATPU offices in Upper Hill, Nairobi, where he was interrogated for 20 days and released, according to witnesses.

16. Hussein Ali Abdullahi, 46 years old

He was arrested from his retail shop in the middle of Wajir town, next to the Chief's camp, on May 8, 2015 by plain clothes security officers driving a black truck with the Government of Kenya insignia. Three men, some of whom were identified by witnesses as police officers attached to the Border Patrol Unit, came out of the truck, arrested Hussein, and took him into custody. Other witnesses told Human Rights Watch that the police took Hussein to Wajir Military camp, where he was being held for at least five days but his current whereabouts remain unknown.

17. Abdinasir Ahmed Mohamed, 30 years old

A bus conductor who was last seen on May 20, 2015 in the custody of KDF officers who took him to Mandera military camp where he was detained for 15 days. He was then released and handed over to the Mandera Police Station, reportedly unable to walk. Witnesses say he was last seen at the police station with Border Patrol Police officers. His whereabouts since then are not known.

18. Sheikh Ibrahim Bilkan Ayilow, 26, and Mohamed Abdullahi, 35 years old

Three people who did not identify themselves arrested Ibrahim and Mohamed from a mosque in Embakasi, Nairobi, on June 10, 2015. Those who arrested them are suspected to have been security officers because they had pistols and handcuffs. The whereabouts of the two remain unknown.

19. Farah Ibrahim Korio, 45 years old

He was arrested on June 30, 2015 inside Wajir Police station where he had gone to record a statement about unknown people who were inquiring after him. The three plain clothed men who arrested him inside the police station introduced themselves as military intelligence officers. They first held Farah briefly inside the ATPU offices at Wajir Police station before driving in the director of Wajir military camp. The matter was reported to Wajir police station under OB No 36/29/06/2015. His whereabouts remain unknown.

20. Ms Asha Abdi Abdisalan Abdullahi, 30 years old

Originally a resident of Garissa's Taqwa neighborhood, she was picked up from her house on 12<sup>th</sup> Street, Eastleigh, by a team of Administration police officers and some plain clothes officers suspected to be military intelligence officers on July 17, 2015. She was driven away in a white Toyota Probox, KCC 406Y. The matter was reported at Pangani Police Station under OB No. 56/29/07/2015. Her whereabouts remain unknown.

21. Abdirizak Mohamed Haji, 29 years old

Ten officers who introduced themselves as KDF based in Somalia arrested Abdirizak from his parent's house in Mandera East on the night of October 24, 2015. The matter of his disappearance was reported to Mandera Police Station under OB No 21/09/12/2015. His whereabouts remain unknown.

22. Mahat Isaak, 30 years old

He was arrested around April 20, 2015 by people suspected to be military officers and taken to Wajir military camp for interrogation. The matter was reported to Wajir police station but no follow up has been made to the relatives by the police. The whereabouts of Mahat Isaak remain unknown.

## Letter to Police

**March 23, 2016**

Joseph Kipchirchir Boinett,  
The Inspector General,  
Kenya Police Service,  
Nairobi (Kenya).



Tel: +254 020 3341411

Email:

Dear Sir,

I am writing to solicit your views and input regarding our ongoing research on human rights abuses in the North Eastern counties of Garissa, Wajir and Mandera over the last two years.

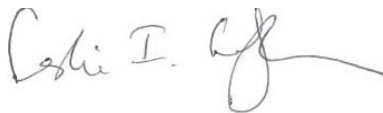
As you may know, Human Rights Watch is an international non-governmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective.

We have not yet had an opportunity to meet with you since you took the role of inspector general of police. Given the breadth of our work in Kenya and the importance of the police in protecting human rights, we would very much appreciate an opportunity to meet and discuss our ongoing concerns for human rights abuses in Kenya as well as the specific queries attached to this letter.

Your response to the attached inquiry is especially important so that we can accurately reflect your views in our forthcoming research on detentions in Kenya. In order for us to include your response in our work, we would very much appreciate a written answer to the attached questions by April 25, 2016.

Please communicate your response to Maria Burnett at:... We would also be pleased to discuss the research findings in person should you be available to meet with us. Alternatively, we would be happy to collect a written response at your convenience, prior to April 25.

Sincerely,



Leslie Lefkow  
Deputy Director - Africa  
Human Rights Watch  
Amsterdam, Netherlands

## **I. Questions and cases of suspicious deaths**

In some cases documented by Human Rights Watch, the family members of those arrested in Mandera, Wajir and Garissa, whose whereabouts in detention could not be established, were able to trace and eventually identify the bodies of their relatives, in most cases without the assistance of the police.

In each of the nine cases below, Human Rights Watch has found that witnesses reported to police both their initial disappearances and their subsequent death.

We would appreciate your response to the following questions dealing with cases of suspicious deaths.

6. Kenyan Law, including the National Police Service Act and the Criminal Procedure Code, requires that any death that is suspected to have occurred in the hands of a state security agent, including the police, be subjected to a public inquest to establish the circumstances under which the individual died. What measures have the police taken to ensure that inquests are held in these cases and, where this has not been done, could you explain why there has been no inquest, and whether there are any plans for pending or future inquests?

7. What avenues exist for the families to regularly receive information that can enable them keep track of the status of investigations into the deaths of their relatives or interact with the investigators to support investigations?
8. When bodies are found, what is the police procedure for determining the identity of the individual? Is there any instance of any of the cases listed above where such a procedure has been undertaken? If so, we would appreciate any relevant details of the procedures.
9. What should families of people who have died in unclear circumstances do to support police efforts to ensure justice and accountability for the deaths?
10. And finally, what steps have police taken to establish the circumstances under which some individuals first went missing and eventually were found dead? Are there any ongoing investigations with regard to the below cases?

g. Ibrahim Abdimalik, 38 years old

He was picked from his house in Taqwa neighborhood, Garissa, at the end of April 2013 by up to 50 masked people in uniforms who introduced themselves as police officers and were armed with spotlighted HK G3 Rifles. The 50 people raided houses and searched the compound in an operation that lasted nearly 2 hours before arresting Ibrahim Abdimalik and his 18 year old brother who shared a house with him and whose whereabouts remain unknown. Ibrahim's mutilated body was found near Thika town, close to Nairobi, over 300km from Garissa town. The matter was reported at Garissa and Thika Central Police stations, but information on the findings of the investigations are still being awaited.

h. Mohamed Omar Said, 32 year old

He was picked from his house in Bula Punda neighborhood of Garissa town in early August of 2014 at around 10pm by people in plainclothes. A report of his being picked was made at Garissa Police station. Three days after he was picked, his body was found at Bangale area, nearly 70km from Garissa town along Garissa – Nairobi highway. All the joints of his limbs and the skull were broken. The death was reported at Madogo Police station but information on the status of the investigation has not been available.

i. Sheikh Mohamed Ali Kher, 55 years old

The man was kidnapped by unknown people along Posta Road, Garissa town, on the morning of December 25, 2014. His body was found by residents in Embu area, more than 200km from Garissa town, on December 27, 2014. The body was later identified by family members through documents found on him. He was a preacher at Jamia Mosque in Garissa. The matter was reported to the police in Embu and Garissa Police stations but information on the investigations has not been available.

j. Hassan Adan Yarrow, 26 years old

He was last seen at 6pm on April 18, 2015 in the company of Kenya Police Reservists and KDF officers, who were interrogating while beating him and booked him into Mandera Police station the same day. He was released the next day and hospitalized from injuries he had sustained. He died on April 20 at Mandera Referral Hospital. Postmortem results showed he died from internal bleeding. We could not access any evidence of investigation.

k. Abdiwahab Noor Diis, 35 years old

Last seen alive on April 22, 2015 being taken away from his retail shop in Omar Jillo, about 40kms from Mandera town, by people in KDF uniforms driving one APC and one tanker. He was taken along with five other people. Noor's body was found on April 27, 2015 around Fino area, some 90kms from Mandera town, but the other five people, who are unidentified, have not been seen since.

l. Mohamud Abdi, 30 years old

He was last seen alive on June 23, 2015 on 12<sup>th</sup> street, Eastleigh, where he was arrested by three people in plain clothes in hired white taxi. The three people showed Mohamud and two other young men who were with him identification cards for National Intelligence Service and said they were taking him to Pangani Police station. His body was in July found at City Mortuary, Nairobi, where records showed that it had been checked in by an Inspector Makau on June 25<sup>th</sup>. DNA tests confirmed the body was that of Mohamud.



m. Hassan Ndimbil Isaak, 35 years old

Last seen alive on July 8, 2015 in the company of KDF officers who picked him from his Quranic School in Mandera and informed his students that they were taking him to the police. A few days earlier, people who introduced themselves as ATPU officers had gone to the school, searched it and left after they did not find him. The ATPU officers asked the area Chief to trace and present him to the police, but Hassan and another man, Yusuf Isaak, were arrested by KDF before the Chief could present him to police. Hassan's body was found buried in a shallow grave in Omar Jillow Location, but the whereabouts of the man with whom he was arrested remain unknown.

n. Abdi Bare Mohamed, 22 years old

Was first harangued and threatened by a CID officer who linked him with Al-Shabaab and demanded Ksh50, 000 as protection from being killed. The officer told the family to call him on 0722 92 47 79 about the issue before Abdi is killed. Abdi Bare was last seen alive on August 18, 2015 and a report about his absence was made at Mandera Police station on August 19, 2015 but witnesses said the report was soon removed from police records. On September 5, 2015, Abdi Bare's body was taken to Mandera Hospital Mortuary by individuals who refused to identify themselves. Another report on Abdi Bare was made at Mandera Police Station on December 9, 2015 (OB No. 21/09/12/2015). The matter has not been investigated, according to witnesses.

o. Ms Isnina Musa Sheikh, 38 years old

She was last seen alive on December 3, 2015 at lunch time at her food kiosk in Mandera town as she was being arrested by four masked men in plainclothes who were carrying pistols and M16 guns, most commonly seen with KDF officers in Mandera. She was driven away in a white Toyota Probox car escorted by two Land Cruisers with KDF insignia. Witnesses told Human Rights Watch that Ms Isnina had previously been arrested twice last year by ATPU officers. On December 4, 2015, a report about the incident was made at Mandera Police Station. On December 6, Ms Isnina's body was found in a shallow grave in Arabia, some 50kms from Mandera town, and later taken to Mandera Hospital Mortuary.

## **II. Questions and cases of suspected “enforced disappearances”**

Based on numerous interviews with eyewitnesses, Human Rights Watch is concerned that the individuals described below were last seen in the custody of state security agents and their whereabouts are now unknown. In some instances, relatives have reported their concerns to relevant police stations and have the applicable OB numbers.

We would appreciate any information you can provide on the whereabouts, legal status and health of the individuals described below. We would also appreciate your response to these general questions about police response to cases of disappeared or missing individuals.

7. Relatives of the individuals listed below have in many cases made reports to their respective police stations as per the law. Could you please let us know what steps your office has taken to follow up on reported missing individuals and trace their relatives?
8. Once a file has an OB number, what is the appropriate procedure for police to follow up and investigate? Who is in charge of communicating with those who have reported an individual as missing?
9. Families and friends of missing individuals have alleged threats, harassment and intimidation by security agencies in the families’ pursuit for justice. Is your office aware of these types of allegations and, if so, could you please share information on the outcome of any internal investigations or other efforts on this issue? If not, what should families do when faced with such a situation?
10. Are you aware of any cases where police have been investigated for a case of an enforced disappearance or an extrajudicial killing in north eastern Kenya and would you be willing to share relevant details about the status of such investigations and/or any court process?
11. During operations to arrest alleged terrorism suspects in Wajir, Mandera and Garissa, which part of the Kenyan state security forces is operationally in command and how do police and military coordinate?

## ***Cases***

23. Mohamed Farah Muhumed, 42, Siad Mahat Ahmed, 23, and Sugu Apkea, 40 years old

Were arrested in February of 2014 by more than 10 armed Kenya Wildlife Service rangers from Bula Tawakal, Garissa, at around 9.30pm and the matter of disappearance reported at Garissa police station. Their whereabouts remain unknown.

24. Hassan Derow, 35 years old

Was arrested from his small retail business in the middle of Wajir town, on March 17, 2015 by security officers using a silver taxicab. Two of the officers, suspected to be military intelligence officers, were in plain clothes and armed with a pistol. The third man was a uniformed Administration Police officer. Witnesses said that Hassan was held at Wajir Military camp for four days when he was moved to an unknown location. His whereabouts remain unknown.

25. Abdiwelli Ibrahim Sheikh, 28 years old, and Feisal Mohamed Ibrahim, 27 years old

Witnesses say they were arrested from their homes in Bulla Jamhuria, Mandera, on the night of March 21, 2015 by people who wore jungle green uniforms normally associated with the military and allegedly taken to Mandera military camp. The whereabouts of Abdiwelli and Feisal remain unknown. Their disappearance was reported to Mandera Police Station (OB No. 40/21/4/2015).

26. Hassan Abdullahi Adan, 42 years old, Yusuf Abdi Iman and three others

Hassan, who is from Shabaha village, Garissa county, had taken his six year old child to Garissa Nursing Home in Garissa Ndogo neighborhood on March 26, 2015. He had gone to Durdur Hotel a few steps away from the nursing home when more than 20 military officers in two AMISOM vehicles raided it and started shooting. The officers carried away five people, among them Hassan Abdullahi and Yusuf Abdi, an employee at the restaurant, the owner of the restaurant, Mr Geni, his waiter, Mr Keynan and a fifth person who is unidentified. The matter was reported at Garissa Police Station. Their whereabouts remain unknown.

27. Sheikh Hassan Ahmed, 43 years old

Last seen at the Mandera Islamic Centre, an orphans' home, in the hands of KDF officers a few days after the attack on Garissa University College on April 2, 2015. Uniformed KDF officers in two military tankers (large, heavily armored combat vehicles) allegedly took him to Mandera military camp, but his current whereabouts are unknown.

28. Osman Abdi Ali Dagane, early 30s, formerly a security guard at Garissa University College

He was arrested at Garissa University College where he was a security guard on April 3, 2015 by KDF officers who took him to Nairobi and handed over to the ATPU who charged him with aiding the attack on the university. Friends and relatives have not received information of his whereabouts since and their efforts to trace him have not borne fruit.

29. Hamza Mohamed Bare, 26 years old

He was arrested from a mobile phone shop in Garissa Ndogo neighborhood in the outskirts of Garissa town where he worked by four people in plainclothes carrying handcuffs on April 8, 2015. The incident was captured on CCTV cameras installed in the shop and aired on local TV stations. The matter was reported to Garissa Police station where the footage from the CCTV cameras was also handed to police. Police at Garissa Police station allegedly told those reporting his arrest that he was in the custody of military intelligence. His whereabouts remain unknown.

30. Mohamed Mohamud Musa, 23 years old

A money changer at the Kenya- Somali border in Mandera, he was arrested at around 10am on April 9, 2015 by people who did not identify themselves. According to eyewitnesses, the two were last seen being taken to Mandera military camp by a combined team of officers in plainclothes and others in Administration Police uniforms. His whereabouts remain unknown.

31. Siyat Rage, 40 years old

Was arrested at around 10am on April 9, 2015 from a restaurant where he worked in Garissa Ndogo neighborhood in the outskirts of Garissa town by plainclothes security agents driving a vehicle with the official government of Kenya registration plates. Some eyewitnesses asserted that the arresting officials were known to be members of the ATPU and military intelligence. His whereabouts remain unknown. The incident was reported to Garissa Police station the same day but no further information has been forthcoming.

32. Ali Warsame, 35 years old

Uniformed officers from the Kenya Police Reservists arrested Ali Warsame from Urale market, Wajir town, on April 9, 2015. He was handed over to the Commander of the Rapid Deployment Unit in Wajir, a Mr Mohamed Sheikh aka Hambarsade, who is now the County Commander of Administration Police in Wajir, and KDF officers. The whereabouts of Ali Warsame remain unknown.

33. Ali Duale Keynan, 21 years old

Five security officers in plain clothes arrested Ali Duale Keynan from a cyber café in Wagbare area in Wajir town on April 14, 2015. The five were driving two vehicles: one was a white Toyota Hilux Pickup with no registration number plates. Several eyewitnesses told Human Rights Watch that this vehicle is known in Wajir town to be used by Border Patrol Unit Police officers. The other was a white Toyota Land Cruiser, also without registration number plates, known in Wajir town to be used by the ATPU. Human Rights Watch was also told that Mr Mohamed Sheikh, a senior superintendent of police attached to the Rapid Deployment Unit, was part of the team that arrested Ali Duale Keynan. The whereabouts of Ali Duale remain unknown.

34. Mr Mahat Ahmed, 38 years old, Mr Ismail Mohamed, 23 years old, Ms Rahma Ali, 24 years and Ms Anab Abdullahi, 25 years old.

The four men and women were picked up from their houses in Taqwa neighborhood, Garissa town, by suspected security officers who were armed, with some wearing plainclothes and others military uniforms, on April 20, 2015. The

matter was reported at Garissa Police station but the whereabouts of the four remain unknown.

35. Abdifatah Othowa Adan, 30 years old

A manager with E-Coach Bus Service, Abdifatah was picked up from Kilimanjaro Hotel in Nairobi's Eastleigh neighborhood on April 20, 2015. The people who picked him showed identification cards from the National Intelligence Service. The matter was reported both at Garissa police station and in Nairobi's Pangani police station and later raised in parliament by Wajir West legislator, Abdikadir Ore Ahmed. Abdifatah's whereabouts remain unknown.

36. Abdilatif Abdimalik, 18 years old

He was picked up at night together with his elder brother, Abdimalik, from their house in Taqwa neighborhood, Garissa town, around April 25, 2013 by more than 50 uniformed officers who introduced themselves as police. Abdimalik's body was found in Thika three days later, but the whereabouts of Abdilatif remain unknown.

37. Omar Yusuf Mohamed, 26 years old

Was arrested from Baquli restaurant in Mandera town during the day on April 26, 2015 by several security officers, among them three CID officers familiar to the residents of Mandera. His case was reported to Mandera Police Station and recorded as missing person under OB No 29/05/05/2015. His whereabouts remain unknown. Omar Yusuf had previously been arrested by the ATPU in August 2014 and held at the ATPU offices in Upper Hill, Nairobi, where he was interrogated for 20 days and released, according to witnesses.

38. Hussein Ali Abdullahi, 46 years old

He was arrested from his retail shop in the middle of Wajir town, next to the Chief's camp, on May 8, 2015 by plain clothes security officers driving a black truck with the Government of Kenya insignia. Three men, some of whom were identified by witnesses as police officers attached to the Border Patrol Unit, came out of the truck, arrested Hussein, and took him into custody. Other witnesses told Human Rights Watch that the police took Hussein to Wajir Military camp, where he was being held for at least five days but his current whereabouts remain unknown.

39. Abdinasir Ahmed Mohamed, 30 years old

A bus conductor who was last seen on May 20, 2015 in the custody of KDF officers who took him to Mandera military camp where he was detained for 15 days. He was then released and handed over to the Mandera Police Station, reportedly unable to walk. Witnesses say he was last seen at the police station with Border Patrol Police officers. His whereabouts since then are not known.

40. Sheikh Ibrahim Bilkan Ayilow, 26, and Mohamed Abdullahi, 35 years old

Three people who did not identify themselves arrested Ibrahim and Mohamed from a mosque in Embakasi, Nairobi, on June 10, 2015. Those who arrested them are suspected to have been security officers because they had pistols and handcuffs and did not appear interested in stealing anything. The whereabouts of the two remain unknown.

41. Farah Ibrahim Korio, 45 years old

He was arrested on June 30, 2015 inside Wajir Police station where he had gone to record a statement about unknown people who were inquiring after him. The three plain clothed men who arrested him inside the police station introduced themselves as military intelligence officers. They first held Farah briefly inside the ATPU offices at Wajir Police station before driving in the direction of Wajir military camp. The matter was reported to Wajir police station under OB No 36/29/06/2015. His whereabouts remain unknown.

42. Ms Asha Abdi Abdisalan Abdullahi, 30 years old

Originally a resident of Garissa's Taqwa neighborhood, she was picked up from her house on 12<sup>th</sup> Street, Eastleigh, by a team of Administration police officers and some plain clothes officers suspected to be military intelligence officers on July 17, 2015. She was driven away in a white Toyota Probox, KCC 406Y. The matter was reported at Pangani Police Station under OB No. 56/29/07/2015. Her whereabouts remain unknown.

43. Abdirizak Mohamed Haji, 29 years old

Ten officers who introduced themselves as KDF based in Somalia arrested Abdirizak from his parent's house in Mandera East on the night of October 24, 2015. The matter of his disappearance was reported to Mandera Police Station under OB No 21/09/12/2015. His whereabouts remain unknown.

44. Mahat Isaak, 30 years old

He was arrested around April 20, 2015 by people suspected to be military officers and taken to Wajir military camp for interrogation. The matter was reported to Wajir police station but the whereabouts of Mahat Isaak remain unknown.



## Letter to KWS

**March 23, 2016**

Mr. Kitili Mbathi,  
The Director General,  
Kenya Wildlife Service,  
Head Office, Langata,  
P.O Box 40241 – 00100,  
Nairobi (Kenya).  
Tel: +254 (20) 2379407



Email:

Dear Sir,

I am writing to solicit your views and input regarding our ongoing research on human rights abuses in the North Eastern counties of Garissa, Wajir and Mandera over the last two years.

As you may know, Human Rights Watch is an international nongovernmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective.

We recognize that you only just recently assumed office. Given the breadth of our work in Kenya and the recent role of KWS in Lamu and Tana River in 2014 and now in the ongoing operations in north eastern Kenya, we would very much appreciate an opportunity to meet and discuss our ongoing concerns for human rights abuses in Kenya.

We seek your response to some queries regarding the role of the KWS in law enforcement operations in northeast and some information regarding specific cases.

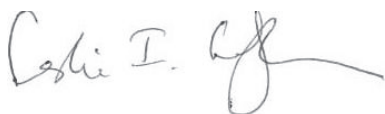
1. On what legal basis is the KWS involved in law enforcement operations in northeast and how does KWS coordinate with the police and KDF? Who is responsible for the operations when KWS officers are deployed for such operations?

2. We are concerned about allegations regarding the possible involvement of KWS officers in the arrest of Mohamed Farah Muhumed, 42, Siad Mahat Ahmed, 23, and Sugu Apkea, 40 years old. The three were arrested in February of 2014 by more than 10 armed Kenya Wildlife Service rangers from Bula Tawakal, Garissa. Their whereabouts remain unknown. We would appreciate any information you can provide on the whereabouts, legal status and health of these individuals.
3. We remain concerned that there are numerous allegations of disappearances in north east Kenya. Under international law, an enforced disappearance occurs when someone is deprived of their liberty by agents of the state or those acting with its acquiescence, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person. We would appreciate any further insights or information you may have about enforced disappearances in northeastern Kenya and the deprivation of liberty of suspects.

Your response to the attached inquiry is especially important so that we can accurately reflect your views in our forthcoming research on detentions in Kenya. In order for us to include your response in our work, we would very much appreciate a written answer to the attached questions by April 25, 2016.

Please communicate your response to Maria Burnett at:...We would also be pleased to discuss the research findings in person should you be available to meet with us. Alternatively, we would be happy to collect a written response at your convenience, prior to April 25.

Sincerely,



Leslie Lefkow  
Deputy Director - Africa  
Human Rights Watch  
Amsterdam, Netherlands

## Annex 3: KWS Response to HRW Letter



ISO 9001:2008 Certified

KWS/DIR/223

28 June, 2016

Maria Burnett,  
Human Rights Watch,

Email: [REDACTED] "without prejudice"

Dear Madam,

Your letter dated 23<sup>rd</sup> March, 2016 refers.

Kenya Wildlife Service (KWS) wishes to respond as follows:-

The Wildlife Conservation and Management Act 2013 mandates KWS to operate throughout the country. Specifically, one of the functions of KWS as stipulated in Section 7(k) is to undertake and conduct enforcement activities such as anti-poaching operations, wildlife protection, intelligence gathering, investigations and other enforcement activities for the effective carrying out of the provisions of the Act.

Further, Section 112(2) mandates KWS to coordinate and control all wildlife security issues in all the national parks, national reserves, wildlife conservancies and sanctuaries in collaboration with other law enforcement agencies, counties and community wildlife scouts. As such, KWS has officers deployed in specific areas of North East Kenya to conduct wildlife law enforcement operations. In furtherance of this mandate, KWS collaborates with other Government law enforcement agencies depending on the matter but limited to the scope of the Wildlife Conservation and Management Act 2013.

KWS is not aware of the alleged disappearance of Mohamed Farah Muhumed, 42, Siad Mahat Ahmed 23, and Sugu Apkea, 40 years old neither is the Service involved in the alleged disappearances in North East Kenya or any other area where the Service operates.

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P.O Box 40241-00100, Nairobi, Kenya. Tel: +254-20-2609233, +254-20-2609234  
Wireless: +254-020-2379407-15. Mobile: +254-735 663 421, +254-726 610 508/9. Fax: +254-020-2661923  
Email: [kws@kws.go.ke](mailto:kws@kws.go.ke) Website: [www.kws.go.ke](http://www.kws.go.ke)

KWS wildlife law enforcement operations are guided by law and all its officers operate within the strict confines of the law in discharging their duties according to the mandate of the Wildlife Conservation and Management Act 2013.

Yours sincerely,

KENYA WILDLIFE SERVICES,

A handwritten signature in black ink, reading "Kitili Mbathi". The signature is fluid and cursive, with the first name "Kitili" and last name "Mbathi" clearly distinguishable.

KITILI MBATHI  
DIRECTOR GENERAL

## Annex 4: Letters to Cabinet Secretaries

### Letter to Ministry of Defense

April 27, 2016

Raychelle Awuor Omamo,  
The Cabinet Secretary,  
Ministry of Defense,  
Ulinzi House  
Lenana Road  
P O Box 40668 – 00100  
Nairobi  
Tel: 2721100 | Fax:2737322

H U M A N  
R I G H T S  
W A T C H

HRW.org

E-Mail:

Dear Madam,

I am writing to draw your attention to a letter that Human Rights Watch wrote to the Chief of Kenya Defense Forces on March 23 regarding our ongoing research on human rights abuses in the northeastern counties of Garissa, Wajir and Mandera over the last two years. A copy of the letter to the Chief of KDF is herein attached.

As you may know, Human Rights Watch is an international non-governmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective and has worked in Kenya for many years.

Thus far, we have not received a reply from the KDF regarding our queries. We are reaching out to your office to request your assistance in ensuring a response to the human rights concerns in the letter.

A response to our inquiry is especially important so that we can accurately reflect government efforts in addressing these human rights concerns in our forthcoming research

on northeastern Kenya. We would very much appreciate an answer on or before May 30, 2016.

Please communicate your response to Maria Burnett at:... Alternatively, we would be happy to collect a written response at your convenience, prior to May 30.

We look forward to dialogue with the KDF and your office regarding our research in northeast as well as other areas of mutual concern, such as the situation in Somalia. We would also be pleased to discuss the research findings in person should you be available to meet with us.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Lefkow", with a stylized flourish extending to the right.

Leslie Lefkow  
Deputy Director - Africa  
Human Rights Watch  
Amsterdam, Netherlands

## Letter to Ministry of Interior and National Coordination

**April 27, 2016**

Joseph Kasaine Ole Nkaisery,  
The Cabinet Secretary,  
Interior and National Coordination,  
The State Department of Interior,  
Harambee House, Harambee Avenue  
P.O Box 30510 – 00100  
Nairobi  
Tel: +254 – 20 – 2227411



Email:

Dear Sir,

I am writing to draw your attention to a letter that Human Rights Watch wrote to the Inspector General of Police on March 23 regarding our ongoing research on human rights abuses in the northeastern counties of Garissa, Wajir and Mandera over the last two years. A copy of the letter to the Inspector General is herein attached.

As you may know, Human Rights Watch is an international non-governmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective and has worked in Kenya for many years.

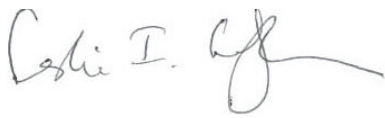
Thus far, we have not received a reply from the police regarding our queries. We are reaching out to your office to request your assistance in ensuring a response to the human rights concerns in the letter.

A response to our inquiry is especially important so that we can accurately reflect government efforts in addressing these human rights concerns in our forthcoming research on northeastern Kenya. We would very much appreciate an answer on or before May 30, 2016.

Please communicate your response to Maria Burnett at:... Alternatively, we would be happy to collect a written response at your convenience, prior to May 30.

We look forward to dialogue with the police and your office regarding our research in northeast as well as other areas of mutual concern, such as police and human rights in Kenya. We would also be pleased to discuss the research findings in person should you be available to meet with us.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Lefkow", with a stylized flourish extending to the right.

Leslie Lefkow  
Deputy Director - Africa  
Human Rights Watch  
Amsterdam, Netherlands



## Letter to Ministry of Environment, Natural Resources and Regional Development Authorities

April 27, 2016

Prof Judy Wangalwa Wakhungu,  
The Cabinet Secretary,  
Ministry of Environment, Natural Resources and  
Regional Development Authorities,  
NHIF Building, 12<sup>th</sup> Floor,  
Ragati Road, Upper Hill  
P.O Box 30126 – 00100  
Nairobi (Kenya)

Tel: 254 20 2730 808/9  
+254 20 272 57 07

Dear Madam,

I am writing to draw your attention to a letter that Human Rights Watch wrote to the Director General of the Kenya Wildlife Services on March 23 regarding our ongoing research on human rights abuses in the northeastern counties of Garissa, Wajir and Mandera over the last two years. A copy of the letter to the Director General is herein attached.

As you may know, Human Rights Watch is an international non-governmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective and has worked in Kenya for many years.

Thus far, we have not received a reply from the KWS regarding our queries. We are reaching out to your office to request your assistance in ensuring a response to the human rights concerns in the letter.

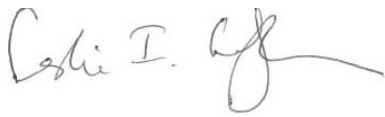
A response to our inquiry is especially important so that we can accurately reflect government efforts in addressing these human rights concerns in our forthcoming research on northeastern Kenya. We would very much appreciate an answer on or before May 30, 2016.



Please communicate your response to Maria Burnett at:... Alternatively, we would be happy to collect a written response at your convenience, prior to May 30.

We look forward to dialogue with the KWS and your office regarding our research in northeast as well as other areas of mutual concern, such as the situation in northeastern Kenya. We would also be pleased to discuss the research findings in person should you be available to meet with us.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie L. Lefkow", with a long horizontal flourish extending to the right.

Leslie Lefkow  
Deputy Director - Africa  
Human Rights Watch  
Amsterdam, Netherlands

# DEATHS AND DISAPPEARANCES

## Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya

Since late 2014, the Somalia-based Islamist armed group Al-Shabab escalated attacks in northeastern Kenya, leaving hundreds dead. In response, Kenya's police, military and other state forces have carried out numerous operations to arrest those allegedly linked to Al-Shabab. Allegations of abuses, including forced disappearances, torture and killings by security forces have increased, but thus far, the government of Kenya denies any wrongdoing.

Based on over 8 months of research, including in the northeastern counties of Garissa, Wajir and Mandera and interviews with over 110 people, *Deaths and Disappearances: Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya* documents 34 cases of enforced disappearances and at least 11 cases in which dead bodies of people previously arrested by state agents have been found in the last two years, in some instances far from the location of their arrest.

Families of those missing have searched detention facilities far and wide, asked for help from political and religious leaders, made reports to state agencies, and in some cases, boldly taken to social media to locate their loved ones. Kenya authorities deny any knowledge of the missing people, fail to acknowledge the growing evidence of abuses during counterterrorism operations, fail to investigate the allegations and in some instances, intimidate and harass those seeking information and accountability.

Human Rights Watch calls on the Kenyan police and military to urgently investigate allegations of disappearances, killings and torture in northeast, and bring those responsible to justice. The president should establish a special commission of inquiry to investigate and establish the extent of the abuses in Kenya's counterterrorism operations.



*Zeinab Bulley Hussein holding the national identity card of her son, Abdi Bare Mohamed. Community members stumbled on Abdi Bare's dead body 18 kilometers from Mandera, in northeastern Kenya, three weeks after police officers arrested him outside the family's home in August 2015.*

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