

## THE REPUBLIC OF KENYA

### CSW SUBMISSION TO THE 35<sup>TH</sup> SESSION OF THE UNIVERSAL PERIODIC REVIEW

#### Introduction

1. CSW is a human rights organisation specialising in the right to freedom of religion or belief (FoRB).
2. This submission seeks to draw the Council's attention to grave human rights violations in the Republic of Kenya, committed between the period of 2015 and 2019, largely by non-state, but also by state actors.
3. During its second Universal Periodic Review (UPR) in 2015, Kenya accepted a recommendation from Holy See to continue the implementation of anti-discrimination laws with regard to religion. This was the only recommendation the country received specific to FoRB.
4. Kenya also accepted recommendations from Lesotho and Rwanda to increase efforts to counter terrorism, and a further recommendation from Botswana to enact and fully implement legislation on counter-terrorism.
5. Throughout the reporting period violations of the right to FoRB have continued, largely in the form of terrorist attacks perpetrated primarily by members and sympathisers of the Somali terrorist group al Shabaab. The al Hijra faction of al Shabaab consists predominantly of East Africans, most of them reportedly Kenyan nationals and several of them converts from deprived backgrounds. The areas of the country that border Somalia experienced the majority of the attacks.
6. In addition to the violations of human rights perpetrated by terrorist groups, there is evidence that Kenyan police and authorities have been complicit in human rights violations in their efforts to combat terrorism, which has exacerbated the situation.

#### Terrorism

7. Terrorist attacks continued in Kenya throughout the reporting period, and often individuals have been specifically targeted on the grounds of ethnicity and/or religion. In areas bordering Somalia where the dominant ethnic group is Kenyan Somali, individuals from other ethnic groups, Christians and other non-Muslims have been targeted. On some occasions Muslims have also been killed for attempting to help those under attack, or for condemning al Shabaab.
8. From May 2017 there has been a notable increase of al Shabaab attacks in Kenya. A particular spike was observed towards the end of 2017, and violence continued on a regular basis throughout 2018 and into 2019. The attacks have been primarily concentrated along the Kenya – Somalia border, with Lamu and Garissa counties experiencing the majority of the violence. Al Shabaab has targeted, communities residing

close to the Boni Forrest in Lamu County, security personnel, cross country vehicles traveling on the Garissa to Nairobi route and religious institutions.

9. Two particularly significant terrorist attacks occurred during the reporting period.
10. On 2 April 2015 al Shabaab killed at least 147 people, most of them students, at Garissa University. The attackers reportedly singled out Christian students for execution. It was the fourth attack in which al Shabaab terrorists had separated hostages according to religious identity and murdered them accordingly. The massacre in Garissa led to calls for the removal from Kenya of refugee camps occupied by Somalis.
11. In January 2019 al Shabaab carried out an attack on the DusitD2 complex, a popular meeting place in Nairobi. Four gunmen attacked the business complex, killing 21 people before being killed by Kenyan security forces. The group claimed responsibility for the attack.

#### Attacks on villages

12. On 7 July 2017 nine men were beheaded during overnight raids perpetrated by al Shabaab on Jima and Pandanguo villages in Lamu County. It was reported that the militants had only targeted non-Muslim men. Some villagers also claimed that police had been informed that al Shabaab were in the area, but had taken no action. The attacks occurred a matter of days after three police officers were killed in nearby village.
13. On 18 August 2017 members of al Shabaab raided the village of Maleli, also in Lamu County. At least three men were beheaded during the attack.
14. In September 2017 four men were beheaded and several homes were raided by suspected members of al Shabaab, in the villages of Silini-Mashambani and Bobo, both in Lamu County. Police in Silini-Mashambani had reportedly failed to investigate a sighting of suspicious men on 5 September, and later that day a woodcutter working in the nearby forest was killed by a heavily armed group who are suspected to have been members of al Shabaab.
15. Bobo village was subsequently attacked by an armed group at 1.30am on 6 September. Residents claimed they called the police, but the majority of calls went unanswered. The few who were able to reach the police were informed there were not enough officers available to respond to the attack. The armed men reportedly called out residents by name, surrounding the village and preventing inhabitants from fleeing.

#### Attacks on security personnel

16. On 30 December 2017 Kenyan newspapers reported that 50 al Shabaab militants had attacked Ijara Police Station in Garissa County. No one was killed, but the police station was burned down and a police vehicle was stolen.

17. On 2 January 2018 five security personnel were killed in a suspected al Shabaab attack. Two administrative police officers and three police reservists were attacked on the Ellwak-Kotulo road in Mandera as they carried out regular patrols. A group of highly trained police officers from the General Service Unit (GSU) was also ambushed as they responded to the attack. Although no officers were killed, their vehicle was burned out.
18. On 13 January 2018, 50 suspected al Shabaab militants attacked police officers escorting passenger buses near Nyongoro, in Lamu County. A 35-year-old mother was shot dead and five police officers were severely injured and transferred to local hospitals.
19. On 6 May 2018 nine Kenyan soldiers were killed on the Kenya-Somalia border, when their vehicle ran over an IED.
20. On 17 June 2018 five administrative police officers and three police reservists were killed when their vehicle hit an IED in the Bojigaras area of Wajir County.
21. On 8 August 2018 five soldiers were killed when their vehicle made contact with an IED in Lamu County. Al Shabaab reportedly claimed responsibility for the attack.
22. On 12 April 2019, al Shabaab gunmen abducted two Cuban Doctors in Mandera town close to the Kenya-Somalia border and killed a police officer who was escorting the health workers.<sup>1</sup>
23. On 4 May 2019 a police reservist was injured in Mandera after suspected al Shabaab members raided a food store in the village of Hareri Hosle, near the Kenya-Somalia border.<sup>2</sup>

#### Attacks on Schools

24. On 31 May 2017 around 70 terrorists invaded Fafi town in Garissa County, destroying a telecommunications mast, killing a Christian school teacher as she taught a class, and abducting a male Christian teacher. He was later found dead, along with a Muslim teacher who had tried to assist him and had also been abducted.
25. On 16 February 2018 al Shabaab attacked a primary school in Wajir County, killing two male Christian teachers and the wife of one of the teachers. The attack led to an exodus of non-local teachers, which has left 224 primary schools and 42 secondary schools in the county unable to function.

#### Attacks on businesses and transport routes in Lamu and Garissa

26. In November 2017 two police vehicles were burned as security operatives escorting commercial buses along the main road between Mandera and Nairobi came under attack.

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<sup>1</sup> *Daily Nation*, 'Gunmen abduct 2 Cuban doctors in Mandera', 12 April 2019

<https://www.nation.co.ke/counties/mandera/Gunmen-attack-Cuban-doctors-in-Mandera/1183298-5068080-naucaoz/index.html>

<sup>2</sup> *Daily Nation*, 'Police reservist injured as Shabaab militants raid village', 5 May 2019

<https://www.nation.co.ke/counties/mandera/Al-Shabaab-militants-raid-village/1183298-5101070-I9qqqc/index.html>

27. On 27 December 2017 a lorry driver and his passenger were shot and killed on the Lamu-Garsen road by suspected al Shabaab militants. The assailants burned the lorry and bombed an electricity pylon.
28. On 4 May 2018 four businessmen were killed at a quarry in the Shimbir Fatuma area in Mandera town. The men were reported to be non-locals, and authorities blamed al Shabaab for the attack.

#### Religiously motivated attacks

29. In September 2017 two police officers were shot dead near the city of Mombasa as they protected St Pauls Ukunda Church, which belongs to the Anglican Church of Kenya.
30. On 12 September 2018 two Muslim men were killed at Kilolapwa and Shamu villages in Ukunda, Kwale County. Imam Ali Hassan Chisuse, 58, the chairman of the mosque, was shot three times at around 8pm as he closed the door of the Masjid Irshad mosque, while Mwinyi Pataka, 70, was killed in his home in Shamu by assailants who escaped on a motorcycle. While some observers speculated the killings were political, others stated that the coordinated nature of the attacks, coupled with the imam's vocal opposition to radicalisation, pointed to a hit by al Shabaab.
31. On 14 September 2018 two people were killed after failing to recite the Muslim profession of faith and seven Qur'anic verses, when seven al Shabaab militants stopped and both racially and religiously profiled passengers on a bus at Handaro near Garissa.
32. It is clear that Kenya has failed to adequately counter terrorism during the reporting period. Particularly concerning is the November 2018 report of the UN Monitoring Group on Somalia and Eritrea, which found that Kenyan police had allowed al Shabaab operatives to cross the Kenya-Somali border in exchange for bribes.<sup>3</sup>

#### Recommendations

33. *Increase efforts to clear the Boni forest and surrounding areas of al Shabaab fighters, and increase the numbers of security personnel deployed to the coastal region to protect civilians.*
34. *Strengthen counter-terrorism efforts with a particular focus on Lamu and Garissa Counties.*
35. *Ensure that the humanitarian needs of communities displaced or affected by al Shabaab violence in Lamu and Garissa Counties are met.*
36. *Bring to justice any police officers found guilty of receiving bribes or engaging in other forms of corruption.*

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<sup>3</sup> United Nations Security Council, Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2385 (2017), p. 25, paragraph 79 <https://undocs.org/S/2018/1002>

## Violations of human rights in the fight against terrorism

37. During the previous UPR, Kenya accepted seven recommendations calling on the state to ensure that all counter-terrorism measures were carried out in a manner that fully respected national and international human rights obligations and laws (Austria, Canada, Chile, Finland, Germany, Lithuania, Norway).
38. However, in a 2016 report<sup>4</sup>, Human Rights Watch (HRW) documented the enforced disappearances of twenty individuals. HRW also documented six cases of suspected torture in military camps and bases in Garissa, Wajir and Mandera Counties, illustrating Kenya's failure to implement these recommendations, as well as the failure to implement an accepted recommendation from the Holy See to eliminate torture.
39. During the reporting period there have been reports of extrajudicial killings by security officers. In addition to highlighting Kenya's failure to implement recommendations relating to the respect of human rights in the fight against terrorism, the killings also demonstrate a failure to implement accepted recommendations from Brazil, Holy See, Lithuania and the United States which specifically called on the government to combat extrajudicial executions.
40. In May 2017 the Mathare Social Justice Centre published a report which claimed that at least 57 people had been extra judicially killed by Kenyan police between 2016 and 2017.<sup>5</sup>
41. In a statement delivered at the 60th ordinary session of the African Commission on Human and People's Rights in May 2017, the Kenya Human Rights Commission claimed there had been over 487 cases of extrajudicial execution between 2014 and March 2017.<sup>6</sup>
42. In November 2018 the Independent Medico Legal Unit (IMLU) claimed Kenyan police were responsible for 267 extrajudicial killings in 2018, a significant increase from IMLU's estimate of 152 extrajudicial executions in 2017.<sup>7</sup>
43. The changing nature of the threat that al Shabaab poses highlights the need for a change in strategy by the state party. The January 2019 DusitD2 was one of the first attacks where the perpetrator was not ethnically Somali. The fact that the leader of the attack, Ali Salim Gichuge, was a 26 year old Kenyan from the predominantly Christian Meru tribe indicates the terrorist groups ability to target and recruit marginalised individuals from ethnic groups that have no connections with Somalia or communities in neighbouring counties.

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<sup>5</sup> Mathare Social Justice Centre, 'Who Is Next? A Participatory Action Research Report Against the Normalization of Extrajudicial Executions in Mathare', 30 May 2017 <https://www.matharesocialjustice.org/who-is-next/>

<sup>6</sup> Kenya Human Rights Commission, 'Statement by the Kenya Human Rights Commission on the death penalty and extra judicial killings or arbitrary killings in Kenya at the 60th ordinary session of the African Commission on Human and People's Rights in Niamey, Niger', 15 May 2017 <https://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/599-statement-by-the-kenya-human-rights-commission-on-the-death-penalty-and-extra-judicial-killings-or-arbitrary-killings-in-kenya-at-the-60th-ordinary-session-of-the-african-commission-on-human-and-people-s-rights-in-niamey-niger.html>

<sup>7</sup> Democracy in Africa, 'Obtaining Justice for Extrajudicial Killings in Kenya', 14 November 2018 <http://democracyin africa.org/obtaining-justice-extrajudicial-killings-kenya/>

44. The DusitD2 attacks illustrates that the state's continued targeting of individuals based on their ethnicity, links to Somalia or country of origin is not only discriminatory, but also undermines the ability of the security services to apprehend perpetrators of violence.
45. Moreover, the failure to ensure that human rights of civilians and even suspects are respected in the fight against terrorism risks alienating local communities, mitigating against cooperation with intelligence gathering efforts, and causing some to sympathise with and even join the terrorist movement. It also demonstrates Kenya's failure to comply with its international obligations, including under the International Covenant on Civil and Political Rights (ICCPR), to which the state is party.

## Conclusion

46. While religious groups in Kenya enjoy a relatively high level of freedom of religion or belief, there remains a need for the government of Kenya to do far more to combat terrorism to ensure that its citizens, particularly non-Muslims in areas near the Somali border, are able to practice their faith without fear of violence or persecution.
47. The government of Kenya must also ensure that all counter terrorism measures comply with its international legal obligations, and that any individuals found to violate these commitments are brought to justice.

## Recommendations

48. *Conduct coordinated assessments, along with the government of Somalia, of the al Shabaab counter-terrorism strategy and its potential impact on civilians, ensuring that all counter-terrorism measures fully respect Kenya's national and international obligations.*
49. *Conduct detailed investigations into allegations of extrajudicial killings, torture and enforced disappearances, ensuring that perpetrators are brought to justice.*
50. *Strengthen human rights education within the security forces to ensure that officers operate in accordance with Kenya's constitutional and international legal obligations.*
51. *Urgently formulate poverty alleviation and income generating initiatives targeting unemployed youth in particular in order to render them less susceptible to financial inducements from terrorist recruiters.*