

### **KPTJ STATEMENT ON HUMAN RIGHTS COUNCIL MEETING**

We take great exception to the flippant tone and guileful dishonesty the Government of Kenya has initially adopted in its response to the very grave findings contained in the report of the UN Special Rapporteur on Extra-Judicial Executions to the Human Rights Council and note as follows:

1. The Government, through its officers, continues to make apologies and excuses for criminal behaviour in the police force. The most recent outrage is the Nyanza Provincial Commissioner's purported statement on Madaraka Day that it is okay for the police to rape women while protecting villagers from killer gangs, and that officers who carry out extra-judicial executions are driven by excitement. We would like to state categorically that these statements characterise the sick mindset in a section of government and reiterate that there nothing exciting about rape or murder.
2. The dismissal of the positive reform recommendations in the report by Prof Philip Alston as unnecessary since they are allegedly already ongoing is dishonest and false. So far, the so-called accountability mechanisms mentioned by the Kenya government in response to the Alston report are utterly ineffective. They are not entrenched in any law, and do not guarantee independence on the part of those carrying out the reforms. It is telling that the so-called police oversight body has been unable to start investigations, and instead refers complaints to the Kenya National Commission on Human Rights. The office of the Ombudsperson has noted numerous complaints about the police but to date, the force does not consistently gather or release data on those killed by its officers. We are deeply concerned by the government's utter failure to act on the findings of the report of the Commission of inquiry into Post-Election Violence, as well as Prof Alston's. The task force that was recently established to spearhead police reforms is not suitably composed to address the core strategic issue of addressing organised crime and insecurity without resorting to torture, unlawful detention and extrajudicial executions.
3. We read deliberate mischief and duplicity in the government establishing this task force when, at the same time, everything possible is being done to undermine the credibility of witnesses for various domestic reports. There are reports of witnesses being abducted by the security agencies and being made to swear false affidavits regarding their experiences in Mt Elgon. The human rights organisations that produced reports on these issues are being smeared with claims of bribery. The deliberate attempt to downplay the epidemic of extra-judicial executions as "rare

- occurrences” that have only occurred where there are police operations are patently false. There is nothing rare about 500 deaths, many of them documented, in less than a year.
4. The State has continued its campaign against human rights organisations involved in investigative work. The threats to the personal safety of human rights workers from those most afraid of the truth on extra-judicial executions have forced at least 20 individuals to go into hiding. **(See the summary of human rights workers under protection since the Alston preliminary report in the attached annex)**. The attempt to discredit the state-funded Kenya National Human Rights Commission, as well as numerous organisations who have painstakingly investigated the excesses of security forces belies a desire not only to bury the atrocities committed in the past but also to lay the basis for their continuation.
  5. The naked attempt to use force, threats and intimidation against witnesses to get them to retract testimonies they gave to Prof Alston and human rights workers, and to then discredit their earlier statements as the product of bribery only underlines the need for structured and credible witness protection. There is a crisis in the security services sector, which will not be resolved through denial, hedging and creating numerous red herrings.

We acknowledge the gravity of issues around insecurity and organised crime in Kenya. Just like the state security agencies, we are deeply concerned about these issues and support the urgent search for a durable solution. Where we part ways with state security agencies is on the following two points:

- i. We strongly believe that it is possible to combat organised crime and insecurity within the boundaries of international and regional human rights law, as well as our own Constitution and the laws and policies regulating acceptable use of force by the state security agencies.
- ii. We believe that security sector reform can only be meaningful if it goes beyond recruiting more numbers, increasing training and buying more equipment. There must be zero tolerance towards breaches of international and regional human rights law as well as our own Constitution and the law -- such as unlawful detention, torture and extrajudicial executions. In the event of such breaches, individual officers concerned must be accountable legally, and the command must be held accountable politically.

Safety concerns all Kenyans. Discussions around it cannot be hijacked and monopolised by a few individuals in government who appear bent on resisting and subverting accountability and reform. Claims by officials in government that real reforms in the security sector are under way is only meant to distract attention from the fact that the very clear recommendations on what needs to be done to restore public confidence in the judiciary and the police are being subverted.

We urge the UN Human Rights Council to adopt Prof Alston's report in full and use its influence to encourage the government of Kenya to embark on these necessary but long-delayed reforms. We also urge individual members of the UN family to take the necessary steps to oblige the depth and breadth of security reform for which the ordinary Kenyan has been hankering.

***\*Kenyans for Peace with Truth & Justice is a coalition of citizens and organisations working in the governance, legal and human rights sector who came together in the aftermath of the 2007 elections debacle. The coalition campaigns for the full and timely implementation of all the mediation agreements***

For TV and radio interviews, contact:

L. Muthoni Wanyeki, Executive Director, KHRC: +254 20-3874998/9

Gladwell Otieno, Executive Director, AfriCOG : +254 20-2723031

ANNEX

## **FLEEING FOR THEIR LIVES:**

**Kenyan investigators of extrajudicial killings forced into exile**

*The following are five profiles selected from the 20 human rights defenders forced to go into hiding because of death threats they received after investigating and exposing extra-judicial executions and*

*other excesses by the security services in Kenya. Their names and their destinations have been omitted from this brief for their safety*

## **Exile 1**

For nine months, this human rights defender investigated and documented information on the arrest and disappearance of suspects in police custody. He also took part in several missions within Nairobi in search of suspects who had disappeared. It entailed coming into personal contact with police officers from elite units suspected of committing extrajudicial killings.

After the release of the KNCHR report, *Cry of Blood: Mungiki Killings*, in August 2008 -- which found that police death squads operating on the orders of senior officers, carried out killings that were widespread, systematic, carefully planned and committed at will, with utter impunity -- he started receiving anonymous telephone calls that would go silent when he picked up his handset. This happened several times in the night for three days. His normal telephone conversations were often interrupted by screeching echoes, an indication that his communication was being tapped. This phenomenon stopped when public anger and outrage over the killings subsided with the passage of time. During Prof Philip Alston's visit, these incidents resumed and escalated after the release of his preliminary report.

On Thursday, March 5, 2009, Oscar Kamau King'ara and John Paul Oulu of Oscar Foundation, who were involved in similar investigations into extrajudicial executions were murdered in cold blood. The following day, as the exile presided over a scheduled parents' class meeting in his son's primary school whose management committee he chaired, one parent approached him and expressed fear that the school could lose a resourceful chairman if the exile continued to do the kind of work he was doing -- human rights advocacy.

He did not give it much thought until he received an anonymous call on a concealed identity that evening from a man who spoke in Kiswahili taunting the extra-judicial killings' investigation and saying it would not go anywhere. He further said human rights activists such as himself would be dealt with and taught a lesson.

He changed his SIM card and mobile phone handset lest someone use them to trace him and fled to his rural home in an attempt to keep a low profile away from the epicenter of the extra-judicial executions.

He was forced to flee into exile on March 9, 2009. The alleged perpetrators are suspected to be members of the police Eagle and Kwekwe squads, members of which he personally encountered in the course of his work.

## **Exile 2**

He was involved in monitoring, investigation and documentation of the military disarmament of the Saboot Land Defense Force. He also investigated police extrajudicial killings for the Kenya National Commission on Human Rights.

During an initial fact-finding mission to Mt Elgon District in March 2008, he and his colleagues received death threats as well as veiled threats that they would 'disappear' from the military if they did not stop intervening in the area. The military obstructed their fact-finding mission despite the human rights workers having the legal mandate to carry it out. The officer in charge said: "This is our place now. We are in control and we do not care about you or these animals. If you continue to be around here we shall kill you and make you disappear in Kamarang Forest." At this time, the human rights defender was with two other colleagues from KNCHR and seven survivors. He reported the army threats in Mt Elgon to the DC, Mr Birik, who told him that the military are well trained and they uphold humanity, that they were not capable of torture or threats.

Police arrested the doctor who had agreed to document the kind of injuries witnesses suffered and took him to court on trumped up charges. The case is ongoing.

The military arrested one of the witnesses with whom this exile had contact after they had set up a meeting, suggesting that the military was tapping their telephones.

On the day his contact was arrested, he protested to the Kitale police boss but was told the suspect was a military detainee and they were just holding him for the army. After protest letters were sent to the Department of Defence, the suspect was later released.

They went to see the 245 suspects charged with promoting warlike activities at the Bungoma Prison. Most of them had been seriously injured, with one dying in prison. Although their injuries were visible, they were not allowed to photograph them since they were said to be "military suspects" caught in an operation area. They met with the officials of the International Committee of the Red Cross -- who among other international organisations, journalist and human rights defenders had been denied access to the "operation" area and the prison.

The Kenya National Commission on Human Rights released the fact-finding mission's report, *Mountain of Terror*.

In November 2008, he began investigating and documenting police extra-judicial killings in Central Province and parts of the Rift Valley.

In the period up to March 2009, he and the team he was working with had documented over 500 killings, put down to a police unit identified as "Kwekwe". The unit was charged with eliminating suspected members of Mungiki sect. In the course of their investigations, they met with the members of that squad, who openly acknowledged that they were killing for the sake of peace and stability in the country.

In this period, there was no aggression but clearly, there were signs that the human rights defender's communication was being interrupted and tapped.

After the release of KNCHR's report, *Cry of the Blood*, the police were visibly following members of the investigations team and one of the police informants who had given information on their activities was killed in Nairobi.

In March 2009, after the country visit by the UN Special Rapporteur and the release of the preliminary report, this human rights defender received repeated calls but the callers did not speak. He also received short text messages saying that he and his colleagues would not be successful and advising that they should stop bringing white people to interfere in "our internal issues".

On March 5, 2009, Oscar Kamau King'ara was shot a few metres from a planned rendezvous with Exile 2 near the University of Nairobi. He went to the scene as soon as he received the news, where he saw some three suspicious looking police officers in civilian clothes and armed with pistols.

Two days later, while at his home keeping a low profile, a police senior sergeant Exile 2 had met in Naivasha during the investigations on extrajudicial executions approached him and told him that they [the human rights defenders] would not be allowed to be a threat to the stability of the national coalition and that they would be targeted and silenced. Later that day, he received a message saying that they [human rights defenders] should ask Oscar, "the deceased", how it felt ...

### **Exile 3**

Since June 2007, he has been investigating cases of extrajudicial killings and disappearances of criminal suspects attributed to both the Kenya army and the police. The incidents mainly relate to members of outlawed militia groups, particularly the Sabaot Land Defence Force (SLDF) and Mungiki.

In the course of his investigations, he directly encountered the arrest of several suspects who would most probably have been executed were it not for his timely intervention. During these encounters, he received direct threats from the arresting police officers, who accused him and his colleagues of interfering with their work.

In one such incident on December 12, 2007, he received a telephone call from relatives of two people -- Mr Geoffrey Guchu and Mr Josiah Kung'u saying that the pair had been arrested on suspicion of belonging to Mungiki and taken to the Umoja Chief's camp. The callers informed him that the police were demanding a Sh1 million ransom from each man. If it was not forthcoming, they would be killed. The KNCHR quickly assembled a team to go to the Umoja Chief's camp. There, the duty officer at the Administration Police Camp said the two suspects had been moved to Buruburu Police Station at around 2 pm. At Buruburu, the rights team met with the officer in charge, Chief Inspector William Ekasi and a Police Inspector Laban Likolai, who confirmed that they were holding the two suspects. Inspector Likolai started shouting at this human rights defender accusing him of repeatedly interfering with police operations in the area. Inspector Likolai's language and demeanour were extremely intimidating. In full view of the OCS, Mr Likolai verbally assaulted and threatened the human rights defender. Upon realizing that he had written down his name, he menacingly stepped in front of the human rights worker and

demanded to know why he had done so. When he said his identification badge was publicly displayed, Mr Likolai flew into a rage, ripped the page with his name from the rights worker's notebook, and stashed the paper into his pocket. He then said: 'Mimi nitakufa na wewe!' (I will die with you!). The rights worker protested at these threats to the station commander, who was present.

After this incident, the human rights defender began receiving anonymous calls on his cell phone, most of them in Kiswahili with messages such as:

'Who do you think you are?'

'Do you think you can fight the police?'

'Many like you have come and gone'

'You will soon know who we are'

'Stupid activist!', etc

On July 24, 2008, two of this human rights worker's informers came to his office after police arrested them saying they were members of the Mungiki. They had paid Sh200,000 to secure their release after they were threatened with death. They told him that the crack police squad had told them that they had killed many bigger people so the human rights defender was nothing to them. Both men have since disappeared.

On October 13, 2008, this human rights worker received a telephone call from Mr Bernard Kiriinya, a former police officer who had recorded a 90-minute video confession (with the KNCHR) in which he explained how, as a driver with the Special Crimes Prevention Unit, he witnessed 58 executions within one year. Kiriinya told him to be careful since his former colleagues had threatened to hit back at those who were accusing the police of extrajudicial killings.

Three days later, Kiriinya was lured out of the safe house where he was staying and shot in the back of the head.

On two occasions, this human rights defender was also trailed by suspicious vehicles on his way home from work. On October 21, 2008, his vehicle plunged in a ditch after a suspicious car swerved towards him at high speed at around 9.00 pm. The suspicious vehicle, a white van, had its registration number plates partially covered. He was only able to note a section of the numbers. He reported the matter to Kilimani Police Station.

His spouse witnessed one of the trailing incidents on February 3, 2009.

On March 5, 2009, at around 11 am, he received a call from Oscar Kamau King'ara of Oscar Foundation, with whom he had been working closely during investigations into extrajudicial killings. He told him to be careful since threats on their lives had escalated in the past few days, particularly after Prof Philip

Alston released his preliminary report after a fact-finding mission in Kenya. King'ara told him that they had received anonymous calls threatening unspecified actions on all those who were spreading malicious information on police involvement in the killings. The human rights defender, King'ara and John Paul Oulu agreed to meet later that evening to discuss the threats. He did not have his vehicle and asked King'ara to call him while on their way to their rendezvous to give him a lift. He got a lift from another friend. King'ara and Oulu were executed a few metres ahead of him along State House Road at around 6.30 pm.

#### **Exile 4**

He was involved in the Kenya National Commission on Human Rights investigations into extrajudicial killings and recorded the statement made by former police officer Bernard Kiriinya. He was also involved in investigations of post-election violence in Kisumu, which showed police had used lethal force, killing 100 people.

Between May 15 and 20, 2008, he started receiving threatening anonymous calls from unknown persons who called him a 'traitor' or 'sellout.' This was followed by persistent surveillance and tracking by unmarked police vehicles within Nairobi.

When the threats escalated, he fled into exile in August 2008, and then fled to yet another country the following month. He returned to Kenya in October 2008, but on October 10, 2008, he was confronted at Kengele's Restaurant near Nyayo National Stadium by a senior police officer. Six days later, police whistle blower Bernard Kiriinya was murdered.

After Kiriinya's execution, this human rights worker received a tip-off from another police informer that he was next in line to be executed according to the plan of action.

He escaped to exile the following day. His wife received a threatening telephone call from a police officer on November 19, 2008, forcing him to return to comfort his family.

On December 22, 2008, on the day of his return, he was confronted by two police officers at a petrol station South C, Nairobi, then waylaid by officers at Pangani roundabout the following day.

He went into hiding in his rural home, but there, he was followed and confronted by an emissary sent by the killer group on December 26, 2008. His spouse confirms that the emissary was the same person who had called her with a threat while he was in exile. He travelled to Nairobi the same night and remained in hiding until December 30, 2008, when he and his family fled into exile.

#### **Exile 5**

This human rights worker received complaints of allegations of torture by the security forces in Mt Elgon District and was in charge of investigating them, ultimately producing the report, *Mountain of Terror*.



Part of the rights defender's work included documenting police extrajudicial executions of suspected members of the Mungiki sect and other violent criminals, leading to the report, *Cry of Blood*. Some of the statements in the report were corroborated by an informant, a police constable, who was tracked down and killed in what appeared to be a chilling message to those working to release the report.

After the release of both reports, the rights worker realised that cell phone communication was massively being tapped and at times "I could receive calls from unknown numbers but the caller would just keep quiet. I received several calls and cannot exactly say how many they were."

This human rights worker was forced to flee into exile for a month and half, returning on November 30, 2008.

When the UN Special Rapporteur on extrajudicial killings visited Kenya in February 2009, the same pattern of tapping phones started recurring and continued until after the death of the two human rights activists. The human rights worker switched off the phone they were using and discarded it before fleeing into exile.

The rights worker expressed fears about their safety to colleagues after noticing strange presences in their telephone conversations.

The exile perceives the threats as emanating from state officials -- either the police or the military.

Kptj/hrds statement