
KENYA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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Political context

In 2009, the country had still not recovered from the political violence that followed the December 2007 general elections¹ and had yet to implement the reforms set out under the National Accord and Reconciliation Act 2008. Following the political agreement decided by President Kibaki and Prime Minister Odinga on December 17, 2008, and in accordance with the recommendations of the Waki Commission², a special tribunal to try the crimes and human rights violations committed during the post-elections violence should have been established by January 30, 2009. However, Parliamentarians rejected it twice, on January 29 and February 13, 2009, after a constitutional amendment motion to institute the tribunal by the Government was defeated. Although the Kenyan authorities announced in July 2009 that they would carry out accelerated police, prosecution and judicial reforms to ensure investigation and prosecution of perpetrators, they provided no time-frame and further specified that they would not support the establishment of such tribunal. As a result, on November 5, the Prosecutor of the International Criminal Court (ICC) announced the ICC would get involved and submit a request under Article 15(3) of the Rome Statute for the authorisation to open an investigation. On November 6, pursuant to the Rome Statute, the Presidency of the ICC assigned the situation to Pre Trial Chamber II to call upon the opening of an investigation³. At the end of 2009, the request for authorisation was still pending⁴. The European Union also called upon Kenya to urgently

1/ The December 2007 Presidential elections were marred by serious irregularities and set off a wave of violence throughout Kenya until the end of February 2008, which claimed over 1,000 lives and displaced over 300,000 people. Serious human rights violations included organised violence by militia, gender-based violence, and spontaneous, disorganised uprisings of mobs protesting the flaws, during which there was a disproportionate and excessive use of force by the police against protesters, mainly in opposition strongholds.

2/ Following the election violence, a Commission of Inquiry led by Justice Philip Waki was set up to investigate the violations.

3/ See ICC Press Release ICC-CPI-20091106-PR473, November 6, 2009.

4/ See ICC Press Release ICC-CPI-20100219-PR497, February 19, 2010. On March 31, 2010, Pre-Trial Chamber II authorised the Prosecutor to investigate crimes against humanity committed in Kenya between June 1, 2005 (date of entry into force of the Rome Statute for Kenya) and November 26, 2009.

adopt measures to end impunity and fight corruption and to ensure full respect for human rights⁵.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who conducted a fact-finding mission in the country from 16 to 25 February, reported “the existence of systematic, widespread, and carefully planned extrajudicial executions undertaken on a regular basis by the Kenyan police”, and a complete lack of accountability that prevails in an overwhelming majority of cases. The report concluded that there were no independent police internal affairs unit to investigate police killings and reliably assess the legality of the use of force, and also denounced the existence of opaque appointments, and “extraordinary levels” of corruption made the judiciary unable to address such issues. The Rapporteur also denounced a systematic attempt to silence criticism voiced against the security forces, in particular in the Mount Elgon district⁶, where from 2006 to 2008, both the Sabaot Land Defence Forces (SLDF) and the Government’s security forces engaged in widespread brutality, including torture and unlawful killings, against the civil population⁷. Detailed reports from a broad range of sources documenting these abuses were not seriously investigated by the police or the military.

Moreover, on January 2, 2009, President Mwai Kibaki signed into law a controversial media law that imposes new restrictions on the press despite mobilisation at local and international level. Indeed, the Kenya Communications (Amendment) Act (2009) provides for heavy fines and prison sentences for press offences, gives the information and internal security ministries the authority over the issuing of broadcast licences and the production and content of news programmes, as well as search and surveillance powers. Following a concerted campaign by civil society, on May 9, 2009, the Kenyan Government published amendments to the Communications Act, which will delete a controversial clause that allows the Government to raid broadcasting houses and destroy or confiscate equipment in the name of “public safety”. The amendments will also get

5 / See EU Declaration by the Presidency on behalf of the European Union on Kenya, October 1, 2009.

6 / See Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, Addendum - Mission to Kenya*, UN Document A/HRC/11/2/Add.6, May 26, 2009.

7 / SLDF is a guerrilla militia operating in the Mount Elgon district of Kenya (western province of Kenya) since 2005. A large scale military assault in March 2008 has resulted in allegations of serious human rights abuses by the Kenyan army, including murder, torture, rape, and arbitrary detention. According to the Kenyan NGO Independent Medico-Legal Unit (IMLU), the military operation reportedly resulted in mass arrests and subsequent prosecution of over 1,200 persons with most of the persons arrested raising complaints of torture.

rid of provisions granting the Government power to control content on TV and radio. The task will now fall under a new Broadcast Content Advisory Council, which will include the Permanent Secretary in the Ministry of Information and six other members to be appointed by the Information Minister. The amendments were agreed upon between the media and the Government as interim measures pending a further and more elaborate review of the law governing communications and the media. At the end of 2009, the Parliament had still not examined the amendments.

Reprisals against human rights defenders who denounced human rights violations by the police forces

In the context of total impunity of police and military forces, human rights defenders who denounced human rights violations committed by those forces faced acts of reprisals in 2009. For instance, on September 15, 2009, Messrs. **Samson Owimba Ojiayo** and **Godwin Kamau Wangoe**, members of the grass-roots movement “Bunge La Mwananchi”, which aims at fighting social injustice and promotes accountable leadership in Kenya, were arrested in Nairobi by plain clothes police officers after they had been campaigning to end impunity for serious economic crimes and extrajudicial killings. Their abduction came weeks after the replacement of controversial police chief, Mr. Mohamed Hussein Ali, who had been widely criticised for his role in the post-election violence. During their detention, Messrs. Kamau Wangoe and Owimba Ojiayo were reportedly denied access to a lawyer and Mr. Wangoe was subjected to ill-treatment. On September 16, Mr. Owimba Ojiayo was released without charge and Mr. Kamau Wangoe was brought before a Nairobi magistrate, charged with “belonging to an illegal organisation” and released on bail on September 18. Following their release, Messrs. Wangoe and Ojiayo as well as their families were subjected to threats and harassment from the security forces. On September 16, the same day Mr. Ojiayo was released, unidentified men approached his 12-year-old daughter and asked her about her fathers’ whereabouts. Police officers in plain clothes also visited their respective homes twice asking about two defenders⁸. As of the end of 2009, no further information could be obtained regarding the status of the proceedings against Mr. Wangoe. Moreover, in 2009, after the Kenya National Commission on Human Rights (KNCHR) publicly released the testimony of a police whistle-blower, Mr. Bernard Kiriinya Ikunyua, who acted as a driver for one of the police death squads that are operating in Nairobi and Central Province with the explicit mandate to exterminate suspected Mungiki⁹ members, and was killed in October 2008 after he testified on

8 / See Kenyan Human Rights Commission (KCHR).

9 / An organised crime sect.

how the police extra-judicially executed some 58 suspects whom they had arrested¹⁰, the police issued a statement questioning the reason why the KNCHR had released the statement as well as KNCHR's commitment to human rights, and intimating that KNCHR officers receive payments from the Mungiki. In the past, the KNCHR had already faced similar reaction from the police because of its investigations into alleged executions and disappearance of persons attributed to the police.

In particular, many of the human rights defenders who testified before the Special Rapporteur on extrajudicial, summary or arbitrary executions during his mission reported they were threatened and harassed by members of the security forces and other Government officials. Thus, two activists who had been particularly active in reporting on police death squads were murdered just two weeks after the mission ended. Mr. **Oscar Kamau King'ara**, lawyer and Chief Executive Officer of the Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and Mr. **John Paul Oulu**, OFFLACK Communications and Advocacy Officer, an organisation providing free legal services in Kenya, were murdered on March 5, 2009. The Oscar Foundation had carried out research on police brutality in urban areas of Kenya, as well as on corruption in the police force and in prisons. On February 18, it had presented its findings on ongoing extrajudicial killings in Kenya to the Ministry of Education for use in a parliamentary debate. The organisation had also provided information to the Special Rapporteur on extrajudicial, summary or arbitrary executions during his mission. Furthermore, the Oscar Foundation had presented a report on extrajudicial killings, entitled *The Killing Fields*, to the KNCHR and a report on organised gangs to the Kioni Committee of the Kenyan Parliament. Although an investigation was opened immediately into the murder of Messrs. King'ara and Oulu, the Government declined the assistance offered by the Federal Bureau of Investigation (FBI) and police Spokesperson Eric Kiraithe alleged that Mr. King'ara's murder might have been the result of rivalries within the Mungiki sect. As of the end of 2009, the investigation was ongoing.

Intimidation of human right defenders who denounced corruption

Human rights defenders denouncing corruption also remained subjected to harassment in 2009. On January 15, 2009, Mr. **George Nyongesa**, a community organiser who works with Bunge la Mwananchi, was attacked in Nairobi by four men, three of whom had guns. He was severely beaten and his assailants took his laptop, camera, and other valuables before

leaving him within 100 meters of the gate of his house. Mr. Nyongesa reported the assault to the central police station and later recorded a statement with the Criminal Investigations Department. However, since that date, the police has not contacted Mr. Nyongesa¹¹. On January 29, 2009, Mr. Francis Nyaruri, a journalist who wrote on corruption cases for the private *Weekly Citizen* under the pen name Mong'are Mokuu, and who had been missing since January 15, was found decapitated and with evidence of torture to his body in Koderia Forest near his home-town of Nyamira. Mr. Nyaruri had written a series of articles that exposed financial scams and other malpractice by the local police department, and had reportedly told his colleagues of unspecified threats by police officers related to articles he had written in the *Weekly Citizen*. An investigation was immediately opened, which was still ongoing at the end of 2009¹².

Intimidation of human rights defenders who denounced human rights violations in Mount Elgon district

In Mount Elgon, both the SLDF and the Government's security forces remained in 2009 in denial of abuses they are said to have committed, and their response to systematic civil society reporting was to methodically intimidate human rights defenders and witnesses. In particular, before, during and after the visit of the UN Special Rapporteur in February, human rights defenders were systematically intimidated by the police, military and Government officials in an attempt to silence all those who held information on human rights violations committed in this district by the authorities. In its report, the Special Rapporteur mentions that human rights defenders were told not to bring witnesses or victims to meet with him, and not to personally testify about abuses committed by the police or military, but to speak only about abuses by the SLDF armed group. They were further warned by text message, telephone calls, and in person. In one instance, officials addressed an internally displaced persons (IDP) camp, saying that the residents should tell the Special Rapporteur about killings by the SLDF only and that if they did not follow these instructions, they would no longer receive food aid from the Government. During the Special Rapporteur's visit to Mount Elgon, National Security Intelligence Officers unsuccessfully attempted to obtain from NGOs the list of witnesses whom he was going to meet with. Civil society organisations were also repeatedly harassed for them to provide information about the programme and schedule of the Special Rapporteur, as well as details of the NGOs' involvement in the mission. During meetings, the Special Rapporteur was alerted to the nearby presence of intelligence officers. Subsequent to the Special

11/ See KCHR.

12/ See Committee to Protect Journalists Press Release, January 30, 2009.

Rapporteur's meetings with witnesses, police, military and Government officials went to the homes and workplaces of human rights defenders, in an attempt to obtain lists of those who had testified before the Special Rapporteur. Individuals were told that they would be arrested if they did not hand over the list of names. This led a number of specifically targeted individuals from the Western Kenya Human Rights Watch and Muratikho Torture Survivor's Organisation to flee the area. They were delivered further messages by telephone to "keep away" and "not come back". Following the Special Rapporteur's press statement, demonstrations were held in Mount Elgon against NGOs, and individuals were told that they would be denied their food assistance if they did not participate¹³. Furthermore, on October 9, 2009, Mr. **Ken Wafula**, a journalist and the Director of the Centre for Human Rights and Democracy (CHRD), was arrested, interrogated by the local police in Eldoret and released the same day but told not to leave the city. Between October 10 and 15, Mr. Wafula was summoned at least three times to report to the police station, where he was obliged to give further statements on allegations of inciting the public and causing national disturbance. On October 23, Mr Wafula was charged with "incitement". On October 7, Mr Wafula had reported on the clandestine re-arming of communities in the Rift Valley with the support of Government officials for their communities, partly in anticipation of violence during the 2012 parliamentary poll. His report received widespread coverage. As of the end of 2009, the charges held against him were still pending. During the same period of time, the police reportedly tried to trap Mr. Wafula. On October 15, 2009, a retired senior police officer by the name of Mr. Paul Sugutt came to CHRD office claiming that on October 10, 2009, a consignment of 300 guns and 3,000 rounds of ammunition was seen in Eldoret going towards Nakuru from Lwakhakha, and insisting that he would like to work with Mr. Ken Wafula to ensure that the guns are eliminated. However, despite the fact that he was formerly a senior police officer, Mr. Sugutt had not reported this information to the police, and called CHRD's offices up to four times a day during several days. Additionally, a person who identified himself as a human rights activist active in the SLDF also called and asked if he and Mr. Wafula could meet outside the city of Eldoret in order to give Mr. Wafula a report with information that SLDF members were being trained. Within minutes, Officer Sugutt had also called with the same information and to vouch for the human rights activist, but the activist has not been heard from again since Mr. Wafula suggested that they meet only in Eldoret¹⁴.

13/ See Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum - Mission to Kenya*, UN Document A/HRC/11/2/Add.6, May 26, 2009.

14/ See Front Line Statement, October 19, 2009.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Messrs. Oscar Kamau King'ara and John Paul Oulu	Assassination	Urgent Appeal KEN 001/0309/OBS 043	March 9, 2009
		Joint Open Letter to the authorities	April 20, 2009