



ARE WE UNDER SIEGE? THE STATE OF SECURITY IN KENYA

AN OCCASIONAL REPORT (2010 – 2014)



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS © 2014

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ABBREVIATIONS

AP – Administration police

CCTV – Closed Circuit Television

CIPEV – Commission of Inquiry into Post Election Violence

COK – Constitution of Kenya

CSO – Civil society Organizations

DCIO – Divisional Criminal Investigation Officer

FGD – Focus Group Discussions

GK – Government of Kenya

GSU – General Service Unit

IAU – Internal Affairs Unit

IEDs – Improvised and Explosive Devices

IG – Inspector General

IMLU – Independent Medical Legal Unit

IPOA – Independent Policing Oversight Authority

KNCHR – Kenya National Commission on Human Rights

MRC – Mombasa Republican Council

NARC – National Rainbow Coalition

NPS – National Police Service

NPSC – National Police Service Commission

NSIS – National Security Intelligence Service

NYS – National Youth Service

OCPD – Officer Commanding Police Division

OCS – Officer Commanding Police Station

RDU – Rapid Deployment Unit

SALWs – Small Arms and Light Weapons

SPSS – Statistical Packages for Social Sciences

SSR – Security Sector Reforms

UN – United Nations

VIP – Very Important person

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FOREWORD

Kenya has witnessed a sharp increase in the number of insecurity incidences over the last four years. With the promulgation of a new Constitution on 27th August 2010, which provides a robust framework for the promotion and protection of human rights, Kenyans had a legitimate expectation that they would live in a Country where their safety and security are assured and guaranteed under the law. However, going by the recent spate of violence in different parts of the country, Kenyans cannot say that they live in a safe and secure country. Increasingly, following the widespread incidences of violence, a “siege mentality” seems to be taking root in the Country. Unfortunately, oftentimes when a nation feels that it is under siege, especially on matters of security, it is normally seen as “acceptable” to suspend fundamental freedoms and liberties in the name of maintaining national security and keeping everybody safe.

The Commission has in the last four years since the promulgation of the Constitution closely monitored, investigated and documented human rights violations that have arisen as a consequence of insecurity. The Commission has undertaken this work in 30 counties and the findings point to worrying trends of loss of lives at the hands of terrorists; continued cases of extra-judicial killings and arbitrary arrests; forcible transfer of vulnerable populations and massive destruction of property. The period under review has also witnessed an increase in casualties among law enforcement officers; a trend has been rarely witnessed before. The prevailing insecurity portends a serious challenge to the realization of a human rights state and has direct implications to the attainment of the government’s development blueprint, Vision 2030.

As a Commission, it is our contention that the government has the sole constitutional duty of keeping the country safe and secure. The foregoing duty cannot be abrogated. We therefore urge the government to take necessary measures to guarantee security in the country.

Kagwiria Mbogori

Chairperson, KNCHR

KNCHR MANDATE

The Kenya National Commission on Human Rights (KNCHR) is an autonomous national Human rights institution established under article 59 of the Constitution of Kenya 2010 with the core mandate of furthering the promotion and protection of human rights in Kenya. The Commission is established in accordance with the United Nations Principles relating to the Status of National Institutions (the Paris Principles)¹. The management team consists of five² Commissioners and the Secretariat.

The Commission has two key broad mandates namely;

1. It acts as a watchdog over the Government in the area of human rights.
2. Provides key leadership in moving the country towards a human rights state.

The principal functions of KNCHR are to investigate and provide redress for human rights violations; to research and monitor the compliance of human rights norms and standards; to conduct human rights education; to facilitate training, campaigns and advocacy on human rights as well as collaborate with other stakeholders in Kenya to promote human rights.

The Security Sector Reforms programme within the Commission focuses on reforms within the Security Sector and includes working on reforming legislation and practice within the sector. The main focus has been working towards reforming the National Police Service with the aim of bringing to an end police brutality, building accountability within the service of their work, enhancing professionalism, improving service delivery among others with the overall goal of building a culture of respect and promotion of human rights within the service. This occasional report builds on this work.

METHODOLOGY

The information in this occasional report was gathered during a period of four years, 2010-2014, in 30 Counties in Kenya: these included Mombasa, Kwale, Kilifi, Tana-River, Lamu, Garissa,

¹ Adopted by the General Assembly Resolution 48/134 of 20th December 1993

² This is the required statutory number. However, the Commission currently has only four Commissioners and every effort is being made to ensure that the fifth Commissioner is appointed soon.

Wajir, Mandera, Marsabit, Kirinyaga, Turkana, West-Pokot, Samburu, Uasin-Gishu, Elgeyo-Marakwet, Nandi, Baringo, Kajiado, Kericho, Kakamega, Busia, Kisumu, Migori, Kisii, Nyamira, Bungoma, Trans-Nzoia, Isiolo, Nakuru, and Nairobi County. During the field research, interviews were conducted at the national level, and targeted senior officers in the Criminal Investigations Department (CID), senior members of the National Police Service and the national government. At the County level, interviews were carried out with the Officers Commanding Police Divisions (OCPD), Officers Commanding Police Stations (OCS), County Commissioners, Assistant County Commissioners, area Chiefs and Assistant Chiefs.

Interviews were also conducted with several Non-Governmental Organizations (NGO) and Community Based Organizations (CBO) operating within the selected Counties. Further, individual interviews and focused group discussions were carried out with people representing different sectors of the society. Several documents that provided secondary data for the report were also reviewed. These documents included judicial and police records, published and unpublished research by the KNCHR, United Nations Agencies, the Reports of the National Task Forces on Police and Judicial Reforms, several reports from local NGOs on various issues touching on insecurity and reports from international organizations that addressed themselves to the security situation in the Country during the period under review.

SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

Key Findings

1. There has been an increase in the incidence, gravity and intensity of insecurity since 2010, including persistent terror attacks, inter-community conflicts and violence targeting law enforcement officers as well as a big number of extra-judicial executions.
2. A total number of 3060 Kenyans (both civilian and law enforcement officers) lost their lives due to insecurity in the period (2010 to 2014) under review. This surpasses the psychological watershed mark of the 1133 Kenyans who died during the country's worst internal conflict following the 2007-08 post-election violence.
3. There has been an increase in the number of the internally displaced persons as well as massive destruction of property due to insecurity. During the period under review, a total number of 180,300 people were displaced from their places of habitual residence. Property worth billions of shillings was destroyed following terror attacks in Nairobi, Lamu, Garissa, Wajir and Mandera, with 3965 herds of livestock either stolen or killed.
4. The provision of essential services in the education and health sectors was disrupted in a number of counties including Baringo, Turkana, Wajir, Mandera, and Isiolo following cases of persistent insecurity, with the deaths of teachers and medical staff reported in some of these areas. This led to the worrying calls made by the teachers and doctors' representatives for the withdrawal of their staff from the worst insecurity prone regions in the country.
5. The reforms anticipated in the security sector, particularly in the National Police Service, are either proceeding at a very slow pace or have altogether stalled. As a result, the police have not been equipped with the necessary tools, knowledge, skills and attitudes to enable them discharge their security functions effectively. This has led to the increased militarization of internal security functions with the military, who are deemed to be better equipped, being increasingly deployed to carry out (sometimes without the necessary legal authorization as was the case in Kapedo) the internal policing functions of maintaining law and order.

6. An operational disjuncture exists within the security agencies, with the result being the poor sharing of or lack of action on security intelligence by the various security agencies. The operational disjuncture is also manifested in confusions on the command structure within the National Police Service between the Kenya Police and the Administration Police, leading to lapses in security operation deployments.
7. Corruption within the criminal justice chain has compromised efforts of having enhancing national security. Some rogue police officers working in tandem with criminals to propagate acts of insecurity in the country.
8. A number of people, especially in Turkana, Mandera, Marsabit, Wajir Baringo, Mombasa and Lamu have had their livelihoods adversely affected due to insecurity. The economic integrity of the people who live in Turkana, Baringo, Marsabit and Wajir has been severely affected due to the loss of their livestock to the insecurity-related incidents of cattle-rustling. In Mombasa and Lamu, people have lost their employment or opportunities for employment due to the dwindling fortunes in the tourism sector as a result of insecurity.
9. Failure to fully institutionalize Community Policing has served to alienate citizens from informing and participating in the formulation of strategies that can adequately respond to the crisis of insecurity that the country faces.
10. Based on the Ransley Report recommendations of 2009, the Government has made tremendous efforts and good progress in buying vehicles to the police. Also, based on the same report, the Government has been able to reduce the police to civilian population to 1:500.

KEY RECOMMENDATIONS

1. **Fast-track security sector reforms:** The National Police Service, the National Police Service Commission and the Independent Policing Oversight Authority should be adequately financed and resourced so that they can effectively deliver on the stalled or slowed down security sector reforms as per their respective mandates and in the line with the Constitution of Kenya.
2. **Equipment and Welfare:** The police should be properly and adequately equipped so that they can discharge their internal policing mandate. The current trend of ‘outsourcing’ this role at will to the military should be strongly discouraged. We call upon the Government to provide the necessary funds to ensure that the police are properly equipped and that their welfare concerns are fully taken care of.
3. **Address Corruption:** The Ethics and Anti-Corruption Commission should work closely with both state and non-state actors in their efforts to stamp out the scourge of corruption within the National Police Service.
4. **Taking personal responsibility on security lapses:** There have been claims, particularly during the period under review, that intelligence was shared with the police in some of the cases of spectacular insecurity experienced in the country like Westgate and Mandera terror attacks and yet the same was not acted upon to avert death, injury and destruction of property. The Inspector General of Police should take personal responsibility for failing to act on security-related intelligence brought to his attention.
5. **The police curriculum should be revised so as** to build capacity of officers to inculcate human rights in the execution of their duties. In the counties visited it was recommended that Training of police officers should be enhanced and should include training on human rights. The training should be a continuous process and should target all officers irrespective of their ranks. The element of professionalism should be emphasized. In the same breath, every respondent felt that the public needs to be sensitized on the nexus between Security, Human Rights and Police work.
6. **Sensitization of public on National Cohesion.** The public should be involved as much as possible in all efforts geared towards curbing ethnic violence. This way, the members of the public will become part and parcel of any such efforts and will own the process. Any recommendations made will therefore be more easily accepted.

7. **Address youth unemployment:** Community sensitization on self-employment options should be encouraged. Self employment is apparently unpopular at the community level. Education geared towards change of attitude as well as exploring diverse opportunities is highly welcome, as the youth will be actively engaged in income generating activities, hence will not engage in crime.
8. **Taking personal responsibility on human rights violations:** During the period under review, it was ascertained that police are the still the leading violators of human rights through extra-judicial executions. While lauding the efforts currently being undertaken by IPOA to reign in rogue officers, we call for speedy investigations and prosecution of all officers who use their firearms against the standards established in our laws to cause death and injury to civilians.
9. **Facilitate movement of vehicles:** The Government should ensure that the vehicles which have been bought for the police are fully operational. While the number of police vehicles has been commendably gone high, there are concerns that the vehicles are not being fully utilized due to poor distribution to the counties and limitations of fuel allocation (300 litres per month).
10. **Make Public Findings of Tana River Inquiry and Institute Inquiry into other security lapses:** If the Government is keen on fostering citizen participation on matters security, then it must endeavor to share the relevant information that will make this partnership meaningful. To this end, the government must share the findings of the inquiry into the Tan River violence and immediately institute other inquiries into the Westgate, Lamu and Mandera terror attacks with the intention of establishing the reasons behind the spate of violence and insecurity that the country has experienced over the last four years so that long-term remedial measures and strategies can be put in place.

1.0 INTRODUCTION

Kenya has witnessed an upsurge in cases of insecurity over the last 4 years. The cases of insecurity have been manifested in a variety of ways, which include: terrorist attacks targeting public facilities, civilians and security personnel in Garissa, Wajir, Mandera, Mombasa, Nairobi and Lamu; attacks against security personnel and installations in Baragoi, Nairobi, Mombasa, Lamu, Baringo and Turkana; inter-ethnic, governance and resource based conflicts in Tana-River, Lamu, Baringo, Turkana, Samburu, Mandera, Wajir and Pokot; and finally, famine related attacks against communities in Bungoma and Busia.

Table 1: Some Cases of Insecurity Reported During the Period under Review

AREA OF SECURITY CONCERN	TOTAL NO. BETWEEN 2010 and 2014
Total no. of deaths resulting from gunshots	1894
Total no. of deaths due to ethnic clashes	574
Total no. of deaths from armed robberies	260
Total no. of deaths from terror attacks	214
Total no. of police killed	91
Total no. of people displaced	180,300
Total no. of livestock stolen or killed	3682
Total no. of houses burnt due to ethnic clashes	845

Source: KNCHR sources as well as information from other state and non-state actors

The cases above demonstrate the fact that insecurity has grown in intensity and magnitude as new cases are considerably on the increase, even in areas that were initially not considered as “unsafe”. Therefore, insecurity is as synonymous to Nairobi County and other major urban towns in the counties as it is with the rural settings of the counties. Additionally, perpetrators of violence and other forms of insecurity have become emboldened as can be seen through their temerity to mete out attacks against individuals across class, religious, gender, racial and other socio-economic and political divides. Therefore, it is not only the socio-economically deprived areas that are affected by insecurity. Cases of insecurity have now also permeated the so-called affluent neighborhoods with increasing severity and aggression.

Due to these challenges, the government's reaction has been to defer a number of internal policing functions to the military. There is an increasing manifestation of the increasing sense of the siege mentality that permeated the country as was evident from the various counties that we visited. For example, in most urban centres—the most prominent being the City of Nairobi—both public and private facilities have been cordoned off, leaving only small passage-ways for access. The number of security officers deployed to guard public installations has significantly increased. Increasingly, the country is adopting a 'seal-off and screen down' approach to security, which has seen an enhancement of security both in public and private spaces. There is also an increased presence of police with some deployed as sentries to guard public and private investments as well as the installation of metal detectors aimed at detecting dangerous weapons from would be criminals. The state has taken militarization a notch higher by the arbitrary, and often times unconstitutional, deployment of the military to respond to threats to Kenya's internal security.

2.0 KNCHR's Interventions on Insecurity

Upon its establishment in 2003, the Kenya National Commission on Human Rights (KNCHR) identified insecurity as the greatest threat to the realization of human rights. It thus formulated interventions around this area in a bid to influence policy and administrative changes with regard to how policing is undertaken. Some of the interventions undertaken so far have included research into insecurity and its link to human rights violations; investigations into egregious violation of rights emanating from insecurity such as post-election violence³; inquiry into conflict and human rights undertaken in respect of incidents in Mandera, Tana River⁴ and Lamu⁵.

³ Out of this work, the Commission published its report titled "*On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence*", whose findings largely continue to shape national and international accountability discourses and mechanisms on how to address serious human rights violations.

⁴ KNCHR submitted its report – "*29 Days of Terror in the Delta: KNCHR Account into the Atrocities at Tana Delta*" – to the Commission of Inquiry established by former President Kibaki to investigate the conflict in Tana River and make recommendations. The findings of the Commission were well received by the Commission of Inquiry.

⁵ The Commission undertook a fact-finding mission in Lamu County and prepared its report findings, which were shared with the Senate Committee on Security. Other stakeholders were also engaged on the Commission's findings.

Additionally, in 2007 the KNCHR undertook a National Public Inquiry on Insecurity whose findings were shared with various State agencies.

KNCHR up-scaled its engagement on security by strategically working with State Security Agencies in a bid to build the capacity of the officers on human rights, which capacity, the KNCHR felt would facilitate their work. To that end, KNCHR under the previous Governance Justice, Law and Order (GJLOs) sector reforms co-chaired thematic group two, which addressed issues of the rule of law. Through this engagement, KNCHR was able to realize a number of successes such as the adoption of human rights in the police training curriculum and the engagement of KNCHR officers as facilitators during induction training of recruits as well as in-service training. Additionally, KNCHR has played an active role in the matter of security sector reforms⁶. Though this process has been fraught with challenges, it has provided a useful platform for the KNCHR to influence policy and attitudinal changes among the police, with the ultimate aim being the establishment of a National Police Service respects human rights.

2.1.0. About the Occasional Report

This report outlines the normative framework that informs the work of the Security Sector Reforms. Subsequent chapters highlight key issues that impact on the country's security. The report is divided into four main sections. Firstly, the report begins by laying out the normative framework on insecurity. Then secondly, it proceeds to discuss some key drivers of insecurity—that have largely arisen because of the continued challenges created by the existence of the gap between theory and practice—that were brought to the Commission's attention (through its own research, monitoring and documentation work as well as through information gathered from other key state and non-state partners) during the period under review. Thirdly, report then considers the impact that insecurity has had on the realization of human rights in the country. Fourthly, the report reviews the status of the Security Sector Reforms against the benchmarks established by the Ransley Report on police reforms as well as through the provisions of the

⁶ KNCHR, through its former Chairperson, Ms. Florence Simbiri Jaoko was a core member of the Task Force on Police Reforms which made far reaching recommendations on the matter of police reforms and was subsequently co-opted as a member of the Police Reforms Implementation Committee. KNCHR also played a key role in judicial reforms as a member of the Task Force on Judicial Reforms and subsequently contributed to the process of judicial vetting through engagements with the Vetting Board for Judges and Magistrates as well as by developing a vetting tool that was adopted by the Board.

existing legislation. Fifth and finally, the KNCHR through this report offers some salient recommendations that we hope policy-makers will take into consideration as they design interventions to address the rising insecurity in the country.

2.1.1 Understanding the Normative Framework

The Constitution of Kenya (the COK 2010) has been lauded as one of the most progressive constitutions in the world. Chapter Four of the Constitution provides a robust Bill of Rights and a solid normative framework for the respect, the protection and the fulfillment of a broad array of rights already well recognized and guaranteed in a number of regional and international human rights instruments. The Right to Freedom and Security of the Person—which is one of the rights guaranteed under chapter four of the Bill of Rights—is clearly set out in Article 29 of the Constitution of Kenya. The foregoing constitutional provision states that: *Every person has the right to freedom and security of the person which includes the right not to be-*

- (a) Deprived of freedom arbitrarily or without just cause;
- (b) Detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;
- (c) Subjected to any form of violence from either public or private sources
- (d) Subjected to torture in any manner, whether physical or psychological;
- (e) Subjected to corporal punishment; or
- (f) Treated or punished in a cruel, inhuman or degrading manner

As the primary duty-bearer, the Kenyan state is the principal custodian of the right to freedom and security of the person espoused above. Therefore, Kenya has the responsibility to establish the necessary security mechanisms to ensure that this right is protected, promoted and fulfilled for everybody living within her jurisdiction. Apart from the constitutional obligation that requires Kenya to offer effective security guarantees for all people within her jurisdiction, the same is a germane requirement under the contemporary international system where one of the hallmarks of a state's claim to sovereignty is its ability to guarantee the security of its citizens

and its territory⁷. Consequently, and from a Weberian perspective, the exclusive monopoly to the legitimate use of force to maintain law and order as well as to guarantee internal security and protection from external aggression is a key feature of state sovereignty⁸.

While Weber's contention that the levels of security (or insecurity for that matter) prevailing in any given state depend on its capacity to project and deploy the exclusive monopoly of legitimate violence provides an important theoretical framework for understanding the challenges of insecurity, its overly state-centric approach focuses more on the "hardware" dimension of security while ignoring the "software" dimension of security. Therefore, although the hardware dimension—mainly manifested through calls for national security, national interests and a display of national might secured through the availability of sufficient and sophisticated security and policing equipment for the security officers—plays a crucial role in the promotion of safety and security, the "software" dimension, with its focus on human security, intelligence-led policing and the promotion of the welfare of the security officers is equally important.

2.1.2 Defining Security

Although the responsibility to provide security for citizens and the ability to keep them safe from both internal and external threats is an important hallmark of what effective state sovereignty entails, it is unfortunate that the concept of state security remains both fuzzy and problematic, and more so in Africa given the historical diversity of states as political units with a considerable proportion of them derogating from the Westphalian benchmark⁹. As a result, there exist multiple and competing networks of state and non-state actors vying to control and deploy the instruments of violence within and beyond the geo-spatial state boundaries in many African countries.

⁷Omeje, Kenneth &Githigaro, John Mwangi. (2012). *Peace and Conflict Review · Volume 7 Issue 1*, p. 3

⁸ Ibid.

⁹ Ibid.

Broadly speaking, and from a human rights based approach, security can be defined as freedom from fear (of violence and conflict) and freedom from want (from hunger and deprivation)¹⁰. This definition blends both the state-centric and human security approaches to security¹¹. The dual approaches identify seven core areas in which states, and Kenya in particular and for purposes of this report, must focus on in order to bring about a holistic and sustainable environment for the promotion of safety and security. The seven core areas relate to: economic security; food security; health security; environmental security; personal security; community security and political security¹². A cursory look at the foregoing core areas shows that they are well recognized in our Bill of Rights. For example, Article 43 of the COK 2010 speaks to economic security, food security, and health security; Article 42 speaks to environmental security; Article 29 speaks to personal security; Article 36 speaks to community security; while finally, Article 38 speaks to political security.

The foregoing Articles are supplemented by an elaborate framework on National Security as set out in chapter fourteen of the COK 2010 and whose provisions have been activated in law through a number of enabling pieces of legislation like the National Police Service Act, 2011; the National Police Service Commission Act, 2011; the Independent Policing Oversight Authority Act, 2011 and the National Intelligence Service, Act 2011 among others. As a country, it is clear that we do not suffer a dearth of the legislative or normative framework in so far as matters of safety and security are concerned. One might therefore be hard-pressed to pose the following question: With such a seemingly robust constitutional and legislative framework aimed at promoting safety and security, why has the country continued to suffer such exponential growth on insecurity? The answer to this question lies in the challenges that we continue to grapple with as country to close the gap between what legal provisions say and their application in practice.

¹⁰ This definition has been adopted from Omeje and Githigaro (supra note 13) and paraphrased for purposes of this report

¹¹ Ibid

¹² Ibid.

3.0 THE DRIVERS OF INSECURITY IN KENYA

3.1 Introduction

Insecurity is caused by direct and indirect socio-economic, political and operational factors that inhibit access to security services and pose a challenge to the threat's response to existing and emerging threats to security. Through its work on security, the KNCHR has established that drivers of insecurity oftentimes revolve around perceptions and/or realities of marginalization and/or exclusion, by certain regions or groups of people in the country. These drivers are also given impetus by the country's political architecture which has since independence favoured a policing structure that leans towards the protection of the regime and/ or maintenance of the status quo. This preference has had a negative impact on the much touted plans to reform the security system from a regime policing mindset to one that embraces the democratic ideals of policing.

Based on the foregoing context, this report identifies youth unemployment; poor welfare of the police; an endemic culture of corruption within the security services; stalled or slow pace of security sector reforms; a rise in non-core policing demands and poor coordination among the different security agencies as some of the key factors that contributed to the overall state of insecurity in the country during the period under review. These factors are briefly discussed next.

3.2 Some Key Drivers of Insecurity in Kenya.

3.2.1 Massive Youth Unemployment as a Driver of Insecurity

According to the 2009 Census, the youth (age 15 to 34) constituted 35.39% of the country's population translating to around 13,665,378 million individuals. Of this number, 51% were male while 49% were female. The population between age 0 to 14 accounts for 42.92% of the country's population. Thus bringing the total number of individuals below age 34 to 78.31% of the total population¹³. Out of this number, slightly over 50% of the youth make up the country's labour force. This number is estimated to have increased by 10% by the 2009 census bringing the

¹³ Katindi Sivi Njonjo. 2010. "Kenya Youth Fact Book" p. 8. Institute of Economic Affairs & Friedrich-Ebert-Stiftung

number to 60%¹⁴. Despite accounting for a significant proportion of the country's workforce, youth unemployment is at a record high confirming the marginalization and peripheralization of more than half the population of the country. Unemployment among the youth stands at 70%¹⁵. Indeed it was precisely for this reason that the question of youth unemployment was identified as a long-term issue that needed to be addressed under Agenda Four of the Kenya National Dialogue and Reconciliation process (KNDR).

There is an established link between youth unemployment and crime. In the period under review, the KNCHR also conducted research that concurred with the foregoing assertion. For example, KNCHR's work on conflict management in Mombasa County in 2013/14¹⁶, found out that unemployment served as a strong push factor for youth radicalization. Through its one-year engagement with young people in the County, the Commission established the fact that youth unemployment, coupled with perceptions of real or imagined systematic marginalization, contributed to their vulnerability and easy proclivity to terrorist activities, which promised them an "easier and quicker path" to wealth.

Additionally, interviews with respondents and research undertaken in 26 counties on the matter of security from 2010 to 2014 confirmed that there were high levels of unemployment among the youth in all the counties under review¹⁷. Further, KNCHR established that many of the unemployed youth were actively involved in a plethora of criminal activities. These were manifested through the operations of well-established extortionist gangs and militias¹⁸; youths being used as guns for hire by powerful political personalities and business people¹⁹; as well as

¹⁴ Daniel Forti & Grace Maina "The danger of marginalization: An analysis of Kenyan youth and their integration into political, socio-economic life"

¹⁵Ibid

¹⁶ This project was funded by the British High Commission and was undertaken in Mombasa County. Through it the KNCHR sought to the capacity of the devolved structures within that County to manage conflict by applying the human rights approach to development.

¹⁷ The interviews and research were conducted in the following counties: 1. Nairobi 2. Lamu 3. Kirinyaga 4. Nakuru 5. Uasin Gishu 6. Kisumu 7. Kisii 8. Baringo 9. Bungoma 10. Tana River 11. Nyamira 13. Mandera 14. Marsabit 15. Mombasa 16. Kericho 17. Moyale 18. Nandi 19. Mombasa 20. Wajir 21. Isiolo 22. Trans Nzoia 23. Turkana 24. Samburu 25. Kwale 26. Kilifi 27. Busia.

¹⁸ This is a practice mostly found in Nairobi, Kisumu, Kisii, Kirinyaga, Nakuru and Nyamira

¹⁹ The Commission found out that at times the politicians and business people use the services of unemployed idle youth to fan or perpetuate incidents of violence (in a bid to maintain political or economic supremacy) or inter-ethnic conflict. The foregoing type of violence was mainly reported in Nairobi, Kisumu, Tana River, Mandera, Wajir, Isiolo and Moyale. It is instructive to note that some of the political and business elites in those regions have,

impressionable and malleable recruits into extreme religious ideologies²⁰. Respondents contended and research findings confirmed the contention that the reason young people were drawn to crime was the relatively easy and immediate achievement of results expected from engagement in criminal activity.

Additional research undertaken on the subject of youth unemployment found that economic challenges such as inadequate job creation by governments, coupled with inadequate skills set among young people as well as lack of knowledge of government policy among youth played a key role in the systematic exclusion of young people from the country's socio-economic fabric²¹. The foregoing reasons, the research found, were fertile grounds that contributed to the birth and legitimization of the Mungiki, a violent criminal extortionist gang²².

3.2.2 Poor Working Conditions and Terms of Service for the Police

The police, just like all the other citizens in this country, have the right to live in dignity and enjoy the human rights guaranteed in our constitution. If Kenyans expect the police to put their best foot forward in securing their safety and security, then they must strive to ensure that the men and women who risk their lives daily so that they may be safe and secure are not reduced to the rat race of daily survival. One of the ways of making the foregoing a reality is by ensuring that the working conditions and terms of service of the police are significantly improved. During the period under review, the Commission interviewed a number of officers who stated that due to the prevailing poor working conditions and terms of service, they felt unappreciated in their

within the period of our research, been summoned by the Police for purposes of recording statements in relation to the conflicts reported in those regions. The fact of their being summoned has been reported in the media at <http://www.standardmedia.co.ke/article/2000065488/police-summon-assistant-minister-over-tana-clashes?categoryID=0> ; <http://www.news24.co.ke/MyNews24/Kimaiyo-summons-Wajir-Mandera-Governors-over-clashes-20140623> , among others.. Additionally, some politicians have been implicated in fueling what some scholars have called “the commerce of conflict” under the guise of cattle rustling. This was found to be the case in Baringo, Turkana, Tana River and Samburu.

²⁰ This was found in Lamu, Mombasa, Kilifi, Kwale, Tana River, Mandera, Moyale, Wajir, Nairobi

²¹ In some counties visited by the KNCHR, young people interviewed admitted that they did not have the requisite knowledge or information on government projects aimed at youth economic empowerment such as the Uwezo Fund, allocation of 30% of government tenders to vulnerable groups such as the youth. This was particularly the case in Kisumu County

²² Daniel Forti & Grace Maina “The danger of marginalization: An analysis of Kenyan youth and their integration into political, socio-economic life”

work and as such, they could not give their optimal in defence of the country's as well as the citizens' safety and security concerns.

That the working conditions and the terms of service of the police remain deplorable is a fact that cannot be gainsaid. What is more, the sentiments raised by the police officers are aptly captured in the Ransley Report on police reforms²³. The report made a raft of recommendations on the need and urgency of improving the working conditions and terms of service for the police by calling for, among other measures, the following: the provision of adequate housing; the provision of medical cover and life insurance; the provision of leave days as well as the improvement of police salaries and allowances. As a Commission, it is our contention that the “peace of mind” which comes with the police officers knowing that their basic human needs are well taken care of will go a long way in boosting the morale of the officers and thereby increasing their sense of pride and their drive to go an extra mile to keep Kenya safe and secure.

3.2.3 Endemic Culture of Corruption within the Security Agencies

Corruption within the security sector has been found to be the greatest impediment to the government's effort to both address and redress the rising levels of insecurity in the country. Available evidence shows that there are an increasing number of cases of collusion between law enforcement officers and criminals. For example in the course of its field work, KNCHR interviewed both State and non-State actors who admitted that indeed there were some “rogue security enforcement officers” who were working in concert with criminals to defeat efforts to address and redress insecurity. This was the case in Kisumu, Nairobi, Kirinyaga, Lamu, Mombasa, Kilifi, Kisii, Bungoma, Trans Nzoia, Busia and Nyamira.

The culture of corruption among the security agents has significantly eroded the confidence between law enforcement officers and members of the public who may genuinely want to cooperate with the officers to combat crime. As a result of the foregoing, a security vacuum has emerged which has fueled the rise of a subaltern culture of security protection around criminal gangs and militias. Oftentimes, though they may start out with “benevolent” intentions, most

²³ See The Task Force on Report on Police Reforms Report (2009).

criminal gangs and militia groups end up being some of the worst purveyors of insecurity due to the extra-legal nature of their operations. During the period under review, the Commission documented a number of cases related to gang and militia violence. Available data fortifies the Commission’s findings. For example, it is important to note that though militia groups and gangs remain proscribed under the Prevention of Organized Crimes Act, No. 6 of 2010, research carried out by the National Crimes Research Centre indicates that gangs and militia groups are well and alive and thriving in various parts of the country²⁴. According to the research findings, there are 46 criminal gangs operating in different parts of the country as tabulated below:

Table 2: Organized Criminal Gangs in Kenya

No.	Name of Criminal Gang	Principal area of Operation	Main type of activities (including Criminal activities)
1.	Mungiki	Central region, Nairobi	Extortion, illegal levies, violence, hire For revenge, executions, illegal oathing.
2.	SunguSungu	Kisii, Nyamira	Expulsion of offenders, hire for revenge, Body guards, security, settlement of Disputes, executions, illegal detention.
3.	Mombasa Republican Council	Kwale, Ukunda, Mombasa, Kilifi	Illegal oathing, violence, promoting hatred, extortion, threats of eviction, Secession.
4.	Jeshi La Embakasi	Embakasi Constituency	Hire by politicians for illegal activities
5.	42 Brothers	Emuhaya, Ebukasami,	Burglary, drugs, theft, violence, murder, hire as body guards, extortion

²⁴ For details of the study, please see, National Research Crime Centre. (2012). *Summary of a Study on Organized Criminal Gangs in Kenya*.

		Luanda, Maseno	
6.	Al Shabaab	Eastleigh, North Eastern	Human trafficking, trafficking of weapons, violence, maritime piracy
7.	Kamjeshi	Nairobi, Eastlands	Extortion of businesses, public service Transport
8.	Jeshi La Mzee	Kangemi	Hire by politicians as body guards Campaigners
9.	Baghdad Boys	Kisumu	Extortion, hire by politicians, body Guards, campaigners
10.	Angola Msumbiji	Butere, Khwisero	Cattle rustling, burglary, murder, hire by businessmen/politicians for protection or intimidation of opponents
11.	Taliban Central	Kayole, Dandora	Extortion, illegal levies, murder, hire by politicians
12.	Kenya Youth Alliance	Nairobi	Burglary, extortion
13.	Shigololi	Emuhaya	Robbery, burglary
14.	Sabaot Land Defence Force	Mt. Elgon	Murder, extortions, evictions
15.	Kamukunji Boys	Kamukunji-Nairobi	Hire by politicians for campaign and body guards
16.	Munyiipi	Mathare	Extortion
17.	DamyDalas	Mombasa	Burglary, robbery
18.	Funga File	Mombasa	Burglary, theft

19.	Congo By Force	Kisauni	Burglary, pick pocketing
20.	Kaya Bombo	Kwale, Kilifi	Eviction, extortion
21.	Tia Nazi	Kilifi	Burglary, extortion
22.	Sri Lanka	Kisii, Kisumu	Robbery, burglary
23.	Nyuki	Mombasa	Burglary
24.	CharoShutu	Malindi	Robbery, burglary
25.	Kimya	Mombasa	Burglary, extortion
26.	Bad Squad	Kisii, Mombasa, Kisauni	Burglary, extortion
27.	Super Power	Eastleigh	Theft, burglary
28.	Chinkororo	Kisii, Nyamira	Murder, defence
29.	Amachuma	Kisii, Nyamira	Murder, defence
30.	Nubians	Kibera	Protection of Nubian community
31.	Kalenjin Warriors of 1992	Molo	Eviction, murder, livestock rustling
32.	Kibera Battalion	Kibera	Extortion, hire by politicians, violence
33.	KumiKumi	Kisii	Extortion

34.	Bamba 40	Kisii	Robbery, burglary
35.	Loma Oyan	Garissa Town	Pick pocketing, robbery on the streets And dark alleys
36.	Haki La Kuishi	Khwisero	Burglary, theft
37.	Land Lord	Khwisero	Burglary, theft
38.	Mafia	Luanda, Emuhaya	Drug trafficking, theft
39.	Down Town	Luanda, Emusire, Kombewa	Stealing motorcycles, power saw engines
40.	WakaWaka	Maseno Hills	Drugs, pick pocketing, attacking Mourners at night
41.	Al Qaeda	Maseno Hills	Drug trafficking, planting of drugs
42.	Siafu	Kibera	Extortion, provide security, mobilize people to attend political rallies, resolve disputes, provide water and electricity illegally
43.	Kamukunji Pressure Group	Kibera	Extortion, provide security, mobilize people to attend political rallies, resolve disputes, provide water and electricity Illegally
44.	Yes We Can	Kibera	Extortion, provide security, mobilize people to attend political rallies, resolve

			disputes, provide water and electricity Illegally
45.	J-10	Kibera	Extortion, provide security, mobilize people to attend political rallies, resolve disputes, provide water and electricity illegally
46.	40 Brothers	Emuhaya, Lwanda	Burglary, theft, drugs

Another consequence of the endemic corruption within the security sector has been the creation of a safe operating environment for real and potential terrorist elements. For example, some of the acts of terrorism experienced during the period under review can be linked to the fact that some criminal elements have been able to buy their way back into the country through illegal border passages facilitated by security and immigration officials²⁵. In its investigations into human rights violations that occurred as a result of Operation Usalama Watch, the KNCHR was informed by witnesses that some criminal elements who had been deported to Somalia on suspicion of engaging in terrorist activities were able to find their way back to Kenya after paying a small facilitation fee to security personnel manning road blocks along the Garissa-Nairobi highway²⁶.

Apart from the suspected terrorists who paid their way to remain in the country illegally, KNCHR was equally concerned by the fact that many Kenyans of Somali origin were subjected to intimidation and harassment from police officers who were actively demanding for bribes from them. Majority of detainees and past detainees recounted to the KNCHR how they were compelled to give bribes to the police in order to be released. The bribes ranged from KES. 1000 to KES 50,000 depending on whether one had valid documents or not. Detainees who fell ill in the detention centers would have to offer a bribe to be accorded medical attention, Halima, a

²⁵ None other than His Excellency the President Uhuru Kenyatta has acknowledged the close link between corruption and insecurity. For example see reported address to security chiefs in which the President expressed concern at <https://www.ntv.nation.co.ke/news2/topheadlines/president-uhuru-worried-about-rising-insecurity> accessed on 20 November 2014

²⁶ Interviews with witnesses held between April and May 2014

mother of two held at Kasarani Police Station narrated her ordeal in the hands of the police as follows:

“Due to how cold it would get in there my daughter fell ill. I expected the police to help but they did not pay attention. Only after I paid a bribe did they go and get me some medicine. Most people that came in had been held in other police stations where they had been mistreated, and some ladies shared that they had been touched inappropriately by some male police”.

Several other people complained that they were asked to give money in order to be allowed to respond to calls of nature while on long transit in police vehicles after their arrest.

The rising number of cases on human trafficking is another indicator of insecurity that can be attributed to corruption with Kenya being found to be a source and destination for trafficked individuals. Indeed, during a visit to the Athi River and Kajiado G.K. Prisons in 2013, the Commission found out that these prisons were carrying large numbers of inmates from Ethiopia. Upon inquiry, the Commission was informed that the individuals had been arrested while attempting to make their way to South Africa via the Namanga border point²⁷. Additional information confirms that organized criminal gangs have infiltrated the police service making it difficult for the police to respond to the challenge of national and transnational crime. In fact, when the KNCHR investigated the killings of alleged members of the Mungiki criminal gang in 2007/8 as well as recent cases of extra-judicial killings, it came across information that strongly suggested that the gangs had not only permeated the security services to the extent of influencing its response, but that some police officers were also part of the gang members²⁸. These challenges have resulted in cases of dereliction of duty by the police officers with both negative and dire consequences for the country’s security.

Apart from rampant cases of corruption being reported in the day to day interaction of the police and members of the public, this vice was also found to be deeply entrenched within the National

²⁷ Interview with Officer –in-Charge during scheduled visits to Athi River and Kajiado G.K. Prisons in 2013 pursuant to KNCHR’s Constitutional and Statutory mandate to promote human rights in public and private institutions.

²⁸ KNCHR. 2008. Cry of Blood:

Police Service itself, especially on matters of enlisting new recruits to the service. The vice was expected to be stemmed with the presence of the National Police Service Commission, which is charged with the responsibility of recruiting new trainees into the Service. However, the nullification of the recruitment results in some centres, following the last recruitment exercise, speaks to the fact that corruption is still a major impediment to the professionalization of the National Police Service. The vice is manifested right from the uptake level—at the point of recruitment—and remains actively nurtured in the course of the careers of some police officers long after they have graduated from college and taken up jobs as police officers.

3.2.4 Stalled or Slow Pace of Security Sector Reforms

The Constitution provides the necessary legal framework for the implementation of security sector reforms. These standards have been extrapolated into legislation such as the Vetting of Judges and Magistrates Act, 2011, the National Police Service Act, 2011, and the National Police Service Commission Act, 2011 and the Independent Policing Oversight Authority Act, 2011, which broadly speaking; articulate the anticipated reforms for the police and members of the Judiciary. Although the exercise has encountered a number of challenges²⁹, it can nonetheless be stated that significant progress has been made in relation to the vetting of judges and magistrates. The process of vetting magistrates and judges has also largely been shielded from political interference. As a result, the judiciary has made commendable strides towards reclaiming its position as an independent arbiter of disputes, including those involving the State. However, challenges, such as the delayed extension of the mandate of the Judges and Magistrates Vetting Board, appeals lodged in court by judges challenging their removal and lack of adequate financial resources have played a role in the delay in the vetting process.

²⁹ In a lecture at the NYU Law School held sometime in May 2014, Justice Albie Sachs, who served on the Judges and Magistrates Vetting Board highlighted some of these challenges. He stated that the most critical challenge the JMVB faced once it rolled out its operations was constitutional petitions that were filed in court by Judges in which they challenged the JMVB's perceived failure to apply constitutional principles such as the right to a fair trial. According to Justice Sachs, these challenges had the net effect of delaying the operations of the Board. Additional challenges the Board faced was public criticism that were anchored in media reports relating to how the board's operations were conducted, some of which alluded to impropriety on the part of the JMVB. Justice Sachs also identified inadequate operational support, which hampered the work of the JMVB, as well as the 2013 electoral process, which also delayed the work of the JMVB. This lecture is available at <http://www.law.nyu.edu/news/Albie-Sachs-Kenyan-judiciary-reform>. It was accessed on 26th November 2014.

If the vetting of Judges and Magistrates has been somewhat problematic, it is instructive to note that the process of vetting police officers has been fraught with even bigger, if not numerous, challenges³⁰. Consequently, the goal of reforming the institution in order to establish a democratic national police service capable of discharging its mandate “in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms”³¹ as stipulated in the constitution still remains a mirage. A key challenge that has bedeviled the police service reforms is the slow pace of the vetting process. Another important point to note is that whereas initially the police vetting process was intended to transform the service into one that espouses the constitutional principles of respect for human rights, the focus seems to be slowly shifting away from an inquiry into any given the officer’s compliance with Chapter Six of the Constitution and an interrogation on his or her track-record in upholding the rule of law and human rights to scrutiny that is largely and overly focused on their financial probity .

Upon its establishment in the year 2012, the National Police Service Commission (NPSC) undertook to vet all police officers within three years, i.e. 2013 to 2016. Two years later however, only 198 senior officers have been vetted, with 1,200 or senior officers slated to be vetted out of a national establishment of over 80,000 officers who have to be vetted. The last vetting exercise was carried out in Machakos on 27th June 2014 and the exercise for the vetting of officers in the Coast region that was scheduled to take place in Mombasa in June, 2014 stalled in part following the violent attacks that befell Lamu County. To the best of the KNCHR’s knowledge, the subsequent vetting that was scheduled to have taken place between 29th June and 12th September 2014 has not happened.

As a result of the stalled or slow pace of the vetting process, the police continue to operate with the old business as usual mindset. The continued cases of extra-judicial killings allegedly perpetrated by the police or by criminal elements acting in collaboration with some rogue police officers—without any meaningful accountability, save for the efforts made by IPOA, to redress

³⁰ KNCHR participated in the initial vetting exercises and identified inadequate operational support as one of the key challenges that had the potential to affect the work of the NPSC. Operational support in the area of human resource and finances is grossly inadequate.

³¹ Article 238 (2) (b) of the Constitution

the same—are a manifestation of the stalled or slow pace of police reforms. Just as was the case in 2007/08 when the police were the biggest contributors to the overall number (1133) of those who died from gunshot wounds during the PEV, the police remained the biggest threat to the right to life during the period under review. A significant number (1873) of Kenyans lost their lives to police and gun-related violence while in Mombasa, prominent Sheikhs and Imams have been murdered under very bizarre circumstances ostensibly in a bid to fight terrorism³². While witness accounts have implicated members of the Anti-Terrorist Police Unit in the killings, none of those cases have been investigated to a satisfactory conclusion. It is the Commission's contention that lack of accountability for the egregious human rights violations perpetrated by the police not only goes against the envisaged reforms within the police service but also serves to reinforce the culture of impunity that has dogged the police service for many decades.

3.2.5 Rise in Non-Core Policing Demands

The task force on police reforms found in 2009 that between 3,000 to 5,000 police officers were not in core police duties. It is estimated that the number of police officers in non-core duties has more than doubled owing to the rise in numbers of constitutional office holders as well as increased security threats against public and private institutions.

According to the police, the creation of the county system of government had the biggest impact in security deployment with the country's 47 counties creating layers of politicians and senior executives demanding state protection. As a consequence, it is believed that almost 10,000 officers are assigned to VIP protection providing personals security and protecting properties of governors and their deputies, members of the National Assembly and the Senate, speakers of both houses, among others. Other VIP's that enjoy security services at the expense of the State include Parastatal chiefs, judges whose numbers have doubled since 2010, members of Constitutional Commissions, among others. While Members of County Assemblies do not currently enjoy services of bodyguards they continue to lobby the national government to deploy security officers for their protection, which move if sanctioned, would occasion an additional strain on the already stretched police service. In a media interview, the Inspector General of

³² For a detailed account of the killings of the Imams and Sheikhs in Kenya, please see a joint report by MUHURI and OSIEA,

Police indicated as much stating that a review of VIP protection was under adding that “we are carrying out a very comprehensive audit, which will inform us on who should be entitled (to a police bodyguard). We already have a shortage of manpower and that’s why we recruited a big number, 10,000 of them.”³³ Police officers are also deployed to act as sentries in public offices and private institutions such as banks – though they are paid an allowance for this purpose. Needless to say, the increased *VIP-i-zation* of security is a new driver of insecurity since the services of the police officers who would otherwise be deployed in implementing the core policing functions—like protection of life and property; investigation of crimes; collection of criminal intelligence; prevention and detection of crime; apprehension of offenders; provision of border patrol and border security; provision of specialized stock theft prevention services—as set out in Section 24 and Section 27 of the NPS, Act 2011, are then diverted to VIP protection.

While it is not in dispute that some of the country’s leaders require security, there have been claims that provision of VIP protection is not regulated. It has been alleged that the security detail allocated to officials holding similar portfolios may vary without adequate explanations for such variations. Hence, in a media report, it was alleged that the 47 Governors enjoy round the clock protection of at least six armed policemen with some having as many as 10 officers assigned to act as bodyguards, security escorts and sentries at their homes³⁴. Lack of a policy and clear criteria on VIP protection opens up the process to abuse and arbitrariness as many more officers than should be are removed from normal policing operations to perform non-core duties thereby exposing many more Kenyans to vulnerability and insecurity.

3.2.6 Lack of Coordination among the Different Security Agencies

A number of the security lapses that were experienced during the period under review can be attributed to the lack of effective coordination between the different national security organs. Through interviews with various officers within the National Police Service (NPS), the Commission established that there are serious lapses of coordination within the service. For instance, in so far as coordinated and joint policing between the Administration Police and the

³³ See <http://www.nation.co.ke/news/VIP-Security-Bodyguards-Police/-/1056/2467554/-/k01uujz/-/index.html> accessed on 21 November 2014

³⁴ Ibid

Kenya Police is concerned, the KNCHR was informed by a number of interviewees that the two arms which make up the NPS carry out their operations almost independently of each other and not as anticipated by the Constitution³⁵. As a consequence, the NPS is unable to work in a coherent and coordinated manner, which in turn has created serious gaps that pose a challenge to the country's security. Lack of operational congruence between the two police service formations has affected information sharing and the carrying out of joint policing operations. During the period under review, credible and well-placed sources within the NPS attributed the mass murder of over 40 police officers in Baragoi to the absence of a proper command structure³⁶. Similar reasons were advanced with regard to the security lapses in Tana River and Lamu that resulted in the deaths of more than 100 women, men and children as well as loss of public as well as private property³⁷.

It is instructive to note that the lack of coordination between the various agencies that make up the national security organs as set out in chapter fourteen is not only limited to the NPS but also extends to the Kenya Defence Forces and the National Intelligence Service. With no coordinated and joint approach to security by the requisite security organs, Kenyans were during the period under review, treated to an unacceptable spectacle of blame shifting and finger-pointing among the institutions charged with keeping them safe. For instance, in the wake of the horrific terror attack carried out for an inordinately long period of time against the hapless and helpless civilians at the Westgate Mall by four armed Al-Shabaab terrorists, the NIS absolved itself of any blame stating that it had shared information on the impending terror attacks targeting up-market malls with the police and other security outfits but no preventive action was taken.³⁸ These challenges mirror similar concerns that were raised by the NIS' predecessor – the National Security Intelligence Service (NSIS) during its evidence to the Commission of Inquiry into Post

³⁵ The Constitution, at Article 243, anticipates one National Police Service, which is made up of two services being the Kenya Police and the Administration Police services. Pursuant to Article 245 (1), these are established under the command of one Inspector General underscoring the fact that they are to operate as one – literally a fusion of the two previously independent services.

³⁶The 40 police officers were killed on 20 October 2012 during a botched operation aimed at recovering livestock from livestock criminals in Baragoi, Samburu County. It is instructive to note that the report from the inquest into the deaths of the officers is yet to be released.

³⁷ These are set out in the Commission's investigations reports into violations in those two counties in the year 2012 and 2014. These reports are available at www.knchr.org

³⁸ See article by David Mwere and Dominic Wabala "*NIS Gave Advance Westgate Warning*" reported at <http://www.the-star.co.ke/news/article-137366/nis-gave-advance-westgate-warning> accessed on 21 November 2014.

Election Violence (Waki Commission) in 2008. The then NSIS contended then that information on the possibility of post election violence was shared with the police and relevant agencies but the same was not acted upon³⁹.

3.2.7. Political and Resource-Driven Conflicts

Political and resource-driven conflicts are increasingly becoming big drivers of insecurity in the Country. During the period under review, the Commission gathered evidence in Baringo, Turkana, Kwale, Tana-River, Mandera, Wajir, Isiolo, Trans-Nzoia, Lamu, Moyale and Marsabit that pointed to the fact that the politics of resource access, ownership and control was a key driver of insecurity in the foregoing regions. The Commission was informed that some politicians were active sponsors of inter-ethnic violence with the ultimate goal of controlling more land for pasture as well as control over new mineral wealth in the country. Consequently, the Commission was informed that justifying insecurity in the name of some traditional practices like cattle-rustling was nothing but a smokescreen behind which political leaders fought supremacy battles of resource control, oftentimes using groups of young men who had been recruited and well-armed to fight on behalf of the political leaders and their respective ethnic communities. Other than fights over resources, political disagreements over power-sharing arrangements and boundary disputes were also pointed out to the Commission as key drivers of insecurity particularly in Baringo, Turkana, Tana-River, Wajir, Moyale and Mandera,

3.3 Conclusion

The drivers of insecurity discussed above have exposed some of the weaknesses in the country's security architecture and call for an interrogation of the security system a bit more closely in order to ask questions such as whether security should continue being a function of the central government to the exclusion of county governments. Given that Kenyans' preference for the devolved state was in part due to feelings of marginalization by the central government that had fuelled feelings of dissatisfaction among the people. It might therefore be important to consider whether these governments which play a key role in governance and are closer to the people and perhaps a more trusted form of leadership for the people could play a greater role in managing security.

³⁹ Report of the Commission of Inquiry into Post Election Violence (the Waki Report)

Additionally, it is important to consider whether security services and specifically those responsible for internal security have adequate capacity and expertise to respond to new trends in crime whose consequences are severe and more devastating. The most severe devastation has been occasioned by terror attacks but while it is appreciated that a lot of preventive work may be going on behind the scenes, the continued loss of lives with the latest being the gruesome murder of 28 Kenyans in Mandera are unacceptable. It is imperative for the security services to identify more proactive ways of detecting and addressing terror threats in order to avert civilian deaths.

4.0 THE IMPACT OF INSECURITY IN KENYA

The Bill of Rights in the Constitution of Kenya 2010 guarantees a wide range of rights and fundamental freedoms. The Kenya Vision 2030, the long-term development blueprint aimed at creating a globally competitive and prosperous country, with a high quality of life for all citizens and transforming Kenya into a newly industrialized middle-income country by 2030, can be seen as a strategy to give effect to the Bill of Rights. The Kenya National Commission on Human Rights has partnered closely with a number of Ministries, Departments and Agencies to infuse a Human Rights Based Approach to development in line with the country's development blueprint. Consequently, a close examination of the three pillars of Vision 2030 namely, the political, social and economic pillars and their related enablers, indicates that the country is committed to implementing the Bill of Rights.

Nevertheless, the country continues to grapple with numerous security challenges that negatively impact on the enjoyment of various human rights including the right to freedom and security of the person⁴⁰. The threat to peace and security is not only limited to international war and conflict but also extends to include acts of ethnic violence, organized crime, and terrorism. Crime and insecurity emerge as major constraints to the promotion and protection of human rights by compromising on human dignity and creating a climate of fear and violence. This has endangered personal security and eroded the quality of life of many ordinary Kenyans leading to further marginalization and disenfranchisement of communities. During the period under review, the Commission monitored and documented the impact of insecurity on the protection, promotion and fulfillment of human rights. The following are some of the violations that the country has suffered as a result of insecurity over the last four years:

4.1 Right to Life

The Constitutional standard on the right to life in article 26 requires that the government protects human *life*. This means that nobody, including the government, can arbitrarily terminate *life*⁴¹. It also means that everyone has the *right* to be protected if his or her life is at risk. Recent

⁴⁰ Article 29 of the Constitution

⁴¹ Article 26(3) provision has the effect that where the law authorizes then the government can take away life. The penal code and the International crimes Act provide for the death penalty.

challenges on insecurity however paint a grim picture where the right to life is under threat from both internal as well as external forces. During the period under review, a total number of 3060 people lost their lives in Kenya due to a number of insecurity related incidents as tabulated below:

Table 3: Number of people killed in insecurity related cases (2010-2014)

Number of people killed in insecurity related cases	
INCIDENT	DEATHS
Extra-Judicial Executions	1894
Inter-ethnic violence	574
Armed Robberies	260
Terror attacks	241
Police Killed	91
TOTAL	3060

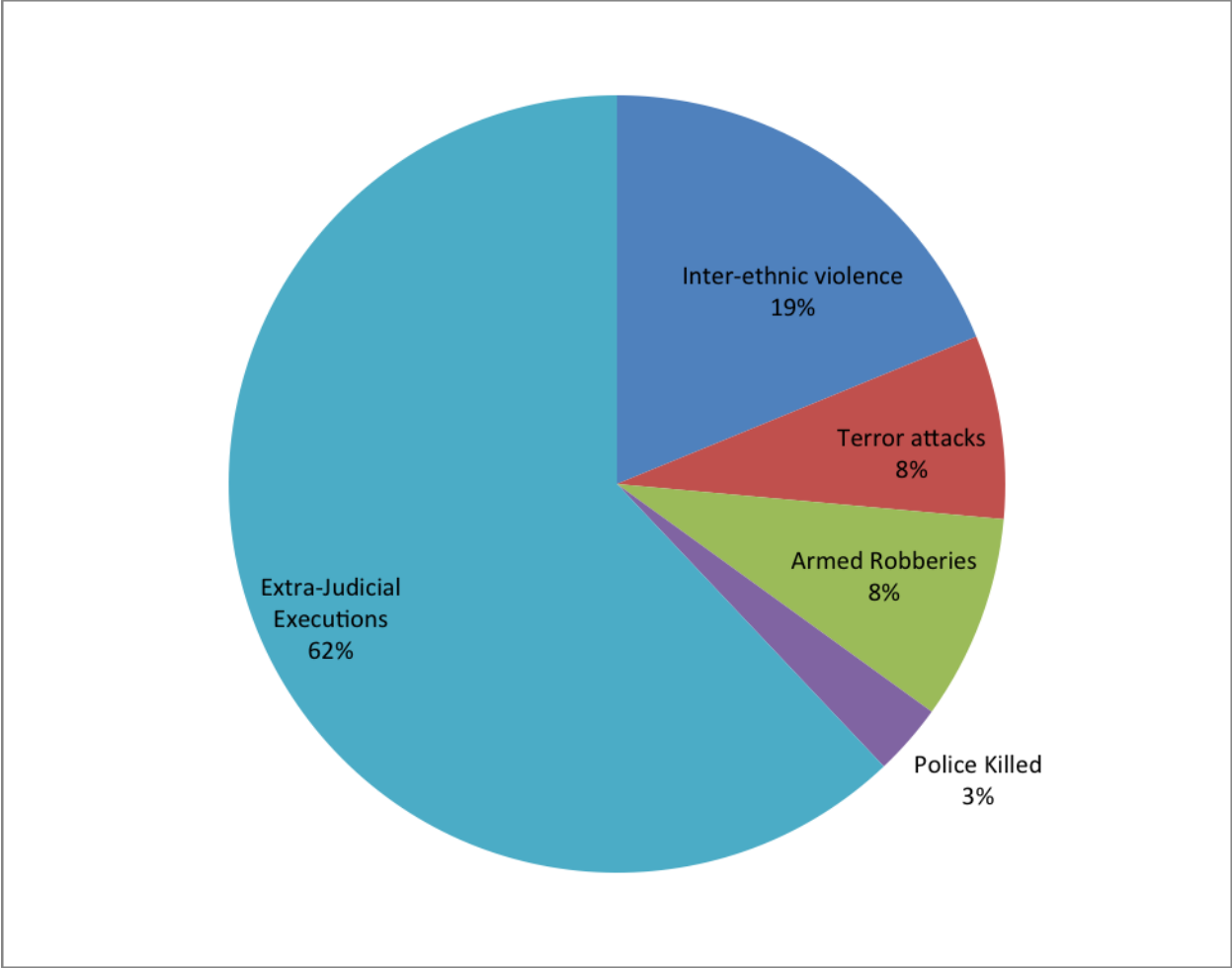


Figure 1: Pie-Chart illustrating the percentages of insecurity related death incidents (2010-2014)

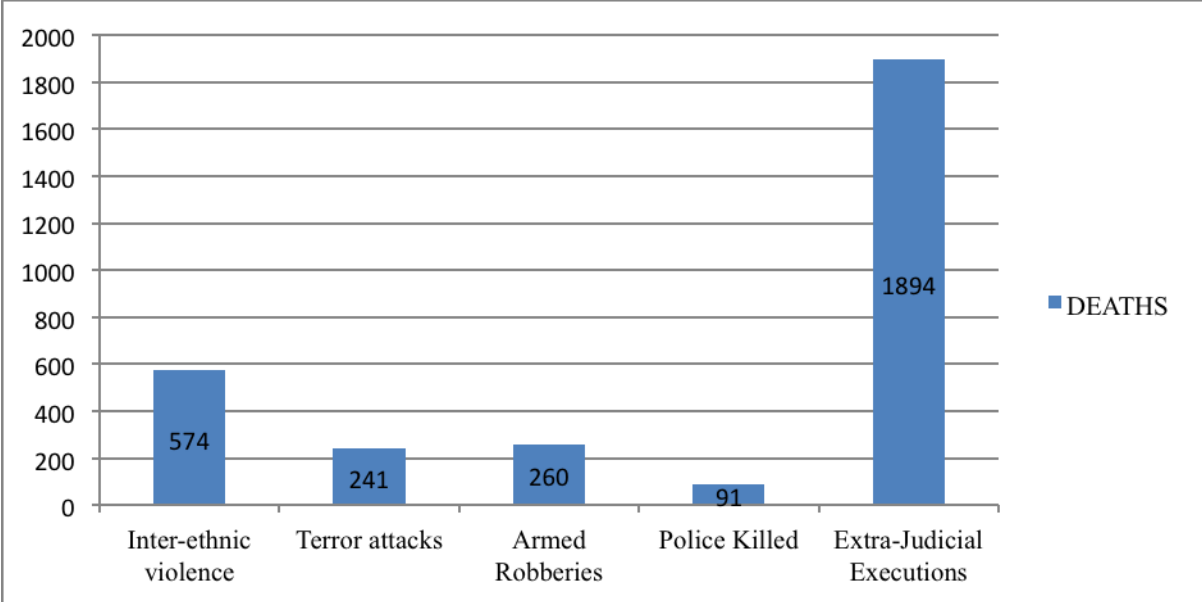


Figure 2: Bar graph illustrating percentages of insecurity related death incidents (2010-2014).

From the table, pie-chart and graph above, it can be seen that the internal patterns of the perpetrators have not changed since the 2007/08 post-election violence. According to the Waki Report, most of the deaths reported following the PEV were attributed to gun-shot wounds from the police and violence from sharp or blunt weapons deployed by rival ethnic combatants. Another similar characteristic to the ethnically-instigated violence that was witnessed in the country in 2007/08 is the political incitement associated with inter-ethnic violence. Hence, the Commission was informed that some politicians have been the main instigators, especially in the perennial inter-ethnic conflict experienced in the predominantly pastoralist areas, of ethnic violence. The fact that seven years later, the patterns of violence remains the same means that we have failed to implement the necessary reforms that were recommended by the KNDR Committee as well as in the COK 2010, and other pieces of legislation that have been enacted to promote the safety and security of all Kenyans. Consequently, cases of extra-judicial executions and enforced disappearances continued to be reported by several partners of the Commission during the period under review as is shown below.

4.1.2 Extra Judicial Killings and Enforced Disappearances

Extra Judicial killings are unlawful and an affront to the commitment of human rights as set out in the Constitution of Kenya 2010 and other international obligations⁴². Failure to gather evidence that results in convictions is one of the factors that motivate the security agencies, especially the police, to resort to extra judicial killings. 60% of cases taken before courts do not meet the minimum evidentiary threshold. Most end up in acquittals. Although a number of relatives, friends and organizations have complained about or reported cases of extra judicial executions to the relevant authorities, no serious investigations have never been conducted and no single police officer or security agent has been prosecuted for their role or involvement in extra judicial executions. During the period under review, and as can be seen from the figures below, many suspects were executed or disappeared⁴³.

1. Omar Faraj 2012
2. Titus Nabiswa 2012
3. Sheikh Aboud Rogo's murder 2012
4. Sheikh Ibrahim Omar Rogo October 2013
5. Shabaan Namusenda Makotse, Mombasa, April 2013
6. Hassan Omondi Owiti and Shekha Wanjiru, Nairobi, May 18, 2013.
7. Khalif Mwangi, Nairobi, May 20, 2013
8. Lenox David Swalleh and another person, Nairobi, November 2013
9. Ibrahim Tafa Tuwa
10. Hamisi Juma, Nairobi, January 8, 2014
11. Sheikh Hassan Suleiman Mwayuyu, Mombasa, December 5, 2013
12. Kasim Omolo, June 2013.
13. Salim Mohammed Nero also known as Suleiman Shauri.

⁴² Kenya has ratified the International Covenant on Civil and Political Rights.

⁴³ Human Rights Watch report and reports from MUHURI and OSIEA, IMLU and the KNCHR Mombasa Office.

Enforced Disappearances

1. Sylvester (Musa) Opiyo Osodo
2. Jacob (Yaqub) Musyoka, Nairobi, May 23, 2012
3. Jeremiah Onyango Okumu,
4. Stephen Mwanzia Osaka,
5. Salim Abubakar Hamisi, and O
6. Mar Shwaib, Nairobi, June 26, 2012.
7. Abdulaziz Muchiri
8. Ali Kipkoech Musa, Nairobi, May 6, 2013.
9. Yassin Olunga
10. Ali Musadiki, last seen in Nairobi in April 2013

Table 4: Distribution of firearm deaths (IMLU Report)

SITE	FREQUENCY	PERCENT
Eldoret	50	2.7
Kakamega	19	1.0
Kisumu	62	3.3
Mombasa	106	5.7
Nairobi	1611	86.0
Nyeri	25	1.3
Total	1873	100.0

4.1.3 Terror Related Deaths

Trends in Kenya suggest that terrorist attack is real and has continued to recur⁴⁴ in spite of several counter terrorism measures⁴⁵ adopted by the Government. The measures have failed to take into account the fact that terrorism is a crime against humanity that violates fundamental human rights, particularly the right to life. The utmost attention to be taken into account is that terrorism should under no circumstances be associated with any culture, religion or ethnic group. While countering terrorism, there is also a need to take into account the political, economic and social factors that terrorists exploit. It is also important that respect for human rights and rule of law should have a central place in all counter-terrorism efforts. In other words, the fight against terrorism should be a joint effort with a holistic approach and long-term commitment aimed at addressing the root causes of terrorism.

While the resolve to fight the terrorism scourge should be firm and unyielding, the responses adopting the state security agencies must be innovative and adaptable to changing circumstances. Since the adoption of the resolution 1373, the establishment of the United Nations Counter Terrorism implementation task force in 2005 and despite the determined endeavors by the Government, today terrorism still continues to be a serious threat to peace and security and human rights. There was even an increase of terrorist attacks and other illegal activities carried out by terrorist. For instance, there were 133 terrorist attacks in Kenya since October 2011, which have resulted in the deaths of 264 people and 923 injuries.⁴⁶ The Commission was able to document the following terror-related cases of deaths and injuries⁴⁷:

:

⁴⁴ In the 1981 bombing of Norfolk hotel there were 15 deaths and 87 injuries, 1998 attack on the US Embassy left 224 people dead and 5000 injured. 2002 terrorist attacks in Mombasa left 15 people dead and 80 injured, 2012 attacks in churches in Garissa left 17 dead and many others injured.

⁴⁵ Extra ordinary renditions, arbitrary arrests of suspected terrorists enforced disappearance, forcible transfer, torture, detention without trial and denial of access to counsel.

⁴⁶ Kenya Police Reports.

⁴⁷ The terrorist attacks documented here are just but a few of those that have happened during the period under review. The attacks include the dead and injured both from the police and civilian populations.

Table 5: Documented cases of terror-related deaths since 2011

Date of attack	Place of attack	No. of deaths	No. of injured	Weapon used
24/10/2011	Mwaura's Bar-Downtown, Mfangano Street-Nairobi	1	>20	Grenade
24/10/2011	Machakos Terminus Bus-Station, Nairobi	5	59	Grenade
10/03/2012	Machakos Terminus Bus Station	6	>60	Grenade
29/04/2012	God's House of Miracles Church, Ngara	1	11	Grenade
15/05/2012	Bella Vista night club, Mombasa	1	11	Grenade
28/05/2012	Sasa Boutique within Assanand's House, Nairobi	1	27	Grenade
24/06/2012	Jericho Beer Garden, Mishomoroni, Mombasa	3	30	Grenade
1/07/2012	Two churches in Garissa	17	50	Guns and grenades

18/07/2012	In a barber shop, Wajir		4	Hand grenade
25/07/2012	Wajir		3	Landmines
3/08/2012	Eastleigh	1	6	Grenade
30/09/2012	Garissa and Nairobi, St. Polycarp Anglican Church-Juja Road	3		Gun and Grenade
27/10/2012	Hagadera- Daabab	1		Gun
20/11/2012	Garissa	10	35	Guns
7/12/2012	Eastleigh	5	8	Grenade
27/12/2012	Mandera	1		Grenade
4/01/2013	Dagahale-Garissa	2	7	Grenade
10/01/2013	Garissa	5	3	Grenade
31/01/2013	Dagahale		3	Grenade
2/02/2013	Dagahale	1		Gun
5/02/2013	Garissa	1		Gun
18/04/2013	Garissa	6		Grenade
9/06/2013	Eastleigh and Likoni		15	Grenade
21/09/2013	Westgate, Nairobi	>68	>175	Guns and

				grenades
14/12/2013	Garissa	4	36	Improvised Explosive Devise
31/03/2014	Eastleigh	6		Explosion of IEDs
23/04/2014	Nairobi	4		Explosion of IEDs
15/06/2014	Mpeketoni	>65	Several	Guns, grenades, machetes.
22/11/2014	Mandera	28	2	Guns.
TOTAL		241	562	



Figure 3: Images of Dead Bodies following the Mpeketoni attacks in Lamu County.

Containing terror-related deaths is oftentimes difficult because of the evolving nature of terrorism. Terrorist organizations do not relent in adjusting and readjusting their tactics and techniques in the organization and financing of and recruitment for their terrorist activities. An effective campaign against terrorism cannot be waged outside the constraints of the Rule of law. In the fight against terrorism, substantive and procedural components of the rule of law must be adhered to. Procedural protections enable, but do not guarantee, the protection of human rights. However, the rule of law gives an assurance of fundamental rights and confers legitimacy and predictability on public decision-making. In the context of the struggle against terrorism, the rule of law must be distinguished from the rules of war that apply to conventional military conflicts. With local and international security agencies collaborating in trying to identify the perpetrators, their modus operandi and modalities for addressing the crisis, a number of crucial factors seem to be the enablers for the worsening attacks. These ought to be addressed urgently

in order to comprehensively address the crisis of rising terror-related insecurity in Kenya and the region.



Figure 4: Victims of the Mandera Bus attack

4.1.4. The Proliferation of Small Arms and Light Weapons

Monitoring the modus operandi of all the attacks since October 2011, when Kenya launched its 'Operation Linda Nchi' in Somalia, the preference for small arms and light weapons by the attackers has clearly established the prominent role of guns, hand grenades and improvised explosive devices (IEDs). While the proliferation of weapons in Kenya, and indeed the region, is not new, the rising readiness to use them against civilian targets raises many questions as to the nature of the changing insecurity dynamics that may ensue if the availability of weapons is not checked with utmost urgency. Addressing the issue of small arms proliferation is particularly problematic given the numerous avenues for the flow of arms into Kenya. The most important challenge bedeviling dealing with arms proliferation in the country is tied to the insecurity in

countries such as Somalia. Given the reality of the porous borders and ill-equipped security agencies, it is clear that real success in dealing with the crisis of arms proliferation in Kenya is dependent concerted internal as well as external efforts. Without peace and stability in Kenya's neighbors', it will be impossible to effectively deal with the scourge of small arms proliferation.

Given the fluid and amorphous nature of the perpetrators and the crisis, it is also only by increased intelligence gathering across the length and breadth of the country that the situation can be effectively addressed. However, given the limited resources and sporadic nature of the attacks, there is the need for the implementation of strategies that urgently rally civilian support in the collection and passing on of vital information to the relevant security agencies for the safety of all Kenyans. If realistic progress can be made to stop these trends, there is the need for the sources and existing mechanisms of arms acquisition and flows to be more closely and effectively monitored and addressed. Most importantly, so should be the demand for Small Arms and Light Weapons (SALW's).

One of the impacts of the rising insecurity—that is closely tied to the proliferation of small arms and light weapons—has been the emergence of well-armed militias and cattle warlords, especially in the pastoralist regions. These militia groups have access to sophisticated weapons as compared to those of the police. The incidents in Kapedo and Baragoi, Mpeketoni, Tana River, Isiolo Samburu border, are pointers to the dangers of having firearms in the hands of unauthorized persons. There is no indication of how many guns are held by illegal militia groups. Civilian disarmament has been a challenge as it has not been successful. Inter group animosity between ethnic groups and clans in poorly policed and economically marginalized pastoralist inhabited areas are key factors. The semi-arid nature of pastoralist inhabited regions in the Northern Kenya naturally leads to competition of the scarce water and pasture for the animals. The automatic weapons, in the absence of effective and accessible state security, are seen as a guarantor to security⁴⁸. Illicit trafficking of guns and bullets is also a source of income in these areas.

⁴⁸Mirzeler, Mustafa and Young, Crawford, 'Pastoral politics in the northeast periphery in Uganda: AK-47 as change agent', *The Journal of Modern African Studies*, 38 (3), 2000, pp 407–429



Figure 5: Guns recovered from Kapedo police killings

The demand for small arms has been exacerbated by the poor and uncoordinated disarmament initiatives. In some cases the disarmament has resulted in the vulnerability of some communities. Current efforts have largely focused on managing the supply of SALW but the socio-economic factors driving these demands need to be prioritized in national action plans. Related to that is the need for state security agencies to increase their visibility and patrols—especially along Kenya’s border points—so as to cut-off the entry-points of illegal arms. At the moment, the security and visibility of the state seems to be largely confined to the major centers. As one moves further from the Capital Nairobi, for instance, there is less and less visibility of state security structures, which is a reflection of state’s inability to fully project the legitimate monopoly of violence within its borders.⁴⁹

⁴⁹For further discussion, “*Addressing Rising Insecurity in Kenya*”, available at <http://www.africanliberty.org/content/addressing-rising-insecurity-kenya-institute-security-studies#sthash.32eCnwp.dpuf>

4.2. Right to Health and Education

The Right to Health and Education are guaranteed under Article 43 (a) and (f) respectively. Due to the prevailing insecurity in the country, these rights severely compromised because medical personnel and teachers could not freely operate in some areas. In extreme circumstances as was the case Tana-River, Turkana, Baringo and Mandera, a number of teachers and medical personnel lost their lives due to insecurity. Similarly, a number of school-going children were denied their right to education because the environment was too volatile and risky for them to go back to school or because their schools had been destroyed or damaged as a result of violence.

The Commission received the following brief on the impact of insecurity on health and education in Baringo County:

Health and psycho-social support: Local residents have undergone through traumatic experiences especially during raids. Some families were not able to bury their deceased relatives as they fled for their lives. Children have been exposed to violence including gun shots. The victims of these attacks are in need of urgent psycho-social support to assist them manage the trauma.

Education: As a result of the insecurity and violent attacks, some schools have been vandalized. Ng'elecha and Kaptilomwo Early Childhood Development Centers have been reportedly vandalized and learning disrupted. Displaced children have been unable to attend school. Noskoru, Rugus, Ng'elecha and Mukutani Primary Schools have reported an estimated 8.6% decrease in school enrolment within the last 3 years. Some young boys of school going age drop out of school to help the community on security by arming themselves with bows and arrows to fight the attackers.

During a fact-finding mission sent out in 2012 following an inter-ethnic conflict in the Tana-River, the Commission found out that the violence and subsequent displacement happened when schools were about to reopen for the final term of the school calendar where candidates at primary and secondary schools were expected to be sitting for the Kenya Certificate for Primary Education and Kenya Certificate for Secondary Education national examinations⁵⁰. There were fears that over 187 standard 8 KCPE candidates would miss school and might not be able to sit for their final examinations. Despite assurances

⁵⁰ For details, See *29 Day of Terror in the Delta*, a KNCHR Report

from local administrators that the government was liaising with Kenya National Examination Council (KNEC) to ensure that all candidates in the area sat for their exams, there were media reports that more than 100 candidates could not be traced as KCSE examinations were underway. According to the reports, most of the affected candidates were from Ngao, Kipini and Tarasaa secondary schools.

Numerous educational facilities were damaged or vandalized during the 2012 violence in Tana River, while others such as Kilelengwani Primary School and Semikaro Primary school were converted into temporary operation bases for GSU officers. 9 primary schools with a student population of 2705 and 1 secondary school with about 120 students were affected. The affected schools include Shirikisho Primary School (533 pupils), Chamwanamuma Primary School (343), Semikaro Primary School (303), Nduru Primary School (419), Kibokoni Primary School (202) Riketa Primary School (274), Kau Primary School (117), Ozi Primary School (304), Kilelengwani Primary School (409) and Buyani Secondary School. Hundreds of pupils were displaced, while at least one teacher, Mwalimu Branji Morowa was killed during the violence. And following the Mandera terror which took place on 22 November 2014, where 28 people (most of whom were teachers and medics were killed), the right to health and education in this county is increasingly being threatened, especially following calls from the medics and teachers' unions to withdraw their staff from Mandera and other counties affected by insecurity.

4.3 Right to property

Protection of the right to property under the Constitution⁵¹ clearly stipulates that the State protects the right to own property. It is implied that the government shall put in place mechanisms to protect property from arbitrary acquisition and destruction of property. Cases where the State can acquire private property are well set out in the Constitution. However, Private and public property has been targeted in attacks by suspected terrorists. Government offices and vehicles have not been spared. The Westgate mall attack resulted in the loss of over 2 billion with business people (most of whom were tenants) losing a source of their livelihood. In Mombasa, churches, mosques, private property and government vehicles were destroyed. Also,

⁵¹ Article 40 of the Kenya Constitution.

during the period under review over 3600 heads of cattle were either stolen from the pastoralist communities.



Figure 1: Aftermath of the Westgate Mall Terrorist attack on September 2013



Figure 2: Vehicles burnt in Mpeketoni

4.4 Right to movement and residence

The Constitution clearly stipulates the right to freedom of movement and residence⁵², which is internationally, recognized in key human rights instruments. The right to movement and residence is a key aspect of respecting people's freedom. The security concerns facing Kenya are legitimate but the decision to return refugees living in urban areas to crowded refugee camps is a violation to the rights of refugees. In monitoring Human Rights of vulnerable groups, KNCHR noted that 92 Somali refugees had been deported to Somali. The relocation violated refugees' dignity and free movement rights, risked indirectly forcing them back to Somalia against the international principle of *none refoulement* and in contravention of international⁵³ and National law. Section 8 of the refugee Act 2006 states that:

“No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected any similar measure if, as a result of such

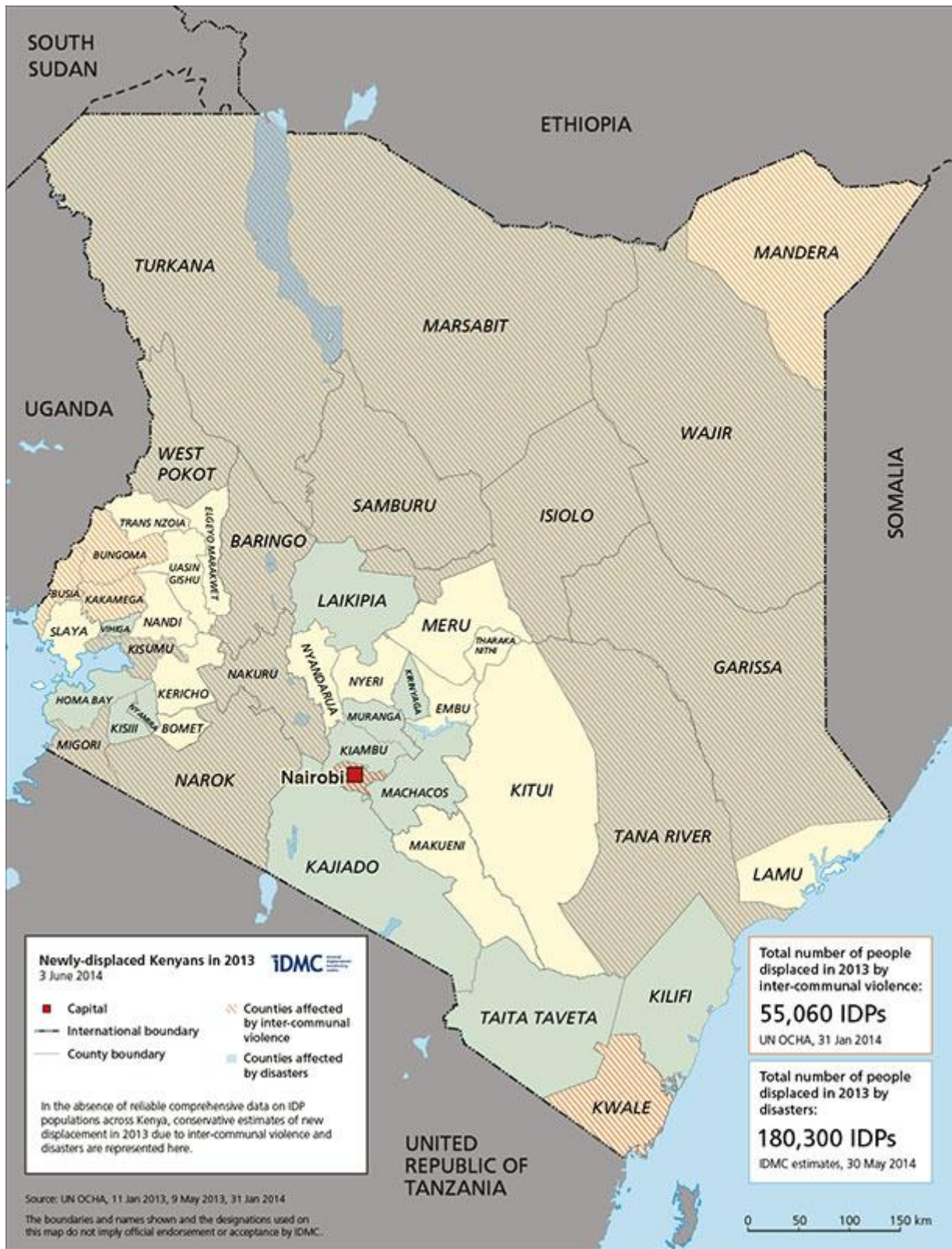
⁵² Article 39 of the Kenya Constitution.

⁵³1951 Refugee Convention and the 1969 Convention Governing The Specific Aspects Of Refugee Problem in Africa

refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where –

(a) the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or

(b) the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country”.



Forcibly returning registered refugees to countries where they faced threat of persecution or to a place where a person would be at real risk of torture or cruel, inhuman, or degrading treatment is refoulement and is prohibited under international law⁵⁴.

The targeting and profiling of communities for expulsion, removal has resulted in the removal of vulnerable populations that need protection. The operation targeted Somalis, ethnic Kenyan Somalis, Sudanese, Ugandans, Ethiopians and Muslim populations in Eastleigh⁵⁵, South C and Likoni areas of Mombasa and other towns in Central Kenya.

During the period under review a total over 55,060 people were displaced due to inter-ethnic insecurity related incidences in Tana River, Mpeketoni, Wajir, Mandera, Baringo, Bungoma, Kisumu, Kwale and Nairobi.



Figure 3: Pastoralist IDPs from Baragoi

⁵⁴ 1951 Refugee Convention of which Kenya is a signatory, the refugee Act and the Constitution.

⁵⁵ A KNCHR official Hassan Abdille was harassed and arrested due to his ethnic Somali origin. The police who arrested him referred to him as terrorist and were reluctant to look at his identification documents. It took the intervention of other KNCHR officials before he was released.

4.5 Right to employment

Labor and employment rights generally fall within the category of social, cultural and political rights. The Constitution protects the right to employment⁵⁶ by providing for fair labor practices, fair remuneration and reasonable working conditions. The escalating incidences of insecurity have negatively affected the right to employment. Insecurity and crime coupled with terrorism attacks resulted in new travel advisories to the Country's major tourist areas issued by Britain, France, USA, and Australia. The advisories resulted in major job losses and a drop in 1.0% of the GDP growth.⁵⁷ In 2012 and 2013, the number of tourists declined by 7.0%. In 2014, several hotels scaled down while others closed leading to massive job losses.⁵⁸ Insecurity is currently costing the Coast's tourism industry Sh560 million per week leading to job losses and rising pressure on industry suppliers⁵⁹



Figure 4: Tourists leaving the country after issuance of travel advisories (Courtesy AFP).

⁵⁶ Article 41 Kenya Constitution

⁵⁷ Tourism accounts for 10% of the GDP.

⁵⁸ Federation of Kenya Employers

⁵⁹<http://allafrica.com/stories/201408061353.html>

Among the many conditions that are conducive to the spread of terrorism, the lack of economic opportunities and the absence of balanced and sustainable development are particularly important. Groups and individuals within vulnerable and poverty-stricken serve as potentially ripe recruits for radicalization⁶⁰. Extremists often take advantage of the situation resulting from poverty and marginalization⁶¹ to foster the conditions that enable them to carry out their violent actions. The breakdown of social order predisposes the youth to crime, many vulnerable young men, especially those from marginalized communities, become prone to criminality and deviant behavior⁶² Though riddle with a number of challenges, it important that the government, through initiatives such as the Uwezo Fund, the Equalization Fund and the National Youth Service project is making good efforts aimed at addressing unemployment by making opportunities for self employment accessible to the youth and other vulnerable groups.

4.6 Rights of Arrested Persons

The rights of arrested persons are protected under article 49 and 51 of the Constitution. Arrest is a form of state constraint applied to a person, during which the person is placed under detention, is imprisoned and is deprived of his right to move freely. An arrested person has the right to be informed of the grounds of the arrest⁶³ right to remain silent⁶⁴, right to communicate with an advocate, not to be compelled to make any confession, to be brought before court within reasonable time and not later than 24 hours and right to defense among, right to a fair hearing⁶⁵ and right to humane treatment⁶⁶ among other rights. The arrested person is entitled to the rights

⁶⁰ A research done by the legal Resources foundation documents radicalization of youth in prisons.

⁶¹ The emergence of groups like Mungiki, Mombasa Republican Council poses real risk to security and human Rights.

⁶²Larry Siegel, *Criminology: The Core*. Belmont: Wadsworth, 2010.

⁶³ Article 49 (1) of the Kenya Constitution,

⁶⁴ Ibid Article 49 (1) (ii),

⁶⁵ Article 50(1)

⁶⁶ Article 51(30) (a)

stipulated in the Bill of rights and to other recognized rights in the international treaties that Kenya has ratified⁶⁷. The Constitution also stipulates incidents when certain rights can be suspended and affirms that freedom from torture and cruel inhuman or degrading treatment or punishment, freedom from slavery, the right to a fair trial and the right to an order to habeas corpus ⁶⁸ cannot be suspended even during times of emergency. The emergence of insecurity especially terrorism relate, has seen massive violations of the rights of arrested persons, fair trial rights and the right to be free from torture and cruel inhuman or degrading treatment. During Operation Usalama Watch, the KNCHR documented that hundreds of suspects were held in overcrowded cells at Kasarani beyond the stipulated 24 hours permitted by the constitution. The suspects were not allowed to communicate with an advocate or relative. Cases of beatings, intimidation, extortion and sexual harassment at the hands of security forces during search operations are rampant.⁶⁹

The Coastal town of Mombasa has witnessed violation of the rights of arrested persons where the government has resorted to forceful counter terrorism strategies. The Human rights violations include torture, holding suspects for more than 24 hours. The suspects are produced in court after 48 hours and the prosecution has more than often applied to hold the suspects for a further two weeks for more investigations to be conducted. KNCHR'S Mombasa office has documented that of the 129 people who were arrested in Mombasa in the month of October; only 14 were charged in court with the offence of loitering and were fined KES. 5000.

4.7 Subversion of the Rule of law

The Constitutional provision on the Rule of law under article 10⁷⁰ binds all State organs and all people to observe and respect the rule of law and embrace Constitutionalism. The National

⁶⁷ The International Covenant on Civil and political Rights, the International Covenant on economic social and cultural Rights, the International refugee Convention among other international instruments.

⁶⁸ Article 25(a)

⁶⁹ KNCHR report on USALAMA watch.

⁷⁰ The 2010 Kenya Constitution.

Security organs⁷¹ are expected to observe respect of Human Rights and Human dignity and the rule of law. The National security organs are duty bound to protect the country against external and internal threats and in exercising this mandate respect for Human Rights is very fundamental. Failure of the security agencies to exercise this mandate has led to security threats facing the country, which include terrorism, Organized crime, ethnic violence, resource conflicts, and robbery with violence and street muggings. Carjacking is the most common crime in Kenya's major cities, and in particular, Nairobi followed by violent home invasions. Criminals often use weapons during commission of these crimes and do not hesitate to shoot a victim who exhibits signs of non-cooperation. Kidnappings and street crime are also a serious problem in major cities.⁷²

The UN, whose agencies have a large presence in Nairobi, reckons that the number of burglaries in Nairobi doubled to 300 from the last quarter of 2013 to the first quarter of 2014. The failure in the criminal justice system to combat crime and ensure security has led to an increase of the alternative criminal justice system or the illegal gangs. The National crime Research centre in its report⁷³ identified an existence of 46 illegal criminal gangs operation in Kenya. The gangs arose in response to the security gap by the State in providing security. In combating the Illegal gangs, security agencies have violated Human Rights. These violations have manifested in extra Judicial Killings, enforced disappearances and torture. KNCHR in its report⁷⁴ documented the disappearance and death of more than 400 suspected Mungiki youths who were executed by police. In 2012 more extra judicial killings were reported documented by Human Rights watch. Between 2013 and 2014, 10 cases of extra judicial Killings perpetrated by the Anti terrorist police unit have been documented.⁷⁵ Though the Constitution is very clear on due process

⁷¹Article 238, 239 of the Constitution, the security organs are the Kenya Defense forces, the National intelligence Service and the National police Service.

⁷²US Department of State's Bureau of Diplomatic Security *Kenya 2014 Crime and Safety Report*

⁷³ National Crime Research centre, Summary of a study on organized criminal gangs in Kenya.

⁷⁴ KNCHR., *The Cry of the blood*

⁷⁵ Human Rights Watch. *Kenya, Killings, disappearances by Anti terror Police Unit*

rights⁷⁶ security agencies continue to act in violation of the Constitution. In 2014, there was a marked increase in arbitrary arrests in countering terrorism. Hundreds of suspected terrorists were arrested which led to profiling of Kenyan Somalis and Muslims who were Subjected to arbitrary arrests, harassment, extortion, ill-treatment, forcible relocation and expulsion.⁷⁷ KNCHR documented a disturbing wave of serious human rights violations suffered by Kenya's Somali community since a security crackdown—known as 'Operation Usalama Watch'—began in early April 2014. In monitoring Human Rights violations during the operation Usalama, KNCHR was denied access to some police stations and other places of detention in blatant disregard to its Constitutional mandate of monitoring Human Rights violations. However, KNCHR was able to access some of the people who had been arbitrary detained and documented their experience. The following testimony is illustrative:

"I am a Kenyan resident of Eastleigh Estate and a small scale businessman by profession. On 3rd April 2014 at around 8pm on my way to the mosque, in the company of my Cousin, for my evening prayers, I met a contingent of APs, regular police and GSU offices along 8th street in Eastleigh. An AP Inspector in the group of police officers, unidentified, stopped me and my cousin and requested for our IDs. Upon handing out our IDs to the Inspector, he alleged that the IDs were fake and called the regular police officers in the contingent who arrested and lead us to the waiting police lorry, a canter. The AP Inspector did not hand back our IDs but instead kept them. In the police lorry I found approximately 100 arrested persons stuffed in the truck. The truck drove around Eastleigh Estate were more and more people were arrested and others were suspiciously set free perhaps after paying a bribe to the police since most were making frantic calls to relatives and friends informing them of their arrest and the need for their intervention. During the rounds in the police truck I also observed other civilian passersby get arrested and loaded into truck without being asked any question as to what their offenses could be or informed of reason for their arrest. At around 12 am or thereabout we finally arrived at Pangani Police station. However, only 24 persons, I and my cousin included, made it to Pangani

⁷⁶ Article, 48, 49, ARTICLE 50, AND Article 51 of the Constitution

⁷⁷ KNCHR Usalama Watch report, Amnesty International. The Kasarani stadium was gazetted as a place of detention

police station as the majority of those arrested had been set free suspiciously and without an explanation from the police. At Pangani Police Station I was booked in the Occurrence Book (OB) NO*****. At the station we were detained in a crowded cell. In my approximation the number of detainees in the cell was 300 people. In the cell I had my ID card which had been returned while in the police truck before arriving at the police station. The following day, Friday 4th April 2014, at around 11.am police officers who identified themselves as CID officers came to take a roll-call of the detainees in the police cells. During the roll call I was beaten by one of the officers when I pointed that my name was ***** and not ***** as called out by the officers during the roll-call. During the roll call we, I included and the other detainees, gave out our IDs to the officers. The same Friday night, at around 9 pm, some detainees received back their IDs and were released; reason because their IDs were genuine. However I did not receive my ID allegedly because it was fake as it was issued at Pumwani. While detained at Pangani, the officers on duty kept taunting me that I was a terrorist. Still in the station's cell my wife informed me that an officer known as ***** had requested for a bribe of 20,000 shillings to secure my release. I warned my wife against giving any form of bribe to the said officer. Those who visited me at the station informed me that they were told I was a terrorist all the while in the OB I was booked with the offence of idling, drunk and disorderly. Conditions at the cells were to say the least degrading, inhuman and inhumanly incomprehensible that a human being can survive under such conditions; we were literally standing on human feces our feet covered to the ankle. The crowding, lack of food and water were unbearable and some people fainted due to the condition, to date I don't know their fate since I did not see them thereafter. On Monday, 7th April 2014, the wording ATPU (Anti-Terrorism Police Unit) was inserted into my charges in the OB supposedly to denote that my case was that of ATPU. To date, I have not seen anyone from the ATPU investigating or purporting to investigate me. The following day, 8th April 2014 at around 11pm, I was taken to Kasarani Police Station and told by the officers transferring us that I will get a chance to defend myself during screening. I left Pangani Police station for Kasarani Police station without having my ID card given back by the CID officers who had confiscated it. At Kasarani Police Station, due to the large number of detainees at the station we were locked up in a roofless cage where we were rained on throughout the night.

On Wednesday 9th April 2014, at 11am, I was transferred to Kasarani Stadium for screening. I had my voter's card but I had memorized by National Identity (ID) Card number. I was taken through a process of screening, gave my ID card number and my finger prints were taken. My ID card was confirmed as a genuinely bit I was not released on allegations that I could not explain why I spotted a long beard as I had explained that it was a God given beauty. I was returned to Kasarani Police station where I spent the night and on Thursday morning (10th April) I was returned to Kasarani Stadium again where the same process I underwent the previous day was repeated on me again. I was again vindicated by confirmation that I was a genuinely registered Kenyan. Upon complaining to the screening officials why I was continuously detained despite my proven nationality, I was assured that I would be released the same day. I was truly released on Thursday 10th April 2014 at 11.30 pm upon being given a signed confirmation note, supposedly to show that I was a genuine Kenyan, but without a stamp or indicating the releasing authority. I was however not given back my National ID Card. At Kasarani I was informed to pick my ID from the District Criminal Investigations Officer (DCIO) at Pangani Police Station. Since my release from incarceration at Kasarani on 10.04.2014, I have made numerous trips to the Pangani Police Station but I have not succeeded to get my ID back. As a result I have been harassed severally by police officers looking for illegal immigrants in Eastleigh where I have had difficulties to prove my nationality. My savior has been the release note given at Kasarani and my audacious clarification to the police that I do not fear being incarcerated to prove my nationality as I have previously done it" (Akim)*

The above conduct by the police is a grave violation of the Kenyan law and regional and international human rights principles and standards that protect people from arbitrary arrests and detention. Art. 29 of the Kenya Constitution provides that every person has the right to freedom and security of the person, which includes the right not to be (a) *deprived of freedom arbitrarily or without just cause*. Art 9(1) of International Covenant on Civil and Political Rights (ICCPR), which Kenya has ratified provides that; *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

The police were also in serious breach of the rights of the arrested persons as enshrined in Art.49 (1) and Art.51 of the constitution. Many detainees such as the one above were incarcerated beyond the 24 hour limit provided for in the Constitution without being presented to a competent judicial authority. Further they were been held incommunicado without access to means of communicating with their next of kin or legal counsel. The KNCHR also found that there was very little information availed to the families of the affected. Many relatives complained that they have been desperately searching for their kin in numerous police stations for days with no success and with no assistance from the police.

A lack of transparency and due process has meant that the exact number of those arrested and still in detention remains unclear. However, Kenya's Cabinet Secretary for the Ministry of Interior and Coordination of National Government, Joseph Ole Lenku was quoted as stating that more than 4,000 people were arrested in the first week of the operation alone. KNCHR is not aware of the 4000 people arrested how many have been charged in court for the offence of terrorism. Many of the arrested youths were charged with minor offences and fined. Violations of human Rights by security forces in the context of counterterrorism operations, in particular in Eastleigh (Nairobi), Mombasa, and towns in Central Kenya increased. In committing these violations, the State backtracked on important human rights commitments made through constitutional, legislative, and institutional reforms after the widespread 2007/2008 post-election violence. These violations have the potential to cause large scale Human Rights violations and institutionalization of impunity.



Figure 10: Detainees at Kasarani following an Operation Usalama Watch Swoop

4.8 Right to freedom of worship.

Freedom of worship is enshrined in the Constitution⁷⁸ is one of the fundamental rights and the most significant breakthrough in recognizing the individual spiritual freedom of the human being. The Constitution further recognizes that any State coercion in the religious or philosophical coercion is out of question.⁷⁹ With the rise of insecurity, the Government ordered the closure of a number of Mosques. The closure of mosques in Mombasa contravenes the constitutional freedom of worship which is provocative and contributes to more radicalization⁸⁰. As stated by a Muslim leader, *"That is an unacceptable move and it can only exacerbate the situation by annoying the youths more and cementing the feelings among them that the government is against them, pushing them more to radicalization,"*⁸¹ The collective punishment due to the closure of the places of warship has resulted in protests in Mombasa leading to more human rights violations.

⁷⁸ Article 32 (2)

⁷⁹ Article 32 (4).

⁸⁰ The Coastal region has suffered years of social injustice and social exclusion as documented in the TJRC report.

⁸¹ Nairobi Jamia Mosque committee member Ibrahim Lethome

5.0 SECURITY SECTOR REFORMS AND THE PROMOTION OF SECURITY IN KENYA

The Security Agencies in Kenya and in particular the Police Force and the Prisons Service were under intense pressure for reforms since the emergence of multi – party democracy in the 1990s. During the said period, these institutions were used by the executive arm of the Government⁸² to repress the movement for democracy through dispersing political rallies, carrying out illegal arrests and detention without trial, subjecting the opposition leaders and other pro–democratic governance groups to torture, cruel, inhuman and degrading treatment, among other forms of human rights violations.

The clamor for reforms by the members of the civil society organizations and the opposition did not bear fruits until 2002 when a new elected government⁸³ came to power with the promise of carrying out reforms in the various sectors of the society and Police Reforms was key in the agenda. The earliest Government initiative on Police Reforms began in 2003 following the establishment of the Kenya National Task Force on Police reforms⁸⁴. The task force was mandated to look into the causes of the poor performance of the then Police Force and make suggestions on improvement on service delivery. It is important to note that the focus was not so much on accountability and professionalism. However, the final report of the Task Force was never made public and thus an opportunity to reform the police was lost.

Although the NARC Government never released the final report of the Task Force, there were unstructured and uncoordinated reforms in the Security Sector. These included the change of top leadership at the Kenya Police⁸⁵, the abolition of the special branch and the introduction of the professional National Intelligence Service, the abolition of the torture chambers and closure of arbitrary detention facilities, and increased budgetary allocations to the Police. On the other

⁸² The KANU Government of President Moi

⁸³ The NARC Government

⁸⁴ The Task Force on Police Reforms appointed by the NARC Government in April 2003. The membership was drawn from state and non – state actors that included the newly formed Kenya National Commission on Human Rights Kenya Human Rights Commission, FIDA the DPP, the Kenya Police, the Administration Police, KIPPRA, Nairobi City Council among other organizations.

⁸⁵ Major General Hussein Ali from the Kenya Army was appointed as the Police Commissioner

hand, the Prisons Service opened up its doors to various stakeholders with a view to promoting accountability, enhanced service delivery and observance of human rights standards. The earliest reforms initiatives in the Kenya Prisons Service can be traced to this period which included recruitment of professional staff in substantive numbers, review of the relevant laws, opening up the prisons doors to human rights organizations, humane transportation of prisoners and prison staff, and improved accommodation and general prisons conditions. Nevertheless, the Narc Government lacked a holistic approach to Security Sector Reforms in terms of a sound legal and policy framework. It was during this period of 2006 - 2007, that Kenya witnessed some massive human rights violations such as extra – judicial killings and enforced disappearances⁸⁶.

5.1 Police Reforms in the Wake of Post – Election Violence of 2007/2008

The Post – Election violence of 2007/2008 presented the Government of Kenya with an opportunity to audit the performance of Police. The Commission of Inquiry into Post – Election violence (CIPEV)⁸⁷ and the United Nations Special Rapporteur on Extra – Judicial Executions⁸⁸ pointed the need for Police reforms in view of their involvement during the period. The CIPEV in analyzing the role of security agencies identified the following key issues in relation to the events of the Post – Election Violence; information and intelligence, operational planning, command and control structures, use of force, dealing with complaints, investigations, resourcing, the utility of Police Statutes and the review of processes⁸⁹. An analysis into these areas pointed to gaps that required urgent attention by the various stakeholders and specific recommendations were made that fell in three broad areas and included the comprehensive reform of both the Kenya Police Service and the Administration Police, the creation of Independent Policing Oversight Authority and the integration of the Administration Police and

⁸⁶ “The Cry of Blood”, KNCHR Report on Extra – Judicial Killings and Enforced Disappearances, September 2008.

⁸⁷ The Commission was mandated to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies in their handling of it and to make recommendations concerning this and other matters.

⁸⁸The government of Kenya following the pressure from civil society organizations invited Philip Alston, a Special Rapporteur on extra-judicial executions.

⁸⁹ CIPEV Report Page 359

the Kenya Police Force.⁹⁰ This CIPEV report thus provided an opportunity once more for the government to renew its commitment to Police Reforms in the Country.

Additionally, the negotiation process that ushered the Coalition government after the Post – Election Violence provided an Item, Agenda Number Four, which agreed on institutional reforms including reforming the Police. Consequently on 8th May 2009, the President announced the appointment of a National Task force on Police Reforms headed by Justice Philip Ransley with clear terms of reference⁹¹. The Task force in executing its mandate received extensive oral and written information from stakeholders and experts. It also held public hearings and engaged Police Officers in their workstations. Further, the Task force benchmarked with Botswana, the United Kingdom and Northern Ireland.

The Task Force presented its Interim Report on 26th August 2009, which contained initial findings and recommendations, which could be addressed in the short term. The final report of the Task force was comprehensive with findings and far-reaching recommendations. It was presented to the principals in October 2009. The recommendations were structured in seven thematic areas namely:

- i. Organizational restructuring
- ii. Enhancing Police accountability, Culture and Image
- iii. Professionalism, Terms and Conditions of Service
- iv. Logistical Capacity and Operational Preparedness
- v. Community Policing and Partnerships
- vi. Enhancing National Security
- vii. Reforms Implementation, Monitoring and Evaluation.

The recommendations provided by the Ransley Task Force formed a blue print for police reforms, which was adopted during the making of the Constitution⁹² and subsequently focus

⁹⁰ CIPEV Report Page 481- 484

⁹¹ National Task Force on Police Reforms, October 2009.

⁹² Chapter 14, Constitution of Kenya 2010

shifted from implementing the recommendations of the Task Force to implementing the Constitution.

5.2 Police Reforms and the Constitution of Kenya, 2010

The promulgation of the Constitution in 2010 heralded a new era of legal and institutional reforms in Kenya including the security sector reforms. Chapter fourteen of Constitution makes provisions for the national security and the principles upon which it should be founded⁹³.

First, a National Police Service was created⁹⁴ that merged the Kenya Police and the Administration Police under one independent command of the Inspector General and his two deputies appointed through a competitive process. This was a departure from the previous system where the President thus owed allegiance to the appointing authority solely appointed the Police Commissioner. The key functions of the Inspector General are; implementing policy decisions, implementing police operations and functions, auditing police functions and operations, benchmarking on the best practices, providing the command structure under systems of operations and cooperating with other agencies such as IPOA and issuing and documenting Service Standing Orders⁹⁵. These functions are aimed at giving effect to the principles of national security and creating a paradigm shift from regime policing⁹⁶ to democratic policing⁹⁷.

⁹³ These include respect for the rule of law, democracy, human rights and fundamental freedoms, respect of diverse culture of communities, recruitment reflecting diversity of the Kenyan People and national security subjected to the authority of the Constitution and Parliament.

⁹⁴ Article 243, Constitution of Kenya 2010.

⁹⁵ Section 10 of the National Police Service Act, 2011

⁹⁶ Regime policing implies that the police are chiefly or solely accountable to the executive arm of government and is characterized by arbitrary violations of the rights of citizens, suppression of the role of other arms of government in playing their oversight functions and suppression of basic democratic freedoms

⁹⁷ Democratic policing, as opposed to regime policing is founded on the principles of equity and equality, accountability, transparency, participation, respect for diversity, the accommodation of dissent, the protection of individual and group rights and the encouragement of human potential

Secondly, the National Police Service Commission⁹⁸ was created under the National Police Service Commission Act 2011. Some of the key functions of NPSC include developing training policies and providing oversight over the same, advising on salaries and remuneration of the members of the Service, providing procedures for recruitment and disciplinary matters and the vetting of the members of the National Police Service. The enactment of the NPSC Act mainly aimed at professionalizing the Service as well as improving the welfare of the members of the Service.

Thirdly, the other key institution that was established is the Independent Policing Oversight Authority Board (IPOA) to provide civilian oversight over the work of the Police. The key functions of the IPOA include investigating complaints against the police by the public and from the police officers, inspection of police premises including places of detention, monitor and review investigations undertaken by the Internal Affairs Unit of the National Police Service, review patterns of police misconduct and internal disciplinary processes and, present any relevant information in a judicial inquest. The establishment of IPOA therefore mainly focused at creating an independent oversight over the police operations and addressing complaints from members of the public against the police as well as those from the police staff.

5.3 Efficacy of Key Policing Institutions under the New Legal Order

The KNCHR, by virtue of its work, has been involved in the police reforms agenda and was a member of the various task forces and police reform initiatives. The Commission regularly works with the key stakeholders in the security sector reforms including the NPS, NPSC, IPOA, and Prisons Service among others.

i. The National Police Service and Office of the Inspector General (IG)

The incumbent IG took office at the time when the Country was already experiencing emerging security challenges emanating from terrorism and related crimes. He is conferred with a huge legal mandate of independently and professionally commanding the Service. He is credited with the formation of the Internal Affairs Unit, which has the mandate of overseeing internal accountability within the National Police Service through redressing receiving and investigating

⁹⁸ Constitution of Kenya 2010,S 246

complaints against the members of the service and taking disciplinary measures as well as liaising with the IPOA. However, the extent to which this Unit has delivered on its mandate hitherto remains doubtful as the levels of internal accountability within the Service is still largely very low⁹⁹.

The inception stages of the appointment of the IG and members of the Commission, the Country witnessed wrangles over mandates. This period was marked by major security lapses that included wanton killings and destruction of property in Tana River in 2012¹⁰⁰, attacks by suspected members of the Mombasa Republican Council (MRC) in the period preceding 2013 general elections, Gang attacks in Bungoma and Busia Counties in 2013.¹⁰¹ Further, there is evidence that the IG has not been able to tackle the problem of extra-judicial killings and the same is still prevalent¹⁰². The International guidelines on the use of firearms and lethal force clearly articulate the two principles of necessity and proportionality when applying lethal force and firearms. The same has been domesticated in the National Police Service Act¹⁰³. The extent to which the police have adhered to these two principles remains largely scanty. The Cabinet Secretary and the IG have been conferred with the responsibility of developing guidelines on the use of force and firearms to give effect to these provisions of the Act and the same is yet to be undertaken¹⁰⁴. This has thus provided the law enforcement agencies with an open ground to abuse rights and no proper framework exists with the use of firearms and lethal force.

Secondly, the NPS Act provides for a National Police Service, which brings together the Kenya Police, and the Administration Police (APs) who should work together and ensure safety and security in all parts of the Country. Unfortunately, there is evidence that this goal is yet to be

⁹⁹Evidence obtained through KNCHR survey in Kisumu, Kisii, Nakuru, Eldoret, Kirinyaga, Wajir and Nairobi in October 2014 and in the course of processing Human Rights Complaints at the KNCHR.

¹⁰⁰ KNCHR conducted investigations into the violence in Tana Delta in 2012 and submitted its report to the Commission of Inquiry constituted subsequently.

¹⁰¹ KNCHR conducted Suo Motto investigations on the attacks and prepared a report.

¹⁰² Independent Medical Legal Unit (IMLU-Kenya) report on enhancing accountability for police use of firearms, "Guns: Our security our dilemma!"

¹⁰³ The National Police Service Act, Section 61 and the sixth schedule of the same Act

¹⁰⁴ Schedule 6A, section 12 and Schedule 6B section, section 8.

realized as two formations still work at cross-purposes¹⁰⁵. For instance, there exist two parallel commands at the County level for the APs and the Kenya Police without clear guidelines on merger and coordination. This has had huge negative effect in securing the Country.

Thirdly, there is a gap in the overall command responsibility where the Inspector General has appeared not to be in charge of certain security operations¹⁰⁶. This has contributed to disjointed efforts in responding to insecurity instances and has led to massive human rights violations in the form of loss of life or property. Several complaints have been made with allegations made at different level on the extent to which this disjointed command has contributed to the insecurity incidences including the alleged terrorists' attacks of the Mandera attacks¹⁰⁷. Further, the National Police Service Act provides for the establishment of Community Policing Forums and Committees¹⁰⁸ and the County Policing Authorities¹⁰⁹. However, the old traditional approach to community policing has continued to be applied in different parts of the country without taking into consideration the requirements of this Act that calls for the overhaul of the existing community policing structures¹¹⁰. This traditional approach to community policing approach is a great avenue of human rights violations in these particular communities¹¹¹.

Fourthly, the National Police Service confers upon the Inspector General the responsibility of issuing the Service Standing Orders, which were considered to be very important in reforming the Police. These were to be among the very first exercise that the IG ought to have engaged in.

¹⁰⁵ Evidence obtained through KNCHR survey in Kisumu, Kisii, Nakuru, Eldoret, Kirinyaga and Nairobi in October 2014.

¹⁰⁶ This was witnessed during the Westgate Terror Attack in September 2013 and various directives issued by the Cabinet Secretary or the County Commissioners.

¹⁰⁷ Special Parliamentary session on Tuesday, 25th November 2014 to discuss the insecurity situation in the Country.

¹⁰⁸ National Police Service Act, 96

¹⁰⁹ National Police Service Act, 41

¹¹⁰ The traditional approach refers to community policing committees acting as kangaroo courts, acting as avenue of alternative dispute resolutions mechanisms, providing security for the community among other acts considered illegal. These were sentiments shared in Kirinyaga and Kisii where Mungiki/Vigilante and Sungu Sungu respectively are very active. These groups all act without reference to the National Police Service Act.

¹¹¹ The rights violated include the right to life, freedom of movement, freedom from torture, cruel, inhuman and degrading treatment among others.

While the process has been ongoing, the pace at which it has been undertaken has been painstakingly slow and this has had a huge effect on the enjoyment of human rights of the general population.

Finally, the old culture associated with policing still prevails within most Police Stations and their interactions. The public still has no confidence in sharing information with the Police and this in the long run affects intelligence gathering, proper investigations and collection of evidence¹¹². Majority of people are unwilling to testify in court cases for fear of reprisals and this has a huge impact on quality investigations.

ii. **The National Police Service Commission**

The NPSC was created and conferred with the huge responsibility of welfare issues for the members of the National Police Service. Key among the issues that the NPSC was to ensure that recruitment of persons into the National Police Service is done with highest standards of professionalism and integrity. Three recruitments have since been carried out with the latest being revoked by the High Court following complaints of serious corruption and irregularities. This goes against the principles of National Security and Chapter Six of the Constitution and has only served to erode public confidence in the Commission that will ultimately have a huge impact on promotion of human rights.

Secondly, the process of professionalizing the NPS was to be carried out through the vetting process of the member of the Service. This exercise kicked off in 2013 after a previous attempt by the NPS to carry out a similar process that was seen as an effort to sanitize the force without any legal backing and in a transparent manner. The exercise kicked off without putting in place the pre – requisites measures such as a proper public engagement, proper investigations, proper information management, and proper measures of witness protection among others. All these consequently worked against the exercise and only served to erode public confidence further on

¹¹² KNCHR survey reports in October 2014 in Kisumu, Kisii, Nakuru, Eldoret, Kirinyaga and Nairobi in October 2014.

the police¹¹³. The vetting exercise was marred by allegations of corruption with the focus shifting from accountability for human rights violations to a wealth declaration exercise which further raised serious credibility of the entire exercise and its commitment to fulfilling its objectives. In a nutshell, KNCHR observes that this exercise that was to have a huge effect on restoring public confidence on the police has not achieved this noble goal and would thus needs to be critically looked at moving forward.

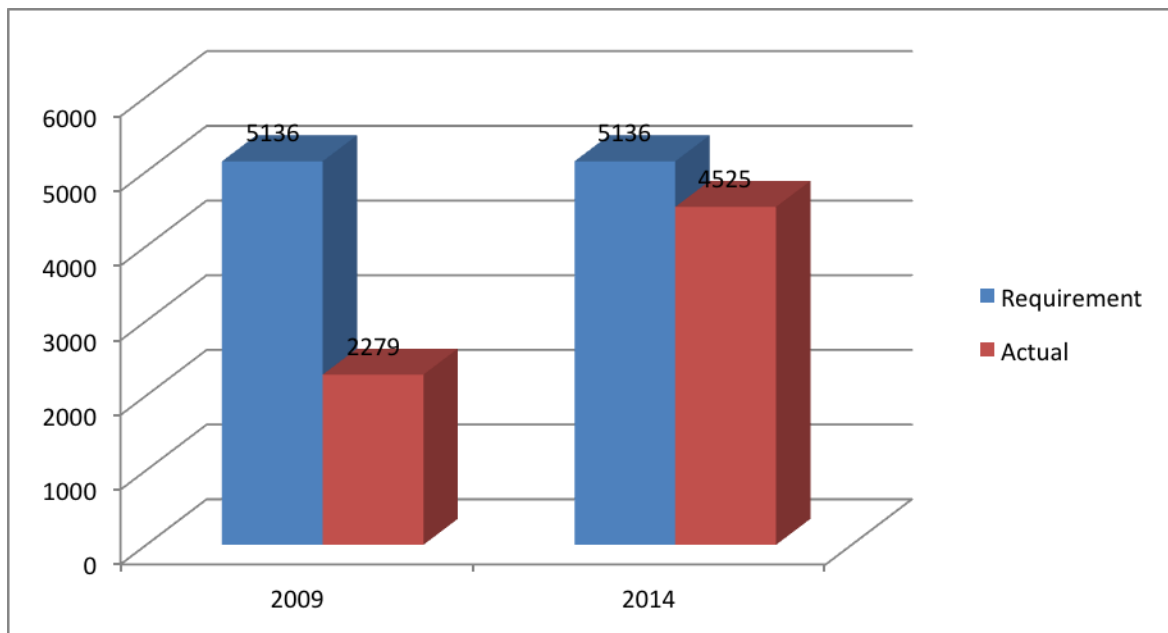
Thirdly, the NPSC had the sole responsibility of improving the welfare, resourcing and tooling within the National Police Service. While this has progressed in the positive direction, available evidence points to an exercise that is rather painstaking. The Ransley Report had indicated a total of close to 40,000 units were required to house the officers adequately. During the period of 2011 – 2014, a total of 2044 units, which translates to around 681 units, be year. This then means a total of 59 years would be required to build the required houses. This does not take into consideration the number of police officers that are continuously recruited. This may mean that we shall never have the required housing units, which would automatically translate to poor morale within the officers and thus poor service delivery and human rights violations in the long run.

The following analysis gives an indication on the extent to which the various aspects of resourcing have been met within the National Police Service, a role shared between the National Police Service Commission and the National Police Service.

¹¹³KNCHR survey reports in October 2014 in Kisumu, Kisii, Nakuru, Eldoret, Kirinyaga and Nairobi

Analysis of Progress on Police Vehicles, Motor Cycles and Housing conditions (Between 2009 and 2014)

Police Vehicles		
	2009	2014
Requirement	5136	5136
Actual	2279	4525



Findings from this research indicate that the government has made remarkable strides in equipping police with vehicles for use in preventing and responding to crime. Appraised by the required performance level of 2009, the stock of vehicles has doubled since the publication of the Philip Ransley report on police reforms¹¹⁴. However the commission points out that the real

¹¹⁴ National Task Force on Police Reforms, 2009

gains from this stock of achievement is far below the nominal value because population of the country has increased since then from 39 million to 42 million. The number of police officers has also increased from 73,956 to 87,956.

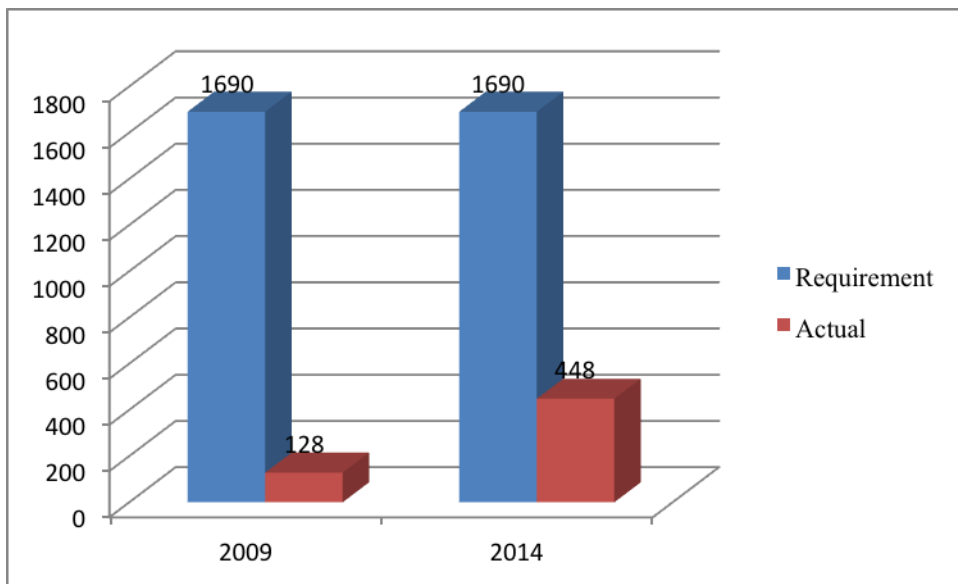
The foregoing shifts imply that the marginal benefit that obtains from access to these vehicles by police officers is also much less that it could have been by the 2009 targets. Furthermore crime has also become more sophisticated particularly with the increased threats from terrorism, thereby requiring more rapid police response. The current stock of vehicles should be 6282 (without factoring the additional complexity of terrorism and deteriorating public order since 2009) if assessed by the vehicle: police officer ratio¹¹⁵ envisioned in the 2009 benchmarks. Overall, the equipping of police officers with vehicles has improved by about 27.6%, as at the socio-economic situations of 2009. Further analysis also shows that there has been an improvement in per capita provision of vehicles (from approximately 1:17298 to 1:9281).

The commission commends the Police Service for the efforts that have been made to improve provision of vehicles. Survey data collected however indicates that though there has been an improvement on this front, there could have been a problem with distribution of these vehicles since the crime hotspot areas still experience a dearth of vehicles for effective response to crime. Most of the vehicles particularly in rural areas also remain in unserviceable conditions, couple with limited resourcing for fuel to run the vehicles as obtained from this survey.

¹¹⁵ The targets of 2009 translate to a ration of 1:14

1. Motorcycles

Motor Cycles		
	2009	2014
Requirement	1690	1690
Actual	128	448



In terms of provision of motorcycle transport, there has been a nominal increase of 26.5% as at the 2009 requirements. Going by the applicable ratio as at that time¹¹⁶, this increase is diminished to 21% in the present year. Though this is a commendable improvement, the increase still translates to an overall deficit of 79% of required level as at 2014.

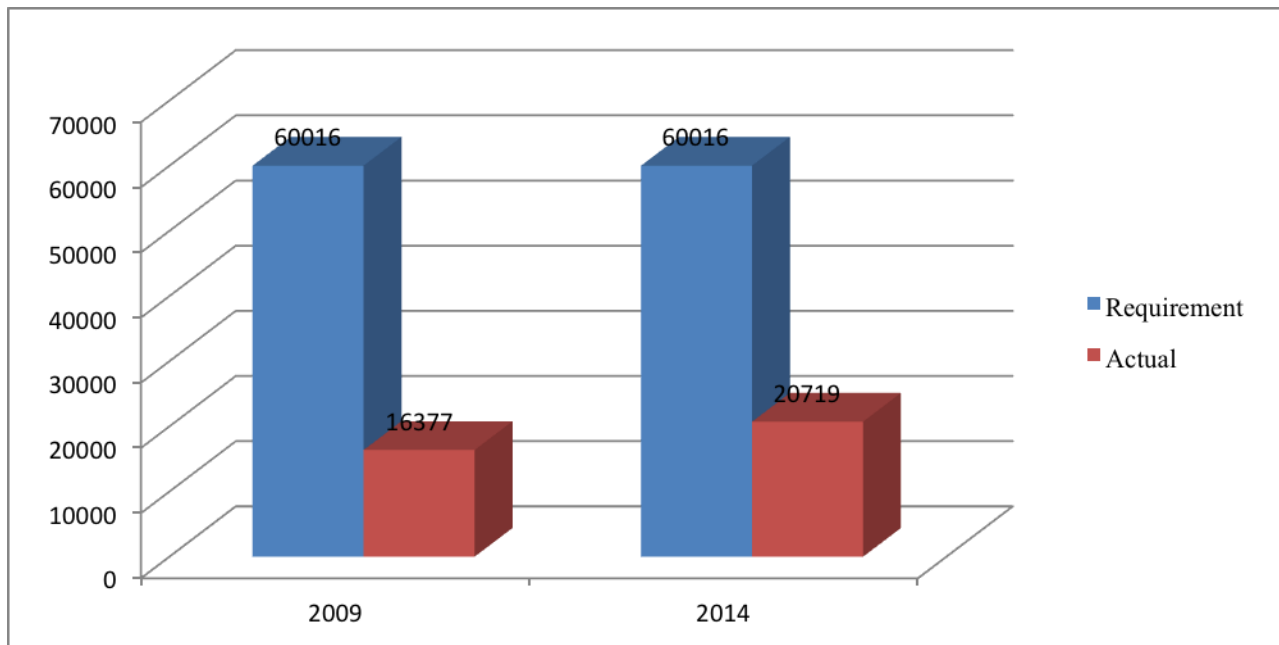
The use of motorcycles as a means of transport has become an important aspect of mobility in the country not only in public spheres, but also for police. The increase in congestion in the city, and ever increasing road traffic requires that patrols by police on motorcycles should be way above its present state. The low numbers of motorcycles implies that most suspects of crime and

¹¹⁶ 2009 statistics translate to a ration of 1:43.

insecurity will be able to get away with their offences without being apprehended. Various reports within the country and in other parts of the world indeed show that even criminals have increasingly resorted to use of motorcycles as a means of getting away from scenes of crime. This requires a similar or more superior response from law enforcement officers in the country for effective management of crime and insecurity.

2. Housing Units

Housing units		
	2009	2014
Requirement	60016	60016
Actual	16377	20719



In previous engagements with the KNCHR as well as in their engagements with the Ransley Taskforce, a cross section of police officers decried the pitiable conditions of housing that they

have been subjected to. The Phillip Ransley report indicated that as at 2009, there was a shortage of at least 72% housing units for police officers to be reasonably accommodated. Even though data from 2014 indicates that as additional 4342 housing units have since been constructed to accommodate the officers, the net benefit indicates that the situation has worsened as this translates to a deficit of 76% for all officers to be accommodated decently.

Decent standard of living is not only a requirement under the Universal Declaration of Human Rights, but also enshrined in domestic law, under the current constitution. The commission has observed in its previous engagements with law enforcement officers that the lack of decent housing and poor working conditions are some of the factors that contribute to frustration among officers, thereby making them prone to violation of human rights. The statistics presented above indicate that there are about 4 police officers per housing unit, a circumstance that greatly infringes on the right of the officers to enjoy their privacy in their conditions of living. The country has witnessed increasing cases of drug misuse, homicide and even suicide arising from degrading conditions of work and of living for police officers. The KNCHR observes that proper accommodation of police officers is a matter that the country needs to address with due urgency.

Requirements for equipment budgeted for vs equipment not budgeted for

	RECOMMENDED	
	BUDGETED FOR	NOT BUDGETED FOR
AMBULANCE	11	25
WATER BOWSER	11	24
HORSE	3	2
BREAKDOWN	2	18
FUEL TANKERS	1	3
AIR CRAFTS	13	18
BOATS	19	14
FORK LIFT	1	1
MV CIVILIAN DISTURBANCE	4	18
SURVEILLANCE	0	6
FIRE ENGINE	0	4
BICYCLES	0	100
TOTAL	65	233

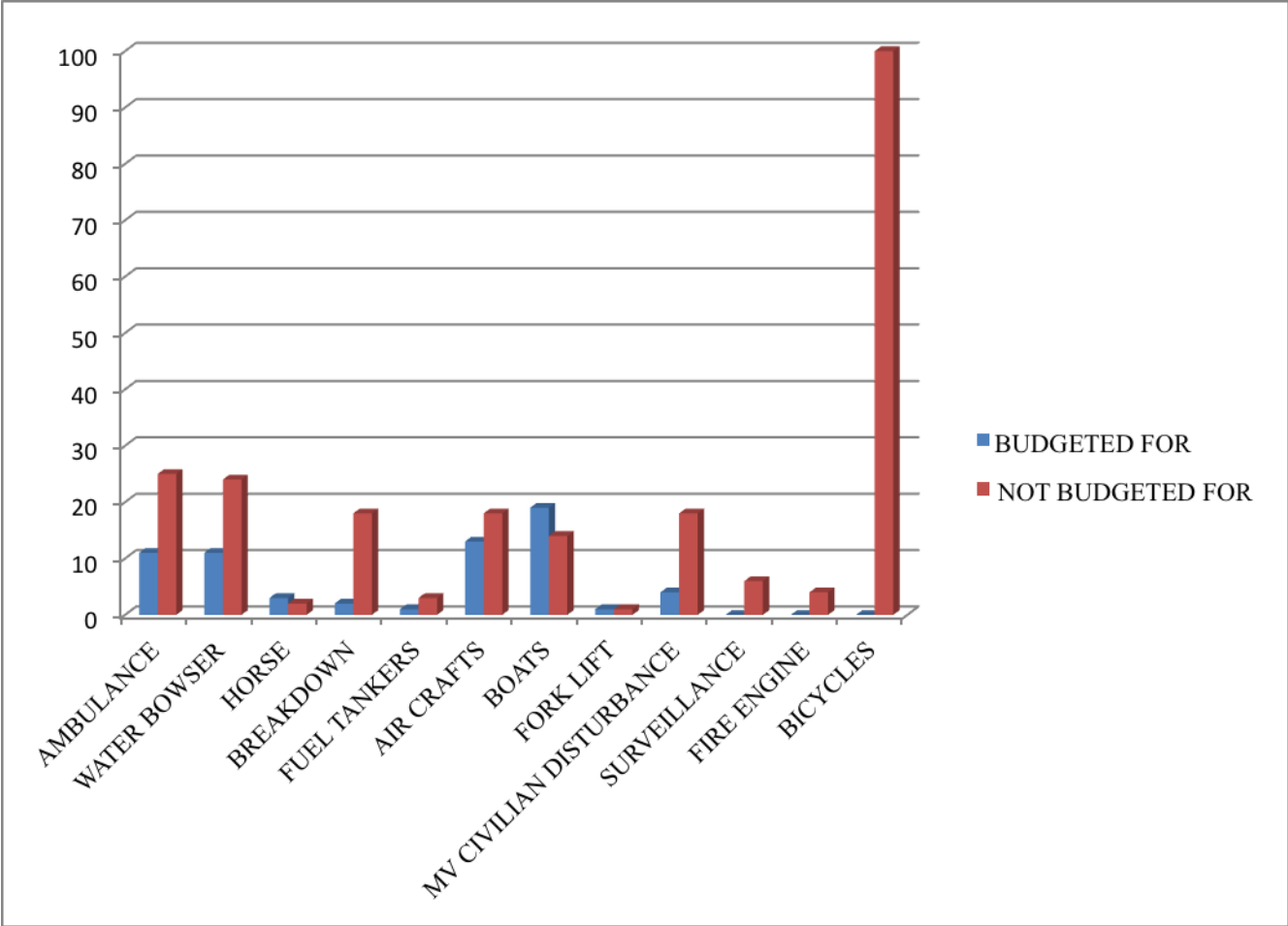
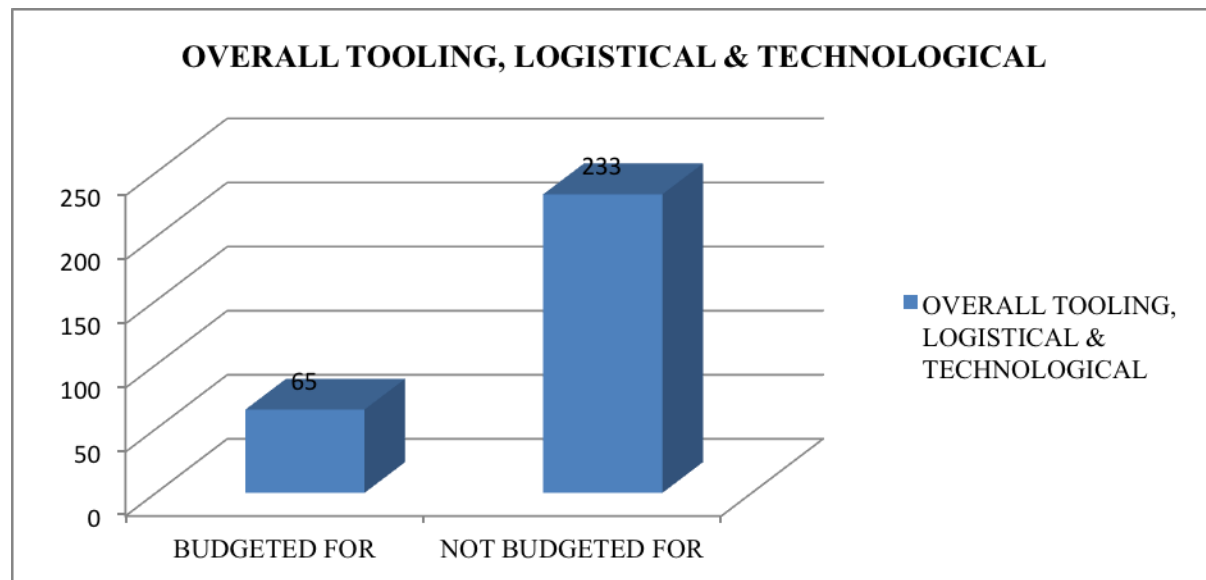


Table 6: Assessment on Resources for Overall Tooling, Logistical and Technological needs

	RECOMMENDED	
	BUDGETED FOR	NOT BUDGETED FOR
OVERALL TOOLING, LOGISTICAL & TECHNOLOGICAL	65	233



iii. The Independent Policing Oversight Authority (IPOA)

The IPOA Board was appointed in 2012 amidst serious complaints from the members of the public and human rights organizations on internal and external accountability within the National Police Service. The Authority operated for quite sometimes without the adequate staff and the requisite finances, which greatly hampered its work until early 2013 when adequate staff was recruited. While the Authority has tried to deliver on its mandate within the short period and limited resources, there still exists a huge gap that needs to be filled. Both internal and external police accountability has not improved despite the Authority’s existence. Complaints of extra –

judicial killings have continued to be reported in different parts of the country in the name of fighting criminality, human rights violations been reported during government operations among others and are all clear pointers that more needs to be carried out by the Authority to ensure that the culture of accountability is entrenched in policing that would translate to protection and promotion of human rights of Kenyans of all walks of life.

6.0 CONCLUSION

The overarching goal for creation of the IPOA, the NPS and the NPSC was to make policing work in the country professional, accountable, service – oriented and above all entrench the principle of democratic policing which is an emerging concept in policing world over. However, the extent to which this has been achieved has largely remained a mirage. The number of killings and wanton destruction of property has continued to be witnessed in different parts of the country by both criminal elements and the law enforcement agencies. Accountability has continued to sink to new lows within the Service as these reforms seems to have no significance to the citizens who indicate that it is business as usual in the manner in which security is handled at the local levels which has greatly contributed to the situation that is currently witnessed in the Country¹¹⁷. The overall aim of creating a paradigm shift from regime policing to democratic policing is to be achieved and this greatly compromises human rights situation in the Country.

The KNCHR renews its commitment to working with all these institutions and would be closely working with the office of the Cabinet Secretary and that of the Inspector General to develop guidelines on the use of lethal force and firearms that would eventually work as the tool for holding the police to account on matters of extra – judicial killings and use of lethal force.

¹¹⁷ Evidence obtained through KNCHR survey in Kisumu, Kisii, Nakuru, Eldoret, Kirinyaga and Nairobi in October 2014.

BIBLIOGRAPHY

Reports and Publications from the Kenya National Commission on Human Rights.

1. “The Cry of Blood” KNCHR Report on Extra – Judicial Killings and Enforced Disappearances, September 2008
2. “On the Brink of the Precipice: A Human Rights Account of Kenya’s Post-2007 Election Violence.
3. “29 Days of Terror in the Delta: KNCHR Account into the Atrocities at Tana Delta”. October 2012.
4. “Return of the Gulag” Report of the KNCHR Investigations on operation Usalama Watch. July 2014.

Reports and Publications from Partner Institutions and Government Printer

1. “Guns; Our Security Our Dilemma!” Independent Medical Legal Unit (IMLU-Kenya) report on enhancing accountability for police use of firearms
2. Commission of Inquiry into the Post Election Violence Report. 2008.
3. The Report of the National Task Force on Police Reforms. 2009
4. The Constitution of Kenya 2010
5. The National Police Service Act 2011.
6. The National Police Service Commission Act 2011.
7. The Independent Policing Oversight Authority Act 2011.
8. “Kenya Youth Fact Book”. Pp. 8. Institute of Economic Affairs & Friedrich-Ebert-Stiftung. Katindi Sivi Njonjo. 2010.
9. Larry Siegel, *Criminology: The Core*. Belmont: Wadsworth, 2010
10. “The danger of marginalization: An analysis of Kenyan youth and their integration into political, socio-economic life” Daniel Forti & Grace Maina 2010
11. *Restructuring the Kenyan State. SID Constitutional Working Paper No.1* Kivuva JM. 2011.
12. US Department of State’s Bureau of Diplomatic Security *Kenya 2014 Crime and Safety Report*

Journals and Periodicals

1. Mirzeler, Mustafa and Young, Crawford, 'Pastoral politics in the northeast periphery in Uganda: AK-47 as change agent', *The Journal of Modern African Studies*, 38 (3), 2000, pp 407–429
2. Mutula Stephen, Mona K Wilson, "Leadership and political corruption in Kenya: Analysis of the 2010 Constitutional provisions on the Presidency", *Volume 38, Number 3, Fall 2013, University of Kwazulu Natal.*