

COMMUNIQUE ON ENFORCED DISAPPEARANCES AND ADVANCING ACCOUNTABILITY FOR TORTURE IN KENYA

HELD ON TUESDAY 23, JUNE 2020

1. The Kenyan Section of International Commission of Jurists (ICJ Kenya) has been convening a series of webinars to discuss human rights, the administration of justice and the rule of law in Kenya within the COVID-19 pandemic and beyond.
2. ICJ Kenya held its 12th webinar in a series of justice and rule of law webinars on 23 June 2020 to discuss enforced disappearances and advancing accountability for torture in Kenya. The webinar was jointly convened with the International Justice Mission, Kenya (IJM Kenya) and the Missing Voices Coalition.
3. Over 550 participants joined the webinar while others followed the deliberations through our social media and online streaming services including YouTube, Twitter, Facebook and WhatsApp. The participants and panellists were drawn from state agencies, civil society, the private sector, international community and the government.
4. The topic of the webinar was informed by the need to interrogate the growing number of enforced disappearances and ways in which the perpetrators can be held to account. The webinar also focused on accountability for victims of torture in commemoration of the International Day in support of Victims of Torture which is held on 26 June 2020.
5. The webinar was held to commemorate four years since the disappearances of Willie Kimani, an advocate of the High Court of Kenya, his client Josephat Mwenda and taxi driver Joseph Muiruri who on 23 June 2016 disappeared on their way from Mavoko law courts. Their tortured bodies were later found dumped in a river in Ol Donyo Sabuk. Willie Kimani was posthumously named ICJ Kenya's 2016 Jurist of the Year.
6. **The panelists and participants discussed the following;**
 - a) The role of the Office of the Director of Public Prosecutions (ODDP) in assisting families of victims through pursuing accountability for enforced disappearances;
 - b) The challenges in prosecuting cases of enforced disappearances;
 - c) The challenges faced by civil society organizations in monitoring, documenting and pursuing accountability for enforced disappearances;
 - d) The impact of enforced disappearances and torture on families;

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- e) Mechanisms that other jurisdictions have utilised to address the challenges relating to enforced disappearances; and
 - f) The various interventions required to address accountability and implementation of torture laws and existing policy frameworks.
7. Based on extensive and highly interactive deliberations guided by thematic experts, the following resolutions were adopted;-

A. To Legislators;

- i) Enact a law on enforced disappearances or amend existing legislations to criminalise enforced disappearances and draw scope for recourse and reparations for victims and their families;
- ii) Comprehensively implement the National Coroners Service Act 2017 and the Prevention of Torture Act 2017;
- iii) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- iv) Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); and
- v) Capacitate and allocate sufficient budget to the Witness Protection Agency to adequately protect witnesses and families of persons who have been forcefully disappeared.

B. To the National Police Service;

- i) Offer support to investigating officers in order to conduct investigations in a manner that sufficient evidence will be obtained to prosecute perpetrators of enforced disappearances;
- ii) Inspire confidence in the public through ensuring that there is a conducive environment whereby the public can be bold in reporting enforced disappearances with no fear;
- iii) Advocate and inculcate value based policing within the police service;
- iv) Ensure that documentation in the occurrence book is clear in order to indicate all persons who are in police custody to facilitate rapid investigations of enforced disappearances;
- v) Police officers who have information on forcefully disappeared persons should collaborate and cooperate with the investigation team and the Office of the Director of Public prosecutions in order to secure a conviction against errant officers within the service;
- vi) Ensure that police officers wear uniform, have their identification badges and drive police vehicles while on duty in order to be able to be easily identifiable by the public;



- vii) Enhance surveillance by putting in place CCTVs on major roads in all towns in order to aid in the gathering of evidence in investigations of enforced disappearances; and
- viii) Adoption of body cameras for all police cameras to aid in the investigation of cases of misconduct by police officers.

C. To the Office of the Director of Public Prosecutions (ODPP);

- i) Enhance the sensitization on the decision to charge through development of guidelines;
- ii) In collaboration with government oversight bodies, the Judiciary and other civil society organisations create habeas corpus guidelines;
- iii) Build trust between the public and the ODPP to ensure that more witnesses come forward with information;
- iv) Prosecute cases of enforced disappearances on behalf of petitioners where the police adduce evidence that the detention is lawful or constitutional;
- v) Working in collaboration with the Witness Protection Agency to encourage witnesses to testify in cases of enforced disappearances;
- vi) Develop ODPP guidelines on the investigation of enforced disappearances;
- vii) Create a multi sectoral security taskforce to conduct investigations of instances of enforced disappearances;
- viii) Fast track the development of jurisprudence on superior responsibility and command of responsibility; and
- ix) Engage the NPS in cohesion building as far as conducting investigations of enforced disappearances.

D. The Kenya National Human Rights Commission;

- i) Enhance its responsiveness to complaints of enforced disappearances and torture related incidences;
- ii) Spearhead the ratification of the International Convention for the Protection of All Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); and
- iii) Actively take up and lead in its implementation role under the Prevention of Torture Act No. 12 of 2017 specifically sections 12(1), 12(2) and 12(3) and 25.

E. To the Independent Policing Oversight Authority (IPOA);

- i. Enhance vigilance in the investigation of incidences of enforced disappearances whereby police officers are the perpetrators;
- ii) Create user friendly interfaces for persons who wish to lodge a complaint against police officers; and

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- iii) Document and collate information across the country on persons who have been forcefully disappeared.

F. To the Judiciary

- i) Expedite and finalise the cases of enforced disappearances before the court;
- ii) Prioritise and expedite matters of habeas corpus before the court;
- iii) Track the emerging jurisprudence on torture related cases;
- iv) Enhance training of judicial officers on enforced disappearances; and
- v) Prioritise the need for law reform on sanctions for failure by government officials to obey court orders for production in habeas corpus cases.

G. To Civil Society Organisations;

- i) Continue to build trust with the public to enable witnesses to come forth with information on enforced disappearances;
- ii) Continue supporting the police reforms agenda with a view to build a more professional service;
- iii) Sensitize the public on the importance of a fair trial of suspected criminals in order to avoid cases whereby the public supports enforced disappearances of such persons;
- iv) Sensitize the public on the Prevention against Torture Act 2017 and the National Coroners Service Act;
- v) Advocate for the criminalization of enforced disappearances and extra judicial killings;
- vi) Continue to lobby actors in the criminal justice system to sanction enforced disappearances; and
- vii) Continue to monitor and document enforced disappearances to pursue accountability for enforced disappearances.

Signed

Kelvin Mogeni
Chairman
ICJ Kenya

Signed

Benson Shamalla
Country Director,
IJM Kenya