**Refugee Review Tribunal**
**AUSTRALIA**

# RRT RESEARCH RESPONSE

**Research Response Number:** KEN31420
**Country:** Kenya
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Keywords: Kenya – State protection – Police killers – Muslim converts to Christianity – Asylum seekers – False identities

This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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**Questions**

1. **What is the general level of state protection in Kenya?**
2. **Are the authorities still pursuing suspects from the 1997 Mombasa riots?**
3. **Would a person accused of killing a police officer be afforded state protection sufficient to ensure that they can defend themselves against the charges?**
4. **If a person's family threatens to kill them, for converting to Christianity, will they have access to protection from the state?**
5. **Are failed asylum seekers returning to Kenya targeted or harmed by the authorities?**
6. **Are there penalties in Kenya for using false names/identities?**

## RESPONSE

### 1. What is the general level of state protection in Kenya?

Sources report that despite reforms the Kenyan police force is plagued by serious problems including corruption, unlawful killings, torture, arbitrary arrest, impunity and understaffing. Sources report that despite reforms the Kenyan judiciary is corrupt, subject to executive interference, under resourced and under staffed.

Information provided in response to this question has been organised under the following headings:

- Police
  - Government Reports
  - NGO Reports
  - News Articles
- Judiciary
  - Government Reports
  - NGO Reports
  - News Articles

## POLICE

### Government Reports – Police

The US Department of State reports that "serious problems remained, particularly with regard to abuses by the police service" in Kenya in 2005. The following human rights problems related to the Kenyan police force were reported in 2005: unlawful killings by police, police beatings and torture of detainees, impunity, harsh and life-threatening prison conditions, arbitrary arrest and detentions and use of excessive force (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – Kenya*, 8 March, Introduction – Attachment 1).

### NGO Reports – Police

In 2006 the Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK) published a report entitled *Shielding Impunity*. The report provides information on police misconduct, police accountability, impunity, police brutality and torture in Kenya. The report is included as Attachment 2:

> The report dubbed 'Shielding Impunity' reviews how the culture of impunity and lawlessness have threatened the ability of the police to maintain law and order, and have perpetuated brutality and corruption.
>
> …Corruption and police brutality is increasingly becoming a common phenomenon that threatens development and social justice. Lack of administrative and judicial measures to deal with police misconduct have entrenched the culture of impunity among police officers that escape punishment in the face of their victims (Oscar Foundation Free Legal Aid Clinic Kenya 2006, *Shielding Impunity – A Human Rights Accountability Report*, Police Accountability South Africa website, Word from the Director http://www.policeaccountability.co.za/File_uploads/Docs/Shieldingimpunity.pdf – Accessed 22 February 2007 – Attachment 2).

According to OFFLACK, "police brutality is 'systematic and endemic' in Kenya". According to OFFLACK, "In practice, most police officers accused of brutality escape both administrative and judicial punishment." OFFLACK provides the following information on police conduct, police accountability and impunity in Kenya:

> The cycle of police brutality continues to be perpetuated with impunity and remains the most serious and divisive human rights violations in Kenya. Excessive use of force by the law enforcement officers, including torture, extra-judicial executions, arbitrary arrests and intimidation, is rife in virtually all police stations in Kenya. The inability of the police force to make it possible for rogue police officers implicated in human rights violations in order to face the due process and be held accountable has been compromised by a rein of lawlessness and endemic corruption. This trend is rapidly precipitating a state of moral negligence and ineptness in the entire police force. …In Kenya, a rogue police officer implicated in an offence that constitute a violation, is shielded from prosecution and is allowed transfer to another station where he goes to commit the same offences. Lack of administrative and legal measures to punish those implicated in human rights abuses virtually guarantees them impunity.
>
> …This gives stark evidence that police brutality is 'systematic and endemic' in Kenya; that measures to deter impunity have failed to yield any meaningful solutions; and that, in each

> case reported to us, survivors of police abuses face enormous obstacles in seeking legal redress to present any criminal prosecution against rogue officers implicated in human rights violations
>
> …Police complaints department situated at the police headquarters, which investigates and recommends for administrative or criminal prosecution against any rogue police officer implicated in abuses, operates with excessive secrecy. Often, the public is not put abreast to what the complaints department undertakes, in fact, public opinion on the police has eroded. It's impossible to access information on the activities of the complaints department at vigilant house; in some cases, police investigators at the complaints department refused to provide information on specific cases of public interest. …While the police attribute their secrecy to part of investigations, information on specific cases of public knowledge.
>
> Police prosecutors have been accused of ineptness and lack of transparency and accountability while dealing with cases involving officers accused of committing human rights violations when they appear in court facing charges resulting from torture, manslaughter, assault, torture, rape or sexual assault.
>
> …However, there is no comprehensive information on the number of indictments against police officers accused of human rights abuses, but the police confirm that those officers accused of misconduct are punished according to the Police Act and are suspended on disciplinary grounds while others are transferred as a deterrent to repeating the same offence, often officers have been transferred to escape administrate or criminal prosecution before investigations even when investigations are incomplete.
>
> …The police oversight unit conducts investigations; monitors police misconduct and evaluate how police officers relate with members of the public, and ensure the promotion and protection of human rights. The oversight unit also receives and examines complaints of human rights abuses filed by citizens against police officers. This trend has proved ineffective and lacks fairness and accounts for the increase in cases of abuse.
>
> …It was revealed that the police oversight unit lacks the capacity to investigate and act on complaints reported by citizens against police officers accused of abuse. In a survey conducted by the OFFLACK, it was suggestive that the investigation procedures used by the police are in conflict with the functions of the Criminal Investigation Department (C.I.D). Both procedures were marred with corruption and lack of clarity on monitoring and evaluation. Often, their investigations produce scant information that fail to support any possible administrative or judicial punishment. The internal oversights units at the police headquarter are unfairly under staffed, demoralized and subjective to those who file complaints to them. Due to the above factors, the police oversights and Criminal Investigation departments only manages a staggering 25% of complaints filed against police officers. In 2004, the police oversight only managed to investigate 8% of the complaints that it has received against police officers accused of torture, bribery and extra-judicial execution (Oscar Foundation Free Legal Aid Clinic Kenya 2006, *Shielding Impunity – A Human Rights Accountability Report*, Police Accountability South Africa website, pp.5-6, 11-12 & 17-19 http://www.policeaccountability.co.za/File_uploads/Docs/Shieldingimpunity.pdf – Accessed 22 February 2007 – Attachment 2).

In November/December 2005 Transparency International Kenya surveyed a random sample of 2,405 respondents in all eight provinces on the incidence, prevalence, severity, frequency, cost and size of bribes in Kenya. Transparency International Kenya found that law enforcement accounted for 46.1% of all bribes reported with an average bribe size of Ksh1,431 and 0.54 bribes per person per year. Transparency International Kenya ranked 33 organisations and sectors in Kenya including the police force:

> The Police force retained the worst ranking with an aggregate score of 60.3, a significant improvement from 72.4 in 2004. The Police ranked worst on four of the six indicators, one less than in 2004. However, the Police registered an improvement in four of the six indicators, the exceptions being the average number of bribes paid, which doubled from 2.5 to 5 bribes per person, and the population affected which increased from 26 percent to 32 percent of the respondents. The monetary indicators registered the most significant improvement, which, as observed earlier, is attributed to the PSV [matatu] reforms in 2004 (Transparency International Kenya 2006, *The Kenya Bribery Index 2006*, p.9 http://www.tikenya.org/documents/Kenya%20Bribery%20Index%202006.pdf – Accessed 22 February 2007 – Attachment 3).

A summary of the results of the Transparency International Kenya survey as they relate to the Kenyan police force are as follows:

- **Likelihood of Encountering Bribery:** The police ranked second with 82.2% of their clients encountering bribery (p.12);
- **Impact:** The police ranked first with 31.98% of respondents affected by bribery (p.13);
- **Severity:** The police ranked first with 38.82% of their clients denied service for declining to bribe (p.14);
- **Frequency:** The police ranked first collecting on average 5.10 bribes per client (p.15);
- **Size of Bribes:** The police ranked eighteenth with an average bribe size of Ksh1,465 (p.16);
- **Cost:** The police ranked first extracting bribes of Ksh740.4 per person (p.17) (Transparency International Kenya 2006, *The Kenya Bribery Index 2006* http://www.tikenya.org/documents/Kenya%20Bribery%20Index%202006.pdf – Accessed 22 February 2007 – Attachment 3).

In June 2005, the World Organisation Against Torture (OMCT) published *State Violence in Kenya*. The report provides information on extra-judicial killings, torture, arrest, bail and pre-trial custody in Kenya. The report is included as Attachment 4 (World Organisation Against Torture 2005, *State Violence in Kenya*, June – Attachment 4).

According to the OMCT, "police in Kenya are described in media reports and elsewhere as trigger happy". The OMCT provides the following information on extra-judicial killings in Kenya:

> The Police Act provides that the police may use firearms if in the mind of the officer it is the only way to either make the arrest or prevent escape. The law states that the police officer should give a warning that they are about to use the firearm. However it is silent on whether the police should shoot to immobilize or kill.
>
> …The police in Kenya are described in media reports and elsewhere as trigger happy, they shoot to kill even when suspects surrender and submit to arrest. This is often done on the excuse that they are wanted criminals or where suspects are escaping.
>
> …To further illustrate that the government condones the shoot-to-kill policy of wanted suspects, the police bosses are captured in electronic and media describing how they shot the suspects. Sometimes the clip is shot right next to the bleeding body of the suspect. Not once has the government castigated the police officers for not only shooting the suspects they should apprehend but for going ahead to bask in their glory of such killings. It is not uncommon for such officers to actually be promoted.

…Police officers involved in extra-judicial executions continue to act with impunity since little remedial or punitive action is taken in such cases.

…The issue of extra-judicial killings evoke controversy in various sectors of the Kenyan society. The police and some members of parliament see it as the ultimate solution to the problem of increased insecurity and the influx of sophisticated arms in the criminal world. But to human rights defender, killing of suspect, some of whom are unarmed, contradicts the rules of justice (World Organisation Against Torture 2005, *State Violence in Kenya*, June, pp. 28-29, 31 & 36 – Attachment 4).

The OMCT provides the following information on torture in Kenya:

The crime of torture is not specifically provided for in Kenyan penal laws and therefore it is not recognized as a crime per se. Persons who are subjected to torture have to bring their complaints under recognized crime, which mainly fall under the domain of crimes relating to assault, battery, abuse of office, murder or manslaughter which are expressly provided under Chapter XXIV of the Penal Code.

…**Assault and battery**

…The very classification of the offences as misdemeanours as opposed to felonies shows they are treated as minor offences thus light sentences.

Another point to note is that when proving any of these offences one must obtain a P3 form i.e. a medical document that is required in order to establish the extent of the injuries. Without this form the court cannot convict the suspects. These P3 forms are only obtained from Police stations. They are required to be filled and returned to the same Police stations. These medical forms are rarely granted when a complaint is lodged against Police officers and when granted occasionally go missing when the file is presented in court.

…**Manslaughter and murder**

…It is however important to note that before these charges can be leveled against the Police officers concerned, consent is required to be obtained from the attorney general. Where the torture victims died under the custody of the Police, the courts first have to conduct inquests to their deaths. This involves investigations by the court as to the cause of the death in custody. Police are the ones who carry out the investigations into the inquests, which creates a problem. This is because the police are left with enough leeway, to change evidence and allege that other prison mates murdered the deceased or died of natural causes or committed suicide.

…**Investigation and apprehension**

Under the Police Act there are mechanisms of disciplining errant officers. This mainly is through a self-regulatory system, where senior officers have the power and mandate to order the investigations of officers of lower ranks.

…The problem, which creeps in with the system of self-regulation, is the notion of ‘code of silence’. The disciplinary system involves calling of witnesses, hearing evidence and in most cases other police officers are the only witnesses to the crimes of torture and are usually reluctant to testify against their fellow officers.

Another problem that sets in is that the police are usually the custodians of all the evidence therefore they are most likely to tamper, destroy or conceal incriminating evidence.

…**Agents' liability**

Section 62 of the Police Act provides for the liability of police officers in relation to prosecution under any other laws for the acts or omissions constituting an offence.

…This section 62 however has a provision, that no police officer shall be punished twice for the same offence. Therefore those officers who are considered to have committed human rights abuses are protected by their superiors under the guise that administrative disciplinary measures have been leveled against them.

…**Emerging trends leading to torture**

One emerging trend, since the coming into force of the Criminal Law (Amendment) Act that removed from the purview of police powers the duty of taking confessions from suspects in criminal cases, is that of torturing suspects to produce exhibits and name accomplices.

Another emerging trend is found in the connection between torture and corruption, especially on the part of the police. Suspects who refuse to bribe the police are subjected to torture. The bribery is sometimes to obtain liberty or to be charged with a lesser offence. In the case of robbery one may bribe to be charged with robbery as opposed to robbery with violence. As the police can arrest on mere suspicion, people have to choose between bribing the officers to have their freedom back and being taken to court and staying in remand for very long. The police force has sort of formed extortion cartels to get money form the citizenry (World Organisation Against Torture 2005, *State Violence in Kenya*, June, pp.36-41 – Attachment 4).

## News Articles – Police

An article dated 17 October 2006 in *The Nation* reports that Justice Minister Karua has announced the formation of an oversight board composed of civilians to check police excesses. A special unit will also be set up to listen and rectify grievances from the public. The article notes that details on the functions of these bodies "are rather scanty at the moment". No further information on the bodies were found amongst the sources consulted ('Policing the Police May Help' 2006, *The Nation*, 17 October, allAfrica.com website http://allafrica.com/ – Accessed 23 February 2007 – Attachment 5).

An article in *The Nation* reports that in June 2004 the population of Kenya was 32,165,328 and there were 39,657 police officers. The recommended international ratio of police officers is 1:450 while in Kenya it is 1:821, "far below" the international ratio (Mburu, Stephen 2007, 'Report Cites Shortage of Officers', *The Nation*, 18 February, allAfrica.com website http://allafrica.com/ – Accessed 23 February 2007 – Attachment 6).

# JUDICIARY

## Government Reports – Judiciary

According to the US Department of State, the following human rights problems related to the Kenyan judiciary were reported in 2005: prolonged pretrial detention and executive interference in the judiciary (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – Kenya*, 8 March, Introduction – Attachment 1).

**NGO Reports – Judiciary**

Transparency International Kenya ranked the Kenyan judiciary "as the sixth worst offender, two positions better than in 2004" but "worse off in all six indicators." A summary of the results of the Transparency International Kenya survey as they relate to the Kenyan judiciary are as follows:

- **Likelihood of Encountering Bribery:** The judiciary ranked fifth with 71.95% of their clients encountering bribery (p.12);
- **Impact:** The judiciary ranked sixteenth with 2.45% of respondents affected by bribery (p.13);
- **Severity:** The judiciary ranked fourth with 31.71% of their clients denied service for declining to bribe (p.14);
- **Frequency:** The judiciary ranked eleventh collecting on average 1.17 bribes per client (p.15);
- **Size of Bribes:** The judiciary ranked fourth with an average bribe size of Ksh5053 (p.16);
- **Cost:** The judiciary ranked eleventh extracting bribes of Ksh51.5 per person (p.17) (Transparency International Kenya 2006, *The Kenya Bribery Index 2006* http://www.tikenya.org/documents/Kenya%20Bribery%20Index%202006.pdf – Accessed 22 February 2007 – Attachment 3).

In December 2004, the International Commission of Jurists (ICJ) conducted a fact-finding mission to examine the state of judicial independence and accountability in Kenya following political changes in 2002. The report is included as Attachment 7. In 2002, the new government of President Mwai Kibaki set up the Integrity and Anti-Corruption Committee on the Judiciary in Kenya to implement its policy of "radical surgery." The policy of "radical surgery" was principally focused on the removal of corrupt judges and magistrates and the appointment of new persons to replace them:

> Following the release of the Committee's report in 2003 (the Ringera Report), five out of nine Court of Appeal justices, 18 out of 36 High Court justices and 82 out of 254 magistrates were implicated as corrupt. Prior to informing the accused of the allegations against them, the government ordered the publication of their names, which then appeared in the national press. The government refused to release the report. The impugned justices and magistrates were issued a two-week ultimatum either to resign or be dismissed. While many have resigned or "retired", some have mounted legal challenges against their dismissals. Since the tribunals started to hear these cases, only one case has been resolved, with the acquittal and reinstatement of Justice Waki in late 2004.
>
> In a series of appointments made in 2003/2004, the President used his authority to appoint 28 acting High Court justices to replace the 18 who were dismissed. The appointment process raised concerns as to whether the newly appointed justices were selected in response to political, tribal and/or sectarian interests. Many have also voiced concerns that the lack of transparency in the appointment process undermines public confidence in the quality of those named to the bench (International Commission of Jurists 2005, *Kenya: Judicial Independence, Corruption and Reform*, April, p.3 http://www.icj.org/IMG/pdf/kenyareport.pdf – Accessed 23 February 2007 – Attachment 7).

The ICJ reports that despite the "radical surgery" the "judiciary in Kenya is reportedly still largely believed to be corrupt." The ICJ notes that "there is no appropriate legal mechanism or procedure that enables the public to lodge complaints in cases of alleged misconduct of

judges and magistrates." The ICJ provides the following information on the impact of the "radical surgery" on the judiciary:

> Successive investigations have revealed that corruption is widespread in Kenya's judicial and legal system. For many years now, the judiciary in Kenya has been perceived as one of the most corrupt institutions in Kenya. Although it has slightly improved its standing since 2002, the judiciary in Kenya is reportedly still largely believed to be corrupt.
>
> …The violation of security of tenure and due process rights of judges and magistrates has engendered a low sense of morale among members of the judiciary and the legal profession. During the mission, some of the judges conveyed to the ICJ a distinct and continuing sense of insecurity about their tenure, which was affecting the way they carried out their judicial functions. They described their anxiety over the developments, as well as their regret that the way their colleagues on the bench had been treated was intended to maximize shame and humiliation of the judiciary. The possibility that they could be next in line to be publicly castigated and removed from office without due process has lowered the general *esprit de corp*s of the judiciary as a whole.
>
> Moreover, the "radical surgery" on the judiciary does not appear to have reversed the prevailing loss of confidence in the judiciary by the public. Initially, the new government had received overwhelming and widespread support in its anti-corruption efforts. However, a recent survey on the impact of the government's programme of judicial reform and the way it was conducted, revealed that 59% of the respondents believed that the efforts made would only transform the judiciary to a small extent. 9% believed that it would not make any difference, adding that the programme was *"a political move"* aimed to advance the government's popularity and to ensure *"that friendlier judges to the current administration were appointed."* In one of the ICJ mission's meetings, one interlocutor summed up the situation as follows: *"Kenya has gone through radical transformation but has remained the same"* (International Commission of Jurists 2005, *Kenya: Judicial Independence, Corruption and Reform*, April, pp.17 & 20 http://www.icj.org/IMG/pdf/kenyareport.pdf – Accessed 23 February 2007 – Attachment 7).

According to the ICJ insufficient attention has been paid to the state of the magistracy which handles 90% of Kenya's caseload:

> The mission found an urgent need to reform the magistracy, to ensure security of tenure on an equal basis to judges and to substantially improve its competencies and working conditions. Processes of appointment and promotion and discipline must be clearly set out and ensure guarantees of fair process (International Commission of Jurists 2005, *Kenya: Judicial Independence, Corruption and Reform*, April, p.5 http://www.icj.org/IMG/pdf/kenyareport.pdf – Accessed 23 February 2007 – Attachment 7).

The ICJ "was consistently confronted with a dominant perception that the judiciary is too closely related to, or identified, with the executive branch." The report continues:

> The belief persists that the judiciary operates *de facto* as a part of executive branch, reflected in the dominance of the Ministry of Justice and the Presidency. This prevalent perception derives from the long history of executive control of the judiciary since 1963. This is supported by previous survey findings that the executive branch continues to pose a danger to the independence of the judiciary and that political interference is the chief obstacle to judicial reform. This perception has been buttressed by the respective roles played by President Kibaki in the "radical surgery" of the judiciary.

> …The funding of the judiciary, as a separate and distinct branch of the state, is an essential component of judicial independence. …The ICJ mission was informed that efforts are under-way to de-link the budget of the judiciary from the Treasury, which currently controls both the allocation and management of funds.
>
> …The current 1% budget allocation to the Kenya Judiciary is inadequate and should therefore be appropriately and substantially increased. The funding should meet fully the requirements of adequate salaries and benefits of judges, magistrates and judiciary support staff, and provide the necessary resources for capital development, stationery and equipment (International Commission of Jurists 2005, *Kenya: Judicial Independence, Corruption and Reform*, April, pp.39-40 http://www.icj.org/IMG/pdf/kenyareport.pdf – Accessed 23 February 2007 – Attachment 7).

The ICJ found that the Kenyan judiciary is perceived to be inaccessible. The report continues:

> The ICJ mission found that there is a prevailing perception that courts in Kenya are not easily "accessible" to the public, to the extent that up to 80% of respondents in a survey stated that Courts were "inaccessible". In addition to being seen as corrupt, the court system is perceived to be discriminatory against the poor and marginalized sectors of Kenyan society. The current image of the Kenyan judiciary is that of reclusion and isolation (International Commission of Jurists 2005, *Kenya: Judicial Independence, Corruption and Reform*, April, p.43 http://www.icj.org/IMG/pdf/kenyareport.pdf – Accessed 23 February 2007 – Attachment 7).

**News Articles – Judiciary**

An article dated 16 February 2007 in *The East African Standard* reports that it "is quite cumbersome" to access justice in Kenya "due to inordinate delays that are mostly caused by rigid court procedures and to a greater extent inadequate judicial officers and corruption." In January 2005, 1,074,602 cases were pending in Kenyan courts. In 2005, the courts determined 541,167 cases leaving a backlog of 535,840. Another article dated 16 February 2007 in *The East African Standard* reports that Nairobi lawyer Judy Thongori "has attributed the backlog of cases to a shortage of judges." Thongori claims that "some judges have more than 36 cases listed for a day and cannot handle even half of them" (Kwamboka, Evelyn 2007, 'Shortage of Judges Blamed for Backlog of Cases', *The East African Standard*, 16 February, allAfrica.com website http://allafrica.com/ – Accessed 23 February 2007 – Attachment 8; and Nechesa, Maina 2007, 'We Must Ease the Backlog in Court', *The East African Standard*, 16 February, allAfrica.com website http://allafrica.com/ – Accessed 23 February 2007 – Attachment 9).

An article dated 28 December 2006 in *The Nation* reports on the failure of the "radical surgery" policy as well as other reforms to the judiciary:

> Yet as four years of President Kibaki's term came to a close and with just one year to go on his mandate, the present Justice and Constitutional Affairs minister Martha Karua is expressing frustration that the reconstituted judiciary is slowing down the war against corruption.
>
> That is the clearest signal from official sources that the radical surgery did not work.
>
> ...Corruption aside, general efforts to reform the Judiciary have had little effect. Cases continue to drag for years unheard, legal fees remain too high and rules and procedures remain too complex for the ordinary court users.

The 2003 radical surgery and the Ringera report involved not just the higher courts, but also a large number of magistrates and other officers ranging from court clerks to registrars and other support staff. Suspension of the large number of officers almost brought court business to a complete halt, adding on to the already clogged up system.

Yet in mysterious circumstances, many of those named were let off the hook without explanation. Some were even promoted, being brought in from lowly magistrates positions in rural areas to occupy senior positions at the High Court in Nairobi. The so-called purge on corruption in the Judiciary was thus brought to ridicule.

…But many promises made by the Narc Government on the judicial reforms have not been achieved. The promises to install systems to speed up proceedings is yet to be implemented, four years down the line and is not likely to happen in 2007.

A promise to establish more courts, especially in remote areas and the pledge to streamline alternative dispute resolution mechanisms and to put in place more elaborate legal aid schemes have not been honoured.

Lawyers and other players have been calling for legal reforms to allow for appointment of more judges and magistrates.

…Other constrains such as finances has hindered achievement of the pledges. In March last year magistrates across the country went on strike demanding a salary increment. Their demands were partly met and the Government announced a 200 per cent increment.

The best opportunity for the Kibaki administration to effect wider judicial reforms was lost when the proposed constitution was rejected in last year's referendum (Thuku, Wahome 2006, 'Surgery in Judiciary That Never Was', *The Nation*, 28 December, allAfrica.com website http://allafrica.com/ – Accessed 23 February 2007 – Attachment 10).

**2. Are the authorities still pursuing suspects from the 1997 Mombasa riots?**

No information to suggest that the authorities are still pursuing suspects from the 1997 Mombasa riots was found amongst the sources consulted.

**3. Would a person accused of killing a police officer be afforded state protection sufficient to ensure that they can defend themselves against the charges?**

Information on the availability of state protection for someone accused of killing a police officer is scarce amongst the sources consulted. A number of news articles provide information on the murder of police officers and subsequent action by police.

An article dated 8 November 2004 in *The Nation* reports that at least 50 police officers have been killed in Kenya since January 2003. The article notes that no one has been convicted of the murders and in "the few cases where suspects have been taken to court, none has been convicted" (Muiruri, Stephen 2004, 'How 50 Crimebusters Died in the Line of Duty', *The Nation*, 8 November, allAfrica.com website http://allafrica.com/ – Accessed 26 February 2007 – Attachment 11).

An article dated 28 January 2005 in *The Nation* reports that Daniel Cheruiyot, a former policeman who murdered three policemen, was shot by a police marksman in Nairobi. His accomplice was also tracked down and killed during a "fire fight" in Nairobi:

> When Cheruiyot defied orders to surrender and leave his house, CID chief Kamau loosened his tie and whipped out his pistol to back up the police squad.
>
> Nairobi provincial police chief King'ori Mwangi and his CID counterpart Sammy Githui also pulled their guns from their holsters and with the Flying Squad officers, sealed the entrance of the house.
>
> The officers lobbed several tear gas canisters into the house through a broken window but Cheruiyot still refused to leave, even when police opened fire with AK-47 rifles and machine guns.
>
> Cheruiyot returned fire from an open window, forcing the police to dive for cover.
>
> …Cheered by a large crowd, Mr Kamau's team hurriedly regrouped but ran into more trouble when they choked on fumes from their own tear gas. A neighbour provided a basin full of water so they could wipe their eyes.
>
> After two-hour, Cheruiyot was himself choked by the gas and came out onto his verandah brandishing a machine gun – and was immediately shot in the head by a police marksman (Muiruri, Stephen 2005, 'Police Killer Shot Dead in Five-Hour Gun Battle', *The Nation*, 28 February, allAfrica.com website http://allafrica.com/ – Accessed 26 February 2007 – Attachment 12).

An article dated 26 January 2006 in *The Nation* reports "CID have been blamed for carrying out shoddy investigations into the killing of a senior policeman in Mombasa." Keriako Tobiko, Director of Public Prosecutions, said the evidence presented by police was not enough to charge any of the six suspects in custody. The suspects are still being held by police and have been for almost a month, more than the 14 days allowed by law. The police initially held 10 suspects including four brothers of Juja MP William Kabogo (Muiruri, Stephen 2006, 'Tobiko Rejects CID Probe File', *The Nation*, 26 January, allAfrica.com website http://allafrica.com/ – Accessed 26 February 2007 – Attachment 13).

An article dated 7 January 2007 in *The East African Standard* reports that two men believed to be members of a gang that killed three police officers were killed by a police marksman after they attempted to escape their home in Elburgon, Nakuru. 50 police officers raided the house at dawn after a tip-off (Ombati, Cyrus et al 2007, 'Police Killers' Gunned Down', *The East African Standard*, 7 January, allAfrica.com website http://allafrica.com/ – Accessed 26 February 2007 – Attachment 14).

An article dated 19 January 2007 in *The East African Standard* reports that nearly 15 police officers were killed in 2006. The article notes that some of the killers "remain at large and authorities say the hunt for them is still on." Major Hussein Ali, Kenyan Commissioner of Police, "said the authorities do not take lightly any killing of police officers in line of duty" (Ombati, Cyrus 2007, 'Law Enforcers No Longer Safe', *The East African Standard*, 19 January, allAfrica.com website http://allafrica.com/ – Accessed 26 February 2007 – Attachment 15).

**4. If a person's family threatens to kill them, for converting to Christianity, will they have access to protection from the state?**

Question 8 of *Research Response KEN31091* dated 11 December 2006 provides information on the availability of state protection for Christians in Kenya (RRT Country Research 2006, *Research Response KEN31091*, 11 December – Attachment 16).

**5. Are failed asylum seekers returning to Kenya targeted or harmed by the authorities?**

*Research Response KEN31293* dated 24 January 2007 provides information on the treatment of failed asylum seekers returning to Kenya. In addition, on 31 July 2006 UNHCR advised the Immigration and Refugee Board of Canada that "UNHCR is not aware of any problems with the readmission of failed overseas refugee claimants who return to Kenya" (Immigration and Refugee Board of Canada 2006, *KEN101594.E – Kenya: Treatment of failed asylum seekers who return to Kenya*, 6 September http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm – Accessed 15 January 2007 – Attachment 18; and RRT Country Research 2007, *Research Response KEN31293*, 24 January – Attachment 19).

*Research Response KEN30721* dated 29 September 2006 provides information on the treatment of persons who depart Kenya illegally (RRT Country Research 2006, *Research Response KEN30721*, 29 September– Attachment 20).

**6. Are there penalties in Kenya for using false names/identities?**

The following information on penalties for using false names or identities relates to passports and identity cards.

According to Section 13(d) of the *Immigration Act*, a person who knowingly uses or has in their possession a forged passport "shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or both" ('Section 13 Offences', *Immigration Act*, Laws of Kenya website http://www.lawsofkenya.com/ – Accessed 23 February 2007 – Attachment 21).

According to Section 14(1)(h) of the *Registration of Persons Act*, it is an offence to knowingly possess an identity card "containing any false entry, alteration or erasure". According to Section 14(j)(iii) *Registration of Persons Act*, it is an offence to possess a document that so closely resembles an identity card "as to be calculated to deceive". The penalty is "a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding eighteen months or to both" ('Section 14 Offences and penalties', *Registration of Persons Act*, Laws of Kenya website http://www.lawsofkenya.com/ – Accessed 23 February 2007 – Attachment 22).

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