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The Kianjokoma Brothers – A clarion call to never forget

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Our teacher, Elisha Z Ongoya is fond of reminding us, again and again, the saying attributed to Thomas Jefferson: ‘Eternal vigilance is the price of liberty’. The case of our friend and his brother is tragically emblematic of this.

On 2 August 2021, media houses reported the alleged murder of two brothers, Benson Njiru Ndwiga and Emmanuel Mutura Ndwiga, in unclear circumstances involving the police enforcing Covid-19 night time curfew regulations on the night of 1 August 2021.¹ Benson Njiru, 22, was an Engineering student of Embu University while Emmanuel Mutura, 19, was a first year LLB student in Kabarak University Law School. Their sudden demise sent widespread chill and vexation around the student community in Kenya and among citizens at large. In fact, riots erupted the days following the murders, which in turn led to the shooting death of at least one protester. One year later, the circumstances under which the family and community of Mr and Ms Ndwiga was rid of their sons remain unclear.

In an excruciatingly sorrowful burial ceremony on 13 August 2021, members of the Kianjokoma locality, including politicians, both young and old, called to the government for justice: condemning the impunity

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¹ George Munene, ‘Slain Embu brothers buried in emotional ceremony’, *Nation*, 15 August 2021.

boldly and continually exercised by the police.² This was no ordinary or general call: they chanted the names and titles of the police officers allegedly involved. The people were clear, they did not want the officers transferred or suspended: they wanted them prosecuted and sentenced to prison.³ While the tenacity of the assurances issued by the politicians in attendance in response to the public cries is not worth discussing here, the government action that followed is instrumental to mention.

For Mr and Mrs Ndwiga, together with the residents of Kianjokoma, the Constitution was supposed to protect them. They believed in the right to life, the right to human dignity and the right against torture and inhuman treatment. They were confident there was a remedy in Kenyan law against the alleged crimes of public officers. They were convinced the legal system in Kenya would uphold and effect the rights of their lost sons.

On the 2 September 2021, the accused police officers were finally charged before the High Court on two counts of murder. According to the prosecution, the six police officers jointly murdered the brothers at Kianjokoma Trading Centre on the night of 1 August 2021 as the students were heading home.⁴ The Court began hearing on 9 February 2022 and is in the process of taking the prosecution's evidence from various witnesses.⁵

The residents of Kianjokoma are not an isolated class of victims. Even before the pandemic, the Independent Policing Oversight Authority (IPOA) reported a rise in cases of abuse and killings by the police.⁶

² Muriithi Mugo, 'Leaders call out police as Embu brothers buried', *The Standard*, 13 August 2021.

³ Eric Biegon, 'Calls for justice dominate burial of slain Embu brothers', *KBC*, 13 August 2021.

⁴ Paul Ogemba, 'Kianjokoma murder cops finally charges after day of drama', *The Standard*, 2 September 2022.

⁵ CORRESPONDENT, '2 witnesses testify as Kianjokoma brothers death trial commences', *Capital News*, 9 February 2022; Margaret Kalekye, 'Hearing of Kianjokoma brothers murders case resumes at High Court', *KBC*, 16 May 2022.

⁶ VOA, 'Abuse by Kenya police officers on the rise: IPOA report', *Citizen Digital*, 24 January 2022.

Covid-19 only presented more opportunity for police to increase in impunity through the pandemic regulations.⁷ The trend remains to be a shuddery cycle of death through police brutality; demonstrations and outcries; transferrals, suspensions and possible prosecutions, with few convictions. By the end of 2021, the Independent Policing Oversight Authority could only report 17 convictions on police officer cases involving various offences, 10 of which are murder. This is despite the Authority's report that of at least 169 incidents of deaths involving police in 2021 alone.⁸ Missing Voices, a coalition of civil society groups, on the other hand records 187 police killings in 2021.⁹

Though much can be said about the inhuman enforcement of Covid-19 regulations in protecting public in third world states, the challenge in this particular context runs deeper. The monster of police brutality continues to systematically consume many in the country, before, during and after Covid-19 restrictions. Multiple questions abound in this regard. Do we have sufficient safeguards against these brazen violations of human rights? Is the criminal justice system sufficient to provide victims effective remedies against rogue police officers? Is the missing link in the law, in implementation, or in both? What steps could be taken to better protect human rights against law-and-order enforcers? What does the future look like for the students and citizens of Kenya who must learn to co-exist with the police? What role can individuals play in ensuring justice for the victims of police killings and security for the rest of the nation?

To a large extent, the reaction of the government's protective mechanisms seems to be influenced by the intensity of public outcries. Four days after the Kianjokoma brothers were laid to rest, the Office of Director of Public Prosecutions arraigned six police officers linked to the killings were before Magistrate Daniel Ndugi. The court denied their

⁷ Amanda Sperber, "'They have killed us more than corona': Kenyans protest against police brutality', *The Guardian*, 9 June 2020.

⁸ Gordon Osen, 'Cops killed 169, disappeared 28 in 2021, says IPOA', *The Star*, 11 July 2022.

⁹ Missing Voices, 'Delayed Justice', 2021 Annual Report, 16.

application for bail, ordering, instead, that they remain in custody to allow investigations without any interference.¹⁰ These preliminary expeditious steps in securing justice for the Kianjokoma brothers, and security for all other Kenyans is a result of the public participation in demanding state accountability for the killings. From their demise to their burial and weeks after, Kenyans, human rights organisations, and a few politicians took to social media (under the hashtag #JusticeForKianjokomaBrothers on Twitter and Facebook) and other platforms to compel action by oversight authorities.

On Friday 22 July 2022, after 6 years of the public waiting in protests, demonstrations and outcries for justice, the court finally convicted three police officers for the murder of human rights lawyer Willie Kimani his client Joseph Mwenda and taxi driver Joseph Muiruri.¹¹ For the hundreds of people that took to the streets and digital platforms to condemn the killing of the three individuals, this judgement brings relief, albeit temporary, in light of other pending cases. Speaking on the case, Elsy Sainna, executive director at the International Commission of Jurists, Kenya stated, 'We must sustain the advocacy efforts both with the judiciary and even with the police that nobody can get away without being accountable for their actions, particularly if they are police officers'.¹²

On the matter of our fallen brothers from Kianjokoma, the words of the late Willie Kimani's father suffice: 'we have wounds in our hearts. As long as this case is in court, the wounds won't heal.'

¹⁰ Susan Kendi, 'Police officers involved in the death of Kianjokoma brothers to remain in custody', International Commission of Jurists Kenyan Section, 17 August 2021.

¹¹ AFP, 'Kenya court finds three police guilty of killing rights lawyer', *The Citizen*, 22 July 2022.

¹² Sarah Johnson, 'Kenyan police officers found guilty of murder of three including human rights lawyer', *The Guardian*, 22 July 2022.