**Submission to the**

**UN Working Group on Enforced or Involuntary Disappearances.**

**Responses to the UNWEID’s call for input concerning calls for a thematic study by the Working Group on Enforced or Involuntary Disappearances on “Election and Enforced Disappearances”.**

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**Kenya: the elections and enforced disappearances.**

These submissions aim to provide an overview of the enforced disappearance and election in Kenya. In 1992, Kenya held its first multiparty elections resulting in President Moi being re-elected, but it was also the start of violence that has accompanied the election cycle in Kenya ever since.

The 1997 election campaign between President Arap Moi and Mwai Kibaki resulted in Moi being re-elected. However, the country again experiences post-election violence. To investigate the violence and the ethnic tensions, the government set up the Akiwumi Commission. The duties of the Akiwumi Commission centered upon the investigation of the so-called "tribal clashes" (inter-ethnic violence) that occurred in Kenya between 1991 and 1998, in particular the causes of the violence, the actions of police and other law enforcement agencies in addressing these incidents, and the level of preparedness and efficacy of law enforcement agencies to prevent and control such violence.[[1]](#footnote-1) The Commission recommended investigation and prosecutions ,however, has failed to carry out its obligations to investigate and to recommend further investigation or prosecution the perpetrators of the election related violence.

In 2007, the sitting President Mwai Kibaki was running for a re-election against the popular opposition leader Raila Odinga. While many expected Odinga to win, Mwai Kibaki was declared a winner and country engulfed into an ethnic violence that resulted in serious violations of human rights, including rape, sexual and gender-based violence, torture, forceful displacements as well enforced disappearances and extra- judicial killings.

Shortly after the violence ended with the international community involvement, the Office of the High Commission for Human Rights (OHCHR) carried out a fact-finding mission to Kenya noted that “following a 2007 police crackdown, the Kenya National Human Rights Commission (KNHRC) reported that about five hundred Kikuyu youths were allegedly subjected to extra-judicial killings and disappearances upon suspicion of Mungiki membership.”[[2]](#footnote-2)

Following the post-election violence that shook the country and international community, Kenyan government has adopted a new Constitution to strengthen the protection of human rights as well as creation of the Independent Police Oversight Authority (IPOA) to provide a civilian control of the work of the police with a mandate to investigate complaints related to disciplinary or criminal offences committed by the member of the police force.[[3]](#footnote-3)

Further, the Truth, Justice and Reconciliation Commission was set up to investigate and address violence in Kenya since the country’s independence. The Commission when addressing extra judicial killings and enforced disappearances, noted the pattern of both the state and non-state actors, such Mungiki group,[[4]](#footnote-4) engaging in enforce disappearances. “In most cases, such as during tribal clashes and military operations, security forces—Police force, Administration Police and the Military were either complicit to the acts, or perpetrators of these acts. The State has also engaged in efforts to conceal EJKs and EDs. These efforts include deliberate failure to investigate and sham investigations, and frustrating genuine investigations. The TJRC reports that there were many cases of EJKs and EDs which, the State completely ignored, and did not undertake any effort to investigate.”[[5]](#footnote-5)

However, despite the creation of IPOA, the recommendations by the Truth Commission, the police brutality has continued, including carrying out the crime of enforced disappearances. Since the crime of enforced disappearance is quite unknown, it is hard to know the exact magnitude of enforced disappearance as reporting is very limited. Victims and their families are afraid to approach the authorities for fear of being disappeared and the authorities fail to carry out effective investigations anyway. Despite this, the Kenya National Human Rights Commission in its report on 2017 election highlighted various human rights violations, including documented incidences of civil unrest, protests, arbitrary arrests, excessive use of force by police and killings attributed to both civilians and the police in Kenya.[[6]](#footnote-6)

Dr. Ruto in his 2022 presidential campaign ran on the promise to end enforced disappearances and extra judicial killings in the country. During his campaign he said that “ many children, fathers and daughters have been lost to extrajudicial killings adding that his government will ensure there is no enforced disappearance and extra judicial killings. [[7]](#footnote-7). However, International Medical Legal Unit Report on Ruto’s 1st year in the office noted that “Despite promises to end extrajudicial executions, enforced disappearances, and enhance police oversight through institutions like the Independent Policing Oversight Authority (IPOA), data reveals a disheartening trend.”[[8]](#footnote-8)

Even before Mr. Ruto became the president, several instances of enforced disappearances related to the election have been recorded. Mr. Musyoka, who served as an election officer at the Embakasi East Polling station, was disappeared and his body was found outside Nairobi with signs of being tortured.[[9]](#footnote-9) The Missing Voices, a coalition of CSOs in Kenya in its annual 2022 report noted 11 enforced disappearances in the period of June to September leading up to elections.[[10]](#footnote-10)

In July 2022, two Indian nationals and their local driver were disappeared by the police. The families claim they were in Kenya on tourism. However, the local media reported that the two Indians were in Kenya to help the election campaign of William Ruto, a charismatic 55-year-old politician who was sworn in as the country's fifth president in September, following a narrow win.[[11]](#footnote-11) Unlike in previous cases, the forced disappearance of the two Indians was investigated and the four officers of Special Service Unit were charged with abduction, murder, abuse and conspiracy.[[12]](#footnote-12) The case is still ongoing.[[13]](#footnote-13)

Shortly after becoming the President, Dr. Ruto has taken few steps to address ED in Kenya. Firstly, he dismantled the Special Service Unit[[14]](#footnote-14) that was accused of committing enforced disappearances in Kenya, including the bodies that showed up in the River Yala. Second, President Ruto also tasked the IPOA to investigate and provide a roadmap to ending extrajudicial killings and enforced disappearances in Kenya.[[15]](#footnote-15) On 21 December 2022, President also gazetted a 23-member task force tasked with identifying and recommending legal, administrative, and institutional reforms in the National Police Service and the Kenya Prisons Service led by the former Chief Justice David Maraga. [[16]](#footnote-16) The mandate of the Task force was to explore the improvement of terms and conditions of service and other reforms for member of the National Police Service and Kenya Prison Service. However, the report released a year later failed to address human rights violations and the pervasive impunity despite the fact that part of the impetus for the taskforce was the public admission that there existed units within the police that engaged in Extra Judicial Executions (EJEs) and Enforced Disappearances (EDs) by none other than the President of Kenya.[[17]](#footnote-17) Kenyan CSOs noted, “There was no analysis of the impact of rogue policing on the lives of Kenyans, especially those from poor urban areas or far-flung areas who bear the brunt of unlawful policing. The report does not mention the assault, unlawful use of force, torture, extra-judicial killings and enforced disappearances that bedevil the National Police Service (NPS).”[[18]](#footnote-18)

Despite these efforts, the impunity for the police officers remains widespread. Kenya has signed the International Convention on the Protection of all persons from Enforced Disappearances but despite repeated pressure from CSOs, the government has yet to ratify the Convention. However, as a signatory the Kenyan government has a responsibility not to undermine the purpose and the object of the treaty. The lack of prosecution and accountability is due to several reasons. Kenya does not have a criminal law that identifies enforced disappearances as a crime. While the criminal law provides for the charges of kidnapping and abduction, the gravity of enforced disappearance is not captured by these charges. The Kenyan government lacks the technical expertise to properly investigate and prosecute enforced disappearances and provide reparation for the victims. Finally, enforced disappearance is an unknown phenomenon among the population making it harder to report due to the fear for their own safety being disappeared or having rights violated and the distrust towards the Kenyan police.

1. HRW. Case Study: Armed Political Violence on the Coast. https://www.hrw.org/reports/2002/kenya/Kenya0502-06.htm [↑](#footnote-ref-1)
2. Report from OHCHR Fact-finding Mission to Kenya, 6-28 February 2008**,** https://www.ohchr.org/sites/default/files/Documents/Press/OHCHRKenyareport.pdf [↑](#footnote-ref-2)
3. https://www.ipoa.go.ke [↑](#footnote-ref-3)
4. Mungiki group is a group made up of members of Kikuyu tribe were central in engaging the violence during 2007 elections. [↑](#footnote-ref-4)
5. Kenya Transitional Justice Network. Summary of Truth, Justice and Reconciliation Commission. https://www.knchr.org/Portals/0/Transitional%20Justice/kenya-tjrc-summary-report-aug-2013.pdf?ver=2018-06-08-100202-027 [↑](#footnote-ref-5)
6. Kenya National Human Rights Commission , Mirage at Dusk: A human rights account of 2017 general election. [↑](#footnote-ref-6)
7. # Presidential candidates promise to end discrimination, extrajudicial killings in North Kenya

   *The state has been criticised over unlawful arrests and disappearances. https://www.the-star.co.ke/counties/north-eastern/2022-08-04-presidential-candidates-promise-to-end-discrimination-extrajudicial-killings-in-north-kenya/* [↑](#footnote-ref-7)
8. Faltering Promises: President Ruto’s First Year marred by Human Rights Failures. https://imlu.org/2023/09/faltering-promises-president-rutos-first-year-marred-by-human-rights-failures/ [↑](#footnote-ref-8)
9. Kenyan Election: Missing IECB officer found dead. https://www.monitor.co.ug/uganda/news/kenya-election-missing-iebc-official-found-dead-3915926 [↑](#footnote-ref-9)
10. The Missing Voices: Accountability Now: 2022 Annual Report: https://ke.boell.org/sites/default/files/2023-09/missing-voices-2022-annual-report-digital-page.pdf [↑](#footnote-ref-10)
11. Why two Indians disappeared on a July night in Kenya. https://www.bbc.co.uk/news/world-asia-india-63397760 [↑](#footnote-ref-11)
12. Kenyan officers charged with murder, abuse and conspiracy. https://www.voanews.com/a/kenyan-officers-in-disbanded-unit-tried-for-murder-abuse-conspiracy/6803141.html [↑](#footnote-ref-12)
13. Press Statement: The update on the case of enforced disappearance of one Kenyan national and two Indian nationals. https://www.odpp.go.ke/wp-content/uploads/2023/10/PRESS-STATEMENT-ON-ENFORCED-DISAPPERANCE-OF-A-KENYAN-NATIONAL-AND-TWO-INDIAN-NATIONALS.pdf [↑](#footnote-ref-13)
14. Special Service Unit was a unit with the Directorate of Criminal Investigations (DCI) which was alleged to have been behind several cases of extrajudicial killings and enforced disappearances of both citizens and foreign nationals. [↑](#footnote-ref-14)
15. Ruto directs IAPO to provide a roadmap to end extra judicial killings. https://www.capitalfm.co.ke/news/2022/10/ruto-directs-ipoa-to-provide-roadmap-to-end-extrajudicial-killings/ [↑](#footnote-ref-15)
16. The Missing Voices: Accountability Now: 2022 Annual Report: https://ke.boell.org/sites/default/files/2023-09/missing-voices-2022-annual-report-digital-page.pdf [↑](#footnote-ref-16)
17. CSOs dissect and react Maraga lead Taskforce Report. https://icj-kenya.org/news/civil-society-organizations-dissect-and-react-to-maraga-led-taskforce-report/ [↑](#footnote-ref-17)
18. CSOs dissect and react Maraga lead Taskforce Report. https://icj-kenya.org/news/civil-society-organizations-dissect-and-react-to-maraga-led-taskforce-report/ [↑](#footnote-ref-18)