

EXECUTIVE SUMMARY:

1. Western Kenya Human Rights Watch (**WKHRW**) was founded in 1999 as a lobby group championing for the rights of the people. It is a non-profit & non-partisan NGO, registered in November 2000 under the NGOs Coordination Act, laws of Kenya (Certificate **No.OP.218/051/0081/1597**). The organizations areas of focus include; Research, Advocacy, peace building, justice, Litigation, Social Audit, monitoring and documentation of human rights violations & fighting impunity.

2. This submission is based on the Human Rights Violations documentation project funded by Track Impunity Always (**TRAIL**) – a Geneva based NGO, and Peruvian Forensic Anthropology Team (**EPAF**) - An NGO of Forensic Experts based in Lima –PERU on the Human Right's Violations committed between 2006-2008 in the Mt. Elgon District of Western Kenya.

3. During these years, a militia Group called the Sabao Land Defense Force (SLDF) caused instability in the Mt. Elgon District of Western Kenya. They opposed the Government's policy of random balloting of land allocation at the Chepyuk phase iii settlement scheme and corruption in the whole exercise. The Militia killed and maimed civilians with the government dragging its feet for immediate intervention. It took the Government of Kenya almost one and a half years to effectively intervene. Before the intervention of the government, the militia group had already killed more than 600 people, abducted 94, and maimed 85 people (cutting of Ears, lips etc.) in the region. Those that were abducted by the militia group have not being found to date and their whereabouts remains a mystery. The militia killed and buried some people in mass graves in the Mt.Elgon forest. The families of the victims have not accessed justice and are still yearning to have their loved ones decently buried. The suspects who were arrested and taken to court were all acquitted due to poor investigation by the police and lack of proper mechanism in witness protection. Key militia suspects and the financiers are still at large to date, as only one was killed by the military.

4. On **9/03/2008**, the Government of Kenya intervened by deploying the Military in a Joint operation famously known as ***Okoa Maisha*** a Swahili word meaning Save Lives. This was a joint operation of the military and the police but the police only assisted to take the suspects to courts as the military completely took charge of the arrests and interrogations in their six military camps established in the region in the month of March, 2008. Even the few who were arrested by the police ended up in the military camps. This operation was accompanied by a humanitarian crisis. The military rounded up villages and arrested all males and took

them in the detention camps .They tortured them to reveal the operations of the militia. In total, 4,132 people were arrested by the military. The official military records have 3839 people this is because those that were arrested and tortured to death before reaching the military camps were not recorded in the military records or they did it deliberately. The military, just like **Sabaot** Land Defense Force (SLDF) tortured and killed more people and buried them in mass graves in the forest. When the military operation officially ended on **31/7/2008**, 121 people who were arrested from their homes in broad day light have disappeared to date. This was a double strategy for the people in the area. Those that had been tortured by the militia were further tortured by the military. They further killed more people and tortured thousands. At the end of the military operation people who were arrested by the military had disappeared and have never been accounted for to date. This is on top of those abducted by the militia before the military intervention, and their bodies have not been found to date.

5. Despite Kenya being a Signatory to major International human rights instruments and a current member of the United Nations Human Rights Council, serious human rights violations like disappearances have not been adequately enforced in the laws.

6. Western Kenya Human Rights Watch (WKHRW) in Collaboration with Track Impunity Always (TRIAL) have so far sub-mitted 80 cases of Enforced disappearances to the UN-Working Group on Enforced or Involuntary Disappearances(WGEID) and will complete the remaining cases by the end of this year 2014.

7. With this submission, Western Kenya Human Rights Watch seeks to make a constructive contribution of fighting impunity to the preparation process of the UPR of the republic of Kenya in June 2015. The Government of Kenya has concealed this truth and victims and families may not get justice if UN- Human Rights Instruments cannot put pressure on the Government.

METHODOLOGY;

8. In the year 2006/08 during the conflict, the organization trained **36** human rights monitors in the region on how to monitor human rights violations in an armed conflict. The monitors were from the conflict areas. Through this program WKHRW obtained a detailed raw data on the number of people killed or disappeared. In 2009 with the assistance of the USA embassy Nairobi, the organization trained another group of **76** women paralegals to indentify the families of the people who were killed or abducted or disappeared by the police, Militia or the military.

9. In 2010/2011, Track Impunity Always (TRIAL) and Peruvian Forensic Anthropology Team (EPAF) trained 26 WKHRW monitors on the use of smart phones, GPS, and how; to conduct an ante mortem interview, to fill Antemortem questionnaire form for Antemortem data collection and forensic analysis of the human rights violations meted on the people of Mt. Elgon Region during the 200/08 clashes and the military operation. The tasks included mapping out the mass graves in the Mt. Elgon Forest and interviewing the families of the disappeared persons with scientific documentation.

10. The project activities spanned from April 2011 to July 2012. Monitors & Supervisors conducted a face to face interview of 1,676 families of the people or victims who were brutally tortured, Raped, Mutilated, killed, abducted or disappeared. The exercise was supported by a seven page questionnaire from the United Nations Working Group on enforced or involuntary disappearances & a one page Power of Antonney drafted by TRIAL and Western Kenya Human Rights Watch, a seven page Antemortem questionnaire by EPAF. The exercise took place in the entire Mt. Elgon District, Parts of Bungoma & Trans Zioa Districts and in courts, Mortuaries where those arrested were taken for prosecution. A total of 1,348 questionnaires were filled. Interviewees were mainly close next of kin or victims who were asked to share their own experiences in regard to the operations of the; Sabaot Land Defense Force, police and the military in the region and the impact of the operations to their lives and the region. The questionnaires captured among others; people who were killed or abducted or disappeared from their areas and by whom? Monitors were spread in all the locations of the region with the highest concentration being the locations bordering Mt. Elgon forest in Cheptais and Kopsiro Divisions.

RESULTS OF THE DOCUMENTATION

11. Documentation activities investigated the entire human rights violations with emphasis on the disappeared persons by both the Sabaot land Defense Force, Police & Military. The outcome of the report revealed that a total 986 people were killed and **228** disappeared during the period starting from **8-6-06 to 31-7-2008**. For the disappeared persons; the military operation that started on **9/3/2008** and ended on **31-07-2008** was responsible for **121** people, Sabaot Land Defense Force, **94** and the Police **13**. The disappearances by the police happened before the intervention of the military. More cases are still being compiled.

CHALLENGES & CONSTRAINS:

12. Missing persons were the main source of economic support and legal owners of family property. The long absence of favorable legal frame work has put the wives and children of the disappeared persons in an awkward situation. Lack of information from the government on the whereabouts of their loved ones/ bread winners. The family's economic hardships include; cannot access their benefits or utilize their properties; bank accounts, succession etc. Due to the legal process of having death certificates to enable the process of

succession. The difficulties of proving that the disappeared person is dead as families need bodies as proof that he/she is dead are among the main challenges the families are facing.

13. The UN – Working Group on Enforced or Involuntary disappearances(WGEID) deals with disappearances by state agencies and not the militia, hence families of those people who were abducted by the Saboot Land defense Force Militia and have not being found to date are unlikely to get justice.

14. Reports of investigations by other organizations; Medecins Sans Frontiers', Human Rights Watch, Independent Medico Legal Unit and United Nations Human Rights Council Special Rapporteurs Professor Philip Alston have never been acted upon by the Government to date. As no investigations by the Government have been initiated.

15. During the concluding observations adopted by the human rights committee at its 105th session, 9-27 July 2012, recommendation NO. 13 that human rights violations be thoroughly investigated and perpetrator's brought to justice; to date the Government of Kenya has not conducted any investigations into these deaths nor brought to justice the perpetrators, responsible for the deaths and the disappearance of 228 people in the Mt. Elgon region.

16. Parliament has an essential role to see to it that the rights of the missing persons and their families are recognized. But because members of parliament from the affected region were deeply involved in the violations, and were adversely mentioned in the Truth, JUSTICE & Reconciliation Commission, and are in Government, they cannot initiate any legislation for a judicial commission of inquiry to official investigate the crimes committed and Enforced disappearances in the Mt. Elgon conflict. One of the adversely mentioned MP was the Chairman of the Parliament Security Committee in the last Parliament.

OBSERVATIONS AND RECCOMENDATIONS:

After analyzing the individual experiences through interviews and the Antemortem data collected on the serious human rights violations (disappearances) committed against the people in this party of the world, WKHRW came up with the following observations & recommendations;

17. Combating impunity requires the Government of Kenya to have the will of establishing an Independent investigative Authority preferable like the **Waki commission** that investigated the 2007/08 post-election violence, to effectively investigate and establish the exact number of people who were killed, buried in mass graves, disappeared and perpetrators of these serious human rights violations in the Mt. Elgon operation. This duty has an absolute character to a state that respects the human rights of every individual and cooperation at the international level, and commitment to eradicate impunity.

18. Considering that lack of accountability encourages repetition of crimes, as perpetrators feel free to commit further offences without fear of punishment, the Government of Kenya

should adopt international criminal law provisions to effectively punish perpetrators of serious human rights violations through adequate penalties. And provide a mechanism involving criminal & disciplinary measures to sanction behavior and practice within the security agencies which lead to impunity.

19. Considering that impunity must be fought as a matter of justice for the families of the disappeared persons as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system in Kenya, and the negative impact of disappearances-stress related problems to families, and the difficulties of proving that someone who disappeared is dead, and the strong cultural believe of a body as proof that the person is dead, the Government of Kenya should provide adequate information to the families of the disappeared persons, their whereabouts and to intensify its efforts to investigate and punish the police and military officers who were in-charge of the Okoa Maisha(save lives) operation, and compensate the suffering families of the disappeared, and provide death certificates that will assist the families pursue legal matters concerning succession as it is about seven years since they disappeared.

CONCLUSION

20. With wide experiences of oppression and impunity in the justice systems in Kenya in regard to the perpetrators of serious human rights violations in Mt. Elgon, the families of the disappeared persons strongly feel that nobody cares. They have been treated unequally and with disrespect by their Government. They are facing prejudice and negative reception from the entire main stream society and are excluded in a multiply of services; they cannot access their husbands banks accounts, their children cannot access bursary funds due to lack of death certificates of their disappeared parents, their children have dropped out of school and many of their husbands properties cannot be accessed due to lack of legal documents.

21. The Government of Kenya program of the (*shamba system*) in 2010-2013 of giving people land for farming activities on the edge of Mt. Elgon forest was mend to distract/ destroy the physically visibility of the many mass graves that the military personnel buried in the victims and conceal the evidence for forensics analysis of the bodies in mass graves.

22. Further detailed information about the disappearances in the Mt. Elgon region of Kenya can be found in the following reports among others :
1. All men have gone & Hold your hearts- waiting for justice by Human Rights Watch
2.(Report of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston on his mission to Kenya(16-25 February 2009)
3.(Double strategy by independent Medico legal Unit)
4.(Alternative Report send to CAT By TRIAL & WKHRW in April 2013(attached),
5. ``The Mountain of terror by Kenya National C ommission on Human Rights, UN- working Group on Enforced or involuntary disappearance report – A/HRC/22/45, UN-Letters:G/SO 217/1/Kenya Dated, 21 May,2013,& 30 May,2012.

ENDS. 2,267 words.