

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

September 15, 2008

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

### AFRICA DIVISION

Georgette Gagnon, Acting Executive Director  
Carolyn Norris, Acting Deputy Director  
Jon Elliott, Advocacy Director  
Rikky Minyuku, South Africa Director (on leave)  
Chris Albin-Lackey, Senior Researcher  
Selena Brewer, Researcher  
David Buchbinder, Researcher  
Maria Burnett, Researcher  
Lucy Cohen, Associate  
Alison L. Des Forges, Senior Advisor  
Corinne Dufka, Senior Researcher  
Neela Ghoshal, Researcher  
Eric Guttschuss, Researcher  
Ross Halbert, Associate  
Charlene Harry, Johannesburg Manager  
Leslie Haskell, Researcher  
Sarah Jackson, Associate  
Tiseke Kasambala, Senior Researcher  
Katherine Lay, Researcher  
Leslie Lefkow, Senior Researcher  
McKenzie Price, Associate  
Ben Rawlence, Researcher  
Lisa Rimli, Researcher  
Jemera Rone, East Africa Advisor  
Kathryn Russo, Stimson Fellow  
Ida Sawyer, Researcher  
Dustin Sharp, Researcher  
Anneke Van Woudenberg, Senior Researcher

### ADVISORY COMMITTEE

Jane Olsen, Chair  
Penelope Andrews  
Carole Artigiani  
Daniel Bach  
Oscar Blayton  
William Carmichael  
Roberta Cohen  
Cheryl "Imani" Countess  
Alison L. DesForges  
Aaron Etra  
Jonathan Fanton  
Gail M. Gerhart  
Nadine Hack  
Alice H. Henkin  
Robert Joffe  
Kim Samuel-Johnson  
Wendy Keys  
Vincent A. Mai  
John A. Marcum  
Dan Martin  
Linda Mason  
Samuel K. Murumba  
Muna Ndulo  
James C. N Paul  
Lorraine Sheinberg  
Peter Rosenblum  
Gustaf Silfverstolpe  
Malcolm Smart  
Darian W. Swig  
Claude E. Welch, Jr.  
Adrien Wing

### Human Rights Watch

Kenneth Roth, Executive Director  
Michele Alexander, Development & Outreach Director  
Carroll Bogert, Associate Director  
Emma Daly, Communications Director  
Barbara Guglielmo, Finance & Administration Director  
Peggy Hicks, Global Advocacy Director  
Iain Levine, Program Director  
Andrew Mawson, Deputy Program Director  
Suzanne Nossel, Chief Operating Officer  
Dinah PoKempner, General Counsel  
James Ross, Legal & Policy Director  
Joe Saunders, Deputy Program Director  
Jane Olson, Chair, Board of Directors

## Submission to 41<sup>st</sup> Session of the United Nations Committee Against Torture on Kenya

Human Rights Watch would like to bring to the attention of the Committee our concerns over serious and widespread allegations of torture by state security forces in western Kenya's Mt. Elgon district. Human Rights Watch conducted a fact-finding mission to the area in March, April and July 2008 which concluded that security forces committed serious human rights violations, including the torture of hundreds of individuals.

The violations have occurred in the context of a security operation by the Kenyan government against an armed opposition movement known as the Sabaot Land Defence Force (SLDF). Both armed groups and state security forces have been responsible for serious abuses of civilians in the Mt. Elgon region in the last two years, since mid-2006. At the same time the state has failed to protect the rights of citizens through an inability or unwillingness to hold both state and non-state violators to account.

For a detailed examination of human rights violations committed by the rebel group, the Sabaot Land Defence Force, and Kenyan security forces please see the enclosed report, *All The Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict*. Human Rights Watch's report is one of several investigations documenting abuses during the conflict in Mt. Elgon. The Committee should be aware of others that document similar patterns of abuse and torture including:

- Independent Medico-Legal Unit, *Double Tragedy: Report on Medico-Legal Documentation of Torture and Related Violations in Mount Elgon "Operation Okoa Maisha,"* August 2008, available at [www.imlu.org](http://www.imlu.org)
- Médecins Sans Frontières, *Mt. Elgon: Does Anybody Care?* June 2008, available at: [www.msf.org.uk/mount\\_elgon\\_report\\_20080616.news](http://www.msf.org.uk/mount_elgon_report_20080616.news)

- Kenya National Commission on Human Rights, *Mountain of Terror*, May 2008, available at: [www.knchr.org/dmdocuments/Mt%20Elgon%20.PDF](http://www.knchr.org/dmdocuments/Mt%20Elgon%20.PDF)

## BACKGROUND

The conflict in Mt. Elgon stems from a complex mix of land disputes, political manipulation and corruption, with roots that originate in the colonial era. Seizure of land by the British colonial government coupled with the Kenyan government's repeated failures to fairly re-settle people led to long-running land grievances. Local politicians manipulated these grievances and funded armed groups to chase away those unlikely to vote for them in repeated electoral cycles. The state condoned such activities in 1991 and 1992 but during the elections of 1997 and 2002 the same armed gangs were this time hired independently by local politicians on all sides.

In 2006 an armed group emerged calling itself the Sabaot Land Defence Force (SLDF). Ostensibly aimed at reclaiming ancestral land the group quickly began targeting political supporters of John Serut, the incumbent Member of Parliament, and engaging in organized crime and extortion. The SLDF infiltrated the local administration and the police and established a reign of terror over Mt. Elgon district.

In early 2007, a Kenyan non-governmental organization, Western Kenya Human Rights Watch (WKHRW, not affiliated to US-based Human Rights Watch in any way), documented widespread torture, rape, theft, extortion and extra-judicial killing by the SLDF, at that time concluding that at least 50 people had been killed by the militia. WKHRW called for state intervention to protect the rights of the civilians of Mt. Elgon.

The police and the paramilitary police, the General Service Unit (GSU), launched low-level security operations in late 2006 and throughout 2007. But these operations drew criticism from other human rights groups due to allegations that police and GSU members raped women and girls and wantonly destroyed property. Human Rights Watch heard similar complaints from residents interviewed in 2008.

Eventually, after controversial December 2007 elections, the government of Kenya launched a much larger joint police and military operation aimed at defeating the SLDF. The operation was extremely heavy handed and characterized by mass detentions of thousands of men and boys aged from ten and above and the systematic torture and mistreatment of detained civilians in order that they identify militia members within their communities. At least 600 people are known to have been detained and tortured and human rights groups estimate that over 100 people have died from the torture and mistreatment in military and police custody. Given the scale of the abuses and the fact that they occurred in different locations, perpetrated by different units

of the police and military it would appear that torture was a deliberate strategy in the operation.

## **NO JUSTICE FOR VICTIMS OF SLDF ABUSES**

The SLDF militia committed widespread abuses of civilians including extra-judicial killings, mutilation and rape of civilians. Local NGOs such as WKHRW and Mwatikho Torture Survivors Organization have documented up to 600 people reporting abduction and torture at the hands of militia members. In addition up to 650 children of school-going age, between six and eighteen, were reportedly recruited into the militia. According to reports by the International Committee of the Red Cross (ICRC), Médecins sans Frontières (MSF), the IDP Network of Kenya and government agencies, between 20,000 and 100,000 people were displaced as a result of SLDF activities. The police and army have also acknowledged widespread human rights violations by the SLDF throughout 2006, 2007 and 2008.

Human Rights Watch spoke to dozens of victims of SLDF abuses during our research in March, April and July 2008. Victims' experiences seemed to follow a pattern: they were abducted from their homes, their homes and livestock were looted and then they were marched into the forest and beaten, strung up on trees, forced to beat or violate others and then mutilated by having their ears cut; some were then forced to eat their own ears. Victims were warned not to report the crimes to the police or they would face serious consequences and many complied with the threat. In any case, the local administration and police were severely compromised by the SLDF; even known ringleaders were able to evade justice because of the flaws in Kenya's justice system. Despite this, at least 10 witnesses told Human Rights Watch that they reported abduction and torture to the district authorities and the police and nothing was done. An SLDF leader, Fred Kapondi, currently the Member of Parliament for Mt. Elgon constituency, was arrested and tried for robbery with violence during 2007 but he was acquitted because witnesses were intimidated and failed to show up in courts.

## **TORTURE BY KENYAN SECURITY FORCES**

In March 2008, three months after the disputed elections, the Kenyan police and military launched a joint operation against the SLDF, called operation 'Okoa Maisha' (meaning 'save lives' in Swahili). Pre- and post-election violence had been particularly intense in Mt. Elgon district as the SLDF sought to intimidate opponents of its favored candidates ahead of the election and then punish them and settle scores afterwards. The joint police-military operation however, was conducted in a way that violated Kenyan law and basic human rights principles. Indeed, it seems that torture was part of the strategy for flushing out the militia.

In the course of our investigation, Human Rights Watch interviewed more than 100 individuals—journalists, humanitarian workers, business people, police, military sources, witnesses and victims—including 37 victims of abuses at the hands of

members of the security forces. Human Rights Watch interviewed people who were from different areas, and were interviewed independently on different days and introduced through different local intermediaries. All of the victims described similar experiences and a similar pattern of abuse. Human Rights Watch researcher staff interviewed them alone, in Swahili or English, without interpreters.

Victims described a large scale security operation whereby military personnel (identified as members of 20 Parachute Battalion and 1 Kenya Rifles Battalion) together with members of the General Service Unit and regular police visited every village in the district, rounding up the entire male population above the age of ten. The men were beaten first, then ordered to reveal the whereabouts of SLDF members and illicit weapons. In some cases, soldiers and police beat people in their villages, stripped them, questioned them and then allowed them to return to their homes. In many others, the men were rounded up, forced to lie on the ground, then taken in military trucks to one of a number of military camps.

The most notorious camp was called Kapkota. Upon arrival, men were beaten, made to line up, bite each other on the back, beat each other, some had rifles inserted into their anuses, had their genitals pulled or smashed, among other abuses.

As one man explained:

"It was 6 a.m., the soldiers banged on the door. They took me and others to the market place and made us lie down on the road while some of them beat us and others went to collect more men. Then they took us to Kapkota. There were many people there, maybe 1,000, it was all the men of Cheptais. There were many soldiers, kicking, beating with sticks. They made us lie down, they walked on top of us. Then they made us walk past a Land Rover with black windows. Those inside were the ones condemning or releasing us. The guilty ones had to stand in the 'red' line, the innocent ones, like me, went to the 'blue line.'"

Nearly all victims described systematic torture of all arrivals, and some deaths resulting from beatings. They were told "you will be beaten until you tell us where the SLDF are." This took place, significantly, before they were forced to walk past informers who notified the military if they were members of the SLDF militia or not. Those 'cleared' by the informants were then released. According to the military's own statistics, 4000 people were 'screened' at the camps; the military denies any were harmed. Human Rights Watch interviewed more than 30 former detainees from Kapkota. IMLU interviewed nearly 200 people in custody in Bungoma and Kakamega jails who had been detained in Kapkota. Most of them had health problems relating to their time in Kapkota: trouble breathing, sleeping, walking, and urinating.

One farmer beaten in his field and then detained at Kapkota, displayed a severely swollen back. He cannot work. He told Human Rights Watch, "Are they

saving lives or destroying lives? We lived in fear of the SLDF and now we live in fear of the military."

Other organizations that interviewed or treated victims of the operation described almost exactly the same experiences. Similar testimony was collected by Médecins Sans Frontières, the Kenya National Commission on Human Rights and the Independent Medico-Legal Unit as well as local human rights organizations such as Mwatikho Torture Survivors Organisation and WKHRW. The government-appointed Visiting Justice Officer for Bungoma High Court interviewed many victims of torture in Bungoma and Kakamega prisons and wrote numerous reports throughout March, April and May 2008. His reports on file with Human Rights Watch describe similar testimony and called for urgent medical attention for prisoners who were in critical condition following detention and torture by the security forces. Both he and prison officials attest to at least four people dying in custody after having been detained and tortured in Kapkota and delivered to the prison by police.

Over 40 people are missing who were last seen in military custody. A list of 42 people was published on July 28 and passed to the Kenya National Commission on Human Rights who are preparing habeas corpus applications with the Attorney-General. Some private cases seeking compensation are also underway with lawyers in Bungoma and Eldoret, assisted by IMLU.

Seven bodies have been found in Mt. Elgon district, near a military camp. A lawyer representing the families of several SLDF suspects who had surrendered to the military and then disappeared has sought a court injunction preventing the site from being tampered with, claiming that the families have identified the clothes of their relatives on three of the bodies.

Human Rights Watch also has credible testimony from three sources that three people died in military custody at an army camp established in the disused coffee factory at Chepkube in Mt. Elgon district. The wife of one of them has filed a habeas corpus application. She described how he was abducted by soldiers from Chepkube base wearing green berets (the uniform of 20 Para) and was told to come back in the morning with a list of SLDF suspects which she duly did. When she went to the base the following morning she saw her husband naked, struggling to walk, bruised, surrounded by uniformed soldiers. Another man says he was tortured in the same camp on the same night. He has visible scars still. He said that he witnessed the woman's husband being tortured alongside him.

According to testimony from a military source present at the time, the officers supervising those executions and other torture at Chepkube were Lieutenant Mahan and Sergeant Osman, both of 20 Parachute Battalion. Several other victims described being rounded up in Cheptais division of Mt. Elgon district during March and April by soldiers in green berets.

Local residents and military sources told Human Rights Watch that the following were the commanding officers of the military bases at Kapkota and Chepkube, two principle sites where torture and extra-judicial killing took place:

Kapkota

Major Mwanzia (20 Para)

Major Owiti (20 Para)

Chepkube

Lieutenant Mahan (20 Para)

Capt. Morithe (20 Para)

The commanding officers of the joint police-military operation are Colonel Boiwo, for the military and the Provincial Commissioner Abdul Mwasserah, for the administration and police.

### **GOVERNMENT RESPONSE AND KENYA'S OBLIGATIONS UNDER THE CONVENTION AGAINST TORTURE**

The Kenyan government has a legal obligation to carry out prompt and fair investigations into torture and prosecute and punish military and civilian officials responsible.<sup>1</sup> All states party to the Convention Against Torture are responsible for bringing torturers to justice.<sup>2</sup> The Committee has previously stated clearly that perpetrators of torture should not be granted amnesty.<sup>3</sup>

A full investigation into torture should trace the orders that led to the torture, back to those who gave them, whether civilian or military commanders.<sup>4</sup> But the investigation should also identify those who are responsible under command responsibility, that is, those who knew or should have known about the abuses, and were in positions of command yet failed to prevent the abuses, or punish those responsible. The Committee has stated that it:

"...considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities."<sup>5</sup>

Kenya became a party to the Convention Against Torture on February 21, 1997. Kenya has incorporated many of the provisions of the most important human

---

1. Torture Convention, Article 12.

2. Torture Convention, Articles 6-9.

3. UN Committee Against Torture, General Comment no. 2, CAT/C/GC/2, 24 January 2008, Paragraph 5.

4. CAT General Comment no 2, paragraph 9.

5. CAT General Comment no 2, paragraph 26.

rights treaties in its constitution and other relevant national legislation.<sup>6</sup> These provisions prohibit violations of the right to life, torture, and other inhuman and degrading treatment, arbitrary arrest and detention, and unfair trials. They also provide for the rights to the protection of the home and family, and specific protection of children in times of armed conflict.<sup>7</sup>

The Kenyan government has persistently denied the allegations of torture by its forces in Mt. Elgon district, initially refusing even to investigate. An internal police investigation was eventually launched in June and its final report was published in late August after pressure from Kenyan NGOs. The police report dismisses all the reports of human rights allegations, including a confidential report submitted by the International Committee of the Red Cross and concludes that "no torture has taken place." Even while the investigation was underway the Ministers for Defence and Internal Security stated publicly that no torture had occurred.

This internal investigation by the very forces that are accused of gross human rights violations is inconsistent in several respects with Kenya's obligations under the CAT, article 12, which states: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." The internal investigation was neither prompt nor impartial.

Of particular concern is the widespread and systematic nature of the torture by the state security forces. Members of the police and district administration interviewed by Human Rights Watch during the early stages of the operation when large numbers of people were being detained and tortured, assured researchers that things were going, "according to plan" and that this was indeed, "how counter-insurgency is done". It seems that the procedure of 'softening up' the population prior to questioning was part of the operation's strategy and was clearly not just the initiative of some rogue officers. Thus, serious questions must be asked of the senior police and military commanders of the operation, their superiors in the respective forces and civilian officials such as the relevant ministers. The mountain of evidence of torture is now too large to ignore. The government claims there is a grand conspiracy to tarnish the reputation of the Kenyan police and army, yet refuses to hold an independent investigation or to task the Attorney General to commence proceedings against any members of state forces.

According to government figures, around 800 SLDF suspects have been charged in court. 160 remain in Bungoma jail on remand for non-bailable offences such as

---

<sup>6</sup>. Chapter V of the Kenya Constitution enshrines in law all the fundamental rights and freedoms of the Universal Declaration of Human Rights.

<sup>7</sup>. Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Kenya on September 3, 1990; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Kenya on September 2, 1990.

murder and robbery with violence. Exactly 400 had been released on bail from Bungoma jail as of July 2008. There are serious concerns about the quality of the evidence against the suspects and real fears among the population that many of the militia men who are now back in the community might harm them again while they are out on bail. Trials in Kenya are notoriously slow and the police are ill-equipped to collect and marshal evidence. A risk is that the heavy-handed security operation will have violated the rights of civilians and SLDF suspects without even making the population safer or dealing with SLDF violations.

Article 13 and 14 of the Convention provide for the right of victims to a remedy. However, as detailed in the submission of the Kenya National Commission on Human Rights to this committee, "Implementation of the United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment," Kenya lacks a comprehensive torture law and victims normally seek compensation through civil litigation which requires court fees and is plagued with the delays habitual in the Kenyan justice system.