

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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The rebel Sabaot Land Defence Force and the Kenyan military are responsible for horrific abuses, including killings, torture and rape of civilians, in a little-known armed conflict in the Mt. Elgon area of western Kenya, Human Rights Watch said today in a joint statement with two Kenyan human rights organizations, Mwatikho and Western Kenya-Human Rights Watch (WKHRW). (Human Rights Watch and Western Kenya-Human Rights Watch are entirely separate organizations).

The Sabaot Land Defence Force (SLDF) is an armed group formed in 2005 to resist government attempts to evict squatters in the Chebyuk area of Mt. Elgon district. Evidence gathered by Human Rights Watch, Mwatikho, and WKHRW shows that since 2006 the Sabaot militia has killed more than 600 people and terrorized the local population through physical assaults and threats, and the seizure and destruction of property. The Kenyan army was deployed in March 2008 to quell the insurgency. Local residents initially welcomed attempts to deal with the rebellion but scores of eyewitnesses told the human rights organizations that the army has pursued a strategy of rounding up all the adult males in the district. Further investigation is required to establish precise numbers but preliminary estimates by the human rights organizations suggest that the military has detained thousands, tortured hundreds, and unlawfully killed dozens of people. Thousands of people are believed to have been displaced by the violence, although no official figures are available.

The people of Mt. Elgon are being doubly victimized, first by the rebel militia and now by the army, said Georgette Gagnon, Africa director at Human Rights Watch. The Sabaot Land Defence Force has committed hideous crimes and people welcomed the army at first. But now Kenyan soldiers are abusing those they are supposed to protect.

In a recent investigation in Mt. Elgon, Human Rights Watch documented deliberate killings, torture, and rape of civilians by members of the Sabaot force and the Kenyan army, and mass detentions by Kenyan military forces. Human Rights Watch interviewed more than 100 victims and eyewitnesses as well as members of the police force and army, government officials, journalists and humanitarian workers.

Human Rights Watch spoke to several women who described how SLDF troops broke into their homes, kidnapped their husbands at gunpoint, and told the women, You won't see your man again. Many of them have not. One woman learned about the fate of her husband when a man she knows to be a member of the SLDF gave her a pile of the clothes he was wearing when he was abducted and said, simply, sorry.

One man described what happened to him:

I was woken up by a knocking at the door. I opened it and there were guns and torches staring at me. They rounded up my cows, beat me and stabbed me as we walked. When we reached the bush they tied me by my feet to a tree, my head hanging down. There were others hanging also. They beat me very badly and said, Choose: Either surrender all your possessions including your land or you die now. I told them to take it. They cut off my ear as a mark, then they made me eat it. I crawled home, I could not walk.

Human Rights Watch also interviewed victims of Kenyan military abuses. Several witnesses who were beaten at Kapkota military base told Human Rights Watch in separate interviews that they saw people beaten to death there. According to one witness, The soldiers were holding [the prisoners] legs apart and smashing their private parts with a club. Some were falling unconscious, some died. I saw two corpses.

A resident of Kaptaboi village interviewed by Human Rights Watch described seeing a military helicopter dropping off bodies on April 2:

We ran away from Kaptaboi where the military were conducting operations. We ran to the forest. There we stumbled across other soldiers. I was about 10 meters away, a helicopter landed and four soldiers dragged four bodies out of the helicopter and then threw them

in the bush. Then they left, very fast.

Human Rights Watch, Mwatikho and WKHRW called on leaders of the SLDF and the Kenyan army to immediately end these abuses, which are serious violations of international human rights and humanitarian law, and issue clear, public orders to protect civilians. The Kenyan authorities should also investigate serious crimes, leading to the prosecution of those responsible, in particular the principal organizers.

The Kenyan army should stop denying claims of torture in Mt. Elgon and instead investigate and prosecute those responsible for the crimes, said Taiga Wanyanja, director of Mwatikho, an organization that supports survivors of torture.

The District Commissioner for Mt. Elgon, Birik Mohammed, told Human Rights Watch that the military sweep operation is proceeding, as planned, and that he had received no complaints of torture. His comment was made despite a long line of persons outside his office at the time who told Human Rights Watch that they were there to complain about torture. The District Commissioner said that there were more than 1,000 suspected SLDF members in custody, in the jails and police cells. This number does not include the thousands who have been detained in Kapkota and have been released, many of whom have alleged they were tortured. Some men have been through Kapkota twice because they were picked up in other locations as well.

Human Rights Watch, Mwatikho and WKHRW also called on the Kenyan authorities to ensure that aid workers, media and human rights investigators have unimpeded access to civilians in the area. The Kenyan authorities should allow medical personnel immediate access to detainees in prisons and military bases where hundreds of people have been tortured, some of whom require urgent medical attention. One person has already died in custody in Bungoma jail.

Both the SLDF and Kenyan military should also ensure that aid workers have access to detainees and people displaced by the conflict, said Job Bwonya, executive director of WKHRW.

Key international partners, including the European Union, the United States, the United Nations and the African Union, should urge the Kenya government and the SLDF to stop extrajudicial killings, torture, rape, and arbitrary arrest and detention, the three human rights organizations said.

### **Abuses Involving the Sabaot Land Defence Force**

#### *Deliberate Killings and Disappearances of Civilians*

The Kenyan human rights group WKHRW has documented 613 people killed by the SLDF since 2006, the vast majority of them civilians. According to WKHRW research, the rebel militia also abducted 118 and maimed 33 people. There have also been numerous media accounts of prominent politicians, chiefs, and others supposedly executed in broad daylight by the SLDF. A February 2008 police operation uncovered mass graves in the forest of Mt. Elgon, apparently victims of the SLDF.

A man who says he was abducted by the SLDF and tortured at one of their bases in the forest, witnessed five corpses lying around the torture site. One chief in Mt. Elgon district described how the bodies of five people opposed to the SLDF were dumped in his area one morning with their throats cut.

Many of the recent murder victims of the SLDF were politicians or party agents who competed against SLDFs favored candidates in the December 2007 elections.

#### *Mutilation and Inhumane Treatment of Civilians*

Dozens of witnesses described to Human Rights Watch how members of the SLDF came to their homes at night, beat them and members of their family, then bound and blindfolded victims and abducted them. Some were beaten in their home and had their ears cut off there without being taken to the forest. The signature maiming of the SLDF is to cut off the ears of those who do not obey their orders or do as they wish.

Many of the young men were maimed in 2007 because they refused to join the SLDF or because they supported political parties opposed to SLDF candidates. Human Rights Watch interviewed numerous people who had had their ears cut off by the SLDF and women who were beaten by members of the SLDF searching for their husbands. One man described how the SLDF beat his wife naked in front of him as a warning to him not to stand for the ruling PNU party in the upcoming elections. He was later abducted along with others and witnessed male prisoners forced to have sex with each other.

#### *Rape and Sexual and Gender-based Violence*

Many young men who did not join the SLDF fled the area, leaving their wives to tend their farms. Male and female residents told Human Rights Watch that rape of men and women by members of the SLDF was routine during the last two years, but that many victims were too scared to report violations to the police because the SLDF explicitly warned all their victims not to go to the police or seek hospital treatment.

Several cases of sexual violence are now being documented as victims feel safer. An example is two sworn statements submitted to a local human rights group and seen by Human Rights Watch that describe how two victims were gang-raped for long periods of time by up to five assailants.

#### *Destruction of Property, Theft of Land and Livestock*

Numerous victims described how their homes were set on fire and livestock, money, and land were taken by the SLDF at gunpoint. Sometimes the motive appears to have been theft, sometimes politics, and sometimes settling scores over land disputes. One retired civil servant told Human Rights Watch how he witnessed his neighbors abducted by SLDF and their homes set on fire. The targets were political rivals of the SLDF: They were singing: the MP (member of parliament) is one, the party is one.

Many people now living in towns further down the mountain are destitute since their land and their livelihood has been taken away. One man whose land was stolen, explained to Human Rights Watch: I have the title deed, but the SLDF have guns. Now they have my land. I

live in a shack in the town and my family and I eat the tomatoes that fall in the market.

## **Abuses Involving the Kenya Army**

### *Unlawful Killings and Enforced Disappearances*

The army's principal strategy to flush out the SLDF in Mt. Elgon has been to arrest every single male over the age of 15 in the area, and screen them at a military base called Kapkota in Cheptais division of Mt. Elgon district. At the time of arrest, and later when in detention at Kapkota, detainees are routinely beaten, and some have died as a result.

In the mortuaries of Webuye and Bungoma in districts neighboring Mt. Elgon, Human Rights Watch saw bodies of men brought by police from Mt. Elgon, but whom mortuary attendants say came from Kapkota. The bodies showed obvious visible signs of torture such as welts, bruising, swollen faces, broken wrists and rope burns around the wrists.

As of April 2, 13 such bodies have been delivered to the mortuaries, and three of the victims have been identified and collected. In those cases, for the hospital to release the body without a post-mortem, police told relatives to swear an affidavit stating, that I or the relatives do not intend to lodge claim of any nature against anyone or the state pertaining the death of the said, X. Relatives who collected two of the bodies told Human Rights Watch the men had been arrested by the military several weeks before.

Many women described to Human Rights Watch how in the past few weeks their husbands and male relatives had been taken by soldiers at dawn. The women are now searching prisons, police stations, and mortuaries for the missing men. WKHRW has compiled a list of 23 missing people whom villagers believe are dead. The military and police spokesmen say that no one has died and no one has been tortured.

One woman told Human Rights Watch how her uncle was taken by the military at night at the beginning of March. Two days later, a relative told her that he had been killed by the army. Two days after that, his body showed up in the mortuary at Webuye. She collected the body and buried him. One of the soldiers present at his arrest apologized to her at the funeral.

The *Daily Nation* newspaper on March 27 quoted a military source describing how bodies had been dumped in the forest. In addition, a different military source told Human Rights Watch that eight bodies from Kapkota were flown in two army helicopters and dumped in the forest, north of Kaptaboi village on April 2.

A senior government official, who chose not to be quoted, told Human Rights Watch, We take no responsibility for those killed in the forest. What are they doing in the forest anyway?

### *Torture, Arbitrary Arrest and Detention*

There is not a man left on the mountain, complained one woman who described to Human Rights Watch how her husband was dragged from their bed by soldiers, beaten and driven to the Kapkota army base.

Dozens of men interviewed by Human Rights Watch described how the military arrested them in their homes, on the street, in their fields. The soldiers asked them to show them members of the SLDF or the whereabouts of illegal weapons, and when they said they did not know, they were beaten. According to a man arrested in Cheptais trading center: Soldiers came into my home and started beating me, they were shouting, show us the criminals, show us the criminals.

Another 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.

Those in the red line were then taken to the jails at Bungoma and Kakamega. Several hundred of them have been charged. Bungoma prison is now holding more than 300 persons brought from Mt. Elgon as a result of the military operation. The government-appointed visiting justice officer to the prison told Human Rights Watch that all of them had been tortured; many had urinal problems and fractures as a result. Thirty-two of them were in a critical condition and needed urgent medical attention. One died on April 2. A doctor working with Mwatikho was denied entry to the prison on March 31. The prison is now holding 1,240 prisoners according to the visiting justice officer but its official capacity is 400.

### *Rape and Sexual and Gender-based Violence*

Human Rights Watch documented one case of rape by Kenyan soldiers. A neighbor of the victim described what she saw: At night [the soldiers] steal food, destroy homes and rape women. I heard a commotion next door. I woke up and came outside. I hid in the bushes. I saw my neighbor there on the ground outside her house. Three soldiers all took their turn.

## **Background**

The SLDF originally took up arms in 2005 to defend land seized during the controversial Chebyuk settlement scheme, a government plan to re-settle landless people that was marred by corruption and arbitrary land-grabbing. In recent months SLDF forces were co-opted by opposition politicians to ensure particular candidates would win seats in the region in the hotly contested December 2007 parliamentary elections.

The conflict in Mt. Elgon pre-dates the recent post-election violence in Kenya but SLDF atrocities were related to the election, as militia members sought to intimidate opponents of their favoured Orange Democratic Movement candidates prior to the poll, and punish supporters of rival parties afterwards.

In April 2007 WKHRW warned of the atrocities committed by the SLDF, including killings of civilians, torture, extortion and rape, but Kenyan authorities initially failed to respond. During the last year, the SLDF set up its own administration in the Mt. Elgon area. Residents of this area have complained that, following this, the SLDF has seized and destroyed property, purportedly as taxation.

The Kenyan government claims that the ongoing operation in Mt. Elgon district is led by the police and supported by the military. However, research by Human Rights Watch, Mwaticho and WKHRW, suggests that, starting in March 2008, the Kenyan military has mounted intense counter-insurgency operations in the area and the conflict now amounts to an internal armed conflict. This means all parties should respect fundamental principles of international humanitarian law (the laws of war).

The Kenyan armed forces and the rebel militia in Mt. Elgon district are obliged to respect Common Article 3 of the four Geneva Conventions of 1949, the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II) (ratified by Kenya), and customary international humanitarian law. This law requires the humane treatment of all persons taking no active part in hostilities, prohibits deliberate or indiscriminate attacks on civilians, and prohibits the destruction of property indispensable to the survival of the civilian population. Serious violations of the laws of war carried out intentionally or recklessly are war crimes.

International human rights law also applies in Mt. Elgon, particularly regarding the detention and treatment of individuals by Kenyan security forces. The use of torture is prohibited at all times.

Whether the current security operation is led by the police or the military, the Kenyan security forces must respect the right to life of all citizens. Even if those killed are responsible for crimes, and it is not clear that they are, they should be tried in a court, not summarily executed or beaten to death. Moreover, families should be properly informed and the bodies of those who die in custody should be returned to relatives.

While the criminal justice authorities may arrest and prosecute those against whom evidence exists of involvement in armed rebellion and other criminal acts, all governmental authorities must respect the rights guaranteed by the Kenyan constitution and international instruments to which Kenya is a state party. These rights include freedom from arbitrary detention, the right to have all detention reviewed by a judge, and the right to a fair trial. At all times, the prohibition on the use of torture and inhuman and degrading treatment is absolute, including during a state of emergency, which has not been declared in Mt Elgon.

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