

**49TH SESSION OF THE UNIVERSAL PERIODIC REVIEW (UPR)  
FOURTH CYCLE UNIVERSAL PERIODIC REVIEW OF KENYA**



**JOINT STAKEHOLDERS' SUBMISSION**

**CIVIL AND POLITICAL RIGHTS CLUSTER**

**PREVENTION OF TORTURE, EXTRA JUDICIAL KILLINGS, ENFORCED  
DISAPPEARANCE AND ABITRATRY ARRESTS THEMATIC GROUP**

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**Article 19 EA  
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International Centre for Civil and Political Rights (ICCPR)  
International Commission for Jurists (ICJ)  
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National Coalition of Human Rights Defenders - Kenya (Defenders Coalition)  
Peace Brigades International Kenya (PBI-K)  
Reprieve UK  
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**who are all members of UPR Kenya, a coalition that brings together over 200 CSOs all of which are divided into 30 sub clusters.**

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**1. EXECUTIVE SUMMARY**

This report has been developed and submitted by Independent Medico Legal Unit (IMLU), Human Rights Agenda (HURIA), Peace Brigades International (PBI), Haki na Sheria, Kenya Human Rights Commission (KHRC), Article 19 EA, Amnesty International, Katiba Institute, Kituo cha Sheria, International Commission for Jurists (ICJ), International Justice Mission (IJM), International Centre for Civil and Political Rights (ICCPR), National Coalition of Human Rights Defenders - Kenya (Defenders Coalition), Free the Slaves, Reprieve UK and Terre Des Hommes who are members of UPR Kenya, a coalition that brings together over 200 CSOs all of which are divided into 30 sub clusters.

2. This submission focuses on three main issues :

- **Increase in occurrence of Enforced disappearances in Kenya, with minimal investigation and prosecution of those responsible.**
- **Widespread prevalence of extra judicial killings in Kenya, with a lack of accountability for the perpetrators**
- **Increase in cases of Torture, inhuman degrading treatment and arbitrary arrests, with widespread reports implicating the security agencies involvement**

3. Kenya has undergone three Universal Periodic Review (UPR) cycles, during which it received significant recommendations addressing issues of enforced disappearances, extrajudicial killings, torture, and arbitrary arrests. However, despite these recommendations, the country has made limited progress in implementing reforms, with these human rights violations persisting as critical concerns.

4. This submission aims to provide an analysis of the situation in Kenya regarding **enforced disappearances, extrajudicial killings, torture, inhumane and degrading treatment, and arbitrary arrests**. It will explore the causes and effects of these issues, assess the existing legal and policy frameworks, and offer key recommendations to improve the current human rights situation.

## SUMMARY OF THE ISSUES

**ISSUE 1: INCREASED OCCURRENCE OF ENFORCED DISAPPEARANCES IN KENYA,**

5. Enforced disappearances remain a significant issue in Kenya, with minimal investigation or prosecution of those responsible. In particular, arrests and abductions of male individuals on suspicion of involvement in terror-related activities, including some returnees from Somalia continue to be reported in Garissa, Lamu, and Kwale counties. Additionally, the use of state apparatus, especially security agencies, to suppress dissenting political views and civil society organizations exercising their constitutional rights to assemble, protest, and demonstrate, has intensified. Cases of arbitrary arrests and the incommunicado detention of protesters are increasingly being reported and highlighted in both mainstream and social media.
6. Kenya faces significant challenges in addressing the issue of Enforced Disappearances (ED) due to weak accountability and oversight institutions that fail to hold perpetrators accountable. This is compounded by the lack of adequate mechanisms to respond effectively to ED cases and meet the needs of victims. Currently, there is no local legal framework criminalizing enforced disappearances, resulting in poor investigations and limited capacity among police, who are often unwilling to pursue these cases to a conclusive end. Furthermore, the constitutional remedy of *Habeas Corpus* has failed to produce results in locating victims of enforced disappearances, highlighting the impunity and disregard for the rule of law among state agencies, particularly security officials.
7. Security agencies have been implicated in continued abductions, often justified by suspicions of terrorism, protests, and political dissent. The failure to fully implement crucial laws such as the Prevention of Torture Act (2017) and the National Coroners Service Act (2017) has further hampered efforts to address ED. Kenya has also not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, leaving a gap in the legal framework. Additionally, there is a clear lack of human rights training and understanding among security agencies, further exacerbating the issue of enforced disappearances.
8. Perpetrators of enforced disappearances remain **largely unaccountable**, leading to ongoing human rights violations and fostering deep mistrust between communities and state agents. These disappearances inflict severe psychological trauma on both the victims and their families, with the impact extending to entire communities. When victims are the primary breadwinners, their loss devastates families' livelihoods. Additionally, victims and their

families face significant barriers to accessing justice and often struggle to obtain essential registration documents, such as birth certificates. The shrinking civic space, driven by the suppression of alternative opinions and efforts to hold state agencies accountable for governance issues, further compounds the problem. Those who challenge these abuses are often subjected to intimidation, surveillance, threats, and, in the extreme cases, death following their enforced disappearance.

## **EXISTING LEGAL FRAMEWORK**

Enforced Disappearances is governed by key legislations including;

### **The Constitution of Kenya 2010**

9. The Constitution of Kenya guarantees fundamental rights and freedoms, including the right to life, liberty, and security of the person. Article 29 specifically prohibits arbitrary detention and guarantees the right to seek legal representation. Despite these protections, enforced disappearances persist, highlighting gaps in enforcement and the need for robust mechanisms to hold perpetrators accountable.

### **Persons Deprived of Liberty Act 2014**

10. This Act establishes the rights of individuals detained or imprisoned in Kenya, including provisions for humane treatment and the right to be informed of the reasons for their detention. However, the persistence of enforced disappearances indicates significant shortcomings in the implementation of these rights, particularly concerning accountability for state actors involved in unlawful detentions.

### **Kenya National Commission on Human Rights Act 2011**

11. This Act established the Kenya National Commission on Human Rights (KNCHR) as an independent body to promote and protect human rights in the country. The KNCHR has documented cases of enforced disappearances and advocated for justice for victims. However, the effectiveness of its recommendations often hinges on the willingness of state authorities to act, which has been inconsistent.

### **National Action Plan on Human Rights (2015-2020)**

12. This action plan aimed to improve human rights standards and promote accountability within state institutions. While it included commitments to address enforced

disappearances, the lack of concrete measures and the continued prevalence of such violations suggest that more needs to be done to translate these commitments into meaningful action and protect the rights of affected individuals.

## **PROGRESS MADE SINCE THE LAST REVIEW**

13. The National Assembly Public Petition Committee invited the Civil society organizations regarding a public petition no 8 Of 2023 which was filed by Kituo-Cha Sheria and which proposed the enactment of a legislation to criminalize and prescribe penalties for the crime of enforced disappearance. As a good will, the committee invited and collected views from various organizations from the Coast specialized on the subject as well as Kenya National Commission on human rights and produced a report dated 11 April 2024i.
14. There has been public acknowledgment of the President in ending of Enforced disappearances and extrajudicial killings<sup>1</sup>. However, Kenya witnessed a spat in EDs and EJKs during the Gen-Z protests in June-July 2024. Despite the state commitments, Kenya is yet to ratify the convention on Enforced Disappearances<sup>2</sup>. According to the Whos' Next report<sup>3</sup>, Families in Kwale have continued to lose their loved ones with over 45 cases of extrajudicial killings and 16 cases of enforced disappearances being reported.

## **RECOMMENDATIONS FOR ACTIONS**

### ***The Government of Kenya should:***

15. Establish a local legal framework to prevent and criminalize enforced disappearances in Kenya. The legislation should entail mechanisms towards fostering accountability and reparation for victims of enforced disappearances.
16. Fully implement the National Coroners Service Act 2017 and the Prevention of Torture Act 2017.
17. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
18. Speedy develop regulations under the Prevention of Torture Act 2017 to ensure that victims of enforced disappearance can access rehabilitation services at no cost, and

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<sup>1</sup> <https://www.youtube.com/watch?v=S2XCalPGOzI>

<sup>2</sup> <https://icj-kenya.org/news/time-for-kenya-to-ratify-the-convention-on-enforced-disappearances/>

<sup>3</sup> file:///C:/Users/user/Downloads/Whos-Next-1.pdf

#### Operationalize the Victim Protection Act 2014

19. Ensure prompt and effective disbursement of compensation funds to the victims of enforced disappearance.
20. Build Capacity and training of security agencies on human rights, and further consider improving investigation and adhering to international standards on conducting investigations on enforced disappearances
21. Strengthen and expand the role and mandate of Government Agencies/ accountability institutions mandated to hold security agencies to account
22. Extend invitation of special rapporteur on Enforced Disappearances to Kenya
23. Enhance awareness by ensuring the translation of the laws that speak to Enforced Disappearances into local languages that can be understood by the local people.
24. Enhance the digitization of police processes from the issuance of OB to installation of CCTVs at police stations to curb the incidences of Enforced Disappearances and the abduction of citizens by police.

#### **ISSUE 2: WIDESPREAD PREVALENCE OF EXTRA JUDICIAL KILLINGS IN KENYA, WITH A LACK OF ACCOUNTABILITY FOR THE PERPETRATORS**

25. Extra judicial killings are prevalent in Kenya, with a lack of accountability for the perpetrators. The government security agencies target human rights defenders and civilians who give alternative voices on accountability and governance.
26. Inadequate implementation of the Prevention of Torture Act (POTA) 2017 with the state failing to prefer charges of Torture leading to Extra judicial killing under the POTA. The lack of effective investigation and prosecution of officers responsible for extra judicial killings. Equally, investigative agencies lack capacity in forensic investigation, evidence preservation and presentation. Limited capacity and resources of oversight bodies like the Independent Policing Oversight Authority (IPOA), the DCI and the ODPP.
27. Perpetrators of extrajudicial killings remain largely unaccountable, leading to continued human rights violations and deepening mistrust between communities and state agents. These killings cause severe psychological trauma for the victims' families and their communities, with the loss of breadwinners devastating family livelihoods. Additionally, the shrinking civic space, driven by the suppression of alternative opinions and efforts to

hold state agencies accountable for governance issues, exacerbates the situation. Families of victims, as well as their associates, are often profiled by state agencies, instilling fear and discouraging reporting and follow-up. Furthermore, environmental degradation results from the harmful and toxic compounds emitted by decomposing bodies dumped in rivers, which negatively affect water quality and aquatic life.

## **EXISTING LEGAL FRAMEWORK**

Extra judicial killing is governed by key legislations including;

### **The Constitution of Kenya 2010**

28. The Constitution guarantees fundamental rights, including the right to life and the prohibition of arbitrary deprivation of life. However, extrajudicial killings persist, indicating significant enforcement gaps and a culture of impunity that undermines constitutional protections.

### **Prevention of Torture Act 2017**

29. This Act criminalizes torture and inhumane treatment, aiming to protect individuals from abuses by state agents. However, its effectiveness is diminished by the ongoing occurrence of extrajudicial killings, often linked to torture and unlawful use of force by security agencies without accountability.

### **Security Laws Amendment Act 2014**

30. This Act has faced criticism for provisions that may facilitate human rights abuses, including extrajudicial killings, under the guise of enhancing national security. It has been perceived as expanding police powers without sufficient checks, contributing to a climate where such killings can occur with minimal oversight.

### **National Police Service Act 2011**

31. This Act outlines the roles and responsibilities of the National Police Service, emphasizing the need for professional conduct and adherence to human rights standards. Nonetheless, the prevalence of extrajudicial killings indicates failures in enforcing these standards and accountability measures for police misconduct.

### **National Police Service Standing Orders**

32. These standing orders provide guidelines for police conduct, including the use of force. While they promote human rights, the ongoing reports of extrajudicial killings reveal a significant gap between policy and practice, highlighting the need for stricter adherence and oversight of

police actions.

#### **Independent Policing Oversight Authority Act 2011**

33. This Act established the Independent Policing Oversight Authority (IPOA) to investigate complaints against police conduct, including extrajudicial killings. Although it serves as a mechanism for accountability, its effectiveness is often hindered by inadequate resources and a lack of cooperation from police, limiting its impact on curbing such killings.

#### **Victims Protection Act 2014**

34. This Act seeks to ensure the rights of victims of crime, including access to justice and support services. However, the prevalence of extrajudicial killings complicates the landscape for victims and their families, who often face additional barriers to justice and support due to the involvement of state actors.

#### **Witness Protection Act 2015**

35. This Act provides protection to witnesses who may face threats due to their testimony in criminal cases. Its relevance to extrajudicial killings is critical, as potential witnesses may be deterred from coming forward due to fears of retaliation, further complicating efforts to hold perpetrators accountable.

#### **National Coroners Service Act 2017**

36. This Act established the National Coroners Service to investigate deaths, including those occurring under suspicious circumstances, such as extrajudicial killings. While it provides a framework for accountability, the effectiveness of investigations is often hampered by systemic issues, including political interference and lack of resources.

#### **Prevention of Organized Crimes Act 2010**

37. This Act aims to combat organized crime and grants law enforcement agencies enhanced powers to tackle criminal activities. However, its provisions have raised concerns about potential misuse by security forces, contributing to an environment where extrajudicial killings can be justified under the pretext of combating organized crime.

### **Progress made in Kenya since the last review**

38. Despite the government's efforts and commitment to address ExtraJudicial Killings there are still widespread cases reported especially pertaining to protests. During these protests, for the period January 1, 2023 to July 31, 2023, IMLU monitored 12 demonstrations across 47 counties organized by different groups e.g. political parties and civilian led. Some were planned while some erupted sporadically. In the demonstrations, IMLU responded,



documented and processed 161 (18 females, 143 Males) torture and related violations with all of them being cases of police use lethal force against demonstrators. Out of these, 42 (26%) were extrajudicial, summary, and arbitrary executions (EJE) – Fatal police shootings;<sup>1</sup>(1%) was enforced disappearance, and 118 (73%) were Torture, Cruel, Inhuman, or Degrading Treatment or Punishment (TCIDT) - Gunshot injuries<sup>4</sup>.

39. On Tuesday, 18th June 2024, Kenyan youth staged their first protest against the Finance Bill, 2024. The protests as of 31st of July were witnessed in 67 urban centers in Kenya, covering 35 of Kenya's 47 counties. This nationwide unrest has led to scores reported injured and several killed majorly by gunshot injuries. The police have continually used excessive force including using live bullets, rubber bullets, and tear gas canisters to a rather peaceful protest. Over this period of protests, IMLU has received 427 (362M, 65F) alert cases of human rights violations. Out of these, IMLU documented and supported 54 autopsies, paid cash bail for 61 protestors, and supported 171 survivors to receive medical services.

## RECOMMENDATIONS FOR ACTIONS

### *The Government of Kenya should:*

40. Expedite the review and amendments to the National coroners Services Act and full implementation of the Prevention of Torture Act 2017.
41. Building Capacity for actors in the administration of the justice sector, including security and law enforcement officials.
42. Establish an official statutory database for tracking investigation, prosecution, and conviction data of persons, including public officials, charged with serious crimes like extrajudicial killings.
43. Through the coroner services agency ensure publication of outcomes of investigations to allow for public oversight to avoid impunity.
44. Ensure prompt and effective disbursement of compensation funds to the families of victims of extrajudicial killings.
45. Ensure operationalization and adequate funding to the victims' protection agency and the witness protection agency to enhance protection of witnesses, families and human rights defenders.

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<sup>4</sup> <https://imlu.org/2024/02/death-blood-tears/>

### **ISSUE 3: INCREASED CASES OF TORTURE, INHUMAN DEGRADING TREATMENT AND ARBITRARY ARRESTS**

46. Torture, inhuman degrading treatment and arbitrary arrest remain a significant human rights issue in Kenya, with widespread reports implicating the security agencies. More often than not, arbitrary arrests have led to torture, enforced disappearances and extrajudicial killings.
47. It is important to note that the absence of proper implementation of relevant laws exacerbates the issue. Despite legal frameworks designed to prevent and address torture, including the Prevention of Torture Act (2017) and the Constitution of Kenya, there is a persistent culture of impunity and inadequate enforcement of these laws.
48. The cultural acceptance and normalization of torture as a means of interrogation and punishment remain deeply entrenched in some sectors, where it is viewed as a legitimate way to extract information. This is further compounded by the limited capacity and lack of adequate training for state agencies on human rights principles. The improper handling of civilians, victims, and suspects leads to abuses of power, perpetuating torture practices.
49. The insufficient implementation of key legal frameworks, such as the Prevention of Torture Act 2017 and the Persons Deprived of Liberty Act 2014, contributes significantly to the lack of accountability. State institutions and agencies responsible for investigating torture cases often fail to fulfill their mandates, further undermining the potential for justice. Additionally, the lack of comprehensive data collection on torture cases hampers effective monitoring and accountability mechanisms.
50. Inadequate oversight and accountability mechanisms within the police and other security agencies exacerbate the problem. These gaps prevent adherence to legal and constitutional criminal justice processes, allowing human rights violations to continue unchecked. The inability of state agencies to ensure proper investigations and accountability has created an environment where torture persists without consequence.
51. The physical and psychological harm inflicted on victims of torture often leads to partial or permanent disability, severely affecting their quality of life. Additionally, the limited access to justice and redress for these victims has fostered a culture of impunity and disregard for the rule of law. This failure of the justice system has eroded trust in law enforcement agencies, creating an environment of fear and mistrust among victims and the wider community.

### **EXISTING LEGAL FRAMEWORK**

Prevention of Torture, inhuman degrading treatment and arbitrary arrest is governed by key legislations including;

#### **Prevention of Torture Act 2017**

52. This Act explicitly prohibits torture and inhuman or degrading treatment, providing a legal framework for the prosecution of offenders and protection for victims. While it aims to promote accountability and safeguard human rights, challenges in implementation and enforcement persist, as reports of torture and mistreatment by state agents continue to be widespread.

#### **National Police Service Act 2011**

53. This Act establishes the structure and responsibilities of the National Police Service, emphasizing the need for professionalism and respect for human rights in policing. However, the persistent occurrence of torture and arbitrary arrests indicates significant gaps in oversight, training, and accountability mechanisms within the police force.

#### **Constitution of Kenya 2010**

54. The Constitution enshrines the fundamental rights and freedoms of individuals, including protection from torture and inhuman or degrading treatment, as well as the right to liberty and security. Despite these constitutional safeguards, the continued prevalence of torture and arbitrary arrests reveals a disconnect between legal provisions and actual practices, highlighting the urgent need for effective enforcement and accountability measures

#### **Progress made in Kenya since the last review**

55. Kenya continues to witness and report cases of police brutality especially during lawful protests. Lawful protests have been seen and interpreted by the police and security officers in general as unlawful and protesters being treated as violent rioters. Human rights and accountability during lawful protests are largely seen by officers as irritations and hindrances to their effectiveness rather than a right to assemble and expression. Despite Kenya being a signatory to the UN Convention Against Torture (UNCAT) and having provisions against torture in its constitution, the country is still grappling with an increase in torture cases, enforced disappearance, extrajudicial killings, and arbitrary arrests. Attempts by various nonstate actors to set up medical, legal, and psychosocial support centres for torture victims have been interrupted and thwarted by the police leaving scores of protesters and medical

personnel with injuries and some dead. Missing Voices coalition reported in its annual report 2023 of 118 cases of police killings and torture<sup>5</sup>.

## RECOMMENDATIONS FOR ACTIONS

The Government of Kenya should:

56. Ensure full implementation of the Prevention of Torture Act 2017 and the Persons Deprived of Liberty Act 2014 to enhance prompt and impartial investigations of the alleged acts of torture and related violations
57. Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.
58. Appropriate budget allocation to ensure that the government can provide redress and rehabilitative services to victims of torture.
59. Develop of regulations under the Prevention of Torture Act 2017 to ensure that victims of torture can access rehabilitation services at state expense. Establish an official statutory database to track data on torture cases.
60. Enhance advocacy mechanisms on awareness and sensitization of the state agencies and citizens on prevention of Torture Act 2017, inhumane and degrading treatment or punishment and related abuses.
61. Operationalize the complaints and disciplinary procedure under the Persons Deprived of Liberty Act.
62. Establish a civilian oversight mechanism for the National Intelligence Service (NIS)

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[http://parliament.go.ke/sites/default/files/202111/Report%20on%20Inquiry%20into%20Extrajudicial%20Killings%20and%20Enforced%20Disappearance%20in%20Kenya\\_.pdf](http://parliament.go.ke/sites/default/files/202111/Report%20on%20Inquiry%20into%20Extrajudicial%20Killings%20and%20Enforced%20Disappearance%20in%20Kenya_.pdf)

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<https://www.missingvoices.or.ke/sites/default/files/202404/Missing%20Voices%202023%20Annual%20Report.pdf>