

HUMAN
RIGHTS
WATCH

WAITING FOR JUSTICE

KENYA'S MT. ELGON REGION

Photographs by Brent Stirton/Getty Images for Human Rights Watch



Land is at the heart of the conflict in Mt. Elgon. As is the case in much of Kenya, these land disputes have their roots in the colonial era, but current grievances center on how those disputes have been managed and the politicization of the various attempts to resolve earlier displacements through resettlement schemes.





SUMMARY

Elsa Chesut found parts of her husband Jerome's body in a forest in western Kenya three months after soldiers from the Kenyan army abducted him from his home. The soldiers who came for Jerome in April 2008 accused him of having knowledge about the activities of the Saboot Land Defence Force (SLDF), a militia group that had been terrorizing the population of the Mt. Elgon region of western Kenya since 2006. They beat him, forced sand into his mouth to prevent him from crying out, tied him to the back of a truck, and dragged him towards a military camp known as Kapkota.

Elsa searched for her husband at the military camp and at a nearby prison, but no one would provide information about his whereabouts until a boy informed her that Jerome's body was in a nearby forest where the boy grazed his cattle. Three years later, Elsa is still waiting for justice to be done and has not been given full information on the events surrounding the death of her husband.

Elsa's story is one of the many told by victims of the Mt. Elgon insurgency, a conflict which started in 2006 when the SLDF began to resist government attempts to evict squatters in the Chebyuk area of Mt. Elgon district. Very quickly the SLDF set its sights on the upcoming December 2007 elections as both an opportunity to cause trouble and seize land by force, as well as a chance to ensure that candidates favorable to its cause were elected. The SLDF was financed and controlled by opposition Orange Democratic Movement (ODM) candidates as it did their bidding—intimidating opponents and voters prior to the elections of December 2007, and punishing them afterwards. In March 2008 the military and police conducted a heavy-handed joint operation—Okoa Maisha ("Save Lives" in Swahili)—to crush the SLDF insurgency which by then had gotten out of hand, becoming more than a political militia and a law unto itself.

Both the SLDF and the Kenyan security forces committed atrocities in Mt. Elgon between 2006 and 2008. The SLDF attacked thousands of civilians, killing, raping, and mutilating. In the Okoa Maisha operation security forces carried out hundreds of extrajudicial killings and the torture and arbitrary detention of thousands, including in the course of mass round-ups of men and boys. Since 2008, victim's families, despite themselves facing threats and intimidation, have gradually begun to come forward, informing local human rights organizations that their family members had been "disappeared," either abducted by the SLDF or arrested by the army in the course of Okoa Maisha.

The atrocities in Mt. Elgon ceased in mid-2008 after national and international human rights organizations drew attention to the insurgency and the army's brutality in addressing it. The army and police claimed to be conducting internal investigations into the conduct of units operating at Mt. Elgon, but ultimately dismissed the allegations of abuse, and no one was ever held accountable. Similarly, despite the fact that over 3,000 men were rounded up and detained (on suspicion of being members or supporters of the SLDF), to date only four people have been convicted of manslaughter; but the hundreds of killings, forced disappearances, and cases of rape and torture committed by the SLDF in Mt. Elgon between 2006 and 2008 have gone unpunished. Over 800 were charged with crimes allegedly related to SLDF involvement but most have been acquitted or had charges withdrawn due to lack of evidence.

Though Elsa and dozens of other victims reported their family members' disappearances at police stations, military camps, prisons, and morgues, the government did not investigate thoroughly, if at all, nor did authorities prosecute security personnel suspected of being involved in enforced disappearances and other human rights abuses.

Three years after the conflict, lawyers and human rights organizations are assisting victims by filing cases at the Bungoma High Court and the East African Court of Justice (EACJ), and taking complaints to the African Commission on Human and Peoples' Rights (ACHPR). Others have filed a complaint before the United Nations Working Group on Enforced or Involuntary Disappearances. But the Kenyan government has done nothing.

The plight facing the families of the disappeared remains one of the most enduring scars of the violence in Mt. Elgon. With no bodies to bury in accordance with local customs, no death certificates issued, and no official recognition of the loss of their family members, these families remain in a legal and psychological limbo.

While many human rights abuses dating to the Mt. Elgon conflict remain unpunished, this report focuses on the specific problem of unresolved abductions by SLDF militia and enforced disappearances at the hands of the Kenyan security forces.

The International Convention for the Protection of All Persons from Enforced Disappearance, to

which Kenya is a signatory, defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." Under customary international law and the Rome Statute of the International Criminal Court, to which Kenya is a party, enforced disappearances constitute a crime against humanity when committed as part of a widespread or systematic attack against a civilian population.

Enforced disappearance is a continuing human rights violation, which does not end until the disappeared person or their remains are located and the truth about their disappearance comes to light.

Disappearances carried out by organized armed movements fighting the state may amount to crimes against humanity when they are widespread or systematic and part of a policy. The Kenyan state's failure to shed light on disappearances at the hands of the SLDF also creates a series of rights violations.

Kenyan law requires police officers to open inquest files into the cases of missing persons who are presumed to be dead. In Mt. Elgon several such files were opened, but only one resulted in a hearing, which has not yet been concluded.

The history, organization, and funding of the SLDF is an example of the relationship between land grievances and the manipulation of ethnicity and violence for political ends that is a disturbingly deep-rooted and longstanding element of the Kenyan political process. This came to prominence in the violence, much of it orchestrated, in the Rift Valley and western Kenya in early 2008 in the wake of the disputed presidential election of December 27, 2007. The election was widely perceived as rigged in favor of the incumbent, Mwai Kibaki of the Party of National Unity (PNU).

The abuses in Mt. Elgon intensified around the time of the election as the SLDF promoted its favored candidates in the election in a vicious campaign that, according to local residents, amounted to a campaign of terror. Abuses took on an overt political character as the SLDF targeted opponents of the ODM local government and parliamentary candidates. The government's brutal effort to suppress the insurgency, coming as it did in March 2008, may represent a case of the selective deployment of security forces against a militia with an opposition ODM political affiliation.

Nonetheless, while the government devoted significant resources to investigating the post-election violence—albeit without ultimately bringing prosecutions against those most responsible—it did not investigate abuses in Mt. Elgon nor consider the situation in Mt. Elgon as part of the post-election violence.

The National Accord and Reconciliation Act of February 2008 that brought an end to the post-election violence led to the establishment of the Commission of Inquiry into Post-Election Violence (CIPEV), also known as the Waki Commission, after the head of the Commission, Justice Philip Waki. However, the resulting Waki Report explicitly excluded the Mt. Elgon atrocities from its mandate, on the basis that problems in Mt. Elgon predated the elections and thus the Waki Commission could not establish a link with the post-election violence; and that the problems were of such great magnitude that the commission could not address them given its limited time, resources, and mandate.

The Waki Report's conclusion concerning the magnitude of the issues in Mt. Elgon would suggest that a CIPEV-style, truly independent commission is necessary to cast light on abuses in Mt. Elgon. But, due to lack of political will, no such commission has ever been established.

The Truth, Justice and Reconciliation Commission (TJRC), a second truth-seeking body established in the wake of Kenya's post-election violence, has heard testimony regarding abuses on all sides in Mt. Elgon. However, the TJRC was only given two years

to investigate human rights abuses throughout all of Kenya from 1962 to 2008, allowing it to spend no more than a few days hearing testimony on any particular set of abuses, including in Mt. Elgon; thus, it has only scratched the surface. It is as yet unclear what recommendations the TJRC will make in its final report concerning Mt. Elgon. Further, given the government's dismissive response to previous commissions, it is unclear whether the government will abide by its obligation to implement TJRC recommendations, including recommendations that particular individuals be prosecuted.

Human Rights Watch recommends that President Kibaki, with no further delay, establish a commission of inquiry to investigate human rights abuses in Mt. Elgon. The commission, independent of government control and of the police and security forces—which have demonstrated their unwillingness to conduct impartial investigations into events in Mt. Elgon—should avail itself of all evidence collected to date by the TJRC, the Kenya National Commission on Human Rights (KNCHR), and other human rights organizations. It should have access to all necessary police, military and administrative records and should be able to summon all individuals who may possess relevant information, including suspects. The commission should ensure that inquests are conducted into the possible deaths of all persons alleged to have disappeared in Mt. Elgon and that mass graves are exhumed.

The Kenyan government should also provide assistance, including by issuing death certificates and establishing a mechanism for compensation, for the family members of victims of enforced disappearances.

International institutions, including the East African Court of Justice and the United Nations Working Group on Enforced Disappearances, have taken up cases related to the lack of accountability for human rights abuses in Mt. Elgon. They should continue these efforts, given the unwillingness of the Kenyan government to ensure accountability to date.

The International Criminal Court (ICC) in The Hague, on the basis of facts uncovered by the CIPEV, initiated investigations into the post-election violence in Kenya. To date, these investigations have resulted in summonses for six individuals on charges of crimes against humanity. The six include politicians and government officials suspected of involvement on both sides of Kenya's 2007-2008 post-election violence. Hearings to determine whether to send the cases to trial were held before the ICC in September 2011. The two cases currently before the ICC involve crimes committed during the post-election violence in Uasin Gishu, Nandi, Nakuru and Naivasha, but no one has been charged before the ICC for crimes committed in Mt. Elgon.

The ICC is a court of last resort, stepping in only where national authorities do not ensure credible domestic investigations and prosecutions of crimes of genocide, war crimes, and crimes against humanity falling within the court's jurisdiction.

While the primary responsibility to investigate international and national crimes that may have been committed in Mt. Elgon lies with the Kenyan authorities, as this report demonstrates, there has been an absence of credible investigations during the last three years for atrocities committed in Mt. Elgon. The cases currently under examination at the ICC involve the killings of approximately 450 people: at least 212 killed in Nakuru and Naivasha by pro-government forces, and 230 killed in Uasin Gishu and Nandi by opposition forces. In comparison, between 2006 and 2008, over a thousand individuals lost their lives in Mt. Elgon, and cases of rape and torture run in the thousands. In the absence of credible national investigations, Human Rights Watch recommends that the ICC prosecutor analyze whether crimes falling within the ICC's jurisdiction were committed in Mt. Elgon and consider opening additional investigations in the Kenya situation to bring to account persons most responsible.

The Kenyan government should facilitate victims' access to truth and justice in the cases filed before national and international courts; exhume reported mass graves; and provide assistance, including by issuing death certificates, to the family members of victims of enforced disappearances.

Two of these women lost their husbands to the SLDF and another lost her son when he was forcibly recruited into the militia; she presumes he was killed by the military.



WIDOWED

ENFORCED DISAPPEARANCES

Approximately 300 Kenyans were forcibly disappeared in Kenya’s Mt Elgon region between 2006 and 2008 after being either arrested by Kenyan security forces or abducted by the militia group Sabaot Land Defence Force (SLDF). Three years after a military operation that aimed to flush out the militia – an operation that was accompanied by serious human rights abuses, including summary executions, enforced disappearance, and torture – the government has taken no action to shed light on the plight of the disappeared or to provide their families with access to justice.

DEATH CERTIFICATES

Under Kenyan law, a person is presumed to be dead when he or she has been missing for seven years. The only avenue whereby the seven-year requirement can be circumvented, according to Kenyan law, arises when an inquest is conducted into the case of a missing person presumed to be dead; the magistrate can, on the basis of the inquest, order that the victim’s family be issued with a death certificate. To date, only one inquest has been initiated, despite reports of several hundred disappearances in Mt. Elgon.

A death certificate is important in accessing a number of benefits. For instance, death certificates are needed for widows or widowers to be able to secure ownership of property in their deceased spouse’s name. Proof of the death of a spouse or parent can assist in accessing certain benefits such as scholarships. The state’s failure to conduct inquests had not only deprived victims’ families of truth and justice – it has also prevented them from accessing material assistance.

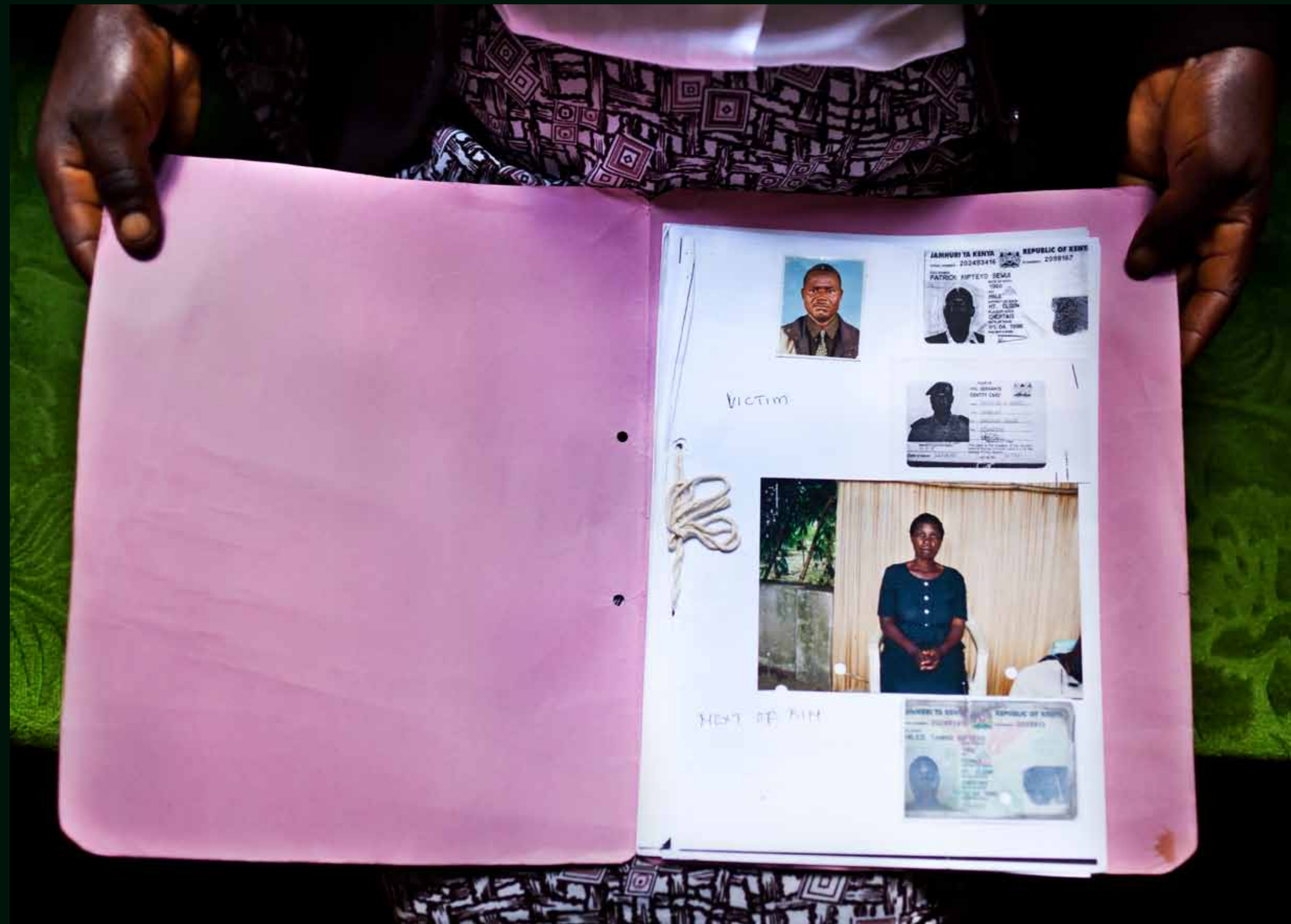
The children remember him. They ask, “Where is our dad?” Sometimes, I don’t know what to tell them. I say, “Dad was taken by certain people... and he wasn’t returned.”

Until this moment, even I don’t know where he is. As I haven’t buried him, my thoughts trouble me. I haven’t returned to our home. If I stay at home, I find myself wanting to call out to him.

Phyllis Kipteyo lost her husband, a government employee, after he was arrested by the Kenyan security forces in March 2008. She last saw her husband at a military camp in Chepkube in Mt. Elgon. He was bloodied and beaten and surrounded by three soldiers. She never saw him again and has received no explanation from the military or government during the three years since he disappeared.

More than two years after her husband was taken by the military, Phyllis received a letter from the government saying that her husband had been fired from his post of Assistant Chief on account of desertion of duty. This means she will not receive a government pension, even though her husband worked for the government and was disappeared by them.

Phyllis has been offered a death certificate three times but refuses to accept it as it means the end of her case and a denial of justice. As a result, she remains in limbo and has no land rights to her husband’s property and no government support for her children’s school fees.





I have gathered the widows whose husbands were killed by the SLDF and by the military, and even those whose husbands just died. Because we are all widows, we don't have any divisions. We have all joined together.

At that time we women were not given any say, we had no say in the affairs of the community. So it was the men that decided it. We women were not given any chance to speak. If I had been given a chance to speak I would have told my husband that it's not good to fight with the government because the government has a lot of power. We should have resolved things differently if someone had a grievance, so that we did it peacefully, instead of with guns. I tried to talk to my husband to tell him this. I told him many times...

He changed because of the land re-distribution. The government sent soldiers, more than 400. They came to our house, chased me away and made it their headquarters. That day my husband changed. The soldiers chased me away like an animal with my children and I didn't have anywhere to go.

I don't have a good answer for my children but I tell them, "Your father was killed by the military when he went to the forest to fight for his right to land." I try and tell them, even if your plot is small, God can open ways for you so that in this Kenya of today you can live without land. So get educated, and live without land. If my husband had realized that life without land is good he would not have decided to go and fight. He decided without land, it was better he should die. But still, without land we could have lived well, with him.

The widow of the deputy leader of the SLDF militia, Wycliffe Matakwei, who was allegedly killed by the Kenyan police in May 2008. The police paraded his body and his wife positively identified the body as being her husband's. She created a support network for women widowed by the violence committed by both the SLDF and Kenyan security forces.



I got news from our neighbor who was arrested with my husband. He said, “That man [the husband] died. I was with him. Look for him in the mortuary, don’t waste your time looking in the prison cells.” So I made an effort then to look for him in the mortuary. But we didn’t find him.

We heard that they were dumping the bodies up on the mountain. That they [the military] put them in the helicopter and they took them up there. There were many of us that wanted to go and look...but we couldn’t. They [the military] prevented us from going up the mountain.

Jennifer’s husband was taken from her home by the Kenyan army in 2008. She never saw him again and received no information from the military or government. She has tried to obtain a death certificate but was told by local officials that without burying her husband she cannot have one. Without a death certificate she cannot apply for bursaries for her children’s education. Jennifer pays school fees in rocks that she collects from her plot of land and carries up a steep hill eight times a day.

TORTURED, RAPED, AND TERRORIZED

Following the March 2008 Kenyan security forces operation to quell the SLDF militia, which had been terrorizing the district for two years, the SLDF was much diminished and the extent of their crimes emerged: over 600 people killed since 2006; hundreds tortured, mutilated, and raped; and houses looted and destroyed.

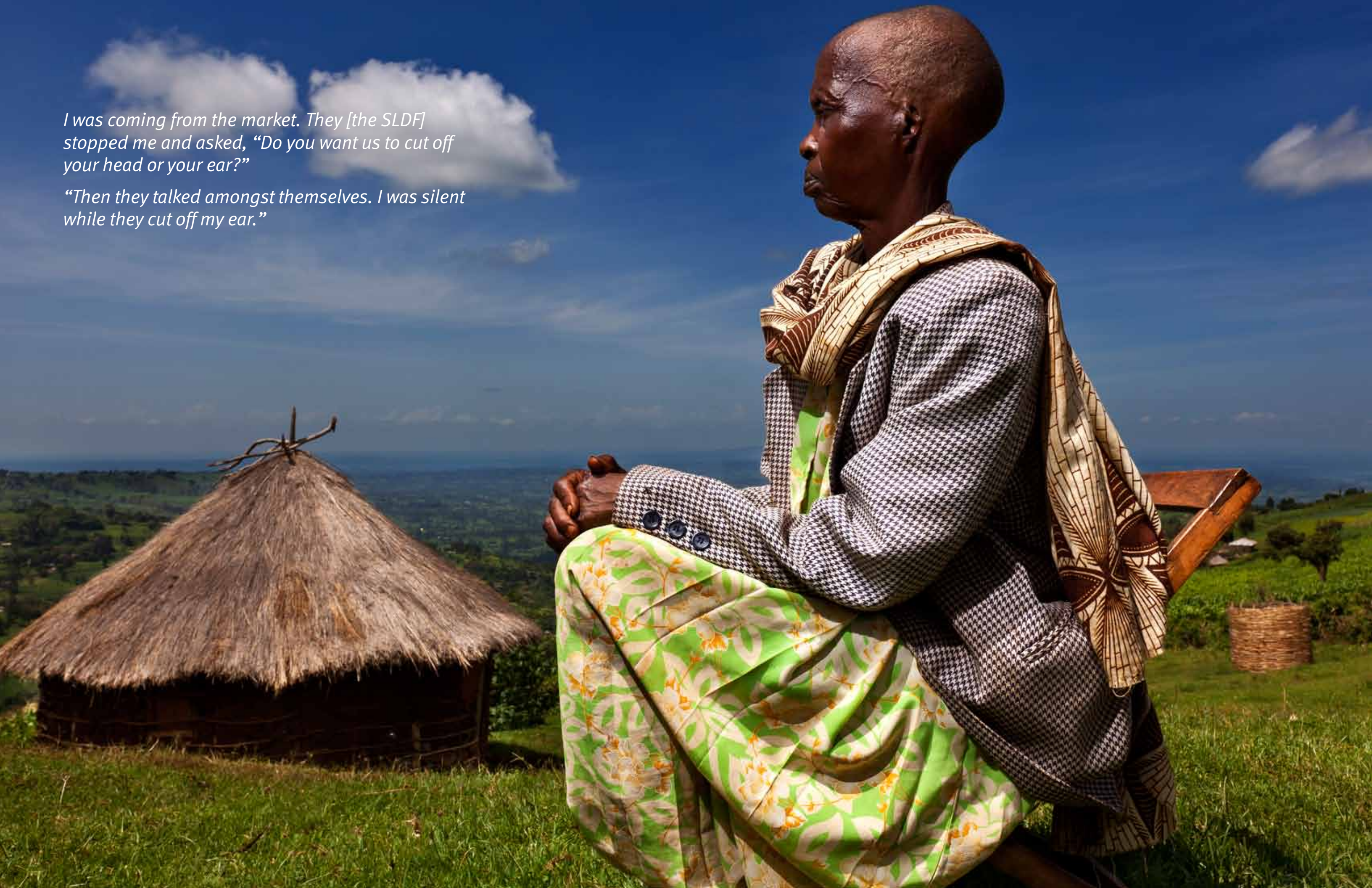
However, members of the security forces also committed serious crimes, including extrajudicial killings and torture, in the course of counterinsurgency. Much of the male population was rounded up and beaten to force disclosure of the whereabouts of the militia. Over 4,000 people were taken to military camps for “screening” where victims described beatings, torture, and some deaths.

This 75-year-old woman had her ear cut off by the SLDF in 2007. The signature mutilation of the SLDF was to cut off the ears of those who did not obey their orders in what locals claim was a campaign of terror.



I was coming from the market. They [the SLDF] stopped me and asked, “Do you want us to cut off your head or your ear?”

“Then they talked amongst themselves. I was silent while they cut off my ear.”





This man had his ear cut off by members of the SLDF. He was later brutally beaten by Kenyan security forces during the operation to quell the SLDF insurgency. They swept up thousands of men and boys and tortured many to obtain information about SLDF movements. As a result of his experiences, he has suffered mental trauma and emotional distress.



They [the SLDF] said, “Why are you still cooking out here? We burnt your houses, leave this place.” I answered them, “Where should I go now when I have nowhere to go?” They said, “Your ears don’t listen,” and so they chopped my ear off.

I can’t work anymore. I don’t know if it’s the root of the ear or what, but I can’t carry anything on my head, my head hurts too much. And it roars like a car...it roars, and roars.

There is peace, but anxiety. We get jolted when we see the SLDF boys.

This woman had her ear cut off by the SLDF because she refused to abandon her land to the rebels.



Above: Benetta Nasambu, 40, was shot by members of the SLDF. The men banged on her door late at night. When she refused to open the door, they shot through it, wounding her three times. The men then seized her husband and took him into the forest. He was released months later.

Right: Joseph Chebonya, 47, was shot three times and tortured by members of the SLDF. He was awakened at midnight by ten militia who stole all his cattle, tortured him for information on government soldier movement, and then shot him in his leg, hip, and buttocks. He is a farmer, and as a result of his injuries his ability to work is compromised and he cannot afford school fees for his 12 children. He has never seen any justice in his case.



*They kicked my legs away. I fell down.
And they raped me there...*

*I still see them...and they are people
from home, and older than me, it is
not good.*

Helen, 27, was taken by men from the SLDF who gang raped her, forced her to consume human excrement and urine, then took her to their leader who ordered her release. These men, who were known to Helen from her village, then raped her again and took her back to her husband saying that now she was HIV-positive. He subsequently left her. She has since remarried but has experienced no justice for the crimes committed against her.



While gathering wood for cooking, this 19-year-old woman was trapped by an SLDF soldier and brutally raped. Her child is a result of the rape. As told by her mother:

They [the SLDF] told her [the daughter], “This is the last time you will see your mother, we are going to kill your mother.” We went far into the bush. When we got there one of them said, “Let’s not kill this mother... let’s kill her child.” Another said, “No, let’s just cut her ear.” They argued until they agreed and then cut my ear.

They released me in the evening. I went to Kapkaten market to beg for vegetables. On the way back we met them and they said, “Aha, you are the ones telling the Bukusu where the Janjaweed [the SLDF] are.” And then they cut off my other ear. That happened the following week.

And then one of them assaulted my daughter when she went to fetch firewood.



*They say we are trespassing, but we are not.
This has been our home since forever.*

*Whom should we ask permission from?
We have lived here since our grandfathers and
their grandfathers. Who should we ask? Maybe God.*

A cattle herder stands in an illegal Ndorobo settlement in the Chepkitale region of Mt. Elgon. The Ndorobo (also known as Ogiek), the original inhabitants of Mt. Elgon, are pastoralists famous for their honey. The herder was forcefully evicted by the government from the national park area and resettled four times since 1979. Each time, he and his family returned after a few years, because the plots of land they were given were too small for their cattle to graze on, and there was “no honey.”

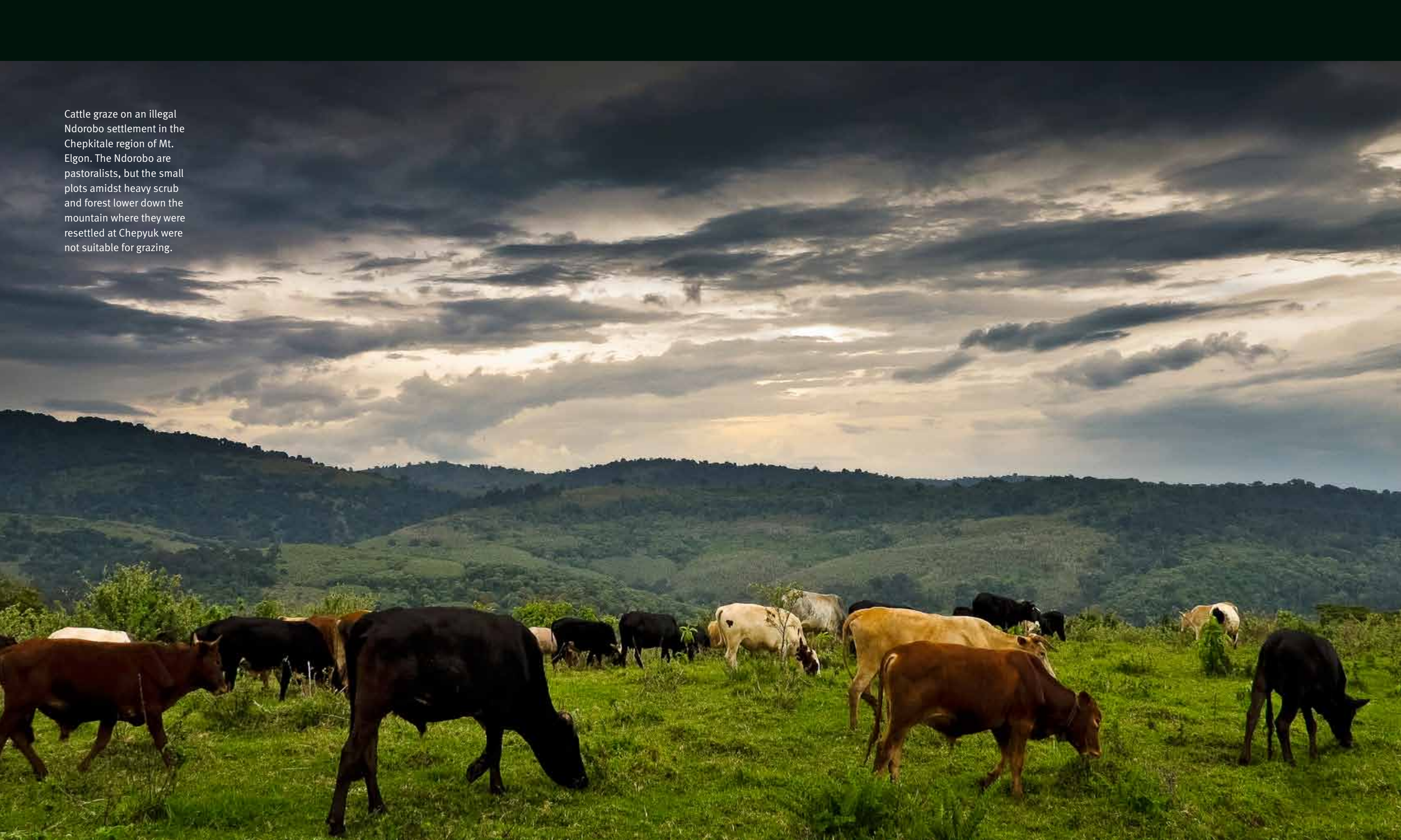
DISPLACED

The roots of the violence in Mt. Elgon lie in a land conflict that has been going on for several decades, starting in the 1960s when the government evicted thousands of Mt. Elgon residents from a forested area that was to be gazetted as a game reserve. Some of those affected were resettled but never received title to their land, while others remained landless. An effort to reallocate land initiated by the government in 2005, which would have reduced the land holdings of some members of the Sabaot sub-clan, led to the insurgency activities by the SLDF, which had already begun training several years earlier after the issue of land redistribution arose during the 2002 elections. To date, the conflict has not been resolved to the satisfaction of many residents of Mt. Elgon, raising the specter of future violence—particularly if the culprits of the 2006-2008 violence continue to benefit from impunity.

Residents of an illegal settlement in the Chepkitale region of Mt. Elgon build shelters.



Cattle graze on an illegal Ndorobo settlement in the Chepkitala region of Mt. Elgon. The Ndorobo are pastoralists, but the small plots amidst heavy scrub and forest lower down the mountain where they were resettled at Chepyuk were not suitable for grazing.





A family shares a meal in an illegal settlement in the Chepkitale region of Mt. Elgon.

JUSTICE?

MASS GRAVES

Residents of Mt. Elgon told Human Rights Watch that both parties to the conflict – the SLDF and the Kenyan security forces – dumped the bodies of their victims in mass graves. Despite ample evidence that this was the case – and recognition from the government that, at least, SLDF graves exist – the government has made little effort to identify and exhume these graves and allow for a dignified burial for victims. The state has also refused requests to preserve evidence at mass grave sites, and has taken little initiative to legally and forensically exhume the graves, raising questions about what might be found within. Some bodies disappeared but the SLDF were exhumed in 2009, but residents claim that many remain. NGOs that attempted to investigate the mass graves were subjected to threats. In June 2011, widows told Human Rights Watch that 64 of them had gone to demand that the former District Commissioner at Cheptais allow them to go into the forest to search for the bodies of their husbands but they were denied. The current District Commissioner claimed no knowledge of such a request.

An area called Kimama suspected of being a dumpsite for the bodies of those disappeared by the SLDF militia.



SUSPECTED GRAVESITES

The map displays the following locations and features:

- Districts:** TRANS NZOIA DISTRICT, MOUNT ELGON DISTRICT, BUNGOMA DISTRICT.
- Forest Area:** MOUNT ELGON FOREST.
- Locations:** KOPSIRO, CHEPYUK, KAPSOKWONY, KAPTAMA, KONGIT, KOBOWO, KAPSOKWONY, KIBUK, KAPSOKWONY, CHEMOGE, KAMUNERU, NAMARIO, KAPKATENY, CHONGEYO, CHESIKAKI, SASURI, CHEPTAIS, CHEPKUBE.
- Legend:**
 - Approximate location of suspected graves (indicated by orange dots with numbers 1-14).
 - Forest Area with suspected graves (indicated by a blue hatched area).
 - International border (indicated by a thick black line).
 - District boundary (indicated by a thin black line).
 - Division boundary (indicated by a dashed line).
 - Location boundary (indicated by a dotted line).
- Scale:** 0 to 5 kilometers.

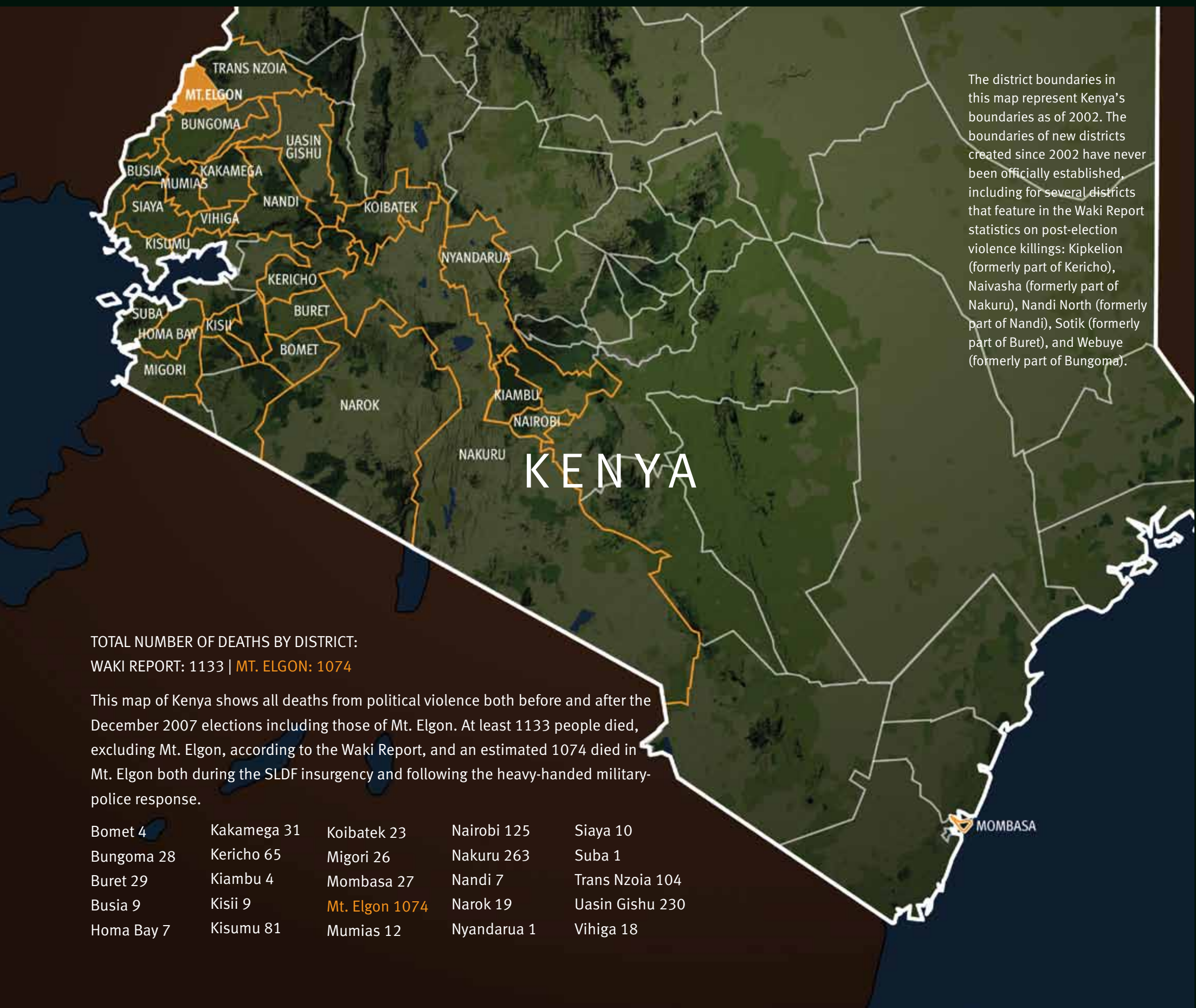


- 01 KAPKOTA MILITARY CAMP
- 02 CHEBWEK
- 03 CHEBOMBOI
- 04 KAMARAN'GA-MEZA
- 05 KAPTOBOI
- 06 CHESEREK
- 07 KIMAMA
- 08 KABORIOT
- 09 KAPTUM
- 10 BANANTEGA MILITARY CAMP
- 11 KUBRA
- 12 SOSOPEL
- 13 KAPKONG
- 14 KABERWA

Graves can be within 8 kms inside the forest from marked areas

Human remains found by locals in an area called Kimama, suspected of being a dumpsite for the bodies of those disappeared by the SLDF militia.

POLITICAL VIOLENCE DEATHS



The National Accord and Reconciliation Act of February 2008 that brought an end to the post-election violence led to the establishment of the Commission of Inquiry into Post-Election Violence (CIPEV), also known as the Waki Commission. However, the resulting Waki Report explicitly excluded the Mt. Elgon atrocities from its mandate, on the basis that problems in Mt. Elgon predated the elections and thus the Waki Commission could not establish a link with the post-election violence; and that the problems were of such great magnitude that the commission could not address them given its limited time, resources, and mandate. To date, the Kenyan government has still not investigated the violence in Mt. Elgon.

Human Rights Watch recommends that President Kibaki, with no further delay, establish a commission of inquiry to investigate human rights abuses in Mt. Elgon.

Based on the Waki Report, the International Criminal Court is investigating political violence in Kenya. It also excluded Mt. Elgon from its remit because the issue was deemed to be too complex. However, the crimes committed in Mt. Elgon are on a scale comparable to the political violence of 2007-2008, indeed they are an integral part of it. The ICC should expand its investigation to include Mt Elgon and bring to account persons most responsible for the crimes committed by both the Sabaot Land Defence Force and Kenyan security forces.

RECOMMENDATIONS

TO THE PRESIDENT OF KENYA

- Establish a commission of inquiry into the killings, disappearances, and other human rights violations in Mt. Elgon in accordance with the Commissions of Inquiry Act of 2009. Direct the commission to avail itself of evidence collected by the Truth, Justice and Reconciliation Commission and the Kenya National Commission on Human Rights; to pay particular attention to the conduct of the police and armed forces at Mt. Elgon; and to ensure that witnesses are able to give testimony either publicly or confidentially.
- Direct the commission of inquiry to review all the cases of those disappeared and provide all known information, including on deaths, to the families.

TO THE ATTORNEY GENERAL’S OFFICE AND THE DIRECTOR OF PUBLIC PROSECUTIONS

- Order a team of magistrates to conduct inquests into the possible deaths of all persons alleged to have disappeared in Mt. Elgon between 2006 and 2008, as per articles 385-388 of the Criminal Procedure Code. If necessary, temporarily relocate magistrates from other parts of Kenya to courts in the Mt. Elgon region in order to have the human resources to conduct inquests into all cases without further delay. In furtherance of the inquest proceedings, order the exhumations of mass graves in order to identify those buried in those graves, with the assistance of international forensics experts. .
- Ensure the criminal investigation and prosecution—before a special mechanism to prosecute post-election violence, if appropriate—of those responsible for forced disappearances.
- In the case of any person presumed to be dead at the conclusion of an inquest, ensure that family members are issued an appropriate certificate of death in accordance with the Births and Deaths Registration Act.

TO THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION

- Pursuant to TJRC hearings in Mt. Elgon, recommend that the government ensure the thorough investigation of enforced disappearances and other human rights abuses committed in Mt. Elgon.
- Recommend criminal investigations of alleged perpetrators of human rights abuses in Mt. Elgon, including military officials and SLDF leaders, and politicians against whom evidence of criminal acts has been presented in TJRC hearings.
- Order reparations for victims of enforced disappearance, torture, and other human rights abuses in Mt. Elgon.
- Use upcoming TJRC thematic hearings on human rights violations by the security forces as an opportunity to further elucidate crimes committed in Mt. Elgon.

TO THE KENYAN PARLIAMENT

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
- Ensure that enforced disappearance is a crime under Kenyan law.
- Establish a special mechanism within the Kenyan judicial system to prosecute serious crimes linked to the 2007-2008 post-election violence, including crimes carried out in the Mt. Elgon region.
- In conjunction with the Ministry of Finance, ensure that the Witness Protection Agency is fully funded, as required by the Witness Protection Act of 2006 and the Witness Protection (Amendment) Act of 2010.

TO THE WITNESS PROTECTION AGENCY

- Offer protection to witnesses from Mt. Elgon who wish to report abuses but who may be at risk.

TO THE KENYAN SECURITY FORCES, INCLUDING ALL POLICE AND MILITARY UNITS

- Cooperate fully with any investigations, by Kenyan or international bodies, into human rights abuses in Mt. Elgon, including by turning over documentary evidence and ensuring that police and military personnel are made available for questioning.

TO THE GOVERNMENT OF KENYA

- Invite the African Commission on Human and Peoples’ Rights to send a fact-finding mission to Kenya to investigate whether abuses in Mt. Elgon violate the African Charter on Human and People’s Rights.
- Invite the United Nations Working Group on Enforced or Involuntary Disappearances to visit Kenya in order to investigate alleged disappearances and to evaluate the government response in addressing these allegations.
- Provide compensation to families whose members were disappeared by the state.
- Establish a mechanism to provide compensation to families whose members were disappeared by the state and to victims of rights violations committed by state agents.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

- Establish an independent mechanism to investigate the human rights violations alleged in the submission made by the Kenyan Section of the International Commission of Jurists (ICJ-Kenya).
- Direct the Government of Kenya to investigate and prosecute all perpetrators of enforced disappearances and unresolved abductions in Mt. Elgon between 2006 and 2008.

TO THE UNITED NATIONS WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

- Transmit to the Government of Kenya a list of cases of enforced disappearances, as requested by nongovernmental organizations (NGOs) submitting complaints on behalf of the victims.
- Request an invitation to visit Kenya in order to investigate alleged disappearances and to evaluate the government response in addressing these allegations.

TO THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

- Analyze whether crimes falling within the ICC’s jurisdiction were committed in Mt. Elgon and consider opening additional investigations in the Kenya situation currently before the ICC to bring to account persons most responsible for these crimes. The Office of the Prosecutor should consider in its analysis crimes committed by both the Sabao Land Defence Force and Kenyan security forces.



Children play in an illegal settlement in the Chepkitala region of Mt. Elgon.



A collective of women, widowed by the 2006-2008 clashes between the insurgent Sabaot Land Defence Force (SLDF) and the Kenyan government, have bonded together to support one another in the aftermath of their husbands' disappearances and deaths.

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