General Allegation

135th session (27 to 31 January 2025)

Kenya

The Working Group on Enforced or Involuntary Disappearances ('the Working Group') received information from sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, 'the Declaration') in Kenya.

1. The Working Group is alarmed by the allegations from credible sources related to the instances of enforced disappearances including so-called short-term enforced disappearances, in the context of the protests which began in June 2024 against the proposed Finance Bill 2024 introduced in a special issue of the Kenya Gazette Supplement No. 102 (National Assembly Bills No. 30). Sources estimate that approximately 60 individuals have been forcibly disappeared; however, it is impossible to determine the exact number as it continues to fluctuate with ongoing reports of new cases and developments. Some of the disappeared have later reappeared, while others were found dead and the fate and whereabouts of some remain unknown. Those who have reappeared reported experiencing torture during their detention. The Working Group recalls that this issue was raised in JUA KEN 4/2024 and we regret the lack of response from your Excellency's Government.

2. According to sources, the proposed bill has provoked widespread indignation among the population due to the economic hardships caused by the introduction of new taxes. In response, residents took to the streets in protest. Reportedly, hundreds of protestors were arbitrarily arrested on the first three days of the protests, with at least two individuals losing their lives as a result of the disproportionate and excessive use of force by the police. As the protests grew, the Kenyan Parliament approved the bill, and protesters forcefully entered the Parliament building. Sources cite instances of arbitrary killings, abduction and shootings with life and rubber bullets.

3. Based on available information, enforced disappearances continue even as protests have diminished in scale. The reported cases of enforced disappearances reveal systematic patterns in the profiles of the targeted individuals, methods of abduction, reasons for detention, and eventual release. The majority of those disappeared were individuals involved in protests or perceived as key voices in society, including human rights defenders, journalists, medical and legal professionals, bloggers and community leaders. Those considered to be spearheading protests or playing a key role in funding them are reportedly especially targeted.

4. Reports received by the Working Group strongly suggest that targets were often identified through prior surveillance of social media or communications and that security services had unrestricted access to call data for real-time tracking, frequently bypassing legal procedures. These allegations raise further concerns about the role of digital surveillance in these violations.

5. According to the information received, a special team from the National Intelligence Service and from the Directorate of Criminal Investigations is purportedly behind the deprivation of liberty followed by enforced disappearance of protestors. Reports indicate that abductions were typically carried out by plainclothes officers in unmarked vehicles. Victims were forcibly taken from various locations, including their homes and public areas, often using force and methods like handcuffing and blindfolding. Interrogations during detention focused on protest-related activities, such as funding and organization, with reports of mistreatment and torture and detention periods ranging from a few hours to 32 days. The Working Group recalls that duration is not a constitutive element of enforced disappearances and that State's obligations under international human rights law are the same regardless of the duration of the disappearances. Sources further indicated that many victims were released after interventions by professional associations, family members, or civil society groups, with releases often occurring in remote areas or at police stations.

6. The Working Group further noted with concern the challenges highlighted in the information received, notably on surrounding accountability and investigations into enforced disappearances. It appears from the reports that, despite constitutional protections, the lack of a specific legal framework criminalizing enforced disappearances at the domestic level and frequent non-compliance with habeas corpus orders seem to undermine efforts to address these violations. Reports indicate instances of judicial orders being disregarded, with allegations of retaliation against the judiciary further eroding confidence in accountability mechanisms. Additionally, no arrests or prosecutions have been reported for perpetrators of enforced disappearances during or after the 2024 protests. Sources question the veracity of official information on cases being resolved and underscore that no evidence of comprehensive investigations has been provided or rendered publicly available. The allegations brought to the Working Group raise concerns related to the absence of action by oversight bodies, such as the Independent Policing Oversight Authority and the National Police Service.

7. The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegation:

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

8. The Working Group would recall that the absolute prohibition of enforced disappearances and the corresponding obligation to investigate them have attained the status of *jus cogens*, thus triggering obligations *erga omnes*. We also recall the Working Group's thematic studies on the Thirtieth anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance; New technologies and enforced disappearances, Standards and public policies for an effective investigation of enforced disappearances, as well as, the Joint statement on so-called "short-term enforced disappearances" and the Guiding principles for the search for the disappeared persons.

9. The Working Group would like to respectfully request the Government's observations on the following questions:

    a) Please provide any additional information and any comment on the allegations mentioned above.

    b) Please provide detailed information on the guarantees to prevent enforced disappearances in the context of manifestations and protests.

    c) Please provide information on State measures and protocols to ensure that the use of force in manifestations and protests is proportionate, necessary and reasonable to prevent arbitrary detentions that might amount to enforced disappearances.

    d) Please provide details on the measures taken to search for individuals who have disappeared during or after the protests, including information on coordination between relevant agencies and the outcomes of these efforts.

    e) Please outline the steps taken to investigate allegations of enforced disappearances, including the status of any ongoing investigations, the involvement of oversight or accountability mechanisms, and the prosecution of perpetrators.

    f) Please provide information on the applicable legal framework regarding enforced disappearances and indicate whether there are any ongoing or planned initiatives to amend the legislation to codify enforced disappearance as a standalone crime.

    g) Please provide information on the use of digital technologies to identify individuals targeted in connection with protests, including how these technologies are regulated to ensure compliance with data protection and privacy laws and international human rights standards.

h) Please identify the Government units or agencies responsible for operations resulting in the alleged enforced disappearances and explain the measures in place to ensure accountability and oversight for their actions.

10. The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days. The text of the general allegation will be published alongside the Working Group's post-sessional report on its website, and also any responses received from your Government.