



**UNSEEN,
UNACCOUNTED
AND UNRECOGNIZED:**

**THE HARSH REALITIES OF
ENFORCED DISAPPEARANCE VICTIMS
AND THE QUEST FOR RECOGNITION.**



Human Rights Agenda (HURIA)
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STATUS OF HUMAN RIGHTS MONITORING

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The Ripple Effect: Who Suffers?



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About HURIA

Human Rights Agenda is a non-profit, local Non-Governmental Organization based at the Coast of Kenya, founded immediately after the 2010 referendum as a response to the dictates of the new Constitutional order. Based in Mombasa County, the organization is committed to advancing and mainstreaming a culture of human rights and promoting capabilities with a view to enhancing the greater realization and equal enjoyment of fundamental rights and freedoms as enshrined in the Constitution of Kenya 2010, other laws and the international human rights instruments.

About the Consultants

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For more information visit huria.ngo

List of Acronyms

AU	African Union
CPC	Criminal Procedure Code
DCI	Directorate of Criminal Investigations
DPP	Director of Public Prosecutions.
ED	Enforced Disappearance.
ELOG	Elections Observation Group (Kenya).
EU	European Union.
HURIA	Human Rights Agenda.
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.
IEBC	Independent Electoral and Boundaries Commission.
IPOA	Independent Policing Oversight Authority.
KNCHR	Kenya National Commission on Human Rights.
LSK	Law Society of Kenya.
NIS	National Intelligence Service (Kenya).
NPS	National Police Service.
OCS	Officer Commanding Station.
OHCHR	Office of the High Commissioner for Human Rights.
PSTD	Post Traumatic Stress Disorder.
UN	United Nations.
WPA	Witness Protection Agency.

Definition of Key Terms

Acquiescence: The silent approval or passive consent of state authorities that enables or tolerates enforced disappearances.

Certification of Absence: Legal recognition of a disappeared person's status without declaring them dead, allowing families to access rights while the search continues.

Counter-Terrorism: State measures to prevent and combat terrorism, which must comply with international human rights obligations and never justify enforced disappearance or torture.

Enforced Disappearance: The deprivation of liberty by state agents (or those acting with state support) followed by refusal to acknowledge or concealment of the person's fate or whereabouts (ICPPED, Art. 2).

Habeas Corpus: A fundamental remedy requiring authorities to present a detained person before a court; indispensable for preventing enforced disappearance and unlawful detention.

Presumption of Death: A legal declaration of death after prolonged absence; in disappearance cases, premature use undermines the right to truth and ongoing investigations.

Ratify: The formal act by which a State expresses its consent to be legally bound by a treaty, following signature and domestic approval. For example, ratifying the International Convention for the Protection of All Persons from Enforced Disappearance obligates the State to implement its provisions in law and practice.

Trauma: The psychological, emotional, and physical harm suffered by victims and their families due to the uncertainty and fear caused by disappearance.

Victims: The disappeared person and any individual who suffers harm as a direct result of an enforced disappearance (ICPPED, Art. 24).



EXECUTIVE SUMMARY

Enforced disappearance remains one of the most serious human rights violations in Kenya today, disproportionately affecting families, communities, and civil liberties. Despite the available constitutional safeguards under Articles 29 and 49 of the Constitution of Kenya, the practice is sustained, often involving state agents or actors operating with indirect official approval. In recent years, enforced disappearance has also been used in Counter Terrorism measures, particularly in regions such as the Coast, North Eastern, and parts of Nairobi.¹ Individuals suspected—often with little or no evidence—of ties to extremist groups are abducted, detained in unknown locations, and denied legal protections.

The June 2024 anti-Finance Bill protests marked a further downward trend, extending these tactics to young people, digital activists, and peaceful demonstrators mobilizing through social media. Victims report to have been held incommunicado, denied access to legal representation, and, in some cases, never returned to their families.²

The legal framework governing cases of ED in Kenya remains inadequate. The country is yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and lacks legislation which criminalizes enforced disappearance as a distinct offence. The only present recourse for victims of ED is the writ of habeas corpus which still remains ineffective.

Women bear most of the brunt of this trauma. Many are suddenly thrust into single parenthood without access to resources or legal recourse. Others face domestic abuse or disinheritance from in-laws and extended family members. Studies from countries like Sri Lanka and Mexico³ reflect similar patterns of gendered harm, where women survivors of disappearance experience heightened vulnerability, poverty, and stigmatization.

¹Deaths and Disappearances, Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya. Human Rights Watch Report accessible at https://www.hrw.org/sites/default/files/report_pdf/kenya0716web_1.pdf

²2024: A year of Blatant State Repression Through Regime Policing, KHRC & IMLU. Accessed at <https://khrc.or.ke/press-release/2024-a-year-of-blatant-state-repression-through-regime-policing/>

³See Comparative Study.

The study finds that enforced disappearance has both direct and ripple effects that extends well beyond the initial violation, eroding trust in public institutions and entrenching marginalization.

Despite the clear constitutional and human rights violations involved, accountability for enforced disappearance in Kenya remains elusive. At the moment, Kenya lacks a centralized database for tracking cases, few successful prosecutions, and minimal institutional coordination. Law enforcement agencies operate with impunity, and judicial capacity to respond effectively remains limited. Enforced disappearance has now become a national crisis. This study reinforces the urgent need for comprehensive legal and policy reforms, to address both the causes and consequences of ED in Kenya.

In the absence of legal recognition of status of disappearance due to ED, families are left in limbo. They cannot access specific assets, transfer property, or initiate succession proceedings, and must wait seven years before a presumption of death can be legally established under the Evidence Act, CAP.80.⁴ This delay imposes unbearable emotional and financial strain, particularly on women and children.

It is therefore not just expedient but requisite to have a legal regime in the way of a Certificate of Absence to fill this legal gap.

Understanding Enforced Disappearance

State Involvement

Arrest or detention by state agents or those acting with their authorization, support, or acquiescence.

Refusal to Acknowledge

Authorities deny the deprivation of liberty or conceal the victim's fate and whereabouts.

Outside Legal Protection

Victims are placed beyond the reach of law, unable to access rights or remedies.

Victims are placed beyond the reach of law, unable to access rights or remedies.

⁴The Evidence Act, Chapter 80 of the Laws of Kenya

Summary of Key Recommendations

a) To the Kenya National Commission on Human Rights (KNCHR);

- i) Prioritize advocacy for the provision of psychosocial, legal, and medical support to victims and families.
- ii) Initiate a digitized and publicly accessible national register and documentation process for cases of enforced disappearance.

b) To Civil Society Organizations.

- i) Support families through helping them navigate legal, administrative, and investigative processes including assisting with tracing efforts, following up with relevant authorities, securing Certificates of Absence, and pursuing justice through courts or oversight bodies. These efforts must prioritize victims' autonomy, dignity, and informed participation.
- ii) Play a long term advocacy role in addition to case level support by documenting patterns and pushing for systemic reforms.

c) To the Judiciary

The Chief Justice should make practice rules and directions to aid expeditious disposal of urgent applications, including habeas corpus, protection orders, and requests for disclosure of detainee whereabouts.

d) The Independent Policing Oversight Authority (IPOA)

Investigate reported and suspected cases of enforced disappearance; involve victims' families in the investigative process including public reporting on progress, and refer matters to the Office of the Director of Public Prosecutions or relevant internal bodies for action with an urgency that presumes life.

e) The Cabinet Secretary for Interior

- i) Publish a policy directive mandating the standardization of arrest, transfer, and detention procedures across all policing and intelligence agencies.
- ii) Together with Parliament and the National Treasury establish a Reparations Fund for Victims of Enforced Disappearance. Establish a national protocol for the tracing of disappeared persons and the dignified management of unclaimed bodies.

f) To the National Assembly

- i) Ratify the ICPPED and take immediate steps to domesticate its provisions. Ratification should be accompanied by a public commitment to uphold victims' rights and eradicate enforced disappearance as a matter of national priority.
- ii) Enact a comprehensive Enforced Disappearance Act, criminalizing the practice in line with international standards.
- iii) Amend to the Criminal Procedure Code and Public Trustees Act to facilitate accessible, timely processes for families seeking administrative relief when a loved one is disappeared.

Key Recommendations

Ratify ICPPED

Parliament must ratify the International Convention and enact comprehensive Enforced Disappearance Act criminalizing the practice.

Establish Certificate of Absence

Create legal framework allowing families to manage affairs without premature presumption of death, protecting rights while investigations continue.

Support Victims

KNCHR should provide psychosocial, legal, and medical support. Establish national register and Reparations Fund for victims and families.

Strengthen Accountability

Judiciary must expedite habeas corpus applications. IPOA should investigate cases urgently and refer matters for prosecution with presumption of life.



A Call to Action

Enforced disappearance is a national crisis that erodes trust in institutions and entrenches marginalization. Despite clear constitutional violations, accountability remains elusive. The 2027 elections present heightened risk. Proactive reforms—strengthening oversight, expanding protection, regulating surveillance—are essential to prevent normalization of this grave violation.

This is not just about legal reform. It is about restoring dignity, providing closure, and ensuring that no family suffers in silence while the state looks away.

Kenya must act now to break the cycle of enforced disappearance and uphold its commitment to human rights and the rule of law.

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Introduction

HURIA has been working to stimulate evidence-based advocacy aimed at expediting state responses to the plight of victims and families impacted by extrajudicial killings and enforced disappearances. With this aim, HURIA monitors and documents cases of enforced disappearances in the coastal region of Kenya and collaborates with like-minded human rights organizations at the local and national levels to accelerate progress towards enacting legislation criminalizing enforced disappearance in Kenya.

Enforced disappearances in Kenya causes profound suffering to victims' families, who remain trapped in uncertainty and denied access to justice and essential services. The absence of a clear legal framework leaves families with limited remedies, while reliance on non-existent structures of

investigations undermines the right to truth and accountability. Families require alternative mechanisms that recognize their loss without foreclosing investigations.

As a result of the cases documented by HURIA, this study was commissioned to explore the effects of enforced disappearances to the victims and families of the victims and to examine the potential adoption of Certification of Absence as legal response in Kenya.

This report therefore proposes to inform key strategic interventions addressing enforced disappearances in Kenya, with a special focus on how the country should handle the presumption of death in cases of enforced disappearance.

Objectives;-

Specifically, the study set out to:

1. **Identify and Analyze** existing avenues of legal redress on Enforced Disappearance including gaps and challenges.
2. **Analyze the potential for a Certification of Absence** for victims of enforced disappearances in Kenya, including a comparative analysis with other jurisdictions.
3. **Examine the impact** of Enforced Disappearance on families and victims.
4. **Review the existing policy and legal frameworks** and analyze the potential for new avenues of legislative and policy reform including Certificate of Absence, and presumption of death.

Methodology

This study combined qualitative fieldwork with desk-based research to examine the phenomenon of Enforced disappearances in Kenya. The fieldwork was conducted between April and May 2025 in four counties namely Kwale, Kilifi, Lamu, and Nairobi. These four counties were identified as critical locations due to documented or alleged incidents of Enforced disappearance rampant in the areas.

The study's primary participants were individuals classified as victims of enforced disappearance in accordance with Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Under this provision, a victim includes not only the person subjected to enforced disappearance but also any individual who has suffered harm as a direct result of such disappearance, including family members and other closely associated persons. The inclusion of these individuals was essential to understanding the broader social, psychological, and legal implications of the violation.

The qualitative data collection process comprised the following components:

- a) Key Informant Interviews (KIIs): Fourteen KIIs were conducted with a diverse range of stakeholders, including victims, religious leaders, community elders, human rights defenders and grassroots actors who work with or are affected by cases of enforced disappearance.
- b) Expert Interviews: Two additional in-depth interviews were carried out with a constitutional law expert and a representative from the Law Society of Kenya, both based in Nairobi. These interviews provided legal and institutional perspectives on the subject matter.
- c) Focus Group Discussions (FGDs): Two FGDs were held in Kilifi and Kwale counties, involving affected persons and community members. These discussions offered insights into community-level dynamics, coping mechanisms, and local accountability efforts.

Desk-based research was undertaken throughout the study period. This involved a comprehensive review of: Domestic and international legal frameworks, Jurisprudence on enforced disappearance, Government and non-governmental policy documents and Academic and literature from both Kenya and other jurisdictions.

The overall research spanned four months (April–August 2025).

Limitations

Despite the study's rigorous design, it was subject to several limitations. Security concerns in some regions led to the cancellation of planned interviews and, in some instances, curtailed the depth of information shared by participants due to fears of surveillance or retaliation. A few scheduled informants from Nairobi were afraid to be interviewed due to fear of reprisals.

The sample size of Key Informant Interviews was also limited. In Kilifi and Lamu for example, there were no individuals who were direct victims of Enforced Disappearance.

These challenges limited the scope of perspectives captured.

Nonetheless, the study yielded substantive and actionable insights into the patterns, consequences, and accountability mechanisms surrounding enforced disappearances in Kenya.

History Of Enforced Disappearance In Kenya



I want all to know that if I disappear from the scene, because the bush is vast and hyenas many, that I am not planning any accident, nor, God forbid, any self destruction. Instead, I trust in a good guardian angel and in the action of grace.”



Father John Anthony Kaiser

Colonial Footprints of Enforced Disappearance

The British colonial government (1890-1963) utilized enforced disappearances in Kenya to control and stifle local dissent. Individuals who were opposed to the colonial government and anyone who sympathized with freedom fighters were often taken from their homes in the dead of the night in some instances never to be seen again.⁵

British Army officer, Frank Kitson was tasked with forming a counter-insurgency operation which was responsible for enforced disappearances as a means of dealing with revolt.⁶ Systematic abductions of suspected “insurgents” and political dissidents were to follow.

In many ways abductions and disappearances were used as a tool of psychological warfare. It served to instill fear and deter the populace from taking arms, supporting or otherwise engaging with the freedom fighters..

The abduction and killing of the Member of Parliament for Nyandarua North, J.M Kariuki, stood as a sore thumb in the regime of Jomo Kenyatta yet not the only case of abduction and disappearance. J.M Kariuki, a fierce critic of the government of the day was abducted on the 2nd of March, 1975 from Hilton Hotel and was found murdered in Ngong.

The Kenyatta 1 regime (1963-1978) inherited from where the Colonial Government left. It was during this period that the phrase “mkono wa serikali ni mrefu” took root. In essence, it implied that the government could do anything including making sure anyone was never found.

⁵Shilaho, W.K. (2018). Autocracy, Big Man Politics, and Institutional Atrophy. In: Political Power and Tribalism in Kenya. Palgrave Macmillan.

⁶Frank Kitson, Low Intensity Operations: Subversion, Insurgency and Peacekeeping.

⁷Kaiser, John Anthony (2003). If I Die. Word Alive Publishers.

⁸All The Men Have Gone, War Crimes in Kenya's Mt. Elgon Conflict. <https://www.hrw.org/report/2008/07/27/all-men-have-gone/war-crimes-kenyas-mt-elgon-conflict>.

Regime Sanctioned Abductions and Enforced Disappearance

The Moi era (1978 to 2002) was known as the dark era.

It is in this period that torture venues were directly sanctioned by the state, in particular by the Special Branch of the Kenya Police. Victims were systematically held incommunicado and subjected to torture while in custody, other disappeared without a trace.

Father John Anthony Kaiser disappeared on 23 August 2000, just days before he was scheduled to testify against the Moi Government and submit a report to the International Criminal Court detailing state involvement in political violence, forced displacements, and other atrocities during the previous general elections. Shortly thereafter, he was found dead.

In premonition and clearly because he knew what the Moi regime was capable of, he wrote a chilling forebode;

“I want all to know that if I disappear from the scene, because the bush is vast and hyenas many, that I am not planning any accident, nor, God forbid, any self destruction. Instead, I trust in a good guardian angel and in the action of grace.”⁷

During Kibaki's reign (2002-2013), the Kenya Defence Forces carried out an operation in Mt. Elgon ostensibly to weed out the Sabaot Land Defence Force, a rebel group that had committed numerous atrocities on the people of Mt. Elgon District.⁸ The KDF disappeared scores of men and women. Arrests were a means of last resort. The operation left many families destitute in its wake. Families were left without death certificates, children could not access birth certificates and victims could not legally deal with property left to them because they had no documentation whatsoever.

Evolution of Enforced Disappearance Post 2010

The 2010 Constitution of Kenya, ushered in a renewed vision for governance, anchored in a transformative Bill of Rights that offers a strong and progressive framework for the protection of the right to life. However, successive governments have increasingly undermined these guarantees, constricting the very rights the Constitution sought to safeguard.

Where enforced disappearances were once predominantly politically motivated, the contemporary landscape in Kenya reveals a far more complex and pervasive challenge. Today, anyone can become a target. Enforced disappearances now occur in contexts ranging from the settling of political scores and business disputes to acts of intimidation. More alarmingly, security agencies continue to forcibly disappear individuals they deem to be in conflict with the law. These patterns reflect the evolving forms and drivers of enforced disappearance in the country.

Following nearly every presidential election cycle, it has become common for groups dissatisfied with electoral outcomes to engage in protests and demonstrations. The State frequently responds with abductions, unlawful arrests, and malicious prosecutions—further eroding public trust and undermining constitutional protections.

Numerous cases have been reported and confirmed.

Enforced disappearance in the pretext of fighting crime has also been a highlight of the Post 2010 epoch. Counter Terror operations in the Coastal region have come at a huge cost to fundamental freedoms and right to life.

Communities in every corner of the Coast have tales of loved ones abducted by people believed to be officers from the National Police Service, the National Counter Terror Unit, Kenya Defence Forces and other specialized units.

Often, the abducted individuals are men, bread winners of their families.

While the State has a duty to protect its citizens against violent extremism, that duty cannot eclipse the duty to ensure the right to life and liberty are protected.

This study has utilized many first hand testimonies of victims of enforced disappearance in the Coastal area of Kenya.

New wave of Enforced Disappearances

The 2024 nationwide protests against the Finance Bill marked a significant turning point in Kenya's civic landscape, particularly in the way the state has responded to youth-led, digitally organized dissent. Empirical reports from the Kenya National Commission on Human Rights (KNCHR) have documented a pattern of enforced disappearances targeting protesters and social media activists who publicly criticized state action.⁹ Victims were abducted by individuals believed to be state agents, often in civilian clothing and using unmarked vehicles. In many instances, the abducted persons were held incommunicado, denied access to legal representation or family contact, and released without formal charges while others remain missing. Such conduct, in direct violation of Article 49 of the Constitution of Kenya, not only undermines the rule of law but also signals the normalization of extrajudicial tactics in silencing dissent.

Of particular concern is the targeting of youth and digital actors who engage in online civic expression. Unlike traditional opposition movements, this new wave of activism, catalyzed through platforms like X (formerly Twitter), TikTok, and Instagram, has been met with disproportionate and opaque state response. The KNCHR's Preliminary Report on Human Rights Violations during the Anti-Finance Bill Protests indicates that a number of abducted persons were vocal influencers or organizers of the protest hash tags, suggesting a deliberate focus on digital mobilisers.¹⁰ This shift reveals a growing anxiety within the state regarding the power of decentralized, youth-led digital movements to challenge policy and governance narratives.

It also raises urgent legal questions about the protection of expression in the digital era and the extent of state surveillance over private communications.

There has also been a growing trend of ED at the Coastal and North Eastern regions. These two regions border Somalia. These cases of ED are directly tied to the fight against terrorism and countering violent extremism. This report will show in great detail the lengths to which law enforcement agencies have gone in the war against terror. Instead of arrests, individuals have been abducted from their homes, places of worship and other social places, sometimes in broad daylight.

Many of these individuals have disappeared without a trace. Some have been found dumped dead with visible signs of torture. The practice was worsened with the advent of the Prevention of Terrorism Act, 2012 which has allowed the state more counterterrorism measures with little safeguards.

The continuing enforced disappearances of such individuals are not isolated but bear the hallmarks of an unofficial, systematic practice intended to intimidate and deter civic participation and instill fear in communities present in highly militarized regions of Kenya.

⁹Kenya National Commission on Human Rights (KNCHR), Preliminary Report on Human Rights Violations During the Anti-Finance Bill Protests, June 2024. Available at: https://www.knchr.org/July_2025/.

¹⁰Ibid.

Theorizing Enforced Disappearance

Enforced disappearance is defined in the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CED) 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.¹¹



The Kenyan Legal Framework has very little and scattered provisions on missing persons and enforced disappearance. Kenya signed the Convention on the Protection of All Persons from Enforced Disappearance in 2007 but is yet to ratify it.

The Treaty Making and Ratification Act, 2012 provides that Kenya signing a Treaty or Convention only means that the State

“expresses its willingness to consent to the text of a treaty and has the effect of obligating Kenya, even though it may not be a party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty.”

The import of this definition and Kenya not ratifying the Convention was to subject matters of Enforced Disappearance to the State's good faith. Nothing would have been further from dangerous.

It was not until May, 2025 when the Court in **Legal Advice Centre t/a Kituo Cha Sheria & 2 others v Cabinet Secretary, Ministry of Interior Security and Co-ordination of the National Government & 7 others; Law Society of Kenya & another (Interested Parties) [2025] KEHC 5718 (KLR)**¹² ruled that even though the Convention was not ratified, it had the status of jus cogens or could be interpreted as a peremptory norm therefore forming part of the Laws of Kenya under Article 2(5) of the Constitution of Kenya, 2010.

As such, Kenya still does not have a Statute that specifically outlaws Enforced Disappearance, based on well-established international standards.

¹¹International Convention for the Protection of All Persons from Enforced Disappearance, Art. 2.

¹²<https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/5718/eng@2025-05-09>

How does the Law presently treat victims of ED?

Section 256 and 258 of the Penal Code have been the fall back offences when cases of enforced disappearance have been highlighted.

Section 256 of the Penal Code establishes the offence of “abduction” as follows:

Any person who by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.

Section 258 establishes Kidnapping or Abduction with the intent to murder. It sets out thus:

Any person who kidnaps or abducts any person in order that the person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of a felony and is liable to imprisonment for ten years.

The offences of abduction and kidnapping only touch on one element of ED; the forceful detention and or deprivation of liberty. It does not cover the other two most important elements of ED: that the deprivation of liberty is carried out by State agents, or by persons or groups of persons acting with their support or acquiescence; and that the actors involved refuse to acknowledge the detention, or conceal the victim's fate or whereabouts, placing the person outside the protection of the law.

¹³Supra n1.

¹⁴Chapter 75 of the Laws of Kenya. <https://new.kenyalaw.org/akn/ke/act/1980/11/eng/2023-12-11>.

Presumption of Death under the Evidence Act and Procedure under the Criminal Procedure Code.

Section 118A of the Evidence Act¹³ provides that

Where it is proved that a person has not been heard of for seven years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.

This provision presupposes that the person to be presumed dead may have voluntarily disappeared or have gone missing under ordinary circumstances.

Section 386 of the Criminal Procedure Code (CPC)¹⁴ provides that the Officer Commanding Police Station (OCS) shall on receiving information that a person is missing and believed to be dead, send to the Director of Public Prosecutions through the Commissioner of Police as full a report as possible together with details of all supporting evidence relating to the circumstances surrounding the disappearance and the grounds upon which the death of that person is presumed to have taken place.

A Magistrate with the power to conduct an inquiry into a questionable death shall then hold an inquiry into the disappearance.

At the conclusion of an inquiry relating to a missing person believed to be dead the Magistrate shall report the case together with his findings to the Director of Public Prosecution and shall make recommendations as to whether or not the period regarding the presumption of death provided for by section 118A of the Evidence Act should be reduced and if so what lesser period should, in the circumstances of the death, be substituted for the period of seven years.

Section 388 (4) of the CPC further provides that upon receiving the Magistrate's report the DPP shall after considering the recommendations of the Magistrate, direct him to make an order as to the period which should be recorded before the death is presumed and upon the expiration of such period the Registrar-General shall be empowered to issue to any person who would otherwise qualify for a grant of letters of administration, an appropriate Certificate of Death in accordance with the Births and Deaths Registration Act.

It is instructive to note that there is no specified timeline within which these actions are supposed to be undertaken.

The **Public Trustee Act**¹⁵ also defines a Missing person as follows:



A person whose whereabouts are unknown despite reasonable efforts to locate the person and;

- a) who is no longer in communication or contact with those persons who the missing person would likely or ordinarily be in communication or contact with; or;**
- b) whose safety and welfare are feared for given the person's physical or mental capabilities or the circumstances surrounding the individual's absence; and**
- c) who had not made provision for the administration of his or her property**



Section 5C of the Act goes ahead to provide that where a person is missing for at least **180 days**, the Public Trustee may make an Application to the court and the court may by order:

- a) declare the person to be a missing person; and
- b) appoint the Public Trustee as trustee of-part of the property of the missing person; or the missing person's property generally.

Once the Public Trustee has been appointed, the Trustee may administer and may with the consent of the court sell, dispose of or otherwise deal with the property or any portion of it; and pay out of the capital or income of the property any debts owed by the Missing Person and money for the benefit of;

- i. a spouse or dependant of the missing person;
- ii. a minor child of the missing person; and
- iii. an adult child of the missing person who by reason of a physical or mental disability is unable to earn a livelihood.

It is critical to note that in so far as the law places an obligation on the State to deal with the certification of a missing person and the likely administration of a disappeared person's estate, the law cripples the ability of families to live effectively after their loved one has been abducted and or forcibly disappeared.

¹⁵ Chapter 168 of the Laws of Kenya <https://www.kenyalaw.org/akn/ke/act/1951/15/eng@2022-12-31>.

Scope of Habeas Corpus

The writ of Habeas Corpus was designed and primarily used for families and representatives of individuals of persons held by the State to demand that those individuals be produced in Court for the Court to determine whether their detention was lawful. Usually, there was an acknowledgement by the State that those individuals were held in gazetted areas. Therefore, Habeas corpus was never intended to be the last recourse in a run to save the lives of victims of state excesses and arbitrary action.

The High Court in *Masoud Salim Hemed & another v Director of Public Prosecutions & 3 others* (2014) eKLR in quoting the Philippines case of *MA. Estrelita D. Martinez v Director General and others*. GR No 153795 held that the purpose of the writ is to determine whether a person is being illegally deprived of his liberty. If the inquiry reveals the detention is illegal, the court orders the release of the person. If, however, the detention is proven lawful, then the habeas corpus proceedings terminate. The use of habeas corpus is thus very limited. Habeas corpus may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person.

The Court went on to find that;



When the respondents making a return of the writ state that they have never had custody over the person who is the subject of the writ, the petition must be dismissed, in the absence of definite evidence to the contrary.



This finding is problematic given the nature of abductions witnessed in Kenya in the last few years. The State has always denied enforced disappearance by state agents, even when the evidence was glaring. This finding of the High Court sets Habeas Corpus up to fail. It sets a precedent for Courts to issue orders only when they are certain that the abductors identified themselves as police officers.

Before the Constitution of Kenya, 2010, Habeas Corpus was a blunt tool that hardly achieved anything when it came to addressing cases of state sanctioned and sponsored abductions and Enforced Disappearance. Judges were hesitant in issuing Orders against the State in Habeas Corpus Petitions.

In *Republic v Commissioner of Police, Mohammed Ali & 3 OTHERS Ex-Parte Phylis Temwai Kipteyo* [2010] KEHC 3476 (KLR), the Petitioner, approached the Court for Orders of Habeas Corpus. Her husband, Patrick Kipteyo Sewui, an Assistant Chief, had been arrested by Army officers and taken to Chepkube Army base at the height of the Kenya Defence Forces operation to weed out the Sabaot Land Defence Force rebel group. The Petitioner had seen her husband at the Army base. He was later disappeared.

The Court uncharacteristically declined to grant an order for Habeas corpus citing that the individuals who took Patrick Kipteyo Sewui had not been specifically identified and as such the Court could not issue orders in vain. The Court ordered an inquest instead.

A key informant in Nairobi remarked that Nothing came of the inquest. He also stated that the Habeas Corpus orders have always been issues in vain. None of the victims have ever been produced by the police in Court.

The recent times in Kenya are unprecedented. In the hundreds of cases of State sanctioned and sponsored abductions and enforced disappearance, the State has denied involvement.

When families and Lawyers of victims have approached Court, the Inspector General of Police, Director of Criminal Investigations and other agencies have denied taking or holding these victims under their custody even when there has been evidence of state involvement.

The case of Bob Micheni Njagi, Jamil Longton and Aslam Longton, is one such example. Bob and the Longton brothers were taken in state style abduction on the 19th of August, 2024 and held incommunicado for 32 days! The State denied abducting or holding the trio.

The Law Society went to Court vide **Law Society of Kenya & 3 others v Inspector General of Police & 4 others [2024] KEHC 10534 (KLR)** seeking an order of Habeas Corpus. When the Court summoned the then acting Inspector General of Police, Gilbert Masengeli, he failed to appear. The Court cited him for contempt of Court and sentenced him to six months in prison. A few hours before the acting Inspector General of Police surrendered himself to Court for committal, the missing trio was found dumped at different locations. The survivors narrated their ordeal. They confirmed that they had been taken by security officers and were tortured in the 32 days.

Ochiel Dudley expressed frustration at the fact the Habeas Corpus orders have always been issued in vain. None of the victims have ever been produced by the police in Court.

Data and experiences from the LSK staff show that over the last one year, persons disappeared by the state especially from the Finance Bill Gen Z protests, have miraculously reappeared on the eve of or on the day Courts were to make Rulings on their Habeas corpus applications.

There is need for practitioners to engage strategic drafting in Habeas Corpus Petitions. While the focus has been on having the Inspector General, and the DCI, it is important that Habeas Corpus Petitions cite the Officer Commanding Police Station (OCS) of the jurisdiction where the victims were abducted or arrested.

Since the Police Station is the basic police jurisdictional unit, this will help pile pressure on OCSs to comply with the law that requires that they are aware of every arrest in their jurisdiction.

Challenges to Access to Justice in Kenya's Legal Framework.

- a) The foremost challenge as with any law is knowledge of the law. Very few citizens are aware that there exist procedures in law for the conduct of investigations into disappearance of persons and/or missing persons.
- b) The provisions of the Public Trustee Act requiring the Public Trustee to make an application for the administration of a missing person's estate. This despite individuals expressing frustration at dealing with the property and documentation of a disappeared person presumed dead.
- c) Government response is slow and often static. The police offer very little help to citizens reporting ED. Because there are no timelines in the implementation of Sections 386-388 of the CPC, an initial report will most times end at the report (WHICH REPORT? BY WHOM? Are we here talking about end by the OB record at the level of the police station?).
- d) The reliance on Sections 256 and 258 of the Penal Code have the effect of only recognizing a missing person but falls short of assigning responsibility and culpability at the doors of the state or its agents and often no declaration of violation of rights can be made.

Cultural & Religious Responses to Absence

While the law on certifying absence and missing persons is convoluted, communities and religions in Kenya have had their own means of handling cases of missing persons.

Enforced Disappearances have been rampant at the Coastal region of Kenya due to the Government's operations against violent extremism and countering terrorism. Often times, individuals are not arrested; they are abducted and disappear without a trace. Very few have returned home to their loved ones.

The study looked at two communities that have well documented last respect rites.

- a) The Muslim Faith has the concept of Iddah.

When a husband dies, goes missing or disappears, the wife gets into Iddah. Formally known is Swahili as "**Kukaa Iddah**". The wife is required to stay by herself without engaging in sexual intercourse, remarrying or otherwise engaging in any romantic relationship for a period of 4 months, 10 days in case she is widowed, and for 4 years, **4 months and 10 days** where a husband has disappeared without a trace.¹⁶ This could lay the basis for a Certification of absence pegged on the 4 months, 10 days period and a presumption of death pegged at 4 Years, 4 months and 10 days.

¹⁶Mohammad Ibrahim Sarhan. "Rulings on Iddah in Islamic Sharia: A Jurisprudential Study."

b) Among the Luo community of Kenya, there is no prescribed timeframe after which burial rites must be performed for a missing person. Families often delay the rituals, sometimes for several years, in the hope that the individual will return.¹⁷ Decisions to proceed with symbolic burial are influenced by spiritual signs, such as dreams, or misfortunes believed to result from unsettled spirits.¹⁸ In the absence of a body, a symbolic burial known as kido is performed, where objects like banana stems, yago fruit, or cloth are used to represent the deceased. These are interred with full ritual observance, including tero buru (cleansing ceremonies) and sigweya (dirges), which allow the spirit to be ritually integrated into the ancestral realm. This practice provides a culturally accepted form of closure, allowing the family to restore spiritual and social balance.

The timing and form of symbolic burial rites may vary depending on the social status, gender, and marital position of the missing individual.¹⁹ Men, particularly those who were married or held leadership roles, are more likely to be accorded prompt ceremonial closure. The rites serve dual functions; facilitating emotional healing for the bereaved and fulfilling obligations to ancestors to prevent harm to the living. Without such rites, it is believed that the spirit of the missing person may remain restless, causing misfortune or illness within the homestead. Performing these rituals ensures both spiritual cleansing and reintegration of the family into normal communal life. Thus, even in cases of disappearance without physical remains, the Luo ritual framework enables dignified mourning and continuity of cultural identity.²⁰

Enforced Disappearance takes away the right of communities to mourn and grieve.

¹⁷Shiino, Wakana. "Death and Rituals among the Luo in South Nyanza." African Study Monographs 18 (1997): 213–236. [Kyoto University Repository](#).

¹⁸Magak, Adhiambo Edith. "The Luo Dirge That Ushers the Dead to Immortality." Order of the Good Death, 2018. [Link](#)

¹⁹Ocholla-Ayayo, A. B. C. Traditional Ideology and Ethics among the Southern Luo. Nordic Africa Institute, 1980.

²⁰Onyango-Ouma, Washington. "The Role of Rituals in Health Seeking Behaviour: The Luo of Kenya." Anthropology & Medicine 11, no. 1 (2004): 21–35.



The Destructive Trail Of Enforced Disappearance

Enforced Disappearance creates more victims than documented. For one disappeared person, there could be tens of immediate and secondary victims. Under the International Convention for the Protection of All persons from Enforced Disappearance (ICPPED), “any individual who has suffered harm as the direct result of an enforced disappearance” is considered a victim of the crime. This includes family members of the disappeared.²¹

Given this phenomenon, one case of ED has the potential to destroy families and communities at large.

Psychological Effects of ED

There is a consistent pattern of trauma-related symptoms, pointing to long-term psychological harm experienced by families' members or the survivor.

The study has established the psychological effects appearing in the following forms:

a) **Chronic Trauma and Post-Traumatic Stress Disorder (PTSD)**

Family members of disappeared persons often suffer from prolonged, ambiguous loss, which means they are trapped in uncertainty not knowing if their loved ones are dead or alive.

²¹OHCHR, Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, 4.

Many experience chronic to acute symptoms of PTSD. Interviewees testified of intrusive memories, nightmares, hyper vigilance, anxiety attacks, and deep emotional numbness.

Survivors of enforced disappearance report experiencing trauma, especially in cases where state agents were openly involved in the abductions. Since the Coastal area has borne the brunt of counter terrorism operations, this has been a constant feature of survivors who have been released back to their families. The same happens with their families too.

I shudder any time I see a double cabin pick-up. They are used frequently by the state to abduct.

- Brother of a disappeared cleric in Diani.²²

This effect is by far the most experienced by individuals who were abducted and disappeared in Nairobi due to the Finance Bill and Gen-Z protests.

Respondents recounted the torture they endured while being held.

Bob Njagi was abducted and held incommunicado for 32 days before he was dumped by a roadside and commanded to find his way home.

I was kept in a dark room blindfolded and given a small meal a day...I was forced to relieve myself where I was while still in cuffs...They would sometimes come randomly and cane my feet...It was an awful experience.

-Bob Njagi.

²²Mwangale, Interview with a victim.

²³Sheikh Abubakar Shariff aka 'Makaburi' was shot and killed outside Shanzu Law Courts. He had been suspected of fuelling radicalization.

b) Protracted Grief and Depression

Due to ED, families cannot mourn properly without knowing the fate of their loved ones, a phenomenon called "frozen mourning" occurs. Families are in a perpetual state of mourning and grief. Wives left behind after their husbands were abducted and disappeared for suspicion of involvement in terrorism have fallen into deep depression. This is characterized by drastic behavior changes.

Two families in Kwale recounted the pain they faced in not being able to bury their loved ones.

We buried our brothers who were forcibly disappeared and found dead, at night so the children left behind sometimes never get to know their parents died. It's like we are in a prolonged period of mourning

- One of the sisters of brothers disappeared, murdered and dumped over 150km from their home

Even clergy shied away from performing burial rites lest they be targeted.

We could not even bury our loved ones. Burying a victim of ED was considered a crime. The case of Sheikh Makaburi²³ is one such example.

recalled a cleric in Kwale.

One interviewee reported that her sister in law developed strange behaviors after her husband was abducted. She started staying out late, leaving her home and children preferring the solace of clubs and taarab (dance parties) hangouts.

My brother's wife now attends taarab in the evenings and stays out late at night. This wasn't her before my brother was taken. His death particularly took a toll on her mental health.

- Sister of victim.

Somatic symptoms are also very frequent. Physical body pains, insomnia and unexplained heart issues develop after loved ones have been abducted and disappeared.

My mother was depressed as a result of the disappearance of my brother. She developed serious health complications due to the stress and died.²⁴

- family member of a victim.

c) Social Isolation and Stigma

Families of the disappeared are shunned by their immediate communities, accused of associating with terrorism or crime. This worsens the psychological toll by adding shame, loneliness, and silence to the already immense personal loss.

The area chief was used to peddle the lie that my brother and cousin were notorious terrorists. Anywhere I went I was referred to as the woman who came from the family of criminals. Eventually, we had to move

-Woman whose brother and cousin were forcibly disappeared, Kenya.²⁵

One of the interviewees gave harrowing details of being ostracized by his extended family because they believed that he had a hand in the disappearance of his son.

My extended family has ostracized me because they think I sold my son. I now have no other family left....If I wasn't a strong man, I would have hang myself...I can't even renovate my house. If I do, the neighbors and community will say I am using money from my son's captors.

-Father to young man disappeared in Kwale

²⁴Mwangale, interview with Key informant-2025.

²⁵Obara, Interview with Key Informant-2025.

d) **Trans-generational Trauma and economic disempowerment**

Children whose parents have been forcibly disappeared endure emotional wounds, disjointed family narratives, and ongoing struggles concerning identity formation. These psychological challenges are often accompanied by practical impediments abroad-ranging socioeconomic consequences. In many cases, such children are forced out of formal education due to a lack of birth certificates or other essential documentation, compounded stigma, and insurmountable financial barriers that make school attendance untenable.

My brother's eldest daughter was severely affected. She spends a lot of time at his graveside and often has fainting fits which started after my brother's body was found. She has not received any form of psychological support. We would be glad if she got some form of help.

-Family member of disappeared.

Our youngest brother could not marry because his prospective in-laws considered that he was from a family of gangsters....Another brother had to move out of our home because he couldn't sleep. He was restless and anxious anytime a car passed by the house or when he heard footsteps outside the home.

Sister to disappeared.

Another respondent recounted how the disappearance of his brother had caused him untold financial strain because he had to take up payment of school fees for his children. He broke down several times as he told his story.

e) **Loss of Meaning and Trust**

Many families and individuals have lost all faith in the police, judiciary and religious institutions. The disappearance becomes a rupture in their worldview, leading to spiritual crises or fatalism.

One family member of a disappeared victim acknowledged that at the time of disappearance, the clergy did nothing to help their family. They lost all hope in their immediate religious leaders.

In Kilifi, respondents decried the loss of trust in the police.

When my son disappeared, officers from the National Counter Terrorism Centre harassed me for many days. I had to report to their offices every week for no reason at all....I don't trust the police

f) Perceived Religious Profiling

I can confirm that all the ED in Diani are of those who profess Islam.

When we as Muslims are suspected of anything including religious extremism, we are not taken to Court. When Christians are suspected, they are taken to Court to face due process.

-Community elder.

Individuals reported experiencing heightened scrutiny or questioning, and some perceived that religious identity alone was at times linked, in public perception or practice, to suspected involvement in extremist activity. These experiences contributed to a broader sense of fear, mistrust, alienation and identity-based misunderstanding among affected populations.

I do not dress like a Madrassa teacher lest I am picked and disappear for good just like my brother was picked. I don't enjoy the way I currently dress because it is now a means of survival²⁶

-A man whose brother was forcibly disappeared, Kenya

The law is only the law when it comes to Christians. When it is a Muslim, the state through its officers becomes the arresting officer, the judge and the prison warder. They abduct and disappear for good. Muslim faithful don't get a chance to defend themselves in a court of law.

-A religious leader (Sheikh) whose family and community are grappling with cases of ED²⁷

²⁶Obara, Interview with Key Informant-2025.

²⁷Mwangale, Interviews with a focused group discussion.

Socio-economic Effects

a) Loss of Income and Livelihood

The disappeared person is often the breadwinner, especially in lower-income households. Their sudden absence results in immediate income loss, collapse of businesses and forced school dropouts as families divert fees to survival needs or searches.

A few months after my brother was forcibly disappeared, the children had to discontinue their studies. Our family also lost a great deal as he was the family's sole provider. We are now forced to seek menial jobs for survival²⁸

-Sister to a disappeared person, Kenya.

The family members who engage in the search end up losing their jobs due to the exacting nature of searches.

I lost my job because I did not show up at work for a while. When my brother was forcibly picked from home, we searched for him in every mortuary in the region. Anytime we heard that there were unclaimed bodies in a mortuary, we rushed there. Eventually, I was laid off.²⁹

-Woman whose brother was forcibly disappeared, Kenya.

I eventually lost my job in South Africa because I had to come back and search for my son. I have spent a lot of money in the search of my son.

I also had to quit my job as a referee because every time I was on the pitch and saw the young boys play I would be reminded of my son with so much grief

b) Legal and Financial Insecurity

Without a death certificate or legal status like presumption of death, families cannot claim pensions or inherit property, access insurance or bank accounts held by the disappeared, enroll children in schools or remarry legally. This leads to chronic poverty and legal limbo, often for decades.

My grandchild is yet to join kindergarten as he has no birth certificate. My son was disappeared before he processed it. He was disappeared with all he had and we do not have his Identification card. The chief won't give me a letter nor assist. I am now forced to bribe a few people to get some help.³⁰

-Father to a disappeared son disappeared in 2019, Kenya.

²⁸Obara, Interview with Key Informant-2025.

²⁹Obara, Interview with Key Informant-2025.

³⁰Mwangale, Interview with Key Informant-2025.

c) Extortion

Enforced disappearance frequently exposes the relatives of the missing to predatory financial exploitation. In a climate of limited accountability, families are often coerced into making payments- sometimes to individuals posing as officials and intermediaries- to gain even minimal information, secure visitation rights, or obtain the release of their loved ones. This predation on the uncertainty and distress experienced by bereaved families deepens their emotional suffering and accelerates their descent into financial hardship.

Since 2019 I have sent over KES.200,000 to various persons who assured me that my son was alive.

-Father to a forcibly disappeared man, Kenya.³¹

This unfortunate case of a father conned of his money for years on the pretext that some people knew where his son was exemplifies the extortion that accompanies some of these disappearances.

d) Family Fragmentation and Vulnerability

The enforced disappearance of a family member causes a deep and often irreversible rupture in family structures, particularly in contexts where men are the primary breadwinners. Women are disproportionately burdened, frequently becoming single mothers overnight without the legal or financial support systems needed to cushion such a loss.

In the absence of death certificates or legal recognition of disappearance, many women cannot access bank accounts, inherit property, or make binding decisions concerning shared estates. This legal limbo not only undermines their economic autonomy but also renders them vulnerable to abuse.

For children, the disappearance of a parent (usually the father) has profound psychosocial consequences.

The sad case of the young girl from Kwale who finished High School but would rather spend her time at the cemetery beside her father's grave is one such example. Children left behind by forcibly disappeared persons are more likely to experience depression, stigma, and educational disruption. Alarming, in some contexts, this vulnerability makes them susceptible to exploitation by criminal or extremist networks. Without a structured response that includes psychosocial support, community protection, and legal reform such as the introduction of a certificate of absence, Kenya risks fostering cycles of trauma that could reverberate across generations.

My niece was a bright student in school but she has since dropped out. She is withdrawn and cries a lot. She also works as a house help and I worry about her.³²

-Sister to a forcibly disappeared man, Kenya.

³¹Mwangale, Interview with Key Informant-2025.

³²Mwangale, interview with a Key informant, 2025.

e) Economic Disempowerment of Entire Communities

The persistent and targeted incidents of enforced disappearance have had devastating socio-economic consequences across the entire Lamu belt, leaving communities impoverished and socially fragmented. Families have lost breadwinners and primary caregivers, leading to increased poverty, food insecurity, and dependency.

At the height of countering violent extremism, Lamu bore the brunt. Even human rights defenders were scared to raise the alarm as the abductors would come at night and target specific villages. The young men who came back were later either tortured or suffered extra judicial execution.³³

-Human Rights Defender, Kenya

f) Cost of Searches

Families spend thousands on travel to prisons or morgues and medical treatment for trauma or torture survivors. For low-income households, which most are, these costs are crippling, leading to debt and asset sales.

The economic ramifications of enforced disappearance are profoundly felt by the victims' families, particularly those from low-income backgrounds. These families frequently bear substantial out-of-pocket expenses related to travel, as they journey repeatedly to prisons, morgues, or medical facilities seeking information or treatment of any torture survivors.



When our brothers were taken, there was no police station, hospital and morgue that we didn't visit. We went to Mombasa, Makindu, Nairobi City mortuary and Kenya University Referral Mortuary...Any time we got information from HURIA or HAKI Africa that bodies had been discovered, we went to confirm.



-Family member of disappeared.

In the FGD in Kwale, participants mentioned that they didn't receive support aside from being accompanied to mortuaries. They confirmed that families had lost time, income and even got into debt while searching for loved ones.

Such burdens often force households to deplete savings, accrue unsustainable debt, or liquidate critical assets-carrying long term consequences for their financial stability. For impoverished families, this cumulative strain can perpetuate cycles of vulnerability and poverty.

g) Missing persons as a consequence of Economic Hardship

This study documented a less reported trend of missing persons particularly among young men and women facing severe economic hardship. In regions such as Malindi and Lamu, the lack of sustainable employment opportunities and low income levels has compelled some individuals to voluntarily migrate across borders in search of livelihoods. These acts, while voluntary, are often not communicated to families or communities due to various socio-economic pressures, including stigma and fear of judgment.

³³Mwangale, interview with a Human Rights Defender, 2025

As a result, family members—unaware of their whereabouts—report them as missing, and in many cases, these are mistakenly classified as enforced disappearances.

A key informant in Malindi recounted such a case, where a young adult voluntarily left the country and only maintained intermittent communication with their family. While not an enforced disappearance in the strict legal sense, the emotional and psychological toll on families left without information or support is significant.

The socio-economic and psychological impacts of a missing person are not much different from the ED cases.

At some point, people said that I am an irresponsible mother because my son had joined the Al Shabaab. I reported the case at the local police station and instead, I became a person under investigation and state surveillance. The community did not want to interact with me I had to seek refuge for a while at the Mosque

-Mother to a man who voluntarily left the Country, Kenya.³⁴

Owing to heightened surveillance, missing individuals, due to social marginalization and economic disempowerment, in numerous instances, they are also disowned or alienated by their own families.



I live very far away from everyone. This stresses me a lot as I have to do everything by myself. There is no sense of community. From my family, only my brother speaks to me as the rest believe that I was married to a terrorist.



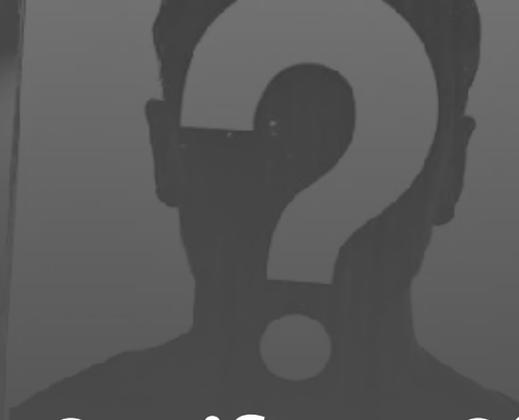
-Wife to a man who voluntarily left the Country, Kenya.³⁵

These effects are long lasting. There is need for better support from CSOs working in this space. Psychosocial support is urgently required to assist family members whose mental health has taken a hit.

³⁴Mwangale, Interview with a Key informant.
³⁵Mwangale, Interview with a Key informant.



A Case For Certificate Of Absence



A Case For Certificate Of Absence

When a person dies from known causes, the law prescribes that a Death Certificate is issued. Their family can then deal with the deceased's estate appropriately.

However, when an individual disappeared, they have no legal capacity or definition recognized under Kenyan Law. There is need for families of disappeared persons to have legal documentation that empowers them to not only find closure, but to deal with certain actions concerning the victim's estate and other administrative requirements.

The report has highlighted a few cases where families are for example left with victims' children who have no birth certificates. The Birth Certificates cannot be issued without parents' documentation. Without proof of parental identity, children cannot be registered either under the Registrar of Births and Deaths or for exams under the National Education Management Information System (NEMIS)

Enforced disappearance continues to cast a long shadow over many Kenyan families, leaving them in a state of legal and emotional paralysis. When a person is forcibly disappeared, relatives are often unable to access property, inherit assets, manage bank accounts, or make critical life decisions—all because the legal system does not recognize the unique status of a person who is missing but not yet declared dead. This legal void deepens the trauma and marginalization experienced by the families.

A Certificate of Absence would provide a much-needed interim legal remedy, giving families a tool to manage affairs while pursuing investigations and ultimately finding truth and closure. It acknowledges the gravity of disappearance without prematurely resorting to presumption of death, which in Kenya only arises after seven years of absence under section 118A of the Evidence Act.³⁶

This certificate would serve both practical and symbolic functions. Legally, it would allow family members to undertake essential transactions, access social welfare, and protect property rights without violating legal norms on succession or finality.

Morally and socially, it affirms the state's recognition of the unique harm of enforced disappearance and offers families a dignified form of redress. Without such a framework, the law continues to exclude and re-traumatize survivors. Kenya's emerging jurisprudence on enforced disappearance, supported by the Constitution's emphasis on human dignity and access to justice—Articles 28 and 48 respectively—provides a solid constitutional foundation for such an intervention.³⁷

A useful comparative model is Sri Lanka, where the Registration of Deaths (Temporary Provisions) Act No. 19 of 2016 introduced a legal mechanism known as the Certificate of Absence (CoA).

³⁶Evidence Act, Cap. 80, Laws of Kenya.

³⁷Constitution of Kenya, 2010, Articles 28 and 48.

This innovation emerged in response to widespread disappearances during the country's civil conflict. Sri Lanka is directly comparable to Kenya given the two countries' similar history of state oppression and sporadic civil conflict that has been met with crude government action including enforced disappearances. The CoA allows family members to manage legal and administrative affairs without forcing them to declare their loved ones dead. It protects both the rights of the disappeared and the dignity of their families. The Act was recommended and supported by both the UN Working Group on Enforced or Involuntary Disappearances and the Office of the High Commissioner for Human Rights as a good practice in transitional justice frameworks.³⁸

Kenya can draw from this precedent to tailor its own legislative and administrative reforms.

The Law already in the Public Trustees Act presupposes the need for documentation on a missing person. Given the nuanced nature of ED, it is imperative that a specific certification regime is established to grant victims of ED legal status, and their families the necessary tools to process their disappearance.

Possible Challenges to a Certificate of Absence

Should the CoA be adopted it is bound to face a few challenges:

- a) In predominantly Muslim populations where ED is rampant, the CoA may meet resistance in the interpretation of Usul Al Fiq and Istishab which govern inheritance and presumption of death. Istishab proceeds from a presumption of life and Usul Al Fiq only mandates dealing with an estate once death has been confirmed. This can however be overcome by establishing a specific regime of law that deals with ED, complete with an Act of Parliament and attendant regulations.
- b) There is a likelihood of abuse. It may be possible for criminals to take advantage of this regime to disappear individuals for personal benefit with an intention to benefit from certain temporary dispositions on their victim's estate. This can be remedied by creating a layered confirmation as a requirement for grant of a CoA.

³⁸Office of the United Nations High Commissioner for Human Rights (OHCHR), Promoting Accountability for Enforced Disappearances in Sri Lanka, 2016; United Nations Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/33/CRP.4, 16 September 2016.



Comparative Study

Learning from Sri Lanka and Mexico

Sri Lanka's Model

Certificate of Absence (2016): Allows families to manage legal affairs without declaring loved ones dead. Issued through Office on Missing Persons based on interim reports.

Uses: Apply for social welfare benefits, temporarily manage property, act as provisional guardian for children, and make representations before authorities.

Legal Framework: Registration of Deaths Act No. 19 of 2010, amended by Act No. 16 of 2016, plus International Convention Act No. 5 of 2018.

Mexico's Approach

General Law on Enforced Disappearance (2017): Establishes National Search System, criminalizes state and non-state disappearances, grants legal standing to families.

Forensic Mechanism: Addresses crisis of 50,000+ unidentified bodies through centralized records, DNA sampling, and international cooperation.

Victim Support: Reparations fund, psychological and legal aid, participation rights in investigations and prosecutions.

Sri Lanka

Sri Lanka has historically been one of the worst affected countries with ED. It is estimated that up to 100,000 cases of ED occurred during the civil war in Sri Lanka spanning the 1980s and 2009.³⁹ The “**White Van**” abductions became rampant thereafter, with northern Sri Lanka being the greatest casualty.

The Country has however made certain commendable strides towards addressing their dark past and forging a future that respects human rights.

Legal & Institutional Reforms

a) **Office on Missing Persons (OMP)** was established and operationalized in 2018 to investigate disappearances, determine fate, and recommend reparations. It however does not have prosecutorial power.

It is designated a budget of Rs 1.3 billion for reparations and related activities.⁴⁰

b) **The International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018** transposes the ICCPED into domestic law, making enforced disappearance an offense.

Loopholes & hurdles

Despite these strides, there is still ambiguity over application to historical cases, non-recognition as crime against humanity, lack of command-responsibility both in law and policy, uncooperative registrars and intimidation and Prosecutorial conflicts because the Attorney General operates the legal advisor to government and also as criminal prosecutor. This impedes impartiality.⁴¹

Political & Judicial Interference

- Judicial independence: Structural weakness in courts persists, and politically motivated commissions have recommended halting prosecution of offences around ED.⁴²
- Presidential pardons: In a rare disappearance-related conviction the President granted a pardon, undermining legal and executive accountability.
- Intimidation: Security forces routinely harass families and witnesses; one judge fled following threats after uncovering a mass grave.⁴³

Certificate of Absence (CoA) in Sri Lanka

The **Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010, as amended by Act No. 16 of 2016**,⁴⁴ formally introduced the Certificate of Absence. The Act defines the procedural criteria and requisite documentation families must submit, and establishes in its Section 8J, the uses of a CoA.

³⁹ <https://www.amnesty.org/en/projects/enforced-disappearance-in-south-asia/>

⁴⁰ <https://www.hrw.org/news/2016/05/28/sri-lanka-consultations-lacking-missing-persons-office>

⁴¹ <https://rtisrilanka.lk/en/six-years-of-inaction-sri-lankas-failure-to-enforce-law-against-enforced-disappearances/>

⁴² <https://sangam.org/ohchr-report-accountability-for-enforced-disappearances-in-sri-lanka/>

⁴³ Supra.

⁴⁴ Sri Lanka Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016. (Accessed at <https://ih-databases.icrc.org/en/national-practice/registration-deaths-amendment-act-2016>.)

Mexico

The certificate is available to relatives in cases of enforced disappearance, internal conflict, insurrections, or war-related disappearances.

The victims and families of ED utilizing the CoA may use it:

- i) To apply for benefits under any social welfare scheme.
- ii) To temporarily manage the property and assets of the missing person and act as a provisional guardian for dependent children of the missing person; and
- iii) Make representation before executive, administrative and judicial authorities on behalf of the estate of the missing person.

The **Office on Missing Persons (OMP)** issues Interim Reports that enable families to apply for CoAs through the Registrar General. The reports are accepted as official basis for issuing a CoA.⁴⁵

These Legislative interventions were the product of the Sri Lanka **Presidential Commission on Missing Persons**.⁴⁶

Enforced disappearance has been a grave and persistent human rights issue in Mexico for decades. Initially associated with state repression during the "**Dirty War**" (1960s–1980s), it later escalated due to organized crime, weak state institutions, and widespread corruption.⁴⁷ The problem intensified significantly after 2006 with the government's militarized approach to the "**War on Drugs**."

According to Mexico's National Search Commission, over 114,000 people were reported as disappeared as of mid-2024, with thousands of new cases every year. Victims include human rights defenders, migrants, journalists, and ordinary citizens.

Key Legislative Interventions

a) **General Law on Enforced Disappearance (2017)**

This landmark legislation (Ley General en Materia de Desaparición Forzada de Personas, Desaparición Cometida por Particulares y del Sistema Nacional de Búsqueda de Personas) which was a direct response to pressure from families of the disappeared, civil society, and international human rights bodies has the following tangible provisions.

- Establishes the National Search System and the National Search Commission (CNB).
- Defines enforced disappearance in line with international standards.
- Criminalizes both state and non-state perpetrated disappearances.

⁴⁵ https://sri.lankabrief.org/omp-to-issue-interim-reports-to-facilitate-obtaining-certificate-of-absence-for-the-disappeared/?utm_source=chatgpt.com

⁴⁶ Ibid.

⁴⁷ Mandolessi, Silvana. (2022). Disappearances in Mexico.

- Introduces specialized prosecutor offices at the federal and state levels.
- Grants legal standing and participation rights to families and civil society organizations.
- Requires the creation of state-level search commissions and search protocols.

b) Mexico's Constitution Human Rights Amendments in 2011

The amendments were critical because they elevated international human rights treaties to Constitutional status. This strengthened the legal basis for applying the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) to Mexico.

c) Ratification of International Instruments

Mexico ratified the ICPPED in 2008. It further recognizes the competence of the UN Committee on Enforced Disappearances (CED) to receive individual complaints. It is party to the Inter-American Convention on Forced Disappearance of Persons (1994).

Policy Interventions

a. National Search Commission

- Coordinates efforts across federal, state, and local levels.
- Maintains the National Registry of Disappeared and Missing Persons.
- Conducts field searches and supports family-led searches.

b. Extraordinary Forensic Identification Mechanism

- Created to address the forensic crisis with over 50,000 unidentified bodies in morgues.
- Allows for international cooperation and independent forensic assistance.
- Aims to restore dignity to the dead and provide closure to families.

c. National Human Rights Commission

- Investigates complaints, issues recommendations, and monitors compliance.
- Plays a critical watchdog role even though it lacks enforcement capacity.

d. Victim Support Mechanisms

- Federal and state-level Victim Attention Commissions were established to provide psychological, legal, and financial support.
- The 2013 General Law on Victims guarantees participation rights, reparations, and access to justice.

Institutional and Implementation Challenges

Despite important advances in law and policy, implementation remains deeply flawed.

a. Institutional Weakness

- State-level commissions and prosecutor's offices often lack autonomy, funding, or trained personnel.
- Little political will in many states impedes progress.

b. Militarization of Public Security

- The continued reliance on military forces (e.g., National Guard) contributes to new disappearances and impunity.⁴⁸

c. Impunity and Corruption

- Conviction rates for enforced disappearance are extremely low.
- Investigations are often slow, mismanaged, or obstructed.

d. Victim Participation

- Family groups are frequently sidelined or exposed to risk.

⁴⁸Zaragoza, Salvador Leyva. (2019). The Mexican General Law on the Forced Disappearance of Persons, Disappearances Committed by Individuals and the National Missing Persons System: How Many Steps Forward?. Mexican Law Review.

Key Lessons for Kenya

Key Lessons for Kenya

Adopt Certificate of Absence regime for legal recognition and family empowerment

Institutional Framework

Establish Office on Missing Persons or National Search Commission for proper reporting and investigations

Forensic System

Create mechanism for forensic identification, DNA storage, and management of unclaimed bodies

Victim-Centered Approach

Ensure compensation, participation rights, and protection for families throughout the process

- a) The Certificate of Absence regime is critical for Kenya. Victims of ED must gain recognition under the law. Families need it as a tool to deal with the various challenges already highlighted.
- b) The Office of Missing Persons in Sri Lanka and the National Search Commission in Mexico are good examples of how Kenya can activate a proper reporting and investigations system that will not only easily recognize but prioritize cases of ED.
- c) A mirror of the Forensic Identification system adopted by Mexico is equally useful. A mechanism for forensic identification, storage of crucial forensic identifiers and data does not exist in Kenya; a serious gap given the many cases of unclaimed and unidentified bodies which present an easy avenue for concealing ED.

- d) Victim centered approaches in both countries are shareable. The element of victim compensation and participation is crucial and timely.
- e) Structural and Institutional challenges both countries face clear insights to address gap. Tightening judicial procedures and accountability is crucial in making the proposed systems
- f) Prosecution must be made accountable to the people, to prevent instances of political interference in a bid to frustrate the prosecution of agents of the state.

Therefore, this study proposes a set of recommendations designed to place victims and survivors of enforced disappearance at the center of the legal, institutional, and policy response. The proposals are categorized by level of urgency and grouped by responsible actors.

1.1

Immediate Interventions

- a) The Office of the Attorney General should immediately initiate and coordinate the drafting of a comprehensive Enforced Disappearance Bill. This Bill should be an autochthonous law rather than a transposition of the convention but still aligned with the provisions of the ICPPED. It must provide for the recognition of victims (including family members), the right to truth, judicial remedies, reparations, and protective documentation such as Certificates of Absence and Presumption of Death.
 - b) Civil society organizations, particularly those working with victims, such as HURIA, should begin targeted advocacy to secure the Cabinet's approval for the ratification of the ICPPED. These efforts should include direct engagement with the Cabinet Secretary for Interior, the Attorney General, and strategic allies in Parliament to ensure swift adoption of a national legal framework that criminalizes enforced disappearances and reflects the lived realities of victims.
 - c) Legal and advocacy actors such as the Kenya Law Reform Commission, Kenya National Human Rights Commission and Civil Society Organizations like HURIA should begin preparing draft amendments to the Criminal Procedure Code, the Public Trustees Act, and the Births and Deaths Registration Act, aimed at harmonizing procedures for legal recognition of absence and presumption of death. These reforms are essential to ease the administrative burden on families and to prevent additional trauma from bureaucratic
 - g) The Kenya National Commission on Human Rights (KNCHR) should prioritize as a matter of urgency the provision of psychosocial, legal, and medical support to victims and families. This includes legal aid for habeas corpus applications, trauma counseling, and referrals for economic or health-related assistance. These services must be accessible, decentralized, and sensitive to the specific needs of women, children, and marginalized groups.
 - h) KNCHR should initiate a national register and documentation process for cases of enforced disappearance. This register should be digitized and publicly accessible and include disaggregated data, a mechanism for family input, and regular public reporting to enhance transparency, accountability, and the visibility of victims.
 - i) Civil society organizations must continue supporting families through helping them navigate legal, administrative, and investigative processes. This includes assisting with tracing efforts, following up with relevant authorities, securing Certificates of Absence, and pursuing justice through courts or oversight bodies. These efforts must prioritize victims' autonomy, dignity, and informed participation.
- Civil Society Organizations should also play a caretaker advocacy role in addition to case level support by documenting patterns and pushing for systemic reforms.

- j) The Judiciary through the Chief Justice should make practice rules and directions to aid expeditious disposal of urgent applications, including habeas corpus, protection orders, and requests for disclosure of detainee whereabouts. Judicial officers must adopt trauma-informed approaches and consider international jurisprudence in adjudicating disappearance-related cases.
- k) The Independent Policing Oversight Authority (IPOA) should act without delay to investigate reported and suspected cases of enforced disappearance. IPOA must proactively initiate inquiries, involve victims' families in the process including public reporting on progress, and refer matters to the Office of the Director of Public Prosecutions or relevant internal bodies for action with an urgency that presumes life.
- l) The Cabinet Secretary for Interior should immediately publish a policy directive mandating the standardization of arrest, transfer, and detention procedures across all policing and intelligence agencies. This directive must ensure compliance with constitutional safeguards, prevent incommunicado detention, and establish protocols for real-time family notification. The Ministry should also focus on appropriate monitoring mechanisms to ensure compliance by security agencies.
- m) The Ministry of Interior, together with the National Treasury, should establish a Reparations Fund for Victims of Enforced Disappearance. This fund should offer both financial compensation and non-material reparations such as counseling, rehabilitation, symbolic measures (e.g., memorialization), and public recognition of harm. This fund should be managed by the KNCHR.
- n) The Judicial Training Institute should begin delivering mandatory training for judicial officers on enforced disappearance, international legal standards, evidentiary thresholds, and best practices in victim-sensitive adjudication. This will address the gaps highlighted by practitioners and especially the ineffectiveness of remedies coming from Court.
- o) The Ministry of Interior, KNCHR, Ministry of Health, National Police Service, IPOA, and Counties through public morgues should establish a national protocol for the tracing of disappeared persons and the dignified management of unclaimed bodies. This includes:
 - i) Centralizing records of unidentified bodies;
 - ii) Ensuring DNA sampling and accessible family notification mechanisms;
 - iii) Requiring mandatory coordination between police, hospitals, mortuaries, and human rights agencies when a person goes missing;
 - iv) Enabling families to participate meaningfully in the identification process;
 - v) Publishing anonymised data on unclaimed bodies and regularly updating it.

This coordination mechanism is essential for fulfilling the right to truth, preserving the dignity of the dead, and providing closure to families.

1.2

Medium to long-term interventions

- vi) Parliament should ratify the ICPPED and take immediate steps to domesticate its provisions. Ratification should be accompanied by a public commitment to uphold victims' rights and eradicate enforced disappearance as a matter of national priority.
- vii) Parliament should enact a comprehensive Enforced Disappearance Act, criminalizing the practice in line with international standards. The Act should include strong protections for victims, guarantee access to legal remedies, establish clear standards for reparations, and operationalize procedures for issuing Certificates of Absence and Presumed Death.
- viii) Parliament should also enact amendments to the Criminal Procedure Code and Public Trustees Act to facilitate accessible, timely processes for families seeking administrative relief when a loved one is disappeared. These procedures must reflect the urgency and emotional toll of disappearance.
- ix) The Births and Deaths Registration Act should be amended to create a clear legal regime for presumed deaths, allowing families to obtain essential documentation even in the absence of remains. The amendment should provide safeguards to prevent premature closure of disappearance cases and harmonize procedures with the proposed Certificate of Absence framework. A dedicated register of presumed deaths should be maintained, designed to balance public accessibility for transparency with privacy protections for affected families.
- x) The Attorney General should oversee the harmonization of all relevant legislation, including but not limited to the Evidence Act, to ensure consistency across Kenya's legal framework in responding to enforced disappearance. All legal reforms must be informed by victim experiences and uphold the state's international obligations. To ensure coherence and legitimacy, the Attorney General should convene a multi-stakeholder task force to review, align, and propose necessary reforms across related statutes such as the Criminal Procedure Code, Penal Code, and Public Trustee's Act.

Future And Emerging Risks

Enforced disappearances in Kenya may increasingly intersect with broader governance challenges such as shrinking civic space, the misuse of counter-terrorism and security laws, and intensifying political competition.

The risk is compounded by technological surveillance tools being deployed without adequate oversight, which may enable targeted tracking of human rights defenders, activists, and opposition voices. Coupled with persistent impunity within security agencies and weak protection frameworks, these trends point to a future where enforced disappearance could be normalized as a tool of control. Addressing these risks requires proactive reforms that anticipate evolving tactics while strengthening democratic safeguards.

Recommendations

To Parliament

- Ratify the ICPPED immediately with public commitment to victims' rights
- Enact comprehensive Enforced Disappearance Act criminalizing the practice
- Amend Criminal Procedure Code, Public Trustees Act, and Births and Deaths Registration Act

To Cabinet Secretary for Interior

- Publish policy directive standardizing arrest, transfer, and detention procedures
- Establish Reparations Fund for victims with Treasury support
- Create national protocol for tracing disappeared persons and managing unclaimed bodies

To Judiciary & IPOA

- Chief Justice to issue practice rules for expeditious disposal of habeas corpus applications
- IPOA to investigate cases urgently, involve families, and report publicly on progress
- Judicial Training Institute to deliver mandatory training on enforced disappearance

To KNCHR & Civil Society

- Prioritize psychosocial, legal, and medical support for victims and families
- Initiate digitized national register of enforced disappearance cases
- Support families navigating legal processes and securing Certificates of Absence

Breaking the Cycle

Enforced disappearance in Kenya has evolved from politically motivated state repression to a pervasive practice affecting anyone deemed inconvenient—activists, suspected criminals, protesters, and ordinary citizens. The 2024 Finance Bill protests marked a disturbing expansion, targeting youth and digital activists who mobilized through social media.

7
Years

Current waiting period before presumption of death—an unbearable strain on families

100
Cases

Documented enforced disappearances in recent years, with many more unreported

0
Convictions

Successful prosecutions for enforced disappearance—impunity remains the norm

The path forward requires comprehensive legal reform, institutional accountability, and victim-centered approaches. A Certificate of Absence would provide immediate relief while Kenya works toward full implementation of international standards. The comparative experiences of Sri Lanka and Mexico demonstrate that change is possible when political will meets sustained advocacy. These recommendations, if implemented, will break the cycle of enforced disappearance in Kenya and strengthen the legal and institutional framework required to prevent future abuses of the right to liberty and life. The time for action is now.

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