EDITORIAL

Deaths in legal custody are a common phenomenon the world over. But whereas death in custody could be caused by natural forces, there has been concerns on suspicious deaths and killings of detainees. International, regional and national laws hold the right to life as a fundamental human right.

International human rights law and International Humanitarian Law posits that States have a duty to respect and uphold the right to life of all persons, including those held in custody. The International Convention on Civil and Political Rights (ICCPR) for example is categorical that ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’.

Article 26(3) of the Constitution of Kenya is clear that ‘a person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law’. This right is further buttressed by article 51 providing that “A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.”

However despite the existence of a legal framework to address suspicious deaths in custody, the Independent Medico-Legal Unit continues to document such cases every year. In 2012, IMLU recorded a total of four cases, 2013 three cases and from January 2014 to date, four cases. Instances where suspected criminals are arrested and illegally detained by police only to be found dead on the roads or their bodies deposited in morgues as ‘unidentified adult’ are fast becoming a worrying trend in the country.

This report provides a glimpse of among other things cases of torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and suspected cover-up of deaths in custody and calls for accountability to ensure anyone found guilty is expeditiously prosecuted.

Finally, IMLU invites information from the public on torture, ill-treatment and deaths in custody. The information can be sent to medico@imlu.org. Further, IMLU welcomes articles from our network members (Lawyers, Doctors, Monitors, Counselors and journalists) on any topical issue to be considered for publication in our next issue. The articles can be sent to jmuthuri@imlu.org, ctunnen@imlu.org or advocacy@imlu.org

JOSEPH MUTHURI
Programme Officer: Advocacy and Communication
Death in custody occurs when someone dies during - or immediately following - contact with a law enforcement officer; during the course of arrest, in a police vehicle upon arrest, by police shooting, in a police station, and deaths while undergoing medical treatment for people who had previously been in legal custody.

The sudden or unexpected death of a person while under arrest or in police custody is a matter of public concern. Just as such a death causes consternation among family and friends, it also presents a huge challenge to the police or custody authorities to investigate and account for the tragedy. Naturally allegations of foul play and incompetence arise presenting issues of criminal and civil liability.

Whereas police misconduct, action or inaction may be responsible for death and injury, a significant number of deaths still occur due to natural causes (natural disease process). Nonetheless, where implication in foul play or negligence is imminent, officials may be particularly interested in preventing an investigation thus denuding trust and confidence in state authorities.

Bereaved families, civil society, and legal professionals may grapple with several questions such as: Was unnecessary force used by police during arrest? Was the person physically abused during transport or during interrogation after having been placed in custody? Was serious and obvious illness in the person ignored or overlooked by the police? Were legitimate complaints minimized or disregarded? Was needed medical attention given? Did someone fail to recognize the potential suicide or fail to heed a suicidal threat? What steps were taken to prevent such an incident? Did the authorities make their inspections sufficiently frequently? Was very reasonable means taken to protect the safety and welfare of the suspect or prisoner from any form of self-directed violence?

The duty to respect and protect life is enshrined in the Kenyan constitution and in international treaties including the Universal declaration of human rights; Article 3: Everyone has the right to life, liberty and security of the person. Article 6 (1) of the International Covenant on Civil and Political rights: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. The third and fourth Geneva conventions of 1949 enshrine the responsibility of states to investigate deaths in custody.
Additionally, Article 51 of the Constitution provides that “A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.”

Prompt, objective and thorough investigation is critical for several reasons. First, the investigation will put rumors and speculation to rest and provide closure to the bereaved. Concerns about inadequate care or foul play will be dispelled and where possible, wrongdoing by law enforcement will be recognized for what it is. Third, information may be developed that identifies situations and procedures that require correction or improvement.

There is scant research and documentation regarding deaths in custody in Kenya. No official records regarding numbers and cause of death in custody have been made public. Anecdotal (from human rights documentation) evidence however suggests that such deaths may be common, unreported and uninvestigated. Several paradigmatic cases are the subject of this issue.

A 2009 prison assessment by the KNCHR concluded that torture, degrading and inhuman treatment, unsanitary conditions, and extreme overcrowding were endemic in prisons. The situation in police stations where pre-trial detainees may be kept for up to 24 hours is no different. Poor conditions of detention have been highlighted as a key contributor to death in custody by several publications including the Guidelines for Investigating deaths in custody, 2013 (International Committee of the Red Cross).

Other contributing factors include, insufficient access to healthcare, insufficient contact with family, inadequate safeguards against suicide and arbitrary deprivation of life, torture and other forms of ill treatment.

Adding to the conundrum of scant investigation, is the absence of formal death investigation system and poor forensic capacity. This has inevitably yielded the role of investigation to the police with obvious questions regarding their objectivity.

Fortunately, efforts are underway to set up a formal medical examiners service through enactment of the Coroners Bill (2012). It is envisaged that this provision will professionalize death investigation and enhance prevention of deaths in custody and other unnatural deaths.
“IF AM ARRESTED AND YOU DON’T FIND ME IN POLICE CELLS...CHECK THE MORGUE”

The following is an analysis of documentation including autopsy and witness accounts of cases of death in custody recorded by IMLU. This analysis shows an alarming recklessness, negligence, torture and conspiracy to cover up by police officers while handling suspects. Note that these are not the real names of the survivors.

DEATH AT THE HANDS OF POLICE OFFICERS

“They took me to a police post in Congo Village (Kawangware). Henry’s aunt and uncle, Martha Njoki and Martin Kimani came to the police post and tried to get me out. They were told that Henry had to be found for me to be released,” reads a statement recorded by James Kamau who later witnessed Henry die in a police cell.

“The policemen then took me to Muthangari police station in a private vehicle. On our way there, I heard them say that once they find Henry, they would make him regret running away (Huyokijanatukimpataaona cha mtemakuni).” Said a police known to Kamau as Eric.

It was on 2nd of November 2013, when Kamau and his friend Henry Kiarie (now deceased) were arrested by two police officers in Congo Village in the informal settlement of Kawangware for being drunk and allegedly causing disturbances in public. Kamau was first arrested and handcuffed but his friend Kiarie fled just as police were about to nab him, but was to be arrested hours later. In the police cells, they were given tea and bread for breakfast but Kiarie did not take his, he was feeling unwell. Upon being asked how he felt, “He told me that he had been slapped several times and that the police had hit him with the butt of the gun against the wall,” he recounted.

In the evening, Kiarie only took a little amount of food. “At around 2pm (3rd November 2014) one of our friends, Peter, who had been sent by the aunt (Njoki) came to visit us. At that time, Kiarie, Kamau recalled. Peter relayed the message to Njoki who hurriedly went to the police station accompanied by her son. She got there and could not hold her tears, as the pain that her nephew was undergoing was all over his face. He constantly held his head and could not sit still at all. She immediately sent his son to get some pain killers and drinking water for Henry. Even after taking the pain killers, Kiarie still complained of severe pain. Njoki left the station, a worried woman.

Back in the cells, after informing the police officer on duty that Kiarie had fainted again, he did nothing. Kiarie passed out again and this time, for 20 minutes. At 6pm when they were supposed to take their meal and similar to what had happened earlier, no help came from the police officer on duty.

On Monday morning, (November 4, 2013), they were to be taken to court after spending the entire weekend in the police cells. Njoki did not see Henry and she knew that something was amiss. As Kamau and the other remandees walked back to their cells, they were shocked to find Kiarie’s lifeless body lying on the floor. He had passed on. There was total silence and what followed was loud screams and bangs on the cell doors. Police officers came and took the body away.

IMLU conducted a post mortem report that revealed Kiarie died of acute head injury due to blunt force to the head. IMLU wrote to Muthangari police station on 10th July 2014 to inquire on the current status of the investigations that led to the death of the deceased and has received no response.
A demand to know why he was being arrested by police officers resulted in his own death. It all started one ordinary evening when Duncan Wachira joined his friends among them Paul Njeru at a local pub popularly known as Mwangaza bar in Nguru village Gachoka constituency. As they drank and chatted away the cold evening, a group of 6 Administration Police officers from Kabandori Camp entered the pub and arrested all patrons in the pub at around 8pm without explaining why they were doing so. They also arrested the bar attendant Jane Njeri who was serving her customer at the counter. The officers ordered Njeri to carry along some crates of beers that were to be used as exhibit. She was ordered to open the bar store but when they realized she had no keys to the store they forcefully broke in and took some beer. The patrons were ordered into a white G.K Land Cruiser that had been parked outside the bar.

Wachira was reluctant to board the vehicle and sought to know why he was being arrested. The officers violently tossed him into the Land cruiser and he hit his forehead hard on the back door of the police vehicle. He eventually boarded the vehicle with severe head injuries. When Njeri got into the Land Cruiser, she saw Wachira and a Ben Kimeu handcuffed in a corner but Kennedy (Wachira’s friend) was not there. The vehicle proceeded to Kabandori Police Station. On the way to the police station, Njeri noticed that Wachira was bleeding profusely on his face. At the police station, the officer on duty could not book him in the OB because he had severe injuries. The rest were booked in and Wachira and Njeru were released.

Earlier on Paul had called Wachira’s wife Mary informing her of the husband’s arrest. The following morning, she left for the station. The officer on duty checked in the OB but did not find Wachira’s name. He called out his name from the cells but there was no response. Njeri, the bar attendant who was arrested with him confirmed to Mary that he had not been booked because of the injuries.

Barely 24 hours after being arrested by police officers, he was missing and after a long search, Mary decided to go back home hoping to find him there. That was not to be the case. As time ticked by anxiety grew and by 4:00pm Mary’s husband was still missing. She decided to call his brother James Nyaga and informed him about the incident. They both went to the same police station to check on him but he was not there. They decided to record a statement of a missing person at the same station.

Three days later, Mary received a call that there was a body that had been found rotting at Kiritiri area in a bush a few Kilometers from the police post. She rushed there only to find the body of her husband who had gone missing for 4 days. Every witness from the bar recalls he was last seen in the company of police officers.

IMLU has contracted an advocate to watch brief in the criminal prosecution of the three AP police officers in Embu High Court being (Criminal case No. 3 of 2014) implicated in the murder.
SPOTTED LAST WITH TWO ADMINISTRATION POLICE OFFICERS

A phone call from David Thuo is the last memory that Rita has of her late husband. It all began on Thursday 17th October 2013 at around 6:00pm, when the 30-year old Thuo called his wife to inform her that he was at his parents’ home in Gikuni Village and he would get home late.

The same evening at around 6pm, Thuo’s cousin Sarah Waithera spotted Thuo standing with two Administration Police officers close to their gate. She was able to recognize the two police officers as Njuguna and Karanja, attached to Gikuni Police Post. After an argument, Thuo was handcuffed by Njuguna and they all walked towards the Chief’s Camp.

Waithera immediately reported to her mother of Thuo’s arrest and decided to follow the officers to confirm that indeed it was Thuo. After making the confirmation, she returned home and informed her mother with certainty that it was him. Waithera’s mother shared the information with Thuo’s mother and agreed to visit the police post the next day because his father was still at work and it was too late to venture out.

Back in Rongai, Rita was worried since her husband had not arrived home. She tried to call him at 9:00pm, but a female voice came through. The woman claimed to be Thuo’s friend but Rita insisted on talking to her husband. She hanged up the phone. Rita kept calling but there was no response. After sometime, the number was busy and by midnight it was off.

Early the next morning, she went to Gikuni village to leave their baby with Thuo’s parents after getting infuriated by the previous night’s conversation. On reaching the village, she learned that her husband had been arrested the previous night. Together with Waithera they decided to go to Gikuni Police Post where they found Karanja, the officer who Waithera allegedly saw the previous night arrest Thuo.

On inquiring about Thuo, Karanja told them he had not arrested anyone with the description they had given the previous night. Njuguna, the other officer entered the office and Karanja asked him, whether they arrested anyone the previous night. They both denied making any arrest but Waithera insisted that she had seen them arrest Thuo just his parent’s gate.

“We only arrested one drunkard fellow whom we released the same night,” said Karanja as he walked away. Rita was surprised as her husband had never consumed alcohol. The two ladies left the station and went to explain everything to Thuo’s parents and a search for him began. They visited several hospitals and Police Stations but in vain. They decided to further their search; and went to morgues. As soon as they got to the City Mortuary, they found his body there. Mortuary record indicated that the body was discovered at Spring Valley near Mwimuto.

IMLU wrote to the OCS Kikuyu police station on 21st July 2014 and a copy to IPOA and the Inspector General to commence investigations on the death of the deceased, but no response received.
A YOUNG LIFE TAKEN BY A POLICE BATON

It only took one brutal swipe of a police baton (rungu) to send the 26-year-old to an early grave. On 20th June 2012, Martin Kamau (the deceased) and Moses Mbugua his colleague in a construction company in Eldoret, went for dinner at a nearby hotel. As they approached Uganda Road near Barclays Bank in Eldoret town, two plain clothes police officers arrived on a motorbike. The officers had rungus and they ordered the two friends to sit down, which they obliged.

Kamau tried to explain to the officers that they had no bad intention and that they were only going to look for food. One of the officers by the nickname “Kazee” hit Martin with the rungu on his head. They were both handcuffed and taken to Eldoret Police Station, about 100metres from where they were and booked in the Occurrence Book (OB). Kamau collapsed as they were being booked, the left side of his head was swollen.

“Kazee” who had hit Kamau with a rungu said that he was faking injury and that he should not be taken to hospital. Mbugua insisted that Kamau be taken to hospital but the officers declined. “Kazee” called other inmates who dragged Kamau to the cell and dumped him there. The two friends spent the night alone in one of the cells.

According to Mbugua, the swelling continued and all through the night, Kamau did not talk but winced in pain. Mbugua had already called Frank Kirui a foreman in the construction company where the two worked and informed him about Kamau’s condition in the cell. Mbugua asked Kirui to go the Police Station to request the officers to take Kamau to hospital.

The next morning, Mbugua was taken to court and was charged with misconduct at police station and for being drunk. Kamau was not produced in court.

The officers then took Kamau to the Eldoret Moi Teaching and Referral Hospital where he was dumped near the casualty, the hospital registered Kamau as unknown African male. His friends among them Dan Njiru went to see him after receiving a call about his health. Njiru found Kamau had been operated on and he could not speak. On seeing him, together with Mbugua, he went straight to the police station and requested to speak to the OCS.

The OCS assured Njiru that he already had the case file and that he was waiting for Kamau to get well so that he too can record a statement.

Mbugua recorded a statement to explain what had happened the previous night when they were being arrested.

On 3rd July 2012, the OCS went to visit Kamau at the hospital but on 5th July at 5:00pm, Kamau passed on.

Martin Kamau’s inquest letter was done on 26th June 2012 addressed to Erastus M Muthamia OCPD Eldoret and a copy sent to the Director of Public Prosecutions. The inquest has since been opened no (13/6/2013). The OCS was to testify on 3/07/2013 but he failed to attend. He has since been transferred to Moyale, Northern Kenya.
A debt of Kshs600 led to the arrest of Fredrick Mburu and eventually to his death. On 19th July 2014, police officers from Kasarani Police Station arrested Mburu after a woman reported he had bought goods (spare parts) at her shop worth Kshs3,600. Mburu allegedly paid only Kshs3,000 shillings and had failed to pay the balance of Kshs600.

After learning of the arrest, Mburu’s wife Rahab went to Kasarani Police Station to check on her husband, where she was able to talk to him and understand why he was being held at the station. She went back to the officer on duty, a Mr. Maina, and requested for his release, but he demanded Kshs10,000.

Rahab decided to seek the help of the lady who had ordered the police to arrest her husband. Together with Mburu’s friend Philip, they went to the business lady and offered her the Kshs5000 shillings in order to secure Mburu’s release, which she declined. “Mimi sinashidayapesanasiwezikuwasaidia - I don’t have money problem and I can’t help you” the business woman said. They tried to use Mburu’s brother to convince her to take the cash and withdraw the case but she still rejected it.

Rahab went back to the police station and explained everything to her husband but promised to look for the remaining Kshs5,000 and to come secure his release the next morning on Sunday 20th July 2014. Mburu went back to the police cells and at around 11.00pm “Makumi” a police officer came to the cells and brought Mburu two packets of milk, bread and a 250ml bottle of alcohol. Mburu gave out the milk and bread to other inmates and drank the alcohol alone.

At around 5.30 am in the morning Mburu began vomiting blood. One of the cell mates gave him water but he couldn’t drink it. He was very weak. The cell mates ganged up and started banging the cell door as they called out for help from any police officer. “Makumi” the officer who had earlier brought the alcohol to Mburu came to the cells and said “Wacheniakufemumkule - Let him die and eat him” and he left. The inmates were angered by that statement and they continued shouting but no one came to Mburu’s rescue. After struggling for a while, he took his last breathe.

This made the detainees to break the bars as they protested further. The officers later came armed and dragged Mburu’s towards the reception. On inquiring about the episode, the OCS was told what transpired and promised investigations.

On Monday morning (21st July 2014), Mburu’s family went to check on him but the officers on duty were not ready to break the bad news. They kept tossing them from one office to the other. It took the intervention of detainees who saw Mburu’s wife moving down the corridors. They shouted “Waachekukuzungusha, wakuambieukweli - Let them stop playing games on you and tell you the truth”

They were finally informed that his body was taken to the City Mortuary. The wife immediately asked for a post mortem to be conducted and the results were that he died out as a result of poisoning.
IMLU HOSTS REGIONAL CONFERENCE FOR CRIMINAL JUSTICE ACTORS

Independent Medico-Legal Unit and the African Centre for Victims of Torture (ACTV) Uganda held a regional conference from 25th -28th of August 2014, to reflect on key issues with regard to prevention and prohibition of torture in East Africa, and to compare lessons on how best to address this scourge.

The conference brought together 50 participants from East Africa representing survivors of torture, government officials in the administration of justice, media, members of parliament, various experts and practitioners and civil society organizations working with victims and survivors of torture.

The objectives of the regional conference were to identify the emerging trends on torture, cruel, inhumane, degrading treatment or punishment within the EAC region with the aim of deepening understanding of the extent of the problem and reflecting on how best to address it; and to learn different care models for victims and survivors of torture within the criminal justice system. Further, to appreciate the role of local legislation in prohibiting and prevention of torture.

The delegates then came up with a common understanding on ways to eliminate and prevent torture and all forms of cruel, inhuman and degrading treatment or punishment in the region through a joint Communique (www.imlu.org).

The conference was funded under a joint project by the European Instrument for Democracy and Human Rights and Open Society East and Open Society Foundations. This is one of the core activities that IMLU will engage it in future in its quest to reposition as a regional training, rehabilitation, research and advocacy resource center against torture.

Delegates who attended the Regional Conference for Criminal Justice Actors
On Friday 12th September 2014, the Independent Medico-Legal Unit (IMLU) successfully performed a post mortem on the body of the 14 year old Kwekwe Mwandaza who was slain by police officers. This was after the High Court in Mombasa granted IMLU lawyers, the orders directing the exhumation and independent post-mortem examination.

A preliminary report on a second post-mortem examination on the body of Mwandaza, revealed that she died from a gunshot wound. This was revealed after a team of IMLU Network pathologists who performed a full autopsy dismissed as inaccurate the initial police report, which suggested that she may have died of cardiovascular arrest.

The late Kwekwe was shot dead by police who claimed that she had attacked 9 armed police officers who had stormed her house at night in a bid to arrest her uncle.

Two police officers Inspector Veronica Gitahi and Police Constable Issa Mzee were Monday, October 13th 2014, charged with the murder of the schoolgirl. This followed directions from the Director of Public Prosecutions Keriako Tobiko that the two officers be charged with killing the girl. The two denied the charge and were each freed on a bond of Sh500,000. Mr. Tobiko gave the orders following separate investigations conducted by the Directorate of Criminal Investigations and the Independent Policing Oversight Authority.
IMLU’S ENGAGEMENT WITH POLICE REFORMS

The Independent Medico-Legal Unit attended the launch of the Independent Policing Oversight Authority’s (IPOA) four-year strategic plan. The Plan is meant to help push for accountability in the police service.

The plan seeks to enhance police compliance to human rights standards, improve detention facilities and police premises. Through the plan, the authority also hopes to restore public confidence and trust in police as well as ensure the Internal Affairs Unit of police is functional.

IMLU was represented by the Executive Director Peter Kiama who said that the IPOA plan was a clear statement of commitment for robust civilian oversight and a watershed for police reforms in Kenya. On behalf of IMLU, the Police Reforms Working Group-Kenya and other civil society organizations, Kiama promised full support to IPOA and wished them the best of success.

IMLU CELEBRATES 82’ AIRFORCE SURVIVORS OF TORTURE

In the group support counseling sessions, the 9 ex-servicemen demonstrated remarkable courage and commitment in sharing their previously untold painful stories with the counselors.

After overcoming what they often referred to as “the overbearing feelings of shame and stigma” they had earlier experienced from the society, they eventually felt empowered and decided to share the same stories with the entire world. This was in a bid to correct the misconceived perceptions that they were all rebels and to let the whole world know that most of them were “circumstantial victims” of the attempted coup.

On 17th October 2014, IMLU celebrated the successful group therapy session at the Kenya Wildlife Service where the servicemen were joined by their family members.

Link of the documentary by NTV http://www.youtube.com/watch?v=baZx0XoPQpc.
IMLU UPCOMING EVENTS/ACTIVITIES

DOCTOR’S TRAINING
17th - 21st NOV 2014 UNIVERSITY OF NAIROBI SURGICAL SKILLS CENTRE, CHIROMO CAMPUS - NAIROBI

MONITOR’S TRAINING
20th - 21st NOV 2014 THE MONARCH HOTEL, NAIROBI

HAWKER’S SURVEY LAUNCH
DATES AND VENUE TO BE CONFIRMED

LAWYER’S TRAINING
26TH TO 28TH NOVEMBER 2014 ELEMETAITA COUNTRYLODGE NAIVASHA

INTERNATIONAL HUMAN RIGHTS DAY
10TH DECEMBER 2014 VENUE TO BE CONFIRMED

MAGISTRATE’S TRAINING
11TH TO 14TH NOVEMBER 2014 MAANZONI LODGE MACHAKOS