Up scaling Torture Prevention and Response in Kenya

National Torture Prevalence Survey Report 2011
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<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
</tr>
<tr>
<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention Against Torture</td>
</tr>
<tr>
<td>CIPEV</td>
<td>Commission of Inquiry into Post-Election Violence</td>
</tr>
<tr>
<td>CJPC</td>
<td>Catholic Peace and Justice Commission</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>GJLOS</td>
<td>Governance, Justice, Law and Order Sector</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>IMLU</td>
<td>Independent Medico-Legal Unit</td>
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<tr>
<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination against Women</td>
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<tr>
<td>PRIC</td>
<td>Police Reforms Implementation Commission</td>
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We also wish to thank the International Commission of Jurists-Kenyan Section our partner in this project for their support and collaboration in successfully implementing this intervention.

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Peter Kiama

Executive Director
SECTION 1

BACKGROUND INFORMATION

1.0 Executive Summary

This study was commissioned by the Independent Medico-Legal Unit (IMLU) to assess the prevalence of torture in Kenya. Torture and ill-treatment are among the most abhorrent violations of human rights and human dignity. According to the Universal Declaration of Human Rights (UDHR)¹ no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.² No exceptions are permitted under international law. Moreover, Articles 25, 26 and 29 of the Kenyan Constitution guarantee the right to life and absolutely prohibits torture. Therefore, IMLU commissioned TNS RMS to carry out research and generate information about current prevalence of torture, its character and drivers. This information is important for a number of reasons. First, IMLU will use this information to identify and address the obstacles faced by the victims of torture. Further, the organisation will use the information to strengthen its culture of evidence based interventions and empower institutions of the state to improve their governance structures.

Data was collected using both qualitative in-depths interviews with a cross-section of stakeholders in both public and private organisations, and a quantitative national survey with a randomly selected sample of 1200 respondents. In-depth interviews with individuals who have been victims of torture were also conducted. The qualitative in-depth interviews helped the research team to generate detailed insights about the anatomy of torture in the country while the survey helped the team to establish the penetrations of torture in the society and identify people most at risk of falling victims of torture.

From the survey, it is clear that torture still exists in the country. For instance, of the total respondents surveyed in this study, over 60% think torture is still very common in the country. In addition, about 86% said they have seen and/or heard incidents of torture reported in the media. Regarding who is the perpetrator of torture in the country, police were seen as the main perpetrator with 63% of the respondents mentioning them. Other perpetrators of torture mentioned in the survey include the local vigilante groups, City Council askaris and the prison warders, mentioned by 7%, 5% and 5% respectively. Asked about what are the factors that are driving torture, about 50% of the respondents mentioned poverty. This is significant because it could point that poverty is a predisposing factor that makes people vulnerable to torture. Other drivers of torture reported by a large proportion of the respondents include weak enforcements (43%) and lack of awareness of fundamental rights (42%).

Twenty three percent (23%) of the sampled population reported that they had been victims of torture. Of the respondents reporting to have been victims of torture in the past, 60% said they were tortured by the regular police, thus making police the main perpetrator of torture mentioned by the largest proportion of the victims. Local vigilantes, administration police, local chief and council askaris in that order were the other perpetrators, even though all of them were mentioned by less than 10% of the victims. But the worrying trend is that only 25% of the respondents reported the incidents to the authorities. Two possible explanations could be advanced for the low reporting rate. Either members of the society are cynical about reporting the incidents of torture because they do not believe it will amount to anything or they are ignorant about their fundamental rights and the avenues for redress. In both cases, advocacy to raise awareness is required.

¹ Signed in 1948.
² The spirit of the Declaration is summed up in its opening words: ‘…Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”
1. Introduction

Independent Medico-Legal Unit, commissioned this study. IMLU was founded in 1992. It is a registered non-governmental organization that seeks to promote the rights of torture victims and protect Kenyans from all forms of torture by advocating for legal and policy reforms, through forensic medical documentation, medical and psychological rehabilitation, advocacy, research, public interest litigation and legislative and policy reforms. IMLU has been a champion of change towards a torture free society that addresses the culture of impunity entrenched in the security agencies. In commissioning this study, IMLU hopes that the information generated will help promote the culture of evidence based advocacy.

According to the UN Convention against Torture (CAT), torture is defined as:

*Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of extracting a confession, obtaining information, punishment, intimidation, discrimination.*

For an act to constitute torture under the CAT, the pain or suffering has to be inflicted by or at the instigation of or with the consent or compliance of a public official or other person acting in an official capacity. There are many forms in which torture can be perpetrated. These include and not limited to systematic beating, food deprivation or forcible feeding with spoiled food, electric shocks, cigarette burning, burning by electrical heated rods, the submersion of victims head under water, being tied or forced to assume a fixed or stressful body position and so on. Rape and various forms of sexual violence could also amount to torture.

Torture is the most serious violation of the human right to personal integrity and dignity, and presupposes a situation where the victim is under the total control of another person. Torture is impermissible under any circumstances, including war, public emergency or terrorism. Article 2 (2) of CAT provides that no exceptional circumstances whatsoever may be invoked as a justification for torture. In Kenya, torture has in the past been used as a tool for suppression and silencing political dissent. Today, torture has taken subtle forms, but it is still a real part of the experiences of many Kenyans.

The country has in the recent past taken some steps towards eradicating torture. Article 29 (d) of the Constitution promulgated in August 2010 provides for the right ‘not to be subjected to torture in any manner, whether physical or psychological.’ Of the most significance is the absolute prohibition of torture or cruel, inhuman or degrading treatment or punishment enshrined in Article 25 of the Constitution. However, while this constitutional protection is commendable, these provisions will only be effective when implementing legislations are enacted and the state security agents and members of the public are educated and capacitated on their responsibilities and rights.³

The efforts to combat torture in the country and to inform the legislative agenda must be supported by objective information about incidences and trends of torture in the country. As such, the goal of this study was to establish the level of torture in the country, identify where it is being perpetrated (and who are the perpetrators) and whether the members of the public have recourse to reparation when they are victims of torture. The following were the specific objectives of the study:

- To establish the key drivers of torture
- To determine the present character of torture in Kenya
- To determine the prevalence of torture in Kenya
- To establish the general perception about torture by the Kenyan public, stakeholders and various arms of government
- To identify the impediments faced by the torture survivors in accessing redress and justice
- Establish any changes in torture since the previous torture survey in 2007

2. Literature Review

2.1. Background

Torture and other cruel, inhuman, or degrading treatment or punishment are under the constitution and the law prohibited practices. However, police frequently use violence and torture during interrogations and as punishment of pretrial detainees and convicted prisoners. According to IMLU’s 2007 torture survey, common methods of torture included whipping, burning with cigarettes, and beating with gun butts and wooden clubs. The public are not on the same wavelength with the political elite, who appear to have a common interest in opposing accountability and other measures to end impunity.5

For the past decade, Kenya has been undertaking governance reforms through the Governance, Justice, Law and Sector (GJLOS) reforms programme, a sector wide, cross-institutional reform programme led by the government. Part of the reforms priority areas included improving respect for human rights in government institutions; enhancing access to justice, particularly for the poor, marginalized and vulnerable; crime prevention, police reforms (including community policing) and penal reforms (particularly decongestion of prisons); and strengthening public prosecutions and legal services available to the public.

Chapter 4 of the Constitution of Kenya provides for the Bill of Rights. The Constitution goes further to outlaw torture making it non-derogable rights. However on the date the new constitution came into force, police arrested human rights defenders who demonstrated against the government invitation of Sudan President, Omar Al-Bashir who has been accused of mass human rights violations, genocide and other crimes against humanity upon the Sudanese people and has been indicted by the ICC.

The prohibition of torture and other forms of ill-treatment has a special status in the international protection of human rights. Kenya being a signatory to the Convention Against Torture (CAT)6 should not be permitted to temporarily limit the prohibition on torture under any circumstance whatsoever, whether at state of war, internal political instability or any other public emergency. The traditional obligations of states to respect, to protect and to fulfill human rights are complemented by a further obligation to prevent torture and other forms of ill-treatment.7 These standards have been entrenched under the Commission of Inquiry into Post Election Violence Report, the Alston Report and this was the bedrock of the GJLOS reforms programme. It is not sufficient to prohibit such treatment or punishment or to make it a crime. States Parties undertake legislative, administrative, and judicial and other measures necessary to prevent and punish acts of torture.8

Following the establishment of the Commission of Inquiry into Post-Election Violence (CIPEV),11 the inquiry established that the effectiveness of state security agencies was negatively affected by the lack of clear operational policing priorities that are largely dependent on political will. CIPEV therefore recommended the need to have concrete measures to improve performance and accountability of state security agencies and coordination within the state security mechanism, including strengthening joint operational preparedness arrangements; developing comprehensive operational procedures and review processes; merging the two police agencies; and establishing an Independent Police Complaints Authority. The Government has been

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5 Research by South Consulting. Available at www.dialoguekenya.org/docs.april2011_KNDRREPORT.pdf
6 Kenya ratified CAT in 1997 without reservations. No domestication has been made to incorporate issues of torture in a local legislation
7 In its general comment No.31: The nature of the general legal obligation imposed on States Parties to the Covenant, the Human Rights Committee stated that “[a]rticle 2 requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfill their legal obligations” (para. 7). It further added that “[i]n general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant” (para. 17). Emphasis added.
8 Commission of Inquiry, chaired by a judge of the Court of Appeal, Justice Philip Waki, issued its report (the ‘Waki Report’ or ‘CIPEV Report’)
9 Report of the UN Special Rapporteur on Extrajudicial Killings, Summary or Arbitrary Executions.
10 In its general comment No.20, the Human Rights Committee notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States Parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture (…)” (para. 8).
11 Commission of Inquiry established under Chapter 105 Laws of Kenya and as part of Reconciliation Agenda Number Item Number Two of the National Accord and Reconciliation Agreement.
12 On 15 October 2008, the Commission of Inquiry, chaired by a judge of the Court of Appeal, Justice Philip Waki, issued its report (the ‘Waki Report’ or ‘CIPEV Report’). The Waki Report determined that crimes against humanity may have been committed in the context of the post-election violence and recommended the creation of a Special Tribunal for Kenya (‘Special Tribunal’) with the mandate to prosecute those bearing the greatest responsibility for these crimes.
slow in implementing these recommendations especially those relating to state security agencies. This report was further given more evidence by the investigations conducted by Philip Alston, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions13

2.2. International Framework

International human rights law defines the limits of a State’s power over individuals, and imposes positive obligations owed by the state to individuals. Article 5 of the Universal Declaration of Human Rights (UDHR) 1948 reads “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”14 This Article is widely regarded as expressing customary international law. Within the United Nations framework, torture and other cruel, inhuman or degrading treatment or punishment are explicitly prohibited under a number of international treaties, which are legally binding on those States which have ratified them.15 These include the International Covenant on Civil and Political Rights (ICCPR), the Convention against torture (CAT), the Convention on the Rights of the Child (CRC), Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the elimination of all Forms of Discrimination against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD), and Convention on the Elimination of All Forms of Racial Discrimination (CERD). These Conventions address torture against all citizens be they migrant workers, women, children or persons with disabilities.

ICCPR was the first universal human rights treaty explicitly to include a prohibition of torture and other cruel, inhuman or degrading treatment, which aims to protect both the dignity and the physical and mental integrity of the individual.16 CAT goes a step further where states parties have a duty to investigate allegations of torture or cruel, inhuman or degrading treatment.

A significant emphasis has also been placed on ending impunity (exemption from punishment for a criminal act) through the use of national and international criminal law. This line of action is an important indirect prevention strategy that must be complemented by other approaches to effectively address the root causes of torture.

2.3. Regional Framework

At the African level, two regional human rights treaties deal with torture, the African Charter on Human and Peoples’ Rights (The African Charter)17 and African Charter on the Rights and Welfare of the Child (Children Charter).18 Under the African Charter, the right to freedom from torture is protected under Article 5, which provide:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

Therefore under the African Charter, unlike other international instruments, Article 5 is not only limited to the right to freedom from torture, but it also covers ‘respect of the dignity inherent in a human being.’ This

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16 HRC, General Comment No. 20, “Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment” (1992) §2, in UN Doc. HR/GEN/1/Rev.7.
18 Entered into force 29 November 1990.
is important because torture aims at breaking down the individual to the level of losing their human dignity, and the right of freedom from torture is inseparable from the guarantee of human dignity. Another unique aspect of the African Charter is that it puts torture in the same category as slavery and slave trade as ‘forms of exploitation and degradation.’

The Children Charter also prohibits torture, specifically with regard to children. It requires states to take ‘specific legislation, administrative, social and educational measures to protect the child from all forms of torture’. Measures to ensure that this article is made effective are introduced, as:

“Effective procedures for the establishment of special monitoring units to provide necessary support for the child as well as other forms of prevention and for identification, reporting, referral, investigations, treatment, and follow-up on instances of child abuse and neglect.”

States are also required to ensure that ‘no child who is detained or imprisoned or otherwise deprived of his or her liberty is subjected to torture, inhuman or degrading treatment or punishment’.20

The African Commission on Human and peoples’ Rights (African commission) has established a complaints procedure where parties can file communications where torture is alleged and as a violation of the African Charter.21 Under this mechanism IMLU has filed Communication Number 385 of 2010, as The Kenyan Section of the International Commission of Jurists versus Kenya22—a Communication submitted on behalf of the people of Mount Elgon, following gross human rights violations over several decades that have witnessed torture, inhuman and degrading term or punishment of a whole community.

The Commission has also developed the Robben Island Guidelines realising that there was need for a torture specific instrument in Africa, and that the prevention of torture is a multidimensional issue. The guidelines were issued from Robben Island inspired by the fact that this place has come to symbolise the fight against torture.23

At the Africa Commission, IMLU has in partnership with other human rights organisations issued reports on the human rights situation in Kenya and noted:

“As has been widely documented, notably by the office of the High Commission on Human rights (OHCHR) fact finding mission to Kenya, inappropriate and excessive use of force by the police against unarmed protestors during post-election violence was widespread…the heavy handedness o the police and unjustified reactions resulted in the deaths of several hundred civilians as they use live ammunition against protestors and then cracked down on highly densely populated informal settlements to prevent crowds from gathering. A forensic investigation conducted by IMLU, confirms this.”24

2.4. National Framework

Kenya is a signatory to the Convention Against Torture (CAT)25 but not its Optional Protocol,26 which allows individual complaints against violations under the Convention. However, despite the ratification of CAT, Kenya has not domesticated or incorporated the definition of torture in its laws. This, therefore, means that psychological and mental suffering resulting from torture are not covered at all in Kenyan law.

19 Article 16(1).
20 Article 17 (2) (a).
21 IMLU
22 Communication Number 385, submitted in May 2010, during the 47th Ordinary Session of the African commission.
23 Robben Island, in Cape Town, South Africa is a place closely associated with freedom heroes fighting the apartheid regime in South Africa.
25 Kenya ratified CAT in 1997 without reservations. No domestication has been made to incorporate issues of torture in a local legislation.
26 The current call by KNCHR and civil society groups is for the government to to establish a national preventive mechanism which will be effective and broad-based while paying heed to the need not to over escalate the number of public institutions undertaking human rights work.
In November 2008, Kenya presented its initial report\textsuperscript{27} to the Committee against Torture. The Committee then noted the pervasive nature of torture in Kenya noting that there was overcrowding in prisons and other places of detention and key institutions monitoring human rights especially the KNCHR had no direct access to these places having been prevented by the police. In auditing the Kenya state report, the committee noted that there was an apparent lack of measures to ensure prompt and impartial investigations of torture.\textsuperscript{28} The situation has become worse, more people have undergone psychological torture and ill-treatment. Reporting of cases has gone down as there is no progress from reported cases.\textsuperscript{29}

Pursuant to the Submissions made by Kenya to the committee, far-reaching concluding observations were made that the State was supposed to make positive measures in response. With the passage of a new Constitution in 2010 that outlaws torture, the normative framework is established. However this should be supported by specific legislation that incorporates the Convention into the legal framework. While acknowledging that torture is outlawed under Article 25 (a) of the Constitution, the proposed \textit{Torture Prevention Bill}\textsuperscript{30} has not been prioritized as one of the bill that should be fast-tracked and the \textit{Coroners’ Bill} is still pending. Of the important bills under consideration is the \textit{Ratification of Treaties Bill, 2011},\textsuperscript{31} which will set the conceptual framework for all Conventions ratified by Kenya.\textsuperscript{32}

\subsection*{2.4.1. Constitutional Safeguards}

Police reforms are feature prominently in the Constitution as this is given priority under police reforms. The current survey by IMLU indicates 63\% of Kenyans are unhappy with police performance owing to claims of corruption, brutality and a culture of extrajudicial killings by state security agencies. The establishment of the Police Reforms Implementation Committee (PRIC)\textsuperscript{33} to oversee the implementation of the recommendation made by various task forces has ensured that police reforms are implemented.

An interview with the members of PRIC, confirmed that the committee has closely worked with CIC and the Kenya Law Reform Commission (KLRC) and drafted a number of Bills on police reforms which have been shared with stakeholders for discussions. Some of the key priority bill include:

1. Independent Policing Oversight Authority Bill, 2010
2. National Police Service Bill, 2010

The first Bill is intended to provide a civilian oversight mechanism over policing; the second places the Kenya Police Service and the Administration Police under one leadership structure whereas the third provides the legal framework for the administration of the National Police Service.

These reforms have far-reaching impact in changing the face of a ‘police force’ that has not been positively rated by majority of Kenyans. Part of the findings of CIPEV indicated that there was widespread torture with acts and omissions of state security agencies and impunity.\textsuperscript{34} This violence follows a pattern of several other historical injustices that characterized past regimes where violence, including detentions without trial and the routine torture of perceived and real dissenters, became institutionalised earlier on under Moi’s rule.\textsuperscript{35}

\begin{footnotesize}
\begin{itemize}
\item 27\textit{CAT/C/KEN/1}. Report submitted during the Forty-first session of the Committee against torture 3-21 November 2000
\item 28 Report by KNCHR, 2008.
\item 29 Interview with Commissioner Lawrence Mute, KNCHR and several staff member; interviews conducted on in June 2011.
\item 30 Draft Bill facilitated by a consortium of civil society organisations, including IMLU and supported by the KNCHR.
\item 32 Commenting on the draft \textit{Ratification of International Treaties Bill}, Commissioner Kathurima M’Inoti, the Chairperson of the Kenya Law Reform Commission, noted that if the bill is passed, it will give the best avenue to domesticate and implement provisions of the Convention Against Torture in its entirety. Interview conducted on 9 June 2011.
\item 33 Appointed in January 2010
\item 34 CIPEV Report, \textit{Findings}.
\item 35 CIPEV Report: \textit{Use of Political Violence}, page 35.
\end{itemize}
\end{footnotesize}
2.4.2. The CIPEV Report

Violence has been a part of Kenya’s electoral processes since the restoration of multi party politics in 1991. However, the violence that shook Kenya after the 2007 general elections was unprecedented. It was by far the most deadly and the most destructive violence ever experienced in Kenya. 36

Following unprecedented violence, the government established the Commission of Inquiry into Post-Election Violence (CIPEV). In February 2008, the mediation process [post-election violence] emphasized the need to demobilize and disband illegal armed groups and militias. From March 2008, the police and the military began an operation to stop the activities of the Sabaot Land Defense Force (SLDF) and later the ‘Mungiki’ and other groups that had been armed and mobilised for violence. Although the operation largely restored calm in the affected areas, sporadic activities by illegal armed groups have been noted. The response of the police toward restoring ‘peace’ was most brutal with thousands of victims being tortured.

To break the cycle of impunity which was at the heart of the post-election violence, the Commission recommended the creation of a special tribunal with the mandate to prosecute crimes committed as a result of post-election violence. The tribunal was to have an international component in the form of the presence of non-Kenyans on the senior investigations and prosecution staff.

Over decades, various regimes failed to address police brutality resulting in many years of unaccountability. This brutality made the members of public to fear the police. Impunity was a major problem. Police officers were rarely arrested and prosecuted for criminal activities, corruption, or for using excessive force. Authorities sometimes attributed the absence of an investigation into corruption or an unlawful killing to the failure of citizens to file official complaints. However, the required complaint form was available only at police stations, and there was considerable public skepticism regarding a process that assigned the investigation of police abuse to the police themselves.

The government took some steps to curb police abuse during the year. In September 2010, the Ministry of Provincial Administration and Internal Security established a police oversight board to hear public complaints and recommend disciplinary actions. By year’s end, the board had met but did not hear any public complaints or issue any decisions. Some legal rights groups questioned whether the minister had the legal authority to establish the board. In 2006 the police commissioner established a special police squad37 that included undercover detectives whose mandate was to combat corruption involving police during traffic stops. The government arrested and charged some officers with various offenses, including corruption and murder.

2.4.3. Alston Report

As the Special UN Rapporteur on Extrajudicial Killing, Summary or Arbitrary Execution, Prof. Philip Alston visited Kenya from 16-25 February 2009 in order to ascertain the types and causes of unlawful killings; to investigate whether those responsible for such killings are held to account; and to propose constructive measures to reduce the incidence of killings and impunity. The main focus was on killings by the police, violence in the Mt Elgon District, and killings in the post-election period. Evidence received from IMLU, various other stakeholders including government officials, established a pattern of perpetrators of violence being state security agencies using very inhuman torture methods.

The Report of the Special Rapporteur concluded that police in Kenya frequently execute individuals and that a climate of impunity prevails. It was further noted that there existed police death squads operating on the orders of senior police officials and charged with eliminating suspected leaders and members of criminal organisations. Such groups do harass and kill Kenyans, and strong policing is required to counter the threat. But carte blanche killing by the police does nothing to eradicate such criminality. Rather it perpetuates the sense that the police are good at killing and bad at law enforcement.

For policing to truly create security, it must be conducted with respect for the human rights of all, including suspects and victims. A lack of police accountability for killings results from the absence of effective internal or external investigation or oversight mechanisms. While the existing situation is bad, it is far from intractable. If

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36 As above.

37 This squad has regenerated into other names to avoid public scrutiny.
it so chooses, Kenya can significantly reduce the prevalence of unlawful killings. Much of the institutional and legal structures needed to carry the reform process forward is in place under the Constitution and under the various international obligations that Kenya has committed to.

2.4.4. Justice (Rtd) Philip Ransley Report

The National Task Force on Police Reforms was chaired by retired judge, Philip Ransley. The task force was established with a mandate to address and formulate:

- a. A National Security Policy
- b. A National Policing Policy
- d. Proposals for Traffic Control including policy on road blocks
- e. Creation of Municipal policing Authorities
- f. Making proposals for creating effective community policing
- g. Reviewing functions and structures of police establishments, formation and units.

The Task Force was also to focus and address state security reforms with a view to ensuring that what is implemented will benefit the country, enhance national security and boost police staff morale. This followed concerns that the police reforms should not only target the people being served by the police but also target the welfare of the officers. This is in consideration that the welfare of police officers would continue to be a priority especially housing and remuneration. Hence the proposed reforms by the Task Force were to lead in better relations between the police and members of the public in order to ensure that security is enhanced in all corners of the country. The key recommendation of this Task force was seeking a transformation of Police Force into a Police Service that serves citizens well.

Other recommendations included the change of name from Kenya Police Force to Kenya Police Service; the establishment of a Police Service Commission and the creation of an Independent Civilian Police oversight Authority. In addressing of police welfare and service conditions, the task force recommended the need to have an audit of police housing projects and broader review of housing conditions for the police, the introduction of Special Police Allowance, and an introduction of a comprehensive medical and insurance scheme.

These findings of the Ransley Report have largely informed current bills pending in Parliament especially provisions seeking to establish a Police Reforms Implementation Commission. The National Policing Council38 was one of the oversight bodies that were proposed. One the pending bills have been approved, there will be indeed far-reaching changes to the police service.

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38 The Policing Council will among other things formulate and determine policy, review, rationalise and coordinate the budgeting of national policing plans
3. Methodology

To exhaustively answer the objectives of this study, the research team utilised both qualitative and quantitative data collection methodologies. Questions about prevalence and penetration of torture are best answered in a quantitative random survey. On the other hand, to gain deeper understanding of the character of torture and the policy and practice issues surrounding prevention of torture, in-depths interviews were conducted.

3.1. Quantitative data collection

The target population are all residents 18 years and above in both rural and urban areas of Kenya. The team used the 2009 national census statistics to apportion the 1,200 sample across the administrative units of the Kenya. The sample was distributed in proportion to populations size (PPS), which implies that regions with bigger populations were proportionally apportioned higher sample size. However, for Nairobi and North Eastern provinces, the team over sampled by 100 in each area respectively. In Nairobi it was necessary to oversample to accommodate the different demographic and social-economic profiles present. In North Eastern, the team over sampled because the sample allocation obtained from the proportion to population size procedure was small, and thus it was necessary to oversample so as to get enough sample size for running statistical breakdowns for example, by gender, age and social-economic status.

This was a nationally representative sample survey of residents aged 18 years and above. The team, therefore, adopted a probability sampling design. In probability sampling, each of the sampling units in the population has a chance of being selected. A sample is considered to be representative if the analyses made using the researcher’s sampling units produce results similar to those that would be obtained had the researcher analyzed the entire population.

The table below shows provincial distribution of the total sample size.

Table 3-1: Sample distribution across the regions

<table>
<thead>
<tr>
<th>Kenya population 18 + years 2009 census</th>
<th>Kenya Country Total</th>
<th>Total pop 18+</th>
<th>Rural pop 18+</th>
<th>%</th>
<th>R u r a l sample</th>
<th>Urban pop 18+</th>
<th>%</th>
<th>U r b a n sample</th>
<th>Boost sample</th>
<th>Total sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi Province</td>
<td>2,187,366</td>
<td>1,807,366</td>
<td>-</td>
<td>-</td>
<td>2,187,366</td>
<td>1,351,168</td>
<td>28</td>
<td>110</td>
<td>100</td>
<td>210</td>
</tr>
<tr>
<td>Central Province</td>
<td>2,805,639</td>
<td>1,790,165</td>
<td>13</td>
<td>76</td>
<td>1,015,474</td>
<td>12,952,130</td>
<td>13</td>
<td>51</td>
<td>-</td>
<td>127</td>
</tr>
<tr>
<td>Coast Province</td>
<td>1,917,914</td>
<td>965,784</td>
<td>7</td>
<td>41</td>
<td>952,130</td>
<td>10,781,077</td>
<td>10</td>
<td>39</td>
<td>-</td>
<td>90</td>
</tr>
<tr>
<td>Eastern Province</td>
<td>3,300,875</td>
<td>2,519,798</td>
<td>18</td>
<td>107</td>
<td>781,077</td>
<td>10,477,507</td>
<td>6</td>
<td>24</td>
<td>-</td>
<td>101</td>
</tr>
<tr>
<td>N/Eastern Province</td>
<td>1,115,955</td>
<td>889,211</td>
<td>6</td>
<td>38</td>
<td>226,744</td>
<td>3</td>
<td>11</td>
<td>100</td>
<td>-</td>
<td>49</td>
</tr>
<tr>
<td>Nyanza Province</td>
<td>2,943,206</td>
<td>2,153,881</td>
<td>5</td>
<td>92</td>
<td>789,325</td>
<td>10</td>
<td>40</td>
<td>-</td>
<td>-</td>
<td>132</td>
</tr>
<tr>
<td>R/Valley Province</td>
<td>5,475,933</td>
<td>3,954,388</td>
<td>8</td>
<td>168</td>
<td>1,521,545</td>
<td>19</td>
<td>77</td>
<td>-</td>
<td>-</td>
<td>245</td>
</tr>
<tr>
<td>Western Province</td>
<td>2,291,332</td>
<td>1,813,825</td>
<td>13</td>
<td>77</td>
<td>477,507</td>
<td>6</td>
<td>24</td>
<td>-</td>
<td>-</td>
<td>101</td>
</tr>
</tbody>
</table>
3.1. Determination of the sample size

To determine the sample size, we considered both the theoretical point of view and the practical imperatives as determined by budgetary and time limitation. The theoretical perspective provides that sample size is determined by three key factors namely: the margin of error that is acceptable for the study, the level of significance that is required and the degree of variability within the sampling population. The final sample size interviewed in this survey was 1230 which is slightly higher than the minimum estimated from the formula above.

3.2. Sampling plan

In this study, the sampling point was the sub-location. The sub-locations were selected randomly. Moreover, no more than ten households were surveyed from each sampling point. Two reasons informed this decision: One, people from the same geographical area would normally share similar experiences, and thus the incremental benefits in terms of new information from interviewing more people from same sampling point is minimal. Two, limiting to 10 the number of respondents per sampling point means that more SPs would be covered, thus ensuring a broad and diverse geographical coverage therefore ensuring that there was a representative random sample.

Households were selected through the random route method while the KISH grid was used to sample the individuals. Random walk method includes two separate steps. The first was to choose a starting point within the sampling point while the second step involves selecting the households from that point onwards.

At the household, KISH grid was used to randomly select the person to be sampled. All members of the household aged 18 years and above were listed out in the grid, and a random number table used to select the respondents from the grid. Since Nairobi and North Eastern Provinces were oversampled, the data was weighted to adjust to known population statistics.

3.3. Qualitative Phase

The team conducted 50 in-depth interviews with a cross-section of stakeholders drawn from different organizations. The team also interviewed people who have been victims of torture in the past to better understand the drivers of torture and people responsible for perpetrating torture in Kenya.

3.4. Questionnaire

Questionnaires were developed by TNS RMS in collaboration with IMLU. The questionnaires were later translated into Kiswahili because majority of the respondents in rural areas did not have a good grasp of English.

3.5. Limitations of the Study

Torture targets officers working in their official capacity, which inherently becomes a problem and a challenge to get information from them. No police officer was willing to talk to the interviewers openly for fear of reprisals. The team only managed to formally access the Police Spokesperson and the Deputy Police Spokesperson, all the other officers accessed shared details on condition of anonymity.

- There was no data readily available at Vigilante House, the Police headquarters to help in assessing the nature of crimes committed by the 670 officers alleged to have been dismissed. There was no means of verifying this number and the details thereof.
- There was a difficulty in interviewing some officers in certain ranks such as prison warders and lower cadre police officers. This was despite writing letters of request to the Prisons Commissioner. Questionnaires tended to frighten some of these participants because of the nature of their work and the need to get authority’s sanction to the processes. Also, some feared reprisals in case ‘damaging’ information was ‘leaked’ out.
- There was scarcity of literature as there were very few accessible formats of documentation at various government offices which evaluate situations where victims of torture have been unable to access justice institutions. More men than women were willing to participate in the surveys.
- There was a general suspicion that research may be a trick by civil society activists to arrest participants also scared away some participants.
Access to key documentation was curtailed and key personalities who would have approved the research were unavailable when they were needed.

Some officers were already biased on the possible findings of the research, being known perpetrators of torture and the likelihood that this evidence would be used against them. The public perception that ‘some level of torture’ was necessary also hindered access to key information and data on who the perpetrators of torture are.

Because of time limitations, the team was unable to assess the overall state of torture cases in all places of detention particularly non-traditional places of detention like health facilities for mentally challenged persons\(^39\) or places where child offenders are detained. It was impossible to access to information regarding police operations around the country was not possible within the timeframe of the research.

\(^39\) Mathare Mental Hospital
4. Findings
Presentation of findings has been organized based on the study objectives such that results from each objective are in a separate chapter. In this section, the study looks at the demographics of the participants: age, gender and educational attainment as well as the distribution of the sample across the different regions of Kenya.

4.1. Demographic Characteristics of the Respondents
The sample was almost equally split between men and women. This is not surprising because the random sample design employed in this study was expected to yield an approximately equal split of men and women, distributed across the different age groups.

Figure 4-1: Gender of respondents

The mean age for the respondents was 33.6 years, indicating some of the respondents were fairly young. Figure 4.2 below shows in detail the distribution of the respondents across different age categories. We find that a full 45% of the interviewed respondents were in the age category 21-30 years old while only 9% where above 50 years old.

Figure 4-2: Age category of the respondents

Mean age=33.6
With regard to education achievement, 52% of the total respondents had secondary school education level of education and above, and only 6% had no education at all. This information is summarized in figure 4.3 below. It is evident that illiteracy level is low among the respondents. Below in figure 4.4 is the regional distribution of the sampled respondents. As explained in the methodology section, the random sample was drawn in proportion to population size. Therefore, the distributions seen in figure 4.4 is a reflection of actual population distribution based on the 2009 national population census.

**Figure 4-3: Education attainment of the respondents**

**Figure 4-4: Geographical distribution across regions**
5. The Present Character of Torture in Kenya

Under this section, the study looked at how torture is presented in Kenya currently. What are the defining features of torture as practiced in Kenya presently and how does it compare with past forms of torture? Characterisation of torture is important because it helps the stakeholders understand how it works, predisposing factors and how it could be mitigated.

Both physical torture and psychological torture are common. Enforced disappearance of persons is now a common form of torture, and it is mainly practiced within the context of fighting organized groups such as the “Mungiki.” What would happen is that a young person is arrested in the pretext that he belongs to an outlawed group, he is taken to a police station only to disappear in unexplained circumstances. The other form of torture is to be held incommunicado. In this case, a person is arrested and held in detention facilities with no opportunity to communicate to other persons, for example relatives or lawyers. This is done to coerce the persons to confess or give information. Kidnapping and ransom seeking is another form of torture prevalent in Kenya today. This is exemplified by a case reported by cards gamblers in Nyeri. In this case, the police were able to ascertain that the men running the gambling show have a lot of money on them. They would then arrest one of the men supposedly because they had broken the law. He would then by driven to the police station and locked up without preferring any charges on them. When their friends went to visit the police station to enquire on their whereabouts, there were intimidated to pay a certain amount of money or their incarcerated friend would be in trouble.

Blackmail and extortion is yet another form of torture common in Kenya currently as the case study below attests. This is phenomenon where arrests are made to punish people into paying money. This again mainly happens within the context of fight against organized groups such as Mungiki or sometimes matatu crew. The case study we give below about this young man who was arrested at one of the matatu terminus in Kiambu district is very significant because it represents many such cases in Central Kenya and Nairobi.

**The case of a matatu stage attendant from Kikuyu, Kiambu district**

“The day started like any other. I woke up early as usual and proceeded to my place of work, which was the matatu terminus. I report at work at 7.30am. Each matatu pays Ksh 250 once per day, but I do this in line with our SACCOS’s constitution which states that each member (matatu owner) should contribute Ksh 250 daily. Members would receive a dividend every end of the year from this collection. When I was employed by the SACCOS they gave me a badge and dust coat for ease of identification.

Last year in July 2010, I was arrested. This time it was different. Around this time, the police were arresting people in Kikuyu town and everyone arrested was accused of being a Mungiki adherent. People were beaten up to make them confess. For a long time I was working with a lot of fear. On a daily basis, at least 3-4 people were arrested around that time. Usually when touts see the police, they run away but this time I was arrested I decided not to run away because I was tired and felt that I hadn’t committed any crime and therefore did not have to run away. They arrested me. Unlike the other times, we were seriously beaten up in the car on the way to the station. The police used a ring on their fist and they would hit us very hard. It is only that I am physically fit that I was able to endure such beatings but, of course, I would cry out so that they stop. When we arrived at the Kikuyu station, the reception we got was very hostile. The policemen joined their colleagues in beating us. They looked for wooden pieces and used them to beat us thoroughly. One policeman told us: “these are your final days. If you go in the cell you will not leave alive. Call your people and let them know.”
One police man came up with a phone and he scrolled down and showed me my picture on the phone. He asked me: “can you see? Did I take this photo today?” I retorted that, that was indeed my picture and it was not taken that day. I added that I did not know when he took my photo. One of the policemen got very angry and hit me very hard. I kept on insisting that I was not a Mungikimember. The policemen got angry with me and threw me into the cells where I found many people who were in my state, beaten up and bleeding. Some people in the cells were so beaten up that they needed help from other inmates to move. One policeman kept coming to the window to intimidate us telling us: “you see these ones (pointing at the beaten inmates), they are on their last leg.”

The OCS came to the station that evening and called all the inmates. He sat in at middle of the cell and asked us who amongst us was caught in Kikuyu. We were put aside, and the rest were told that they could leave since he had nothing against them. But he gave them a warning that he does not want to see anyone of them again in the cells. Three of us were left behind and we were beaten up again. I was beaten up and I fell down and one of the policemen stepped on me with his heavy boots. I told him that if this was my final day, I didn’t care. I did not fear anything. This really annoyed the policemen and they continued with their beatings.

The following morning the OCS came to interrogate us. I told him that if the policemen thought that by beating us up they would get a confession out of me, they were wrong. I still insisted that I was not a Mungiki as they had accused me. The OCS asked us why we were in the cells and I boldly told him that we were arrested by the policemen and our money taken away. The OCS said that he would conduct his own investigation and find out whether what we are saying was the truth. I asked the OCS to talk his men not to beat us anymore.

My bosses came to the station that day wanting to talk to the OCS but he refused to talk to them. He said that he was not talking to anyone and would only see them the following day. My bosses requested to see me and I was taken to the window to talk to them. I told them what we have gone through in the cells, the beatings and kicks.

On the third day my mother and brother who had arrived from South Africa came to see me. When I saw my mother I was torn apart because she was in tears. She asked me : “so my son, you are a Mungiki and you have never told me?” I assured her that it was not true.

It seems like the police at the Occurrence Book and the arresting policemen were collaborating because each time he would try to frighten us by saying: “nimesikia kuhusu mambo yenu, wewe na wewe. Mambo yenu itaisha kesho! Ambieni watu wenu wafanye kitu (I have heard about you and you and your mother will end tomorrow. Talk to your people to do something!)” I sensed that he was asking for money indirectly.

An inspector came to our cell the following morning, trying to frighten and intimidate us. He slapped me and another policeman held my hands on the wall of the cell and he hit my back with a piece of wood. I looked at him and told him I was not a Mungiki. The inspector then told me that he heard that I was to be released the following day, but for that to happen, my people had to part with Kshs 50,000. When my mother brought for me food that evening, I warned her not to part with any money for my release because I was innocent even if it meant me losing my life. My mother told my employer about the demand by the police. My employer followed up the matter with the OCS and it was agreed that they ‘pay’ Kshs 20,000 for my release. My brother contributed half the money and the employer the other half.

Once again I was called to the OCS office and interrogated by the OCS as my employer stood by. He accused me of being involved in other activities other than what I was employed for. He went into his drawer and brought out a piece of people with four names. Two names sounded familiar. The OCS informed me that the four were the ones who reported me to the police.

I guess this is a case of mistaken identity. The OCS confessed himself that I was not a bad person based on his investigations but he warned me not to greet him or attempt to talk to him whenever I see him at the stage.

I never reported this matter to any authority and I decided to quietly go back to my job. But the experience was horrifying. I would not like to find myself in the same situation again. I do not wish this for any other person!
Related to the above are the extra judicial killings attributed to policemen. Based on this research, extra judicial killings are precipitated by among other things, police avoiding the laborious court processes, or police knowing they don’t have enough evidence to prosecute so deciding to take short cut by killing the person. Courts need concrete evidence that is done well, and often police don’t have it or have no patience to accumulate it and so choose the shortcut of extra judicial killings. These findings about extra judicial killing, arbitrary or summary executions are collaborated by findings by the Prof. Philip Alston, the UN special rapporteur. According to Prof. Alston:

“Perhaps the most surprising outcome of my visit was the extent to which I received overwhelming testimony of the existence of systematic, widespread, and carefully planned extrajudicial executions undertaken on a regular basis by the Kenyan police. The Police Commissioner in particular, along with various other senior officials, assured me that no such killings take place. But he and his colleagues appear to be the only people in the entire country who believe this claim.

I have received detailed and convincing reports of countless individual killings. It is clear from the many interviews that I conducted that the police are free to kill at will. Sometimes they do so for reasons of a private or personal nature. Sometimes they kill in the context of extortion, or of a ransom demand. Often they kill in the name of crime control, but in circumstances where they could readily make an arrest.

In addition to these everyday police killings, there is compelling and detailed evidence that police death squads operate, primarily in Nairobi and Central Province, with an explicit mandate to exterminate suspected Mungiki members. These are not “rogue” squads, but are police who are acting on the explicit of their superiors. (Philip Alston, 2009).

The other form of torture is perpetrated by criminal gangs that instill fear and intimidation with police inaction. Few cases were reported as majority of those interviewed feared putting themselves into more grave dangers as the leaders of these criminal gangs were often seen in the company of police officers. This created a perception that there was a collusion between these officers and the criminal gangs.

One thing that has become very clear from this study is that police declined to be interviewed when they were asked about incidence of torture within their ranks. Their response was that torture is no longer applied.

Emerging Issues

- Corruption is now closely linked to torture, creating a conducive environment where torture is taking place in prisons, places of detention, in access to justice, organized criminal gangs, and state security officers. This has created a fertile ground where torture occurs with impunity.
- The most vulnerable are the poor and those in places of detention
- Torture is more prevalent in urban centres especially informal settlements |Kinyago interview, KNCHR interview – indicators that indicated the existence of a ‘parallel government’ that is supported by criminal gangs and extortion rings.
- State has abdicated its role as the public protector to criminal gangs that use blackmail and extortion to give ‘security’ in neighbourhood, businesses, economic cartels, etc.
- Rural communities live in fear and pay ‘taxes’ to illegal gangs

At policy level, various economic, social and cultural dimensions that underlie torture and other forms of violence are constantly taking place. These include arbitrary detention, arbitrary arrests, lack of access to justice, and violence to the most vulnerable. The legal regime on torture prevention, economic development, and social programmes, are still not pieced together. There is no law defining torture or a legal framework creating sanctions commensurate with the offences of torture. This makes implementation and domestication of international human rights principles that Kenya has committed to near impossible to enforce. Thus there is need for a permanent body with capacity to create awareness, monitor, investigate, and prosecute perpetrators.
Various sectors and the three arms of government are therefore important to ensure an effective process of addressing torture. The executive [police, prison, PRIC, stations], legislature [parliamentary committees, Legal and Constitution committee - office of the AG, KLRC] and Judiciary [judges, magistrates, prosecutors, court orderlies], all are institutions that must comprehensively address the reforms agenda. Each has a role to make Kenya a torture free society. Key reasons are:

- poverty remains the main impediment to both the fulfillment of basic needs and realisation of rights - persons economically disadvantaged in society
- close link between high levels of poverty to torture - victims have no means of recourse to justice and the poor remain most vulnerable to torture
- Extensive violence deriving from deep poverty and inequalities in Kenya: the poor are on a regular basis harassed, coerced, intimidated, threatened, forced to pay brides and constantly face arbitrary arrests and detention
- Since 2007 new methods of torture have emerged encompassing economic crimes, counter terrorism, illegal gangs sanctioned by the state or with inaction by the state, denial of access to resources [land, services in health, education, employment] increases tensions - violence against women, inaction of state security agencies

Forced disappearances are emerging as the new trend that the police are applying to deal with suspects. According to KNCHR, incidents of torture have increased, with threats and fear of victimization. Enforced disappearances and killings by police have gone up and are more serious. This is highest in Central Province and most of the time the victims are youths, the youngest reported case being that of a 17 year old.40 The motivation for this increase has been the police response to Mungiki crackdown executed in early February 2011. The police find extra-judicial killing as a much ‘easier’ way of liquidating suspects instead of undergoing the rigors of judicial processes. Courts are unable to act appropriately when cases are taken before them where the police have done shallow investigations.

The KNCHR, in a 2008 report, said Kenyan police were to blame for the executions and disappearances of more than 500 people who were suspected of being members of a notorious gang. After the report’s release, a police driver who told the commission he witnessed more than 50 executions by police was killed while under witness protection.

Extra-judicial executions and other brutal acts of extreme cruelty have been perpetrated by the police against vigilante groups [so-called Mungiki adherents] and that these acts may have been committed pursuant to official policy sanctioned by the political leadership, the Police Commissioner and top police commanders. There is no defining criteria of who forms these vigilante groups and innocent citizens have suffered at the hands of state security agents under the ‘illegal members’ banners.

Notwithstanding police crackdowns, most Mungiki members enjoy impunity for criminal and violent acts. According to KNCHR (interview, June 2011), Mungiki were for the most part free to operate however they wanted without police interference within their strongholds. A good example given was during the Mathira massacre, wherethe police did not intervene before the Mungiki had left Nyeri, and thus failed to save people’s lives. Further, police officers are often committing illegitimate violence themselves, leading to general distrust among slum dwellers and other Kenyan citizens.

In 2009, Philip Alston, the UN special rapporteur on extrajudicial, summary or arbitrary executions, issued one of the UN’s strongest indictments yet of Kenya’s culture of impunity, in a hard-hitting report following a 10-day investigation into the alleged killing of more than 1000 gang members, insurgents, petty criminals and political protesters since 2007. “I have received overwhelming testimony that there exists in Kenya a systematic, widespread and well-planned strategy to execute individuals,” Alston told a news conference in Nairobi. “Kenyan police are a law unto themselves. They kill often, with impunity,” he said.

Torture in Kenya is consistently reported to be a widespread and persistent phenomenon particularly during interrogation, security forces and the police torture or ill-treat detainees. In most cases, the aim of this is to

40 Interview with an Advocate, KNCHR
obtain information and coerce confessions, occasionally leading to death in custody. In other cases, officials use torture to punish, intimidate, or humiliate detainees. Police also detain and torture family members to obtain information or confessions from a relative, or to force a wanted relative to surrender.

Traditionally, torture was mostly used against political dissidents, but that has changed in recent years. Today, torture affects a large number of ordinary Kenyans (citizens) who find themselves in police custody as suspects in connection with criminal investigations. Kenyan police regularly detain street children they consider “vulnerable to delinquency” or “vulnerable to danger”. During arrest, these children are routinely beaten with fists and batons. [Interview at Kinyago and Nairobi Remand]
6. General Perception about Torture by the Kenyan Public

Despite the inauguration of the new Constitution and the high expectations it raised regarding enhancement of all the social-political spheres of human life, we still found that many people were ignorant on their rights. A person would still become victim of torture but fail to report the incidence to any authority. Moreover, many of the people interviewed said that our courts should have qualified people to prosecute the cases, otherwise police will continue to torture people to get confession. When prosecutors are not well qualified, they have no ample evidence to sustain a conviction and are intimidated by defendants, the temptation is to use police officers to get evidence by force. The other observation that we made was that a majority of the respondents in this study did not support torture, but there is a small percentage that support it. This is because failure of the justice system and poor investigation result to dissatisfied members of the public who then nurture the notion that justice can only be obtained if their tormentors are tortured or even subjected to mob justice. In view of some in the public condoning torture for whatever reasons, the study propose that the public be educated about what torture is so that they can report perpetrators.

In the first question we juxtaposed the problems of torture against other problems affecting the society, and asked the respondents to say how big each of the problems was. Results are tabulated in table 4.1 below. 53% of the respondents perceived lack of protection against torture to be a very big problem, against 35% who thought poor quality education is a big problem. Results show that torture is perceived to be more pressing problem than other social problems.

<p>| Table 6-1: Respondents rating of torture against other social issues of day |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|</p>
<table>
<thead>
<tr>
<th>Place: Total Sample=1230</th>
<th>Very big</th>
<th>Big</th>
<th>Neither big nor small</th>
<th>Small</th>
<th>Very small</th>
<th>Mean</th>
</tr>
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<tbody>
<tr>
<td>Lack of protection against torture</td>
<td>25</td>
<td>32</td>
<td>10</td>
<td>9</td>
<td>3</td>
<td>4.2</td>
</tr>
<tr>
<td>Environmental pollution</td>
<td>47</td>
<td>32</td>
<td>10</td>
<td>9</td>
<td>2</td>
<td>4.1</td>
</tr>
<tr>
<td>Lack of access to clean water</td>
<td>46</td>
<td>26</td>
<td>13</td>
<td>11</td>
<td>5</td>
<td>4.0</td>
</tr>
<tr>
<td>Unfair/biased judges</td>
<td>42</td>
<td>29</td>
<td>19</td>
<td>7</td>
<td>3</td>
<td>3.9</td>
</tr>
<tr>
<td>Lack of democracy or well run elections</td>
<td>45</td>
<td>28</td>
<td>14</td>
<td>9</td>
<td>4</td>
<td>4.0</td>
</tr>
<tr>
<td>Bad treatment of prisoners</td>
<td>41</td>
<td>24</td>
<td>20</td>
<td>11</td>
<td>4</td>
<td>3.9</td>
</tr>
<tr>
<td>Lack of good health care</td>
<td>40</td>
<td>29</td>
<td>15</td>
<td>12</td>
<td>4</td>
<td>3.9</td>
</tr>
<tr>
<td>Poor quality education</td>
<td>35</td>
<td>27</td>
<td>18</td>
<td>15</td>
<td>5</td>
<td>3.7</td>
</tr>
</tbody>
</table>

We also asked for the respondent’s opinion regarding use of torture as a tool for extracting confessions by government agents. The question was whether people find torture as an acceptable tool for obtaining information from people suspected of serious crimes. Whereas the majority of the respondents said that torture is never acceptable, there were still approximately 30% of the total respondents who thought that torture was sometimes acceptable or always acceptable. This is significant because it shows there is a substantial segment of the population that would condone torture on others in some instances. Probably they are driven to hold this sentiment by spiralling crime rates in the society, and this is the segment that would in some instances provide the police with the “moral support” in their perpetration of the vice called torture.
Table 6-2: Acceptability of torture as tool for extracting information from suspects

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base: Total Sample</td>
<td>1230</td>
<td>444</td>
<td>786</td>
</tr>
<tr>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Always acceptable</td>
<td>8</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td>Sometimes acceptable</td>
<td>21</td>
<td>22</td>
<td>21</td>
</tr>
<tr>
<td>Never acceptable</td>
<td>68</td>
<td>71</td>
<td>67</td>
</tr>
<tr>
<td>I can’t say</td>
<td>2</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

Asked who are the main perpetrators of torture are Kenya, 63% mentioned the regular police. Other agencies mentioned are shown in figure, and include the administration police, local village groups and council askaris. Even though this was a purely perception question, we still see that police are regarded by the majority as the main perpetrators of torture.

Figure 6-1: Perception about who are the perpetrators of torture is in Kenya.

Comparing regions, Central Province followed by Coast and then Nairobi had the highest proportion of the respondents reporting that torture was prevalent in their areas. Even though it is difficult to say why this is so, we can surmise that the crackdown against Mungiki followers in central and to some extent Nairobi provinces, and anti-terrorism operations in the coast have given rise to perception of harassment in these areas. North Eastern province registered the lowest proportion of respondents that perceived torture to be prevalent.

Table 6-3: Respondents perception regarding prevalence of torture by region

<table>
<thead>
<tr>
<th>Q. How common do you feel torture is in Kenya?</th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
<th>Central</th>
<th>Coast</th>
<th>Eastern</th>
<th>Nairobi</th>
<th>North</th>
<th>Eastern</th>
<th>Nyanza</th>
<th>Rift</th>
<th>Valley</th>
<th>Western</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base: Total Sample</td>
<td>1230</td>
<td>444</td>
<td>786</td>
<td>157</td>
<td>107</td>
<td>184</td>
<td>122</td>
<td>62</td>
<td>164</td>
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<td></td>
</tr>
<tr>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
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<tr>
<td>Very common (1)</td>
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<td>70</td>
<td>6</td>
<td>48</td>
<td>60</td>
<td>64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somewhat common (2)</td>
<td>26</td>
<td>22</td>
<td>28</td>
<td>14</td>
<td>23</td>
<td>29</td>
<td>18</td>
<td>39</td>
<td>16</td>
<td>36</td>
<td>27</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somewhat rare (3)</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>5</td>
<td>2</td>
<td>10</td>
<td>9</td>
<td>36</td>
<td>15</td>
<td>4</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very rare (4)</td>
<td>5</td>
<td>2</td>
<td>7</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>18</td>
<td>21</td>
<td>1</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does not exist (5)</td>
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<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
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<td>1</td>
<td>39</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Don’t now (6)</td>
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<td>1</td>
<td>1</td>
<td>0</td>
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<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mean</td>
<td>1.6</td>
<td>1.4</td>
<td>1.7</td>
<td>1.3</td>
<td>1.3</td>
<td>1.6</td>
<td>1.5</td>
<td>2.7</td>
<td>2.1</td>
<td>1.5</td>
<td>1.5</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SECTION VI

7. The Prevalence of Torture in Kenya

Here the team examined the level of pervasiveness of torture in Kenya. The team looked at the pervasiveness of torture and attempted to answer the question of whether it is localized in space or widespread and how frequently incidences of torture are reported.

The study found out that torture is prevalent in Kenya. In border points such as Bungoma, torture is prevalent as local government officials such as the DC seem to be a “government on their own.” In Bungoma, the Sabaot Land Defence Forces were in the past a cause of torture of the general population. In Bungoma, some people involved in the illegal coffee trade (*magendo*) were reported killed after being arrested by Administration Police. The reason was that the police wanted to take away their coffee. They, therefore, had to be eliminated. They were also tortured to say where they had hidden coffee. This case is elaborated in the box below.

“There was a recent case in October where there was a team of some boys who were always trading in coffee which is very common on the border. They were attacked by the police officers, beaten and robbed of the coffee.

The officers proceeded to sell the same coffee in Uganda and up to now some ten people cannot be accounted for. We only retrieved two bodies from the river and that is when we sought assistance from the police. They had already buried the bodies at night when we had already reported that people had drowned. We had to exhume them. IMLU sent some pathologists who carried out a post mortem and were reburied. Around 50 boys who came out after some time were taken to Nairobi last month for treatment. Then the IMLU team came to the border town of Luahaha and met around 60 victims of torture. They took them through some counselling and others needed urgent medication and that how we took them to Nairobi.” The coordinator of *Muungano* Family Empowerment Programme; a human rights advocacy organization based in *Wadanyi* trading centre in Bungoma West.

In Nanyuki, there were reports of young Muslim men being arrested and held on the pretext that they are terrorists. Similar cases were reported in Mombasa. There was also the reported case of misuse of police officers to torture business rivals because of business rivalry and settling scores. A case in point was a truck driver who was burnt with an iron box on his bottom and the mouth sewed up to avoid screaming. His arms were broken. The sister is still pursuing the case. The victims’ relatives are also affected.
Case study:

A sister’s story about her tortured brother

Zaituni is a 42 yrs old a mother of 14 children and a house wife who lives in Kibera, a low neighborhood of Nairobi. She may seem luckier than most of her neighbours, because her husband owns the house they are currently living in but the pain in her eyes tells a different story. Memories of her deceased brother are still fresh in her mind. This is the story of how her brother was tortured, died and the family’s effort to get elusive justice.

“I was here in Nairobi when I was told that my brother had died. I remember it was the same time the family was going through a mourning period after we had buried my husband’s sister who had died. I was surprised that my brother had died in police cells. Since I could not travel I sent my three sons and elder sister to go there and find out what happened. You see, my brother was a truck driver and something happened that led to his arrest. The people I sent to the police called me to tell me the story of what had happened. He was working with a turn boy when they had travelled to sell goods. The turn-boy went to a nearby hotel to buy a drink while my brother went for prayers. While my brother was praying, the turn-boy went back to the truck and stole all the money from goods they had sold and ran away. When my brother went back to the truck he did not find his turn-boy and neither was he at their hotel. The money they had hidden inside the truck too was missing. He called his boss and told him that the turn-boy had run away with the money. His boss told him not to bother since some goods were still in the truck. His boss asked him to go back to Migori. On the way back to Migori, he found the police waiting for him on the road. The police arrested him and they drove to Migori, where he was put in a taxi was taken to the police station. He was accused of stealing his boss’s money. When they reached the police station they found DCIO who gave orders that he should be locked in the cell awaiting interrogation the following day.

By this time we had no idea that our brother had been arrested by the police. I have another brother who is a mechanic in Migori who was told the sad news by a man called Mr ***. Mr *** is the one who told us that he saw our brother carried in the police station on his way to work. He told us to go and pick my brother’s corpse for burial because we are Muslims. Initially we were told he has died of shock.

My mechanic brother then asked to be taken where the corpse of our brother was lying. My deceased brother was found at the Migori terminus mortuary. His body was put in a polythene bag and it was naked. On close examination he asked whether the cause death was really shock because he had a broken arm, leg and his mouth was sewn such that he could not scream. In addition, his buttocks were burnt with iron box. When my brother saw this he said that our brother cannot be buried immediately until the family sees the corpse and decide what to do next.

Although my brother’s boss had accused him, *** took action against my brother. *** got the police, they killed him after torturing him before he was taken to the cells. By the time he was being taken to the cells, he could not do anything, he could not even walk. Even the police at the OB refused to book him because he said that they were bringing a dead person instead of taking him to the mortuary.

The matter is still in court, about eight years after the sad event. The policemen responsible for torture and demise walk free, ready to pounce on their next victim.

In Lodwar, we talked to the Catholic Peace and Justice Commission (CJPC) is of the opinion that over the years the prevalence of torture has reduced. In these frontier districts, chiefs are the ones who orders security officers to act but people do not have so much trust in the government system.

In the previous chapter we reported about people’s perception about torture in Kenya. Below are findings about people’s personal experiences as victims. The question here was direct to the respondent, and enquired about whether they had been tortured, who the perpetrator was, place where torture occurred, recourse if any that was pursued and so forth. Of the total respondents surveyed in this study, 23% said they had personally suffered torture.
Approximately 1 out every 4 persons have suffered torture one time or another in the past. According to the figures reported in table 4.7 below, Central has the highest percentage of respondents reporting to have been victim of torture, followed by Western and Nairobi in that order. North Eastern province had the least percentage of people saying they have been victims of torture.

**Figure 7-2: Comparison of torture prevalence across the regions**

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
<th>Central</th>
<th>Coast</th>
<th>Eastern</th>
<th>Nairobi</th>
<th>North Eastern</th>
<th>Nyanza</th>
<th>Rift Valley</th>
<th>Western</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base: Total Sample</td>
<td>1230</td>
<td>444</td>
<td>786</td>
<td>157</td>
<td>107</td>
<td>184</td>
<td>122</td>
<td>62</td>
<td>164</td>
<td>305</td>
<td>128</td>
</tr>
<tr>
<td>% Yes</td>
<td>23</td>
<td>25</td>
<td>22</td>
<td>37</td>
<td>17</td>
<td>15</td>
<td>31</td>
<td>6</td>
<td>15</td>
<td>23</td>
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</tr>
<tr>
<td>% No</td>
<td>77</td>
<td>75</td>
<td>78</td>
<td>63</td>
<td>83</td>
<td>85</td>
<td>94</td>
<td>85</td>
<td>77</td>
<td>65</td>
<td></td>
</tr>
</tbody>
</table>

“Torture is prevalent in this country. I think we have done a lot to ensure that perhaps the extremes forms of torture have come down. But I would say torture continues to be an everyday thing in police stations. When you are arrested and the first thing you receive in a police station are slaps and kicks that is torture and that is very normal in this country but the old days torture of applying pliers to remove your nails and to pull your balls and things like that I think that has largely being controlled. But it keeps popping up from time to time you will hear strange things that have happened,” IMLU Network Advocate.

The respondent was also asked whether anyone they personally know has been a victim of torture. In this case, 29% responded in the affirmative. See figure 4.8 below.

**Figure 7-3: Proportion of respondents who know someone who has been victim of torture**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>n=1230</td>
<td>71%</td>
<td>29%</td>
</tr>
</tbody>
</table>
The 23% of the respondents who said they had been victims of torture were asked to indicate who tortured them. The goal here was to establish the agencies that are responsible for perpetrating torture in the country. The findings about this are summarized in Figure 4.9. Police emerges as the major perpetrator with 59% of the victims mentioning police as the perpetrator. Others perpetrator albeit in limited measure include local vigilante groups (8%), administration police (7%), local chief (5%) and city council askaris (4%). Even when the respondents were asked about other people who have been victims of torture, still police emerged as the main perpetrator. See figure 4.10 below.

Figure 7-4: The agency that perpetrated torture against the respondents
Case study 1: Victim of torture

The story of a matatu tout

James, a 37 yrs old man lives in Kangemi with his family. He didn’t go past class eight since his parents could not afford to pay for his fees. “Because I have other younger siblings ,I saw it best that they continue while I look for money,” he says. He is currently jobless but he used to be a matatu driver.

“I was a driver in Kangemi route 23. One night when we were about to close business, some policemen confronted me. The conductor had left the vehicle for few minutes to look for change to give customers. The policemen accused me of blocking the road and they arrested me. They told me to drive to Kabete police station. As I drove off with the policemen, I called my boss - the owner of the vehicle. My boss asked me to drive slowly so that he could talk to the policemen to see whether they could release me. I drove slowly talking with him on phone and he reached us before we arrived at the police station. He talked with the policemen but they got into an argument. They exchanged harsh words. They then told my boss that if he wanted his vehicle, he could take it because they were interested with the driver as he was the one who had caused the obstruction. They pulled me from the vehicle and put me inside their car and took me to the police station. When we got there they started beating me up for about half an hour, just beating me. They did not tell me why they were beating me. When I asked them why they were beating me up, and all they could say was that I wait had to wait for them to finish their ‘work.’ They used a whip, electric wire and a rungu for to hit my joints. I still have marks on my joints from the beatings with the rungu. I also have marks on my back.

They then threw me inside the cell, in so much pain. I could not stand up. I had to be carried by other inmates. In the morning around 6:00 am, my brothers came to the station to check on me. When they got to the station, they were told that I had already been taken to court yet I was still inside the cell. My brothers went to the court to look for me but they could not find me.

My brothers then came back to the station at 1:00 pm and found our friend who is also a policeman. They told the policeman that they were looking for me to pay for my fine but could not find me as I had been taken to court. They asked him to check whether I was still in the cell. The policeman said that he feared his bosses and could not go in to check. But then he asked my brothers to wait and then look for me after his bosses had left. They waited then he came and asked me if I had been taken to court. Of course I had not been taken. He came out and told my brothers that I was still inside and had not gone to court. My brothers then went to my boss and told him that I was still in the cell. My boss then went to my boss and told him that I was still in the cell. My boss came and pleaded with them and he was asked to part with Kshs. 3,000 so that they would release me. When he ‘paid’ the ‘fine’ the policemen released me. They had to carry me from inside since I could not stand on my own. They carried me to a taxi and later took me to hospital in kangemi where I was treated. When I got to the house, my brother, dressed my wounds with warm water mixed with salt. For days, I couldn’t eat because I could not swallow anything, even tea. The following morning my cousin and brother took me to the Mbagathi Hospital where I received treatment. While at the hospital, my boss brought some journalists from Standard Newspapers who wrote my story. I was later treated. My story was highlighted in the newspaper twice.”
Victims of torture are subjected to diverse forms of torture as reported in figures 4.11 and 4.12 below. What is emerging from the survey is that victims are subjected to multiple forms of torture whenever they are exposed to torture. Harassment, intimidation, physical infliction of pain, being forced to admit a crime one has not committed, canning, arbitrary arrest and being forced to pay bribes are some of the forms of torture that have been reported most frequently.
From the in-depth interviews with some victims, it emerged that methods of inflicting torture are diverse. The most common methods of physical torture in Kenya involve punching, kicking, beating with batons, whips, electric wires, chains, verbal abuse, and threats. Physical methods also involve stripping, rape threats or actual rape. Victims may also be deprived of food, drink, sleep or use of the toilet. The cells are usually very narrow and overcrowded with little or no ventilation. Psychological torture always accompanies physical torture but can also be executed alone, involving abuse, humiliation, threats of injury to victim or family, forcing victim to make impossible choices, etc.
8. Key Drivers of Torture in Kenya

Here the study sought to establish what is supporting torture in Kenya, or the circumstances that precipitates torture in this country. That is, why does torture still occur despite local and international conventions that advocate against torture and other inhuman treatment? From the qualitative in-depth interviews that were conducted with a cross-section of stakeholders it emerged that a big driver of torture in Kenya is the compliance by the people in the high authority, especially the executive, when incidents of torture come to light. By keeping silent, it appears that they are condoning torture while the perpetrators can always invoke “orders from above” to justify their activities. Thus, many of the respondents thought that the Executive bears the greatest responsibility for the prevalence of torture. Inaction by the Executive, therefore, was viewed as the key driver of impunity.

Secondly, there is the propensity by those responsible for public order to seek shortcut in concluding cases. They do this by forcing their culprits to confess to something by torturing them. Rather than follow the due process, they resort to torture because they do not want to “waste” time in lengthy investigative processes. The culture of impunity also contributes in that even when an individual reports an incident of violation, there is inaction. Therefore the public become lethargic about reporting.

Thirdly, poverty was also mentioned as a driver of torture. Poverty affects torture because access to justice requires time, funds, investigations access to legal aid or support which majority of people cannot afford. Further, poverty was seen as a predisposing factor in the sense that those who are poor are more likely to fall victims of torture as compared to people who are well-off.

Many unemployed young people, especially in Central and Nairobi provinces have been arrested in police swoops, locked up in police and tortured using one pretext or another. It appears therefore, joblessness and idling at the shopping centers, especially when the person is young, predisposes one to torture.

Lack of legislation, especially one that defines torture is a constraint in seeking redress for victims of torture. Whereas freedom from torture and other human rights abuses is guaranteed, there is no legislative framework to enforce that.

From the household survey, some of the key drivers reported by a large percentage of the respondents included poverty, weak enforcements of legislation prohibiting torture, lack of awareness about personal rights, and ignorance on the perpetrators about human rights. It means that poverty makes people vulnerable to torture. Even when they suffer from acts of torture, they are less likely to seek recourse because it requires money or patronage which their social status cannot afford. There should be more purposely enforcement of laws against human rights violations and awareness creations, both on the side of public and agents most responsible for torture.
Table 8-1: Factors that drive perpetration of torture in Kenya

<table>
<thead>
<tr>
<th>Factor</th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
<th>Central</th>
<th>Coast</th>
<th>Eastern</th>
<th>Nairobi</th>
<th>North</th>
<th>Eastern</th>
<th>Nyanza</th>
<th>Rift</th>
<th>Valley</th>
<th>Western</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base: Total sample</td>
<td>1230</td>
<td>444</td>
<td>786</td>
<td>157</td>
<td>107</td>
<td>184</td>
<td>122</td>
<td>62</td>
<td>164</td>
<td>305</td>
<td>128</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poverty</td>
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<td>28</td>
<td>40</td>
<td>45</td>
<td>62</td>
<td>55</td>
<td>52</td>
<td></td>
</tr>
<tr>
<td>Weak enforcement of legislation prohibiting human rights violation</td>
<td>43</td>
<td>48</td>
<td>40</td>
<td>48</td>
<td>48</td>
<td>50</td>
<td>49</td>
<td>39</td>
<td>37</td>
<td>45</td>
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<td></td>
</tr>
<tr>
<td>Lack of awareness about fundamental rights</td>
<td>42</td>
<td>39</td>
<td>44</td>
<td>46</td>
<td>32</td>
<td>42</td>
<td>33</td>
<td>19</td>
<td>41</td>
<td>57</td>
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</tr>
<tr>
<td>Ignorance on the perpetrators about human rights</td>
<td>37</td>
<td>38</td>
<td>37</td>
<td>41</td>
<td>30</td>
<td>34</td>
<td>39</td>
<td>36</td>
<td>42</td>
<td>37</td>
<td>35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inadequate legislation to protect against torture</td>
<td>34</td>
<td>41</td>
<td>31</td>
<td>38</td>
<td>33</td>
<td>33</td>
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<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Everyone who reported that they had been victims of torture was asked to mention the reason why they were tortured. The results are summarized in Figure 4.13 below. What we notice from the results below is that diverse reasons were given, with 38% saying they were tortured for no reason. Another 31% and 22% mentioned torture for confession and to reveal information respectively. Table 4.5 summarises the reasons for torture across the regions.

Figure 8-1: Reasons why the person was tortured

Base: All the respondent who had suffered torture
Table 8-2: Reasons given for being tortured

<table>
<thead>
<tr>
<th>Reason</th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
<th>Central</th>
<th>Coast</th>
<th>Eastern</th>
<th>Nairobi</th>
<th>North Eastern</th>
<th>Nyanza</th>
<th>Rift Valley</th>
<th>Western</th>
</tr>
</thead>
<tbody>
<tr>
<td>No apparent reason</td>
<td>38</td>
<td>43</td>
<td>34</td>
<td>53</td>
<td>7</td>
<td>29</td>
<td>43</td>
<td>36</td>
<td>34</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>For confession</td>
<td>31</td>
<td>23</td>
<td>35</td>
<td>25</td>
<td>54</td>
<td>33</td>
<td>20</td>
<td>7</td>
<td>45</td>
<td>23</td>
<td>42</td>
</tr>
<tr>
<td>To reveal information</td>
<td>22</td>
<td>14</td>
<td>27</td>
<td>7</td>
<td>55</td>
<td>42</td>
<td>14</td>
<td>16</td>
<td>50</td>
<td>9</td>
<td>28</td>
</tr>
<tr>
<td>Punishment for crime</td>
<td>9</td>
<td>12</td>
<td>7</td>
<td>9</td>
<td>12</td>
<td>8</td>
<td>12</td>
<td>-</td>
<td>5</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>Ethnicity</td>
<td>6</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>-</td>
<td>8</td>
<td>5</td>
<td>-</td>
<td>14</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Political affiliation</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>7</td>
<td>4</td>
<td>5</td>
<td>2</td>
<td>-</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td>Revenge</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>-</td>
<td>8</td>
<td>5</td>
<td>-</td>
<td>5</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Being drunk late at night</td>
<td>3</td>
<td>6</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Illegal possession of firearm</td>
<td>2</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>22</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>In the context of counter-terrorism</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>7</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

Figure 8-2: Reasons why another person you know was tortured

Base: All the respondent who had known anyone who had suffered torture; n=361
Table 8-3: Reasons why another person you know was tortured

<table>
<thead>
<tr>
<th>Reason</th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
<th>Central</th>
<th>Coast</th>
<th>Eastern</th>
<th>Nairobi</th>
<th>North Eastern</th>
<th>Nyanza</th>
<th>Rift Valley</th>
<th>Western</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base: Those who know someone who has suffered torture</td>
<td>361</td>
<td>153</td>
<td>208</td>
<td>48</td>
<td>27</td>
<td>54</td>
<td>52</td>
<td>13</td>
<td>48</td>
<td>64</td>
<td>55</td>
</tr>
<tr>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>For confession</td>
<td>35</td>
<td>35</td>
<td>34</td>
<td>34</td>
<td>29</td>
<td>20</td>
<td>26</td>
<td>3</td>
<td>55</td>
<td>27</td>
<td>59</td>
</tr>
<tr>
<td>To reveal information</td>
<td>30</td>
<td>28</td>
<td>31</td>
<td>23</td>
<td>39</td>
<td>28</td>
<td>17</td>
<td>4</td>
<td>66</td>
<td>17</td>
<td>34</td>
</tr>
<tr>
<td>No apparent reason</td>
<td>28</td>
<td>24</td>
<td>30</td>
<td>34</td>
<td>17</td>
<td>24</td>
<td>34</td>
<td>29</td>
<td>16</td>
<td>41</td>
<td>19</td>
</tr>
<tr>
<td>Punishment for crime</td>
<td>24</td>
<td>19</td>
<td>28</td>
<td>23</td>
<td>18</td>
<td>42</td>
<td>24</td>
<td>12</td>
<td>32</td>
<td>8</td>
<td>25</td>
</tr>
<tr>
<td>Revenge</td>
<td>8</td>
<td>9</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>16</td>
<td>11</td>
<td>30</td>
<td>13</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Ethnicity</td>
<td>6</td>
<td>9</td>
<td>4</td>
<td>4</td>
<td>-</td>
<td>2</td>
<td>12</td>
<td>35</td>
<td>-</td>
<td>13</td>
<td>-</td>
</tr>
<tr>
<td>Political affiliation</td>
<td>3</td>
<td>6</td>
<td>1</td>
<td>13</td>
<td>5</td>
<td>-</td>
<td>4</td>
<td>11</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>In the context of counter-terrorism</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>13</td>
<td>5</td>
<td>-</td>
<td>9</td>
<td>7</td>
<td>1</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Illegal possession of firearm</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Religious affiliation</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Lack of work permit</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
</tbody>
</table>
9. Impediments faced by torture survivors in accessing redress and justice

One of the constraints preventing people from reporting incidences of torture, from the survey, was that respondents did not trust the police. The police were viewed as the perpetrators. Torture was also viewed as a personal issue and the court processes tend to put them in the open. Even then, some people found it hard to open up. This is especially true when the form of torture was so humiliating. Persons recounting it felt that such narration – coming out -rekindles painful, embarrassing.

Another major impediment gleaned from our study is the lack of awareness of where to report cases of torture. Related to this is the lack of awareness about personal rights and safeguards provided by law and the constitution against violations. Some people are simply lethargic of reporting to a system that they feel has let them down in the first place, and/or are tired recounting the torture again, and simply want to forget and move on with their lives.

Another impediment is the lack of proper legislation that defines torture. Currently the court processes rely on the Penal Code as there are no supporting legislation. This impediment is compounded further by lack of people on the ground to handle complaints because the civil societies that campaign against torture such as IMLU are very thin on the ground as they have to cover very wide area. Moreover, most civil societies groups operate from urban centers and serving rural communities is intimidating.

The Kenya National Commission on Human Rights (KNCHR) has been stopped due to the rules establishing it through a constitutional case. As a result they cannot address torture cases referred to them and recommend civil action against the perpetrators.

In the household survey we established that about 1 out of 4 individuals who suffer torture report the incidents. However, 75% of those who reported said that nothing was done about their complaint. This state of affair has created a cynical and apathetic public that is reluctant to report as they believe the effort will avail nothing.

Another big impediment is the fact that police are in a state of denial. They refuse to accept that torture is perpetrated from within their ranks. This finding is collaborated from the Prof. Alston’s report (2009), that noted that police is the only institution refuting that violations from within it ranks is taking place.

In this section we examine the behaviour exhibited by individuals when they become victims of torture. Do they report the incidences of torture? To whom do they report, and what action is taken? Ideally everyone should report and action taken against the perpetrators. The study established that only 25% of victims report. The overall picture that we can get is one where most people do not report, either because of ignorance or from apathy borne from realization that reporting will not avail much.
Figure 9-1: Proportion of victims reporting when tortured

Base: All the respondents who had suffered torture

The very few that report do so at the police station. Other places where reports are filed include the area chief and government office.

Figure 9-2: Agency where complaint about torture is reported

Base: All the torture victims who reported the incident

Majority of those who reported, 77%, said no action was taken. This outcome probably explains why majority of the victims do not report in the first place. These results are summarized in figure 4.17 in only 5% of the instances were perpetrators arrested and punished. Asked to indicate their level of satisfaction with services provided when they report incidences of torture, less than 10% across the gender and location splits said they were very satisfied. See table 4.7 and note the small size of n which indicate only a few victims report.
Figure 9-3: Action taken when victims reported the incidence

Base: All the torture victims who reported the incident

Table 9-1: Level of satisfaction with action taken when victim reported torture

| QB10. Using a 5-point scale, where “1” means “very dissatisfied” and “5” means “Very satisfied” please tell me how satisfied you were with the action that was taken when you reported the incidence of torture? |
|-------------------------------------------------|----------|----------|---------|---------|---------|
| Total | Urban | Rural | Male | Female |
| Base: Those who said action was taken | 17 | 6 | 11 | 9 | 8 |
| Very dissatisfied (1) | 52 | 36 | 61 | 44 | 60 |
| Dissatisfied (2) | 15 | 19 | 13 | 29 | 1 |
| Neither satisfied nor dissatisfied (3) | 14 | 37 | - | 13 | 15 |
| Satisfied (4) | 16 | - | 25 | 15 | 17 |
| Very satisfied (5) | 3 | 9 | - | - | 7 |
| Mean | 2.0 | 2.3 | 1.9 | 2.0 | 2.1 |

To understand why people do not report when they are tortured, the team asked the respondents to say why these incidences are not reported. The results are summarized in table 4.8 below. The largest percentage said they do not report because they don’t believe any assistance will be given. This reason was followed by fear of reprisal and then belief that one needs money to get justice. Victims are constrained by doubts that reporting will amount to inaction fear and feeling of despondency as they also lack money to pursue the rigorous processes.
### Table 9-2: Why people do not report

<table>
<thead>
<tr>
<th>QC6. Why do people not report?</th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
<th>Central</th>
<th>Coast</th>
<th>Eastern</th>
<th>Nairobi</th>
<th>North Eastern</th>
<th>Nyanza</th>
<th>Rift Valley</th>
<th>Western</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base: Those who said that victims do not normally report when they are tortured</td>
<td>571</td>
<td>194</td>
<td>377</td>
<td>81</td>
<td>64</td>
<td>80</td>
<td>54</td>
<td>49</td>
<td>69</td>
<td>118</td>
<td>58</td>
</tr>
<tr>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Don’t believe any assistance will be given</td>
<td>42</td>
<td>43</td>
<td>42</td>
<td>56</td>
<td>72</td>
<td>28</td>
<td>36</td>
<td>51</td>
<td>46</td>
<td>33</td>
<td>24</td>
</tr>
<tr>
<td>Afraid of reprisal</td>
<td>35</td>
<td>40</td>
<td>33</td>
<td>28</td>
<td>37</td>
<td>53</td>
<td>42</td>
<td>33</td>
<td>20</td>
<td>22</td>
<td>61</td>
</tr>
<tr>
<td>You need to have money to get justice</td>
<td>32</td>
<td>36</td>
<td>30</td>
<td>25</td>
<td>65</td>
<td>16</td>
<td>27</td>
<td>12</td>
<td>26</td>
<td>47</td>
<td>28</td>
</tr>
<tr>
<td>Do not know whom to report to</td>
<td>17</td>
<td>16</td>
<td>17</td>
<td>30</td>
<td>12</td>
<td>24</td>
<td>15</td>
<td>3</td>
<td>17</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>They do not know their rights/ignorance</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>4</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>No independent body to hear the case</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Embarrassment or shame</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Fear of bribery</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
10. Changes in torture since the previous torture survey of 2007

It is a veritable fact that the country has come from very far from the days when torture was so brazen and unmitigated. Today torture on political dissidents has been eliminated even though torture on members of organized groups is on the rise. Today, torture is more psychological rather than physical. The intensity of torture has reduced between the periods 2007 and present.

However, torture has taken other more sinister forms compared to the past. Today many young men die in extra judicial killings perpetrated in the context of combating organized crime groups. In the past the perpetrators were obvious but now there are more non-state actors or criminal gangs involved. The police may not beat you but let fellow inmates beat you up.

Another change that is visible today is that the public is more aware of their rights, and this has forced the perpetrators to change tactics towards more blackmail and extortion and such other torture methods that do not leave any mark or evidence behind.

Since the Kenya police is a main stakeholder in the law and order in the country, and because the institution has been accused of perpetrating torture more than any other institution in the country, we sought their opinion regarding torture in the Kenya. The team wanted to understand from them the prevailing trends of torture and actions taken to mitigate against it.
10.1 Police statement about torture in Kenya

There is poor investment in police and there is an urgent need to put in place this in process as the police serve community interests. Failure to invest in the police has implications in the way they perform. As we address governance concerns in the country, we need to invest in police service as well.

Torture cases have reduced and indeed the Kenya Police Service does not accept or tolerate torture. When an officer is reported to have committed any act or torture, the only option is to sack the individual officer. We must however consider the circumstances under which torture happens, the police are highly demoralized, they live in poor conditions, in crowded small room with several officers sharing. After a hectic day, these officers have no space to rest or bond with family.

The public should also be made aware of their rights, when torture happens; the immediate thing that they should seek is medical attention for the medical officer to make a written report. If somebody is uncomfortable reporting the incident and their effort to get a P3 form is frustrated, the investigating officers will use the medical report to file the P3 form even if this happens 3 years later. Getting a P3 form should never be a hindrance to get investigations underway.

The Constitution now sets 24 hours within which all arrested person would be submitted in court. This poses several challenges to police service consideration there is no infrastructure to facilitate investigations within 24 hours and in some cases, the geographical coverage is vast and some stations may not be able to get suspects in court within this time. This will definitely impact on the role of police service in ensuring access to justice for the victims of criminal activities. There is also need to correspond these constitutional provisions with intensive training of police officers to ensure competence and proper supervision.

In the last 6 months, 23 cases of mob justice have been reported. Members of the public are taking the law into their hands. Several police officers have been shot by thugs when trying to prevent criminal activities and just last week, a police officer was shot at Kencom Bus terminal when he tried to assist somebody who was being robbed!
The police are under attack all the time and have no defence mechanism. With the constitutional provision that officers should not use force, these are some of the implications and this will have the impact of a demoralized police service.

Torture is on the decline and reported cases are acted upon immediately. Mental torture happens when people like the mungiki intimidate witnesses even when they suffer from their activities. We can report that Kayole is now tamed. The officer in charge there has been very effective.

The police are now undertaking training, which is ongoing, on issues of human rights, the law and they are given general exposure. The officers are now aware of the consequences of torture. Several cases have gone to court seeking individual accountability and nobody wants to be referred to The Hague [the ICC] like the case was with post election violence intervention. The police are now more conscious of their actions. We however need to address the root causes of torture.

The rebuilding of the police service is ongoing. The police know what they want to achieve. There are foreign forces driving the public agenda with foreign funds that come with hidden motives. The police service does not allow foreign influence as the government must be the one to support its own police order, social security, as its core role.

Administrative Police has a history in the Moi regime when PS Oyugi [Hezekiah] recruited KANU youth wingers as AP substitutes. The proposed merger of the administrative police and the Police Service is with the assumption that the APs are a ‘police’ as well. This is a serious misconception. This has been misinterpreted to mean that police do not want reforms. Far from it, but a merge of these two agencies will have serious implications.
Forensic science can greatly help in police investigations. The material relevant in evidence. The first officer at the scene of crime has in most case no expert experience to preserve the scene of crime for investigations. There is however need for separation of powers – investigations, prosecutions and arbitration. Sometimes the media has posed serious challenges when they report that the police have been releasing suspects or they have failed to investigate. Police officers are trained to undertake investigation upon cases being reported to them and not through the media. The media has unfairly condemned the police without all the necessary facts or expertise on an issues or incident.

We are very happy with public vigilance that has increased. In the case of Mercy Cherono [university student who died recently] a motorist who witnessed the incident called at the Parklands Police Station at 3 am and recorded a statement. He proceeded to give his personal details just in case there was follow up to the case. Another motorist driving along the same road, took the trouble to follow the car that run over the deceased until she got the registration numbers of the car and proceeded to call and report to the police. They both followed up this case independently without being prompted by the police.

The office has increased received letters of appreciations, people who have received service from the police and are happy. This is an encouraging trend that the police are indeed doing their job well. It is an indicator of changes and appreciation.

To be able to produce suspect in court with 24 hours, there are several challenges that the public must be aware of and have a role to play in ensuring these reforms. Invest in judicial processes that take time and resources. Ensure international standards are adhered to not just political rhetoric. Keep people in custody when it is absolutely necessary. That all cases are handled by competent officers and create a system that ensures rehabilitation as well as to address early warning signs that address the root cause of crime.

The police should be involved in law reforms – be provided with all the necessary instruments, have ample time, professionalism has been eroded and the politicians have sent a message that law-makers are not serious about law enforcement.

We admit that before the police performance has not been good. In the police training, all officers were told that when a crime occurs they MUST recover the stolen property, they MUST get a conviction, the MUST do it. There was a sense of guilt if a case was lost, an indicator of professional failure, there was a culture of perfectionism, but these has changed.

People are more interested in the rights of criminal but not the police. Mob justice has taken over. The statistics are very high and worrying. More victims of domestic violence. Annually the crime report and the crime data, these cases are on the rise.

Last month there were transfers of police officers. There was a delegation of resident from Kabete Police Station and Kileleshwa Police Stations, with people demanding that the officers-in-charge of these two stations should not be changed. From kileleshwa the message was that the officer-in-charge there has brought changes- making people in charge of their own security instead of resorting to ‘mungiki security’. In Kabete, some landlords could not collect rent from their own houses. The OCS came in and has changed the situation. To stop Mungiki from collecting money from members of the public, it requires ingenious means, the OCS Kabete has managed the situation very well and residents want him to remain there to serve them well. We should not tolerate criminal gangs, or cover evidence or allow intimidation.

For a civilized force, the premium is for law enforcement.
11. Conclusions
Torture in Kenya is still widespread and a persistent phenomenon, and from this study, regular police are the main perpetrators. Apart from the traditional torture methods where pain would be inflicted upon a victim to force a confession, non-conventional torture methods such as forced disappearance, blackmail and extortions are currently common characteristics of torture in Kenya. There are consistent allegations of ongoing extrajudicial killings and enforced disappearances by law enforcement personnel, particularly during special security operations. Thus despite the vast recommendations addressing torture made by various actors in Kenya including GJLOS, CIPEV and Alston report to mention but a few, very little has changed.

In comparison to other social problems confronting the public, torture had 53% of the respondents ranking it as a very big problem. Another 25% of the respondents said torture is a big problem. Even though this was an opinion rather than experiential question, it is still significant that a large proportion of the respondents perceived torture to be a major concern in Kenya. Further, the regular police were perceived to be by far the main perpetrators of torture, with 63% mentioning the police compared to 9% who mentioned the administration police that came second.

That 23% of the respondents reported that they have personally suffered torture, underscores that torture is prevalent in Kenya. This means that approximately one out of four persons in Kenya has been a victim of torture. When these people who said they have been victims of torture where asked to identify who tortured them, 59% mentioned the police against the 8% who mentioned local vigilante groups which emerged as the second most mentioned perpetrators. Therefore, the regular police emerges the main perpetrators both in peoples perception and in reality as reported by the victims.

Drivers of torture are many and diverse, but the executive was identified as the main driver because of its acts of omission rather than commission. By keeping silent when incidences of torture are highlighted in the media and other forums, it appears that the executive is condoning torture. Conversely, active participation by the executive in condemning and punishing perpetrators holds great potential in stemming torture in the country. Propensity by the law enforcing personnel to conclude cases quickly and secure a conviction by taking shortcuts that avoid the due investigation process is yet another driver, as well as the culture of impunity where perpetrators rest assured that they will not be punished despite their action. Further, there is a legislative gap as far as prosecuting perpetrators of torture is concerned because torture is not defined in our Penal Code. As such there is no legislative framework to enforce freedom from torture. However, it is noteworthy that IMLU in conjunction with KNHRC and ICJ have drafted the Torture Prevention Bill, 2011 for presentation to parliament for debate and possible enactment into law.

There are impediments in the fight against torture. First of all, very few of the victims report to the authorities or seek redress. From this study, only 25% of the respondents who said they are victims of torture ever reported the incidence to the police. Reasons for non-action are multi-pronged with majority not having trust in the institution of justice, their complaints have not been acted upon reporting or simple inaction for fear of further reprisals by the perpetrators due to the culture of impunity. In addition, there is lack of awareness about where to report cases of torture. Related to this is the lack of awareness about personal rights and safeguards provided by law and the constitution against violations. Therefore, creating awareness within the public about their rights and courses of actions to be taken when torture is inflicted, plus outlining clearly the reporting procedures, may help reduce torture in the country as well avail redress to victims.

However, more worrying is the fact that 77% of those who reported said that nothing was done about their complaint, thus negating efforts to report in the first place. Unless reporting provides real chance for redress and punishment for the perpetrators, victims will not be encouraged to report.
Police shared their opinion regarding torture in Kenya, especially from the point of view that the study overwhelmingly identified them as the main perpetrators of torture in Kenya. While not refuting that torture is perpetrated from within their ranks, they stated categorically that torture of whatever form is not officially sanctioned and that when an officer is reported to have committed any act or torture, the only option is to sack the individual officer. The police also recommend that the public should be made aware of their rights, so they can take necessary actions when they are tortured. Regarding the Constitutional requirement that all arrested persons should be submitted to the court within 24 hours, the police said this poses several challenges. First there is no infrastructure to facilitate investigations within 24 hours and in some cases, the geographical coverage is vast and some stations may not be able to get suspects in court within this time. This will definitely impact on the role of police service in ensuring access to justice for the victims of criminal activities. The police also identified the need to match constitutional provisions on the Bill of Rights with intensive training of police officers to ensure competence and proper supervision. The police said that there are on-going training of its officers on issues of human rights, the law and general exposure to important social-economic issues. As a result police are now more conscious of their actions. However, the police also recommended that the root cause of torture be addressed. Pressure to make quick arrests and secure convictions of suspects may precipitate actions of torture, especially given the requirement to produce suspects in court within 24 hours and the dearth of forensic science facility that would otherwise aid investigations. There is need therefore to equip the police force with proper forensic laboratories to aid in proper investigations, and thus remove the temptations to resort to shortcuts such as torturing people. Related to this is the training of police how to preserve the scene of crime and secure materials relevant for evidence.

The police claim that the media has unfairly condemned the police without all the necessary facts or expertise on an issue or incident.
Although the government investigated torture complaints in some criminal cases and punished some offending police officers, punishments generally have not conformed to the seriousness of the offence. The government has not prosecuted any Officer-in-Charge of Station (OCS) for torture on its own volition. All cases have been instituted by aggrieved citizens and in the cases of death, by angry relatives.

Fight against groups perceived by the state to constitute organized crime gangs has precipitated incidents of torture. We recommend that police be trained on human rights, not only the theory of it but its practice within operations contexts when in the field implementing government policy. Internal Security Permanent Secretary Francis Kimemia was quoted as stating that ‘State security agents will be ruthless on the gangs linked to terrorism, kidnapping, beheading, exploitation, extortion, oathing, and money laundering and piracy activities.’ Government in the Kenya Gazette, published the targeted illegal groups that are only listed and not defined comprising: Al Shabaab, Amachuma, Angola Msumbiji, Banyamulenge, Baghdad Boys, Charo Shuru, Chinkororo, Coast Housing Land Network, Congo by Force, Dallas Muslim Youth, Forty Brothers, Forty-two Brothers, Jeshi la Embakasi, Jeshi la Mzee, Jeshi la King’ole, Japo Group, Kamjeshi, Kamkunji Youth Group, Kaya Bombo Youth, Kenya Youth Alliance, Kosovo Boys and Kuzacha. Others include Makande Army, Mombasa Republic Council, Mungiki Movement, Mungiki Organisation, Mungiki Sect, Republic Revolution Council, Sabaot Land Defence Force, Sakina Youth, Siafu, Sungu Sungu and Taliban.

The Constitution is a major achievement and a tool indicating success in addressing torture. It has set the pace for reforms by outlawing torture and provided the space and pace for a fresh start. By setting the standards in making torture non-derogable and outlawing the use of force for any reason, the Constitution gives the preamble for best practices. Progress in legal reforms commensurate with the spirit of the Constitution is now desirable.

The failure to fight impunity and the little progress made in arresting and prosecuting officers accused of torture has made Kenyans skeptical about political commitment to addressing the culture of impunity.

There lacks a specific legal framework to ensure prompt and impartial investigations into acts of torture and other cruel, inhuman and degrading treatment or punishment committed by law enforcement officers. Acts of torture and ill-treatment are seldom investigated and prosecuted and perpetrators are either rarely convicted or are sentenced to lenient penalties not in accordance with the grave nature of their crimes. This has resulted in impunity for perpetrators of acts of torture and ill-treatment throughout the country. The government should set up a specific legal framework to eliminate impunity for perpetrators of acts of torture and ill-treatment by ensuring that all allegations are investigated promptly, effectively and impartially, that perpetrators are prosecuted and convicted in accordance with the gravity of the acts, and that victims are adequately compensated, as required by the Convention Against Torture (CAT).
section xi

12. Recommendations

These recommendations are derived from the findings of this study as well as the literature review that was carried out as part of the study. There are many stakeholders around the phenomenon of torture, ranging from the police, the executive, legislature, judiciary, the civil society organisations, victims and others. These recommendations are given to every stakeholder separately so as to render concise and complete presentations of findings.

The Government of Kenya

- Respect its obligations under the international human rights instruments it has ratified, including the Convention Against Torture (CAT);
- Take necessary steps to ensure that all state security forces, including the police, the army, and the Administrative Police, comply with Kenyan and international law regarding searches, arrests, and the treatment of detainees.
- Open investigations into the conduct of police and intelligence officials who have knowingly collaborated with armed civilian groups and or organized criminal gangs and encouraged them to carry out arrests and ill-treatment of members of the public.
- Take disciplinary action against officers who breach their obligations and prosecute those alleged to have committed criminal offences, including such human rights violations as torture, ill-treatment, and unlawful detention.
- Ensure that all police officers comply with human rights standards relating to police functions (including those set out in the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Peoples and Human Rights, and the Convention against Torture), and abide by Kenyan Constitution and laws that reflect these standards.
- Implement the recommendations of CIPEV and the UN special rapporteur on extrajudicial, summary or arbitrary executions as part of the national task force on police reform, chiefly, the establishment of an independent police conduct authority, the merging of the Administration and Regular Police, and the overhaul of police command structures. Put into account concluding Observations made by the Committee against Torture
- There should be separation of powers for investigations, prosecution and arbitration in cases involving torture to avoid conflict of interest. These powers are currently vested on the police, and this situation may be responsible for stalling of progress towards finding justice for victims

The government should develop a comprehensive integrated strategy for torture prevention. Such an integrated approach should be composed of three interrelated elements:
- 1. A legal framework that prohibits torture
- 2. Effective implementation of this legal framework

The fight against torture has, for a long time, focused on the first two elements of this strategy, in particular the enactment of laws and litigation of cases. An effective legal framework is an essential part of any programme to combat torture. However, the mere existence of laws and regulations is not sufficient to prevent torture; they also need to be properly understood and rigorously applied.

Executive

The Executive should in collaboration with the other arms of government adopt a more comprehensive approach to reform the justice system with a view to enhancing its integrity, efficiency and transparency. The
executive should further take all necessary measures to ensure that the lack of resources is not an obstacle to
accessing justice. In the implementation of the National Legal Aid Scheme the office should work closely with
an independent body that receives complaints, investigates, and prosecutes torture cases. Have an Officer of
Public Defender.

**Minister for Justice and Constitutional Affairs**

- Expand the Legal Aid scheme to cover torture cases.
- Publish CAT concluding observations and the efforts made to address them in a public media
  channel. Translate this material into Swahili to ensure effective access by majority of citizens.
- Invite civil society groups in the formulation of the next CAT Report to share cases studies, data and
  research findings on cases of torture

**DPP and Police Commissioner**

- Ensure that all police officers receive appropriate and sufficient training to understand their
  responsibilities to respect human rights as defined by the international conventions to which Kenya
  is a party and to prevent violations of these rights.
- Establish an official system to record and respond to complaints of abusive conduct and to track
  disciplinary or criminal action taken against police officers.
- Ensure prompt passage of a new criminal law prohibiting and punishing torture and inhuman and
degrading treatment.
- Investigate all claims of arbitrary detention, torture, inhuman treatment, rape, and looting by security
  forces and prosecute those responsible for post election violence in 2008, Mandera disarmament
  operation in 2008, the Mungiki Operation in 2010 including the commanding officers who supervised
  the operation and did nothing to stem abuses by subordinates. Set up an inquiry into these operations
  with special attention paid to creating a conducive environment for women and girls who have been
  sexually assaulted to record their complaints; the inquiry should include trained female investigators
  and take steps to protect the identity of rape complainants.
- Police and institutional reforms are a priority area under the GJLOS, PEV, UN Special Rapporteur
  report and under the UN CAT Concluding observations, but no comprehensive policy or administrative
  changes have occurred in the police force/service. The changes effected in the police force have
  not had a significant impact at community level. Peoples’ trust in the police force to change into
  a ‘police service’ is still far from a reality. People are not confident that the police have capacity to
  stop incidents of torture since the use of force is witnessed regularly. Undertaking comprehensive
  reforms within the police force is imperative.
- There is the problem of arbitrary police actions, including unlawful and arbitrary arrest and widespread
  police corruption, particularly in informal settlements/slums and the urban neighbourhoods. There is
  need to have a clear message on zero-tolerance of corruption, the imposition of appropriate penalties
  and adequate training of police officers who practice corruption as this has negative implication on
  the fight against torture and the culture of impunity.
- There are consistent allegations of ongoing extrajudicial killings and enforced disappearances by
  law enforcement officers, particularly during special security operations, operations against criminal
  gangs and other criminal activities. There is outright lack of investigations and legal sanctions in
  connection with such operations, as well as about information regarding impediments that civil
  society groups like IMLU faces in their attempts to document cases of disappearances and death.
  There is need to ensure immediate and impartial investigations into these serious allegations and
  to ensure that perpetrators of these illegalities are punished with penalties appropriate to the
  grave nature of their acts as required under the Convention against Torture. There should also be
  preventive action and steps by the government to ensure that there are no more extrajudicial killings
  and enforced disappearances.
United Nations Agencies

- Press the Kenyan government to fully investigate and sanction all abuses committed by police officers.
- In all assistance programmes directed at the Kenya police, include training on human rights with a particular focus on enforcement of the prohibitions of torture and the excessive use of force to ensure that aid to the police is directed toward initiatives that promote human rights.
- Provide adequate support for the Police Service Commission and the Independent Police Oversight Authority in their efforts to gather data and track complaints against police officers.
- Carefully monitor the government’s compliance with the criminal procedure code and the independence of the judicial system, and take steps to support the development of an independent, effective judiciary.
- Actively denounce human rights abuses documented by human rights observers on the ground, and regularly raise these issues with the government, requesting specific action to end these abuses.

Legislature

- Domesticate the Convention - A law comprehensively domesticating CAT must be enacted. It must provide a clear definition of torture, prescribe punishment for offenders, and establish a clear procedure whereby complaints can be made, investigated and prosecuted. This law should guarantee full rehabilitation and make provision for adequate compensation where torture occurs.
- Ratify Optional Protocol to CAT - The government should urgently consider ratifying the Optional Protocol to the Convention against torture as a proactive way of putting in place internationally acceptable standards of prevention.
- Ratify 2nd Optional protocol to ICCPR: the government should consider ratifying the second Optional Protocol to the ICCPR as a proactive way of abolishing the death sentence while commuting all current death sentences to life imprisonment.
- Ensure the passage of enabling legislation that ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature as laid out in Article 4, paragraph 2, of the Convention.
- Establish a parliamentary inquiry into the allegations of abuses in Mount Elgon, Mandera, Nyeri and Kirinyaga, and publish its findings.
- Establish a parliamentary committee to examine the structure, mandate, and rules of engagement of joint security operations between the police and military, and consider the responsibility of ministers for crimes resulting from abusive policies and strategies approved by them.

Other legal reforms recommended by the Committee against Torture directed at the government of Kenya include:

- Law Reform to ensure that the relevant provisions of the Penal Code, Evidence Act and Criminal Proceedings Act are in conformity with the Convention.
- Fully implement the newly established legal aid scheme and to set up an Office of Public Defender.
- Combat the prevalent practice of unlawful and arbitrary arrest, and the widespread corruption among police officers, which particularly affects the poor living in urban neighborhoods and the increasing high rate of unemployed youths that are targeted for arrest. Further ensure disaggregate data, firstly, on unlawful and arbitrary arrests; and secondly, on police officers under (a) investigation, (b) prosecution, and (c) sanctions, and the nature of those sanctions. This will help to ensure these data reflects on the impact of torture on various groups in society.
- Improve the bail system in order to ensure that it is more reasonable and affordable. Currently access to justice for people arrested or in places of detention has to go through harrowing experiences to access bail and when they do, the conditionality attached are impractical to meet. The poor have no family with assets to deposit as security and nor the requirement for a formally employed family member with a constant income.
- Address the widespread use of torture and ill-treatment in police custody and detailed updated statistical data, disaggregated by age, sex and rank, on the number of officials who have been prosecuted for this crime, how many of them have been convicted and what penalties have been imposed including criminal

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42 Interview with judicial officer on the conditions required for bail. Makadara law courts. Interview conducted on 10 June 2011.
and disciplinary actions against law enforcement officials found guilty of torture and ill-treatment. The Police Reforms Implementation Committee that has mandate to investigate cases of torture has barely been able to address individual cases as it has no mandate to prosecute those accused and have no guiding legislation to guide them in the definition of offences of torture. The police have continued to commit extra judicial killings, arbitrary arrests and detention unabated.

- Dealing with impunity on cases of torture require the government to set up a specific legal framework focusing on the elimination of impunity for perpetrators of acts of torture and ill-treatment and ensuring that all allegations are investigated promptly, effectively and impartially. This legal framework will ensure that perpetrators are prosecuted and convicted in accordance with the gravity of their acts, and victims are compensated as required by the Convention.

**KNCHR**

- Use the commission’s statutory authority to bring a collective legal case against the state for gross violations of the rights of the victims of the Mount Elgon, Nyeri and Mandera disarmament operations and seek redress and compensation.

- Work with line ministries to ensure effective measures to bring the conditions of detention into line with UN Standards Minimum Rules for the Treatment of Prisoners and ensure the allocation of the material, human and budgetary resources necessary to:
  
  a) Reduce overcrowding in prisons, in particular the high number of persons in pre-trial detention, by among other things enforcing the relevant provisions which provide for alternative non-custodial measures for minor offences and by reforming the abusive bail system currently in place
  
  b) Ensure that adequate health services are available in all prisons by increasing the number of medical practitioners working for the prison system
  
  c) Take the appropriate measures to reduce the high level of violence inside prisons, including inter-prisoners violence, and punish those responsible

**Judiciary**

Access to justice require a more comprehensive approach to reform the justice system with a view to enhancing its integrity, efficiency and transparency where allegations of torture are made especially due to the current changes of the character of torture changing to non-physical methods.

The judiciary bringing together magistrates, judges and prosecutors, given their role in upholding the rule of law, have a particular responsibility to help prevent acts of torture and ill-treatment by promptly and effectively investigating such acts, prosecuting and punishing those responsible and providing redress to the victims. Preventing and investigating alleged acts of torture poses particular problems for magistrates, judges and prosecutors, and for the administration of justice, because the crime is usually committed by the same public officials who are generally responsible for upholding and enforcing the law. This makes it more difficult to deal with than other forms of criminality. Nevertheless, magistrates, judges and prosecutors have a legal duty to ensure that the integrity of their profession and the justice they uphold are not compromised by the continued tolerance of torture, or other forms of ill-treatment.

Further, judicial supervision of conditions of detention foreseen in the Prison Act should be strengthened.

**Complaints Mechanism**

An effective and efficient complaint mechanism should be established, and the public sensitized about its existence and its workings. So far, Kenya lacks an accessible complaints mechanism for victims of torture and
ill-treatment. There should be measures to ensure that all individuals who may have been subjected to torture and ill-treatment have the possibility to complain and their case promptly and impartially investigated and examined by a competent authority. External oversight of the police – through ombudsmen, oversight boards, or other institutional models – is essential in any system designed to ensure police accountability. The Kenyan police has for long lacked such oversight, and this is a key systemic flaw promoting impunity. Tied to this is the fact that there exists no disaggregated data on the number of people held in custody, including remandees and prisoners, and the length of their sentences. There should be available detailed data, disaggregated by crime, gender and ethnicity, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions and criminal and disciplinary sanctions.

In addition, there should be a proper documentation of cases of torture allegations against officials, and the outcomes, the respective court decisions or punitive measures undertaken. This type of documentation will help monitor incidences of torture in Kenya and identify the appropriate control mechanisms to limit incidences of torture. Such documentation could be managed by the complaints mechanism that we have recommended that it should be established. This documentation should cover the number of complaints made, or the number of cases which are closed by the prosecution and therefore never get to the court in the first place. In general, only a small percentage of torture victims resort to filing a legal complaint, for fear of retaliation by their torturers or because of their shame and lack of faith in any positive outcome of such a complaint.

**Human Rights Defenders**

There are systematic and repressive measures taken to intimidate and threaten human rights defenders especially those who report cases of torture and ill-treatment, and in particular human rights defenders involved in addressing the post-election violence, acts of commission or omission of law enforcement agencies regarding organized criminal gangs and cases of police corruption. There should be effective steps to ensure that all persons reporting on acts of torture and ill-treatment are protected from intimidation and from any form of reprisals as a result of their activities. There should be great cooperation with civil society organizations especially IMLU in preventing torture, in particular in ongoing process of law and policy reforms and use of international best practices.

**Bi-lateral donors**

- Support the Kenyan government’s proposed process of police reform as a matter of urgency.
- Condition security sector assistance on accountability for past abuses during operations by the security forces and insist on a human rights component for all security force training programmes as a condition of security assistance.
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