

Rights Journal

A QUARTERLY NEWSLETTER PUBLISHED BY THE INDEPENDENT MEDICO-LEGAL UNIT

- A PROJECT FUNDED BY THE EUROPEAN UNION'S ANTI-TORTURE ADVOCACY & AWARENESS PROGRAMMES FOR KENYA

JULY 2011

Facing up to Torture in Kenya

Eleven Months after ushering in a new constitutional dispensation in Kenya, it is appalling that dehumanizing incidences of torture still occur, in spite of clear provisions in the constitution of Kenya 2010 that expressly outlaw torture.



European Union



Independent Medico Legal Unit

A PUBLICATION OF INDEPENDENT MEDICO LEGAL UNIT. NO PART OF THIS MATERIAL SHOULD BE REPRODUCED WITHOUT THE CONSENT OF IMLU ©

THE VIEWS EXPRESSED IN THIS PUBLICATION DO NOT NECESSARILY REFLECT THE VIEWS OF THE EUROPEAN COMMISSION.



Welcome to our July 2011 Rights Journal!

At IMLU we stand for justice, equal opportunities and protection of the rights for the victims of torture the indispensable elements in a truly democratic society - and well worth fighting for in the interest of justice. In the quarter beginning April 2011, our collective efforts were geared toward creating a heightened awareness on the high incidences of torture in Kenya. IMLU organized trainings and public forums in Kisumu and Mombasa. IMLU also conducted training for monitors drawn from across the country. The organization has also drawn up a new Strategic Plan for the period 2011-2015. It has also embarked on critical anti-torture campaign. This has been informed by the

national survey on the prevalence of torture that was conducted in the months of May and June 2011 and was released on the 29th July. IMLU intensified action on raising awareness on torture issues and particularly how we as citizens ought to respond in light of violations. This was due to the fact that the survey revealed that when someone had been tortured, s/he did not know where to go for assistance or; was too intimidated to take any action for redress.

Within this quarter, IMLU has bid farewell to familiar faces and welcomed new ones to the family. More details on this are in the Up and About IMLU column of the Journal. Details of IMLU's engagement in various programmatic themes are set out

as you read on. May the work and its impact not only inspire you, but stir you into getting involved in the struggle for a just world free from torture.

Many thanks to all the contributors of the July 2011 edition of the Rights Journal; our donors who made the works herein possible; our partners and networks who labor together with us in the cause for justice; our clients without whose cooperation and consent, our work would be difficult and; the management board and staff for their unyielding commitment to work towards seeing a just world free from torture.

Javas Bigambo, Programme Officer Advocacy & Communication

IMLU STAFF MEMBERS

EXECUTIVE DIRECTOR

Peter Kiama

LEGAL REDRESS & TRAINING

Vincent Kodongo
Sarah Muthiga
Kennedy Kinuthia

REHABILITATION AND DOCUMENTATION

Dina Van Altena
Rose Oray

PSYCHOTHERAPIST

Adrienne Carter

ADVOCACY AND COMMUNICATION

Javas Bigambo

FINANCE AND ADMINISTRATION

Wanjiru Gathuru
Wycliffe Asiligwa
Lilian Atieno
Rachael Isiaha

INTERNS

Yvonne Jeruto



This publication has been made possible by the generous contribution of the European Union. A publication of Independent Medico Legal Unit. No part of this material should be reproduced without the consent of IMLU. We also wish to thank our partners and donors during this quarter who made our work possible.

DESIGN AND LAYOUT

Daniel KIHARA



CONTENTS

06 CELEBRATING THE UN INTERNATIONAL DAY IN SUPPORT OF TORTURE VICTIMS, JUNE 26 2011

"This is a day on which we pay our respects to those who have endured the unimaginable. This is an occasion for the world to speak up against the unspeakable. It is long overdue that a day be dedicated to remembering and supporting the many victims and survivors of torture around the world."

- Kofi Annan

RIGHTS ISSUES

- 05 KENYAN GOVERNMENT IN THE DOCK over torture & murder allegations
Case Updates: Reference No.3 of the East African Court of Justice (EACJ)
- 10 PARTNERSHIP WITH THE MEDIA to enhance Prevention of, and Response to Torture
- 11 LEGAL AID CLINIC at the Nairobi Remand and Allocation – Industrial Area on 25th June 2011

4

One of every Kenyans has experienced torture. IMLU's survey on prevalence of torture reveals

Facing up to torture in Kenya

Eleven Months after ushering in a new constitutional dispensation in Kenya, it is appalling that dehumanizing incidences of torture still occur, in spite of clear provisions in the constitution of Kenya 2010 that expressly outlaw torture.

By Javas Bigambo

Interestingly, the face of torture is changing by the day. The architects of the vice are keenly reinventing themselves. At IMLU we receive new cases every single week. We get cases of those who have been tortured by the police, those who have been threatened and intimidated. Threats create fear. We know too well that sufficient fear causes anguish, psychological instability and a complete disruption of people's lives. Whether by design or default, torture is alive in Kenya, the new age notwithstanding.

The struggle for human rights is far from over. The day when Kenya will be declared as human rights compliant is not near. Not with trigger-happy policemen still being retained on the government payroll. The dirty little and brazen secrets of vigilance house of merely transferring the police officers who are known to have killed innocents must be brought into the light of public scrutiny. Torture is a moral issue which must be fought with both legal and moral means. Celebrating the newfound freedoms provided for in the Bill of Rights in the Kenya constitution is not enough. True transformation involves the moral questions

The struggle for human rights is far from over. The day when Kenya will be declared as human rights compliant is not near. Not with trigger-happy policemen still being retained on the government payroll.



61% of Kenyans believe that torture is very common despite having a new constitution that upholds human rights guiding our laws. State agents are the main perpetrators.

of justice and respect for human life. That is why the debate on torture with duty bearers has easily become acrimonious and contentious, with the perpetrators playing mere public relations with the matter.

Kenya must face up to torture in ideology and practice. The stubborn and persistent denial by the police on the existence and changing faces of torture is a defense that is deficient in logic. Recent cases of human bodies that were found in Kajiado, shot and disfigured (and some dismembered) with acid points to the lesser appreciation of human dignity and seriously undermines the respect for life. It is proper to remember that physical torture was the order of the day during the Moi era. Of course the strappado of the KANU regime and the evils of Nyayo house will never be forgotten. But the age of freedom has not seen an end to acts of torture. What explains the more than 20 new cases of physical torture and extrajudicial killings reported at IMLU since the beginning of the year 2011? It is therefore not remote to argue that

acts of state perpetrated torture are a reflection of the knowledge and training among police officers that shows a lack of requisite human rights training at the Kiganjo police training college.

So it is manifest that acts of torture have their origins in the psyche and mindsets of the perpetrators. We don't need laws and policies on human rights that are incongruous with practice.

Up until we have a firm grip on the root of torture, which of course largely stems from deficient police training and a culture of impunity, it would be difficult for all of us in the sector to understand the magnitude of what we are dealing with. When we gladly talk about African Renaissance, we are making reference to leading and reinventing Africa at policy level. Those policies in respect to human rights must inform law and common practice especially among the police and the administration of justice. We all have an interest in a stable country where the poor, like the rich, are happily at ease and justice is the garment of mutuality that ties them together. So it will take

much more than policies and good laws to root out human rights violations including torture in the Kenyan system. It calls for heightened vigilance by the rights-based organizations, a seriousness and commitment on the part of the nation's leadership starting with the president, and a judiciary that expedites justice for victims. Measures must be put in place too such that those awarded compensation by the courts of law can quickly access their money, reparations and restore their livelihoods.

Kenya must face up to torture in ideology and practice. The stubborn and persistent denial by the police on the existence and changing faces of torture is a defense that is deficient in logic.



BELONGING
By Ngwatilo Mawiyoo

It is hard to believe that this country is mine also. That I am its child, now – my face pressed to beaten earth, goat droppings, dead and plastic things – as if I swore an oath against it, led a prodigal life, or had another home to which to return. The mind's search for reason is silenced by the sound of leather belts ringing incomplete clauses into flesh, leaving symbols one cannot distinguish from question marks or commas – which do not stop throbbing. I might believe what they say, that they seek "the cancer of our society."

It is not their fault that I resemble it, the cancer, my skin, headscarf, wedding ring, skirt, vocation, the same. I cannot dispute it. But this man in costume pressing the pointy side of a rifle against my buttocks cannot belong to me. It cannot be my countryman standing over my child and I, our neighbours, all of us strewn before him and his squad like stray dogs with no dignity left to claim. These men cannot belong to us.

Poem

Anti-Torture Laws in Kenya

Police Act, Section 14 A (2)

No police officer shall subject any person to torture, cruel, inhuman or degrading treatment

The Constitution of Kenya

Article 25

Despite any provision in this Constitution, the following rights and fundamental freedoms shall not be limited-

(a) freedom from torture and cruel, inhuman or degrading treatment or punishment

Article 29

Every person has the right to freedom and security of the person, which includes the right not to be – (d) subjected to torture in any manner, whether physical or psychological.

Donations to IMLU

IMLU accepts donations from well wishers and partners, both local and international. For any financial assistance please contact:

The Executive Director,
Independent Medico Legal Unit at
medico@imlu.org

Medico-legal Aid in Kisumu

IMLU received anecdotal information from International Centre for Peace and Conflict (Nairobi) in May 2010 that there were many survivors of state perpetrated violations traceable to the 2007/2008 post-election violence who had not received rehabilitation and legal services. IMLU organized a mission to Kisumu with a team of medical and legal professionals from its network. The medico-legal screening of 25 clients was done on 16th June 2010.

The clients received medical treatment and those in need of further treatment were given appointments for further examination and treatment in Nairobi.

All the clients received legal advice provided by a team of two lawyers from IMLU's network based in Kisumu. It was established that only 9 clients had instructed independent advocates to undertake legal action. Most clients had neither reported the matters to the police nor initiated the process of civil legal action. Such cases were time-barred by the Government Proceedings Act for filing in court and the clients were advised as such. The legal aid was part of IMLU's intervention at the pre-trial stages of legal intervention.

Training of Network of counselors:

IMLU works with a network of counselors to rehabilitate its clients. It is worth noting that there has been an increase in counseling intake mainly due to an upsurge of violations by security officers, preparation of families for ICC cases and enhanced outreach work by IMLU to more places outside Nairobi. There has also been an increased appreciation of psycho-

logical work in IMLU at all levels. IMLU continued with in-house counseling whereby clients receive counseling within IMLU's premises. During this quarter, out-of-office sessions were held for clients in various areas like Thika, Bungoma, Kisumu, Homabay and Nairobi mainly relating to the ongoing International Criminal Court Post Election Violence cases.

IMLU believes in strengthening the clinical skills of the network counselors through continuous training to enhance their capacity. This is also geared towards continuous advancement of the quality and quantity of services for torture survivors in Kenya. During this quarter, 15 counselors (both male and female) were trained by the clinician and in house coun-

selor. The main focus of the training was how to deal with somatic ailments of clients.

Further, IMLU's in-house counselor, 2 network counselors and clinician trainer attended (a CVT training workshop attended by counsellor dubbed PEACH workshop) held in Cameroon in the month of April 2011. This was part of their professional development course



Kenyan Government in the dock over torture & murder allegations

Case Updates: Reference No.3 of the East African Court of Justice (EACJ)

In 2008 IMLU conducted field missions in Bungoma and Mt. Elgon towards investigating and documenting the reports of torture and ill-treatment meted out by the military during the course of "Operation Okoa Maisha". The military operation was allegedly intended to flush out the S.L.D.F militia that were living and terrorizing residents of Mt. Elgon.

IMLU documented 278 cases of torture meted out by the S.L.D.F and the military

and compiled a report titled "Double Tragedy" (Full report: (www.imlu.org) Other efforts towards the pursuit of justice including calls for independent investigation of the activities in Mt. Elgon and prosecution of the perpetrators were consistently ignored by the government of Kenya.

In 2010 IMLU filed a case at the East Africa Court of Justice against the Attorney General of Kenya and 3 others seeking the Court to declare the rights of the people of Mt. Elgon be

upheld, and specifically order the Government of Kenya to investigate the military's illegal activities in Mt Elgon during the 2008 operation. The EACJ's jurisdiction in the case is established by the EAC Treaty.

The matter came up for hearing 28th July 2011. The hearing was to involve presenting evidence to the court; i.e. witnesses and expert testimonies, presenting written evidence and reports. However, the State made an application for stay pending

appeal on the court's earlier ruling that the matter had been filed within time. The application was allowed. The appeal will be heard and determined in the month of September and this will determine whether the matter will be heard or not.

The appeal is going to provide an authority once and for all for East Africa on the issue of jurisdiction and limitation of time viz-a-viz continuing human rights violations as perpetrated by the State.



IMLU documented 278 cases of torture meted out by the S.L.D.F and the military and compiled a report titled "Double Tragedy" (Full report is available on our website).

Capacity Enhancement of Community Human Rights Monitors in Documentation and Reporting

IMLU is keen on building capacities of human rights monitors throughout the country. It thus organized targeted training for 38 selected human rights monitors representing all regions of Kenya. This two-day training was held between 10th - 11th May 2011. The training specifically focused on empowering and equipping community human rights monitors with basic legal knowledge and skills necessary for documentation and reporting of human rights violations, specifically, torture. It is envisaged that trained monitors will enhance capacity at the community level and thus boost the existing organizations and defenders in responding to violations of human rights across the country.

The participants were human rights defenders already involved in documentation and reporting of torture and human rights violations at the grass root level. They had a wide regional representation, having come from areas like Nairobi, Nakuru, Molo, Narok, Maralal, Laikipia, Nyeri, Nanyuki, Mombasa, Wajir, Garissa, Mandera, Migori, Isiolo, Lodwar and Kakamega. Consideration was given to the participants' gender, as well as their thematic areas of work to ensure good nationwide representation. In the coming year IMLU plans to train a total of 100 monitors: atleast 2 monitors per county to enhance torture prevention and to respond capacity countrywide.



Group discussions and peer learning during the human rights monitors training.

The Central Role of the Psychological Evaluation as Intervention in Torture Cases

By Dinah van Altena Kituyi

It is a widely held view that torture is an extraordinary life experience capable of causing a wide range of physical and psychological suffering. Most clinicians and researchers agree that the extreme nature of the torture event is powerful enough on its own to produce mental and emotional consequences, regardless of the individual's pre-torture psychological status.

The psychological consequences of torture, however, occur in the context of personal attribution of meaning, personality development and social, political and cultural factors. For this reason, it cannot be assumed that all forms of torture have the same outcome. For example, the psychological consequences of a mock execution are not the same as those due to a sexual assault, and solitary confinement and isolation are not likely to produce the same effects as physical acts of torture. Likewise, one cannot assume that the effects of detention and torture on an adult will be the same as those on a child. Nevertheless, there are clusters of symptoms and psychological reactions that have been observed and documented in torture survivors with some regularity.

Perpetrators often attempt to justify their acts of torture and ill-treatment by the need to gather information. Such conceptualizations obscure the purpose of torture and its intended consequences. One of the central aims of torture is to reduce an individual to a position of extreme helplessness and distress that can lead to a deterioration of cognitive, emotional and behavioural functions. Thus, torture is a means of attacking an individual's fundamental modes of psychological and social functioning. Under such circumstances, the torturer strives not only to incapacitate a victim



A group psychological assessment session in progress

physically but also to disintegrate the individual's personality.

The torturer attempts to destroy a victim's sense of being grounded in a family and society as a human being with dreams, hopes and aspirations for the future. By dehumanizing and breaking the will of their victims, torturers set horrific examples for those who later come in contact with the victim. In this way, torture can break or damage the will and coherence of entire communities. In addition, torture can profoundly damage intimate relationships between spouses, parents, children, other family members and relationships between the victims and their communities.

The overall goal of a psychological evaluation is to assess the degree of consistency between an individual's account of torture and the psychological findings observed during the course of the evaluation. Over the years of systematic investigation of torture it has become obvious that the improved methods of detecting and proving physical torture has made the methods of torture

more sophisticated in order not to leave visible evidence on the victim's body. Especially in situations where the public opinion is involved, the variety of methods, which leave no physical marks or permanent scars, is very extensive.

Psychological evaluations also provide critical evidence of abuse among torture victims for several reasons: torture often causes devastating psychological symptoms, torture methods are often designed to leave no physical lesions and physical methods of torture may result in physical findings that either resolve or lack specificity. It is important to realize that torturers may attempt to conceal their act. To avoid physical evidence of beating under the legs (falanga) or electro shocks, different precautions are taken in order to apply forms of torture that have the intent of producing maximal pain and suffering with minimal evidence.

However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no mark or

permanent scars, and thus, the importance of an assessment cannot be underscored.

Challenges in the process of clinical assessment

- How to gather the data
- Knowing how much information is enough
- Knowing what kind of data is important (valuable)
- How to eliminate inaccurate/ irrelevant information
- How to put the information together to form a diagnosis
- How to avoid the counselor's own biases coming into the picture
- Deciding who gets to see the results of the assessment & for what purpose
- Knowing how the assessment results may affect the clients
- Knowing how to ensure confidentiality of the assessment

Analysis of psychotherapy on clients.

- 90% of IMLU clients in the past six months expressed to have grasped the elements of psycho-education; understanding what trauma is, how it develops into symptoms and the role of counseling. These makes sessions more meaningful to them.
- 15% of clients, all of them men, of ages between 35-45 years struggled with coming to counseling and finally dropped out of sessions. Home visits are planned to find more cultural ways to support them emotionally e.g. cultural or religious rituals that promote healing.
- 75% said being in a group made it easier for them to express themselves and learn from others
- 15% joined individual sessions after three group sessions.
- Overall improvement is at 68%. Home visits and follow up are the next step of intervention.

National Torture Prevalence Survey, 2011

IMLU commissioned a research firm, TNS RMS, to conduct a national survey on torture prevalence in Kenya. The outcome of this survey is key in advising IMLU's engagement with the various stakeholders and duty bearers as we strive for a just world free from torture.

A summary of the findings are as below:

National Torture Prevalence Survey Report 2011

The Independent Medico-Legal Unit in collaboration with the International Commission of Jurists-Kenya Chapter commissioned a nationwide survey on 'The Prevalence of Torture in Kenya in May-June 2011.' The report reveals that this vice continues to be perpetrated in Kenya, even after the promulgation of the Constitution of Kenya 2010.

Did you know that torture is prevalent in Kenya?

- 61% think that torture is very common
- 63% of Kenyans believe that Police are the main perpetrators
- 23% of Kenyans have experienced torture
- Only 25% of these, made a formal report
- Of the 25% who reported torture, 77% say no action was taken when they reported and only 3% expressed complete satisfaction with actions taken when they report

Did you know the main reasons for victims' failure to report torture cases?

- 42% do not believe any action will be taken
- 35% were afraid of reprisals by perpetrators
- 32% said they needed money to get justice
- 17% do not know where to report

Did you know who the main Perpetrators of torture are? Those interviewed reported that:

- 59% of the perpetrators are the Regular Police
- 9% Vigilante groups
- 7% Administrative police
- 5% Local Chief
- 4% Council *askaris*

Did you know that the Factors driving torture are

- Poverty -48%
- Weak enforcement of legislation -43%
- Lack of awareness -42%
- Perpetrators ignorance of rights -37%

- Inadequate legislation -34%

Did you know that the Constitution of Kenya 2010 prohibits Torture?

- Article 25 guarantees the following rights and fundamental freedoms that shall not be limited:
 - a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
 - **Article 29:** Every person has the right to freedom and security of the person which includes the right not to be-
 - b) Subjected to torture in any manner, whether physical or psychological
 - f) Treated or punished in a cruel, inhuman or degrading manner

Do you know that YOU CAN STOP this degrading, inhuman treatment meted on Kenyans by:

- Reporting all cases of torture
- Ensuring the government takes 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
- Ensuring that disciplinary action is taken against officers who perpetrate torture
- Establishing an effective and efficient complaint mechanism
- Establish an official system to record and respond to complaints of abusive conduct and to track disciplinary or criminal action taken by police officers.
- Reforming the justice system to enhance its integrity, efficiency and transparency
- Expanding the National Legal Aid Scheme to cover torture cases
- Advocating for prompt passage of a new criminal law prohibiting and punishing torture and inhuman and degrading treatment.
- Advocating for the establishment of the Independent Police Oversight Authority
- Protecting human rights defenders

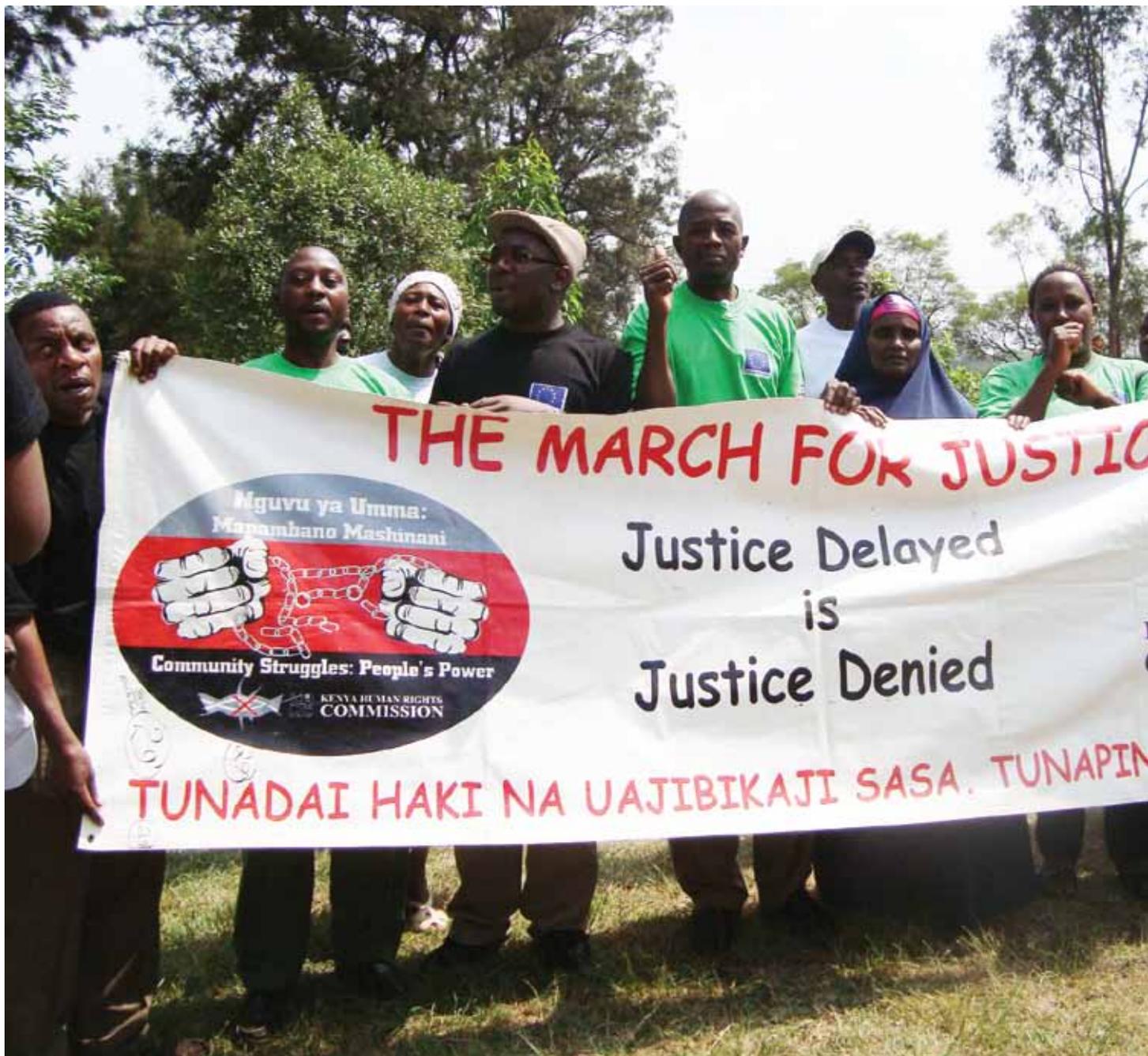
End the silence. Speak out against Torture in Kenya!



Celebrating the UN International Day in Support of Torture Victims, June 26 2011

"This is a day on which we pay our respects to those who have endured the unimaginable. This is an occasion for the world to speak up against the unspeakable. It is long overdue that a day be dedicated to remembering and supporting the many victims and survivors of torture around the world."

Former UN Secretary-General Kofi Annan



The Solidarity march from Freedom Corner to Nyayo House Torture Chambers

The United Nations' (UN) International Day in Support of Victims of Torture is annually observed on June 26 to remind people that human torture is not only unacceptable - it is also a crime.

Rehabilitation centers and human rights organizations around the world mark the UN's International Day in Support of Victims of Torture on June 26 each year. The day serves as a reminder to people that torture is a crime. This event gives everyone a chance to unite and voice their opinions against human torture, dehumanizing acts which deprive people of their dignity, freedoms, rights, and most of the times claim the lives of others.

Reasons for Marking the Day On June 26, 1987, the Convention against Torture came into force. It was an important step in the process of globalizing human rights and acknowledging that torture and inhuman or degrading treatment or punishment should be universally illegal. In 1997 the United Nations General Assembly decided to mark this historic date and designated June 26 each year as the International Day in Support of Victims of Torture.

The first International Day in Support of Victims of Torture was held on June 26, 1998. It was a day when the United Nations appealed to all governments and members of civil society to take action to defeat torture and torturers everywhere. That same year marked the 50th anniversary of the Universal Declaration of Human Rights, which proclaims that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

This year, IMLU partnered with the Kenya National Commission (KNCHR), Release Political Prisoners (RPP), Kenya Human Rights Commission, International Commission of Jurists-

Kenya (ICJ-Kenya), Africa Community Development Media (ACDM), Kamukunji Paralegal Network and other community based groups to organize various activities mark June 26th and stand in solidarity with survivors and victims of torture. The ten-day series of events were preceded by the launch of the Prevention of Torture Bill 2011, presided over by the police spokesperson and the Chair of the Constitution Implementation Committee.

On the day before June 26, a medical, legal and psycho-social clinic was held at Nairobi Remand Prison. This activity was being spearheaded by the KNCHR.

The culmination of the week long initiatives was a press conference on the morning of June 26, followed by a solidarity walk from Freedom Corner to the Nyayo House torture chambers and concluded with a caravan roadshow from Nyayo house Dandora,

Eastlands area of Nairobi; where cases of torture are being reported by the poor and marginalized people of the society.

The theme for this year's June 26 was "Poverty as a cause and effect of torture" and emphasized on moving away from breaking the silence on torture to taking action to end the cycle of torture.

Over 500 people participated in these events, including survivors, community activists and families of survivors from all over the country. While the real impact of these activities can only be seen in the long term, the activities brought the issue of torture to the limelight with heightened media coverage throughout the week, and gave momentum to the campaign for the enactment of a comprehensive legislation against torture in Kenya.



The June 26 2011 Caravan bearing the message of a Just World Free From Torture



The Zangalewa Entertainment Group making its signature performance to draw the crowds



61% of Kenyans think that torture is very common as revealed by IMLU's survey on torture.



Secretariat staff and board members in a group photo



IMLU Executive Director Peter Kiama addressing the public in Dandora



The caravan makes its way across city neighborhoods to the celebration grounds



Sections of the audience taking note of the various stage performances and solidarity messages on torture during the June 26 celebrations



Mr. Malombe (KHRC) giving a message of solidarity to torture survivor in Dandora during June 26 caravan roadshow.



Cheers! A toast to the excellent work done by the outgoing board members and welcome to the new members. Right to left: Kakai Kissinger, Alice Nderitu, Rosemelle Mutoka, Mr. & Mrs. Pravin Bowry.



IMLU's team practising for the UWAZI tournament

LAUNCH OF THE NATIONAL SURVEY ON PREVALENCE OF TORTURE REPORT 2011



The Dark Report: It's a dire situation that we are in - despite having a new constitution, torture continues to take place unabatedly.



Standing in solidarity with the victims of torture during the unveiling of the prevalence of torture survey report



Lighting of candles – moving action for human rights from a wicker of hope to igniting flames of justice



A moment of silence in honor of the victims of torture and human rights defenders in the struggle for a just world free from torture.



Unveiling of the report by Kiama and Ms. Olatokunboh – Upscaling Torture Prevention and Response in Kenya



Mr. Owino Wahnji, Deputy Spokesman Kenya Police giving his remarks at the launch.



Ms. Njoki Kamau (2nd left), RPP Board member, taking lead in singing the Anthem of the human rights struggle during the launch of the prevalence of torture survey report



Ms. Olatokunbo Ige, Senior Human Rights Advisor, the UN High Commission on Human Rights, makes her remarks during the launch of the report.

Partnership with the Media to enhance Prevention and Response to Torture

IMLU embraces the media as an effective partner in working for advancement of human rights. Over the years, media coverage accorded to IMLU has generated interest in its programs and campaigns in matters of torture, extra judicial killings and related human rights violations.

While appreciating this support, IMLU has embarked on a more structured and sustainable media partnership informed by our internal communication strategy. This IMLU-Media partnership is vital in placing the fight against torture at the center of public policy and action.

On 16th June 2011, IMLU hosted a cocktail with media practitioners to discuss how this partnership could effectively address prevention and responses to torture. It attracted journalists,

specifically reporters and correspondents and news editors who gather content for news and feature stories. This is because they process information for public consumption and are therefore key public opinion leaders and shapers on these public interest issues.

The cocktail provided consultative and interactive session for reporters on torture and human rights issues in Kenya; and their coverage of the same. It also enhanced media understanding and coverage of torture related issues advocated for by IMLU. IMLU also took this opportunity to sensitize the media practitioners on the essence of celebrating June 26 (UN International Day in Support of Torture Victims) and invite the media to the planned series of events to mark the day.



Peter Kiama, IMLU's Executive Director, making his remarks during the IMLU-Media partnership cocktail



Ms. Ngwatilo Mawiyo, poetess, gives a voice to the victims of torture through her presentation at the media cocktail



Mr. Kwamchetsi Makokha, a media consultant, makes his propositions on the media's influence towards effective response to torture



Ms. Liza Wangari, IMLU's client, gives an account of her torture ordeal, journey for justice and eventual award for damages at the conclusion of her case.

Legal Aid Clinic at the Nairobi Remand and Allocation – Industrial Area on 25th June 2011

By: Akademia Nanjala

The Kenya National Commission on Human Rights (KNCHR) is a human rights institution established with a constitutional mandate to promote and protect human rights in the country. In its commitment to ensuring the government complies with constitutional and international obligations regarding protection of citizens from all forms of torture, cruel, inhuman and degrading treatment the KNCHR employs 5 key strategies. They are:

- (i) monitoring and documenting the status of human rights in places of detention and making recommendations to government on appropriate forms of redress;
- (ii) investigation of alleged cases of torture and related acts;
- (iii) reporting government's compliance to regional and international commitments on the right to be free from torture, cruel, inhuman and degrading treatment to the relevant treaty monitoring bodies;
- (iv) providing policy advice to government



Ms. Akademia Nanjala

- on matters related to prevention of torture and related acts for instance through generation of relevant policy frameworks such as the draft Prevention of Torture Bill, 2010; and
- (v) Enhancing the capacity of security sector personnel (police, prisons and judiciary) on prevention of torture and related acts.

On June 25th, 2011, the Commission held a legal clinic at the Nairobi Remand and Allocation prison as part of commemorating the United Nations International Day in Support of Victims

of Torture - June 26th. The objective of the activity was providing legal advice to the remandees and come up with a framework for psychosocial support to the Kenya Prisons Service.

This initiative was held in collaboration with other stakeholders namely Independent Medico-Legal Unit (IMLU), Release Political Prisoners (RPP), International Commission of Jurists (ICJ-Kenya) and the Kenya Prison Service (KPS).

Three activities were running concurrently that day namely; the legal clinic, medical clinic and psychosocial support session for prison warders. The prison organized three groups to meet the lawyers i.e. overstayed murder cases, juvenile cases and sexual offenders. A total of 184 cases were administered and 21 cases were identified as requiring follow-up by either the Commission or KPS. The number of juveniles inside was not encouraging with approximately 55 being attended to. We were however informed that the registrar of the court had visited the prisons and had asked that they be produced in court so that their bond terms are re-

duced to allow them attend court from home.

The session on psychosocial support was successful with actions being identified in terms of follow-up. In the short term trainings by the Commission for warders will include a component on de-briefing and in the long term draw up a framework together with the KPS on incorporating psychosocial and counseling in their system will be options to be considered.

With the new constitution, there are certain rights that are to be enjoyed by persons in custody and the Commission endeavors to ensure that they are protected so that these people can enjoy their right to fair trial. In the meantime, there will be consistent interaction and partnership with the KPS which will go a long way to ensure that such engagement will result to uphold enjoyment and promotion of human rights for both the officers and those in their custody.

Ms Nanjala is the Human Rights Officer, Public Education and Training at the Kenya National Commission on Human Rights



Community Outreach

IMLU believes in community empowerment and thus, works to enhance public understanding on torture and state obligations in addressing torture. IMLU does this through organizing and holding community public forums in specific areas. In the month of May, IMLU held such a forum in Kisumu and similarly, in the month of June a forum in Mombasa.

The one-day forums were attended by local human rights defenders, IMLU network of lawyers and doctors and local human rights groups, torture survivors, families of victims, and ordinary members of the general public who are potential victims of torture. Notably, the Mombasa forum was graced with the presence on the Mombasa Chief Magistrate. The forums afforded the participants with an opportunity to deliberate on trends on pre-trial detention issues focusing on Constitutional issues and political cases and the missing links.

IMLU facilitated discussions on torture and violation of human rights practices and the prevalence of torture incidences, in the context of human rights crimes in pre-trial detention. The discussions centred on the contemporary state of torture in Kenya and the various actors whose acts or omissions enable torture during pre-trial detention.

The public forums therefore sought to discuss the following issues:

- What leads to torture acts in pre-trial detention?
- How critical is torture and human rights violations in pre-trial detention?
- What measures do *human rights standards* offer to the fight against torture in Kenya through the new constitution?
- What human rights standards *provide strong organising principles* that can be used in the fight against torture?
- To what extent is it *useful* for anti-torture non-state

agencies to work with state actors to battle torture in Kenya?

During discussions, it was important to note that a major factor contributing prevalence of torture is the existence of a poor legal framework in combating torture in Kenya; and the non-compliance to international human rights standards in respect to torture. Evidently, attempts to criminalize torture under the Police Act have not done much to curb torture acts in Kenya.

During the 2007/2008 post-election crises both the regular and administration police were accused of perpetrating human rights abuses including rape, shooting and killings, unwarranted and indiscriminate shootings of civilians. The security forces have been deemed guilty of or in actions or application of excessive force against residents in an apparent bid to quell violence, yet very few charges and cases have been instituted against the officers to date. IMLU organized a follow up meeting in Mombasa with the Chief Magistrate. This was done in collaboration with IMLU network lawyers and doctors and Haki Yetu organization. The purpose was to identify modalities of addressing human rights violations in pretrial detention. After deliberations, the magistrate committed to prioritize all complaints being raised by pretrial detainees at the pretrial stage. It was also suggested that a 6-months pilot pretrial intervention be started, subject to availability of funds. This would be done in collaboration with the actors in the criminal justice system in Mombasa.



IMLU's Advocacy Officer, Javas Bigambo moderating a session during the mombasa public forum



Participants taking note of presentation during the forum



Ms. Rosemelle Mutoka, Mombasa Chief Magistrate making a presentation during the public forum



Fr. Dolan and Ms. Mutoka deliberate over issues at the end of the public forum

UWAZI Cup Tournament

7th May 2011 marked the second edition of the Uwazi 7 aside Football Tournament at Impala Grounds. The UWAZI tournament is a football match organized by the International Commission of Jurists-Kenya (ICJ-Kenya) and Left Foot Management. IMLU took part in the UWAZI tournament and this year, the tournament attracted 22 Teams comprising of educational institutions, media, civil society, law firms, banks and corporate organizations. ILMU participated as one of those teams and bagged a trophy for the best female footballer. This was taken by our very own, Lilian Atieno who exposed her mastery of the game. IMLU presented a significant challenge to most teams. The tournament was won by Kituo Cha Sheria who beat the rest of the teams.

The tournament offered great opportunities for the various sectors to interact, network and team build, but above all, to come together for sports,

beyond programmatic work. It also helped to promote ideals and values of transparency, governance and equality, which are pillars of economic and social development, and corporate social responsibility goals. The tournament initiative was part of the campaign towards a freedom of information law that would provide for the necessary framework for the promotion of transparency and accountability in government, free media and a better business environment.

The objectives of the tournament are, to engage, raise awareness and build public-private partnership in advocating for the enactment of the freedom of information law, to promote transparency and accountability in our society, and promoting the need for joint corporate responsibility in democracy and governance and to provide a sustainable environment for market venture. This Year's theme was **"An informed citizen, a transparent Government, a prosperous Kenya."**



The IMLU football team in action during the UWAZI tournament



IMLU's football team takes a break during the tournament

Changing faces of IMLU

Board membership

Mr. Kakai Kissinger, Mr Pravin Bowry and Mr. Pheroze Nowrojee, all completed their terms of serving as board members of IMLU. Ms. Rosemelle Mutoka and Ms. Alice Nderitu joined the IMLU board. We sincerely thank the outgoing board members for their wise guidance to the secretariat and; warmly welcome the in-coming members and look forward to fruitful engagement.



Cheers! A toast to the excellent work done by the outgoing board members and welcome to the new members. Right to left: Kakai Kissinger, Alice Nderitu, Rosemelle Mutoka, Mr. & Mrs. Pravin Bowry.



Secretariat staff and board members in a group photo

Staff

We appreciate Mr. Vincent Kodongo's service in the secretariat as Program Officer, Legal Redress and Training Program, as he moves on to the next step of his engagement in the human rights work.

Joining the same program (Legal Redress and Training) is Ms. Sarah Muthiga, who serves as the Program Assistant. We do welcome her on board.

We welcome Mr. Javas Bigambo on board who takes the position of the Program Officer, Advocacy and Communication Program.

Ms. Adrienne Carter via the auspices of Center for Victims of Torture (CVT), USA, joined the Rehabilitation and Documentation department as psychotherapist/ trainer. We welcome her to the IMLU family.



IMLU staff and board members with Ms. Eloise Burke (4thleft) during strategic plan retreat.

Extrajudicial Killings, Minority Groups and Torture in Kenya

Extra-judicial killings and forced disappearances of young Kenyan men continues to be a regular phenomenon and has been going unabated. The most affected are the young men who are criminalized and said to belong to illegal movements. Tact has now changed and police are finding it easy to justify extrajudicial killings by claiming that the victims were either from a notorious illegal group (eg Mungiki) or were caught when they were about to commit robbery with violence, or were armed and exchanged fire with the police.

IMLU works closely with partners within the civil society and other community based organizations to champion for the rights of torture victims as well as the victims' families and to reduce the potentiality of further extrajudicial killings and torture perpetrated by the state.

Among groups and organizations that IMLU partners with is Gay Kenya. In Kenya, homosexuality is not only a penal offence, but also a sexual offence. In particular, the Sexual Offences Act (2006) under its section 11(6) provides as follows:

"Any person who commits an indecent act with an adult is guilty of an offence and is liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand shillings or to both."

Criminalization of adult consensual homosexuality done in private undermines the fight against HIV/AIDS, entrenches stigma and discrimination affecting service delivery to LGBTI persons, encourages blackmail and extortion, promote arbitrary arrest and/or police detentions of



A victim of extrajudicial killing

LGBTI persons, and other human rights violations including deprivation of life, and physical assault.

Kenya is a 'culturally-bound' and 'religious intolerant' nation and most cultures insist that men have wives and children. Homosexuality is seen as evil, wrong and to some people still, a Western import or concept. The homophobic attitude is not helped at all when we hear cases of gay men routinely being beaten or exposed. This makes most gay men 'blend in' by marrying women and having children and suppressing their sexual orientation or masking it.

1. Arrests and Police behavior towards homosexuals

There is a cartel of corrupt police officials who routinely extort and blackmail LGBTI people with the threat of arrest and/or imprisonment if they do not give them

bribes. Police routinely visit and stalk various spots/joints famed to be have gay patrons or people. They would then wait and after identifying one or two individuals, they'd arrest them under pretext of sodomy. Effeminate men are also occasionally stopped or harassed by police. Because of this most gay men engage in sex under hiding

and in fear. They cannot openly express their love or affection for one another in public lest they are arrested.

In most court cases involving gay men, the only proof, apart from a medical report is the word of one or two witnesses who were present and actually saw the actual act. Nairobi, with its cosmopolitan population has a large number of reported cases of such arrests and cases as compared to other areas. The Coastal area i.e. Mombasa, Malindi and Lamu are also notorious for such.

2. Post arrest and Prison conditions

Once arrested, some, if not all gay men and MSMs, to ascertain that they are 'gay' or have engaged in anal sex, are made to undergo, willfully or by force, a medical exam that involves an anal (and possibly urethral exam) by a doctor who will look for evidence

A report by the UN consultant Philip Alston which investigated extrajudicial killings that have been carried out by Kenyan police revealed damning state of affairs in Kenya.

(of semen) in the anus or in the urethra. This is done in the police cells or remand jail or in a hospital. Sometimes, we are told, that some police officers would take it upon themselves to (don a latex glove and) forcibly insert their fingers in someone's anus to check if the muscles around the anus are 'loose' or tight and this they say proves if one has had anal sex. Normally, most MSM, after being arrested, are taken to the nearest police station and booked under the Occurrence Book (OB) as sodomy. They are then put in the cells found in every police station waiting to be arraigned in court. But what we do know is that apart from being harassed, most are held in remand cells for long without charges being preferred against them, and some are presented in court on trumped up charges. In other cases we are familiar of policemen taking advantage of such men when they are brought in the station. They are forced to endure threats of beating, shameful and obscene words shouted at them and physical mishandling. Being beaten, slapped or knocked down are common occurrences. We also do know that some police officers would routinely ask MSM/gay men to have sex with them or ask them for money in order to have them released. In case they are jailed, they are then taken to either one of the prisons scattered across the nation. Conditions here are harsh, unforgiving and unbearable. Some MSMs, once in jail and word leaks out why they were arrested (or are gay) are subjected to humiliating acts and talk by the police and other prisoners. We are familiar with gay men/MSM being inappropriately touched, forced into sex, and raped while in prison. Prisons themselves are harsh (poor diet/food, poor sleep, no

clothing, gang wars, etc.) There is hardly any medical assistance or even legal aid (it's very hard to get a lawyer who would defend a gay man or an MSM or sex worker) offered to prisoner and thus most are left to rot and spend long in such conditions.

State of Affairs

A report by the UN consultant Philip Alston which investigated extrajudicial killings that have been carried out by Kenyan police revealed damning state of affairs in Kenya. The report alleged that police are carrying out executions at will even among suspected criminals who have surrendered. "Killings by the police in Kenya are systematic, widespread and carefully planned. They are committed at will and with utter impunity," stated part of the U.N.

Special Rapporteur Philip Alston report. This is the sad reality in Kenya even to this day. Despite the expanded Bill of Rights in the new Constitution, we are yet to see a significant reduction in the level of human rights violations. The cold reality is that cases of extrajudicial killings and disappearances

"Killings by the police in Kenya are systematic, widespread and carefully planned. They are committed at will and with utter impunity."

have been rising.

Among the fundamental rights and freedoms that may not be limited is the right to life, and it is a serious offence to cause death of another person through an unlawful act or omission. Extrajudicial killings have become rampant, perpetrated mainly by units formed to fight organised criminal gangs like the Mungiki. The police initially said that lack of proper legislation was hindering the fight against outlawed sects. Now that we have strong legislation, due process of the law should be followed. According to Legal Notice No 162, the

Prevention of Organised Crimes Act, 2010 came into operation on September 23. It stipulates that any person who engages in any organised criminal activity shall, upon conviction, be liable to a fine not exceeding Sh5 million, or to imprisonment for a term not exceeding 15 years, or both.

But increasingly, suspects are not being accorded that right. A good example is the killing of Mr Peter Irungu and Mr John Kamuri whose bodies were dumped at Ruiru by people believed to be police officers from the Rhino Squad. On the evening of December 28, Mr Kamuri and Mr Irungu, both mechanics, boarded a matatu registration number KBK 334J plying the Nairobi route at Kahuro market.

It is clear that the forces of impunity are still alive and well, and law enforcers have been sanctioned to become executioners. This therefore call on IMLU and other human rights organizations and partners to be even more vigilant and step up the documentation of extrajudicial killings, torture incidences and use litigation to help victims and their families to access justice in Kenya.



IMLU's Executive Director, Kiama, Squatting 3rd left, with other partners at KIOS partners' meeting in Uganda.



OPEN LETTER TO THE PRESIDENT

RE: Torture, Enforced Disappearances and Extra Judicial Killings by State Security Agents

The United Nations International Day in Support of Victims of Torture, on the 26th of June, is a special date put aside to remind us that torture is a crime and provides us an opportunity to stand united against this cruel violation of human rights.

As we commemorate The United Nations International Day in Support of Victims of Torture, we the undersigned (families, victims and organizations) have noted with concern the rise of Torture, enforced disappearances and extrajudicial killings in Kenya in the last 8 years, which coincides with your term as president and may lead to the conclusion that the legacy of your administration is to be understood as having condoned police killings; and wish to petition the President on behalf of our clients, the aggrieved families and victims of gross human rights violations perpetrated by the police.

In the last one year alone we have received over 200 reports of violations ranging from extrajudicial killings, disappearances, torture and brutality perpetrated by state law enforcement officials.

We continue to receive evidence of the existence of extortion rings within special crime prevention units within the police that has given rise to the upsurge of extra-judicial killings, torture and forced disappearance of innocent civilians in Kenya.

These police units are known to abduct innocent civilians and extract 'protection fees' from them using threats of execution. Some detainees are even required to ask their friends or relatives to send money to their phones (through mobile phone money transfers systems) in order to secure their release. They are also asked to send regular amounts of money to specific police officers from the units to avoid being arrested, evidence of which we have obtained.

These police units further arbitrarily arrest civilians and detain them in unconventional places, at undisclosed destinations and travel in unmarked vehicles whose number plates they change frequently, acts that are clearly illegal.

Despite lodging of formal complaints with various police stations by families of the deceased, injured and missing persons and numerous calls for investigation and arrest of the perpetrators, no inquests and prosecutions have been initiated as required by the Criminal Procedure Code

We are deeply concerned that despite formal complaints by human rights organizations to his office, the Commissioner of Police has failed to take action against the perpetrators and instead the police have made statements which are a blanket defense of their conduct.

We would like to bring to your attention that these violations have previously been investigated and documented by the Kenyan National Commission of Human Rights in "The Cry of Blood", an account of at least 500 cases of enforced disappearances, torture and extra judicial killings within this context.

The enforced disappearances and extra judicial killings have garnered international attention which resulted in a fact finding mission by the United Nations Special Rapporteur on extra judicial, arbitrary or summary executions Professor Philip Alston on the 16th - 25th February 2009. The Special Rapporteur received evidence of systematic widespread and carefully planned extra judicial executions by the Kenyan police as contained in his report to the UN Human Rights Council in June 2009.

To date, the perpetrators are yet to be held accountable for these violations despite the recommendations made in this report.

Notorious police stations complicit and linked with the violations by these units include: Central police station, Parklands police station, Kayole, Karori police station, Kinyago, Huruma and Kasarani police posts, Kariobangi North police station, Hardy police station and Karen police station among others

We note that by the failure of the Commissioner of Police to take action on the documented evidence, not only are the Police failing to safeguard the right to life and the absolute prohibition of torture guaranteed under Articles 25, 26 and 29 of the Kenyan Constitution and further is in disregard of Kenya's international obligations under the International Covenant on Civil and Political Rights, Convention Against Torture and African Charter on Human and Peoples' Rights all ratified by Kenya and which form part of the laws of Kenya in accordance with Article 2 of the Constitution.

The inaction by the police is also a furtherance of the non-implementation of specific recommendations by the United Nations on Kenya's human rights situation, and in particular, the concluding observations of the United Nations Committee Against Torture (Nov 2008) where in the matter of Extra judicial killings and enforced disappearances the **Committee urged the State party (Kenya) to conduct immediate, prompt and impartial investigations into the serious allegations and ensure that perpetrators are prosecuted and punished with penalties appropriate to the grave nature of their acts as required by the Convention. The Committee further urged the State party to take all possible steps to prevent acts such as the alleged extra judicial killings and enforced disappearances**

While we commend the current reforms currently underway to bring the police service in line with new Constitutional Dispensation, it is unacceptable that such flagrant and widespread human rights violations and extortion be allowed in contravention with the Kenyan Constitution and the general rules of international law.

We the undersigned families, victims and organizations call on your government to respect the provisions of the Constitution and international principles on the prevention of torture and ensure that proper mechanisms are put in place to investigate the allegations and ensure that the perpetrators of these crimes face the full force of the law.

We believe that your office has the capacity to reassure many poor and vulnerable Kenyan victims and families who have lost their loved ones that your government respects their rights by taking concrete action during this **International Day in Support Victims of Torture, 26th June 2011**, as follows:

1. Order the suspension of all police officers mentioned as suspects in the cases and publishing the names of those suspended in the Kenya gazette;
2. Order the Police Commissioner and Attorney General to institute inquests and facilitate prosecution of the police officers involved in all cases and publish this information in public;
3. Enactment of the Prevention of Torture Bill 2011
4. Immediately suspend the ongoing unconstitutional police vetting process to allow the establishment of an independent vetting mechanism of the police that respects transparency, public participation, information and engagement.
5. Ratification of the Optional protocol to the Convention Against Torture.

We wish to thank you for your time and attention to this matter and look forward to your response on the matter.

Yours faithfully,

Yours faithfully,

PETER KIAMA
EXECUTIVE DIRECTOR
INDEPENDENT MEDICO-LEGAL UNIT

George Kegoro
EXECUTIVE DIRECTOR
THE KENYAN CHAPTER OF THE INTERNATIONAL COMMISSION OF JURISTS

MUTHONI WANYEKI
EXECUTIVE DIRECTOR
KENYA HUMAN RIGHTS COMMISSION

CC: 1. The Prime Minister's Office
2. CIC
3. Ministry of Justice
4. Director of Public Prosecutions
5. Attorney General
6. KNCHR

INDEPENDENT MEDICO-LEGAL UNIT - IMLU

OUR BOARD OF DIRECTORS...

Mr. Moses Njenga Chege**Dr. Ling Marete Kituyi****Ms. Rosemelle Mutoka****Dr. Mohamud Said****Fr. Gabriel Dolan****Ms. Alice Nderitu****Vision:**

IMLU envisages a just world free from torture

Mission:

IMLU seeks to promote and safeguard the rights of all against torture by holding the state accountable.

Strategic Objective 1

To inform and influence policy and legislation on the prevention of torture and hold the state accountable.

Strategic Objective 2

To improve access to justice for victims of torture through medical, legal and psycho-social support.

Strategic Objective 3

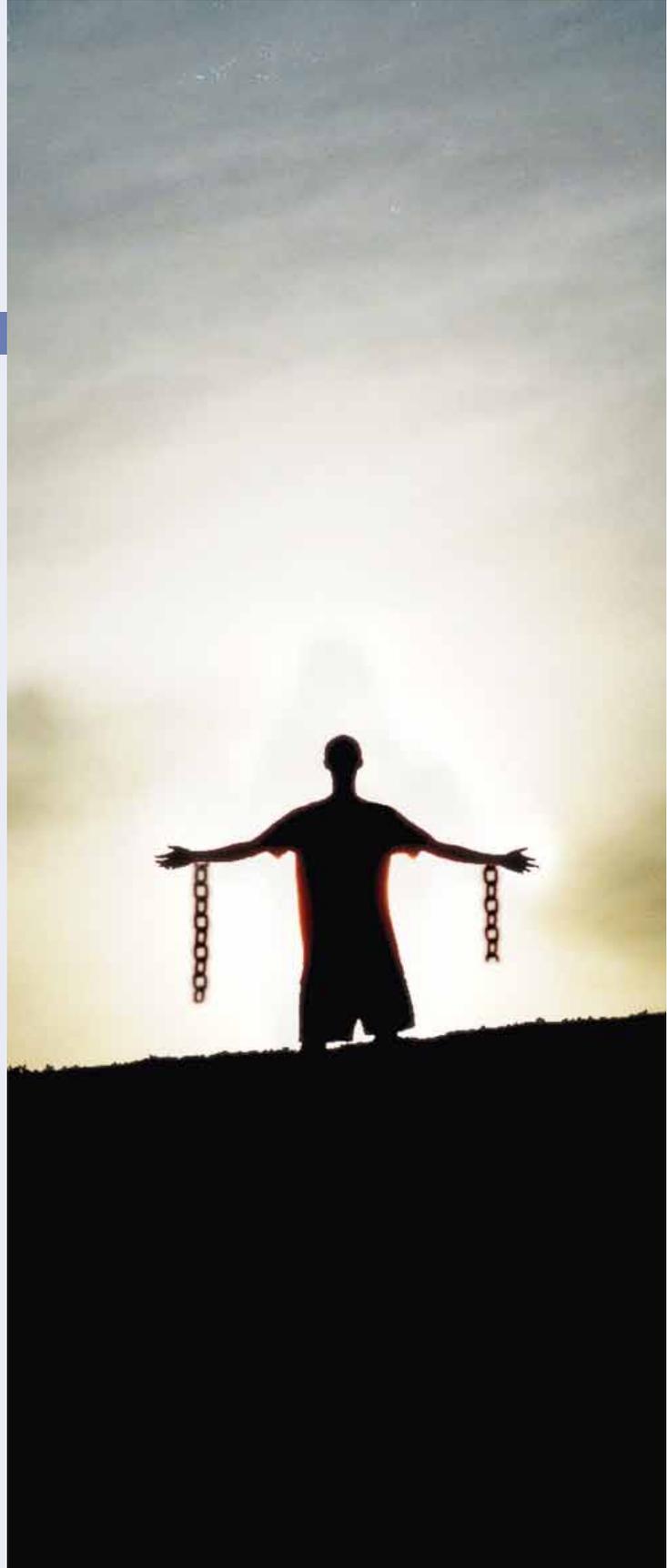
To nurture strategic alliances for the prevention of torture

Strategic Objective 4

To enhance the use of research to prevent and respond to torture

Strategic Objective 5

To enhance IMLU's institutional capacity to deliver its mission





For more information contact
Independent Medico-Legal Unit (IMLU)
David Osieli Road. Off Waiyaki Way, Westlands.
P.O. Box 1271 0606, Nairobi
E-mail: medico@imlu.org, www.imlu.org

A Just World Free From Torture