



Rights Journal

NEWSLETTER FOR THE INDEPENDENT MEDICO-LEGAL UNIT

AUGUST 2010



Editor's Note

Welcome to the August 2010 Newsletter. We continue in our work towards a torture free society. This issue covers most of our activities done in the year 2010 as we were unable to publish the first two editions due to unavoidable circumstances. In this issue, we have also taken the approach of clients' stories to bring out the work we do and also, the elements of torture and the effects on the survivor's life.

During this quarter, the nation witnessed a human rights revolution,

massive civic education and campaigns, citizens going to the polls to peacefully exercise their right to vote at the referendum for a new constitution and eventually, the promulgation of the new constitution. All these events were historic and the expectations of Kenyans are definitely high. Some of the provisions on torture from the new constitution have been highlighted in this issue. We will continue to advocate to implementation of anti-torture laws in our beloved country. I would like to thank every Kenyan who took a stand and cast their vote on the day of the referendum and; congratulate Kenyans on taking this

step towards making a promising future free of torture and overall a better Kenya.

It was also in this quarter that one of our board members, Mr. Bravin Bowry was appointed as the vice-chairperson of the Kenya Anti-Corruption Authority. We wish him our best regards as he takes on his new responsibilities in service to the nation.

Finally, I extend my gratitude to all the contributors, clients, partners and donors for their commitment and support in advocating for a torture free society.

Read on!

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We also wish to thank our partners and donors during this quarter who made our work possible.

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PROHIBITION AGAINST TORTURE IN THE KENYAN CONTEXT

By Chemurgor Sainna

Torture is an issue of profound global concern to the entire international community; civil society organizations such as ICJ Kenya and IMLU are dedicated to promoting efforts to eradicate the scourge of torture. Torture destroys not just the emotional and physical wellbeing of the person but negates the inherent dignity of man. The prohibition against torture is a peremptory norm of international law. No state can justify torture under any circumstances.

The absolute prohibition against torture as a right under International law means, in simple terms that is inexcusable. This absolute ban is enshrined in most important international and regional human rights instruments. Kenya has ratified other international human rights instruments which also outlaw torture. These include, the Universal Declaration on Human Rights (UDHR) whose article 5 provides that no one shall be subjected to torture or cruel and inhuman treatment. Similar provisions are outlined under the International Covenant on Civil and Political Rights (ICCPR) in particular under article 7 and article 5 of the African Charter on Human and Peoples Rights (ACHPR). The implication for Kenya on signing and ratifying these instruments is that it is obligated and not only bound, but required to domesticate the provisions into its municipal laws. This is based on the recognition that these human rights instruments contain an embodiment of rights for the protection of individuals against infringement or violation in anyway by the State.

The right to freedom from torture is further reiterated in the Convention

on the Elimination of all Forms of Discrimination against Women (CEDAW) which indirectly outlaws gender-based violence. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) recommended that among the rights women are entitled to enjoy, is the right to freedom from torture.

Kenya does not have a law specifically dealing with torture, cruel and inhuman or degrading treatment. However there are many laws that touch on the issues. These laws are scattered in various Acts of parliament and include but not limited to the following:

The Constitution of Kenya at Sections 74 prohibits any form of torture. This is significant to the extent that it shows the kind of weight attached to torture and its related aspects to the extent that it is non-derogable for whatever reason. The provisions are however not sufficient. The constitutional principle does not have accompanying remedies and are thus impotent. Further, the constitution does not define torture or cruel, inhuman or degrading treatment or punishment. To this end the constitution remains but a declaration of statement of intention that has not been applied.

The Police Act (Cap 84) at section



26th June 2010 poster

14(A) provides that; No police officer shall subject any person to torture or to any other cruel, inhuman or degrading treatment and any police officer who contravenes the provisions of this section shall be guilty of a felony.

The Force Standing Orders issued pursuant to Section 5 of the Police Act Cap. 84 Laws of Kenya and a guiding factor is that the Force Standing Orders should not in any way be inconsistent with the provisions of the constitution and the rights guaranteed from torture.

Criminal Procedure Code, (Cap. 75), Laws of Kenya enjoins the police to use reasonable force in the apprehension of suspected criminals.

The Chiefs Authority Act (Cap 128) at section 20; (No chief shall – in the

performance of his functions or the exercise of his powers under this Act - subject any person to torture or to any other cruel, inhuman or degrading treatment.

Children Act of 2001 (Act No. 8, 2001) in section 18 provides that: No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty.

From the foregoing, it can be deduced that, whilst Kenya is a signatory to virtually all international and regional instruments prohibiting torture, her legal regimes fall short of the requirements of the Convention.

One of the main handicaps in the prosecuting incidents of torture and ill treatment is that these terms are not defined in the terms stipulated in the Convention as an offence under Kenyan law. Although the Evidence Act was amended to prohibit the use of confession statements or admissions of guilt as evidence in criminal proceedings, if obtained

by torture of a suspect, a lot more needs to be done if Kenya is to be fully compliant with the spirit and principles of the Convention. This is of grave concern and disadvantages both victims and survivors of torture.

The UN Committee against Torture on reviewing Kenyan efforts to implement and domesticate the Convention made several recommendations among which included that Kenya should ensure that it incorporates the Convention into its legal framework by including a definition of in its penal legislations in full conformity with article 1 of the Convention. It further recommended that Kenya should ensure that all acts of Torture are punishable by appropriate penalties which take into account their grave nature as laid out under article 4 paragraph 2 of the Convention. It is therefore important that Kenya dully fulfils her commitment to Convention by enacting legislation to criminalise torture.

With the promulgation of the Proposed Constitution into law sooner or later, Kenya will open a new chapter in meeting her obligations under international Conventions and CAT is no exception. Accordingly, a lot of Kenya's obligation under CAT can safely be met and taken care of in the on-going reform initiatives. Reforms are taking place in the police, military and all legal sectors including the judiciary. It is therefore critical that whenever new laws are be enacted; respective laws should take into account Kenya's obligation and commitment under CAT.

As countries combat and confront the scourge of torture and related incidences of cruel and degrading treatment, it is arguable that legitimate national security needs versus public anxiety and the desire for retribution may give rise to the temptation to sacrifice certain fundamental rights. This temptation must be vigorously resisted. The right not to be torture or mistreated is not

IRCT IN SUPPORT OF VICTIMS OF TORTURE

26 June 2010

Ladies and gentlemen,
Today marks the UN International Day in Support of the Victims of Torture. It provides us with a time to reflect on the past, to honour the victims and survivors of torture and to look to a better future: to a World Without Torture. The horrific practice of torture continues to afflict people across the globe. But a world without torture is possible. That is something we must always hold on to. We owe it to the

victims and survivors of this heinous crime around the world.

A world without torture will not become a reality until we have brought healing to those who have been subjected to this appalling practice. Without healing, the effects of torture are all too likely to continue within the survivors. Each year over 100,000 survivors of torture receive treatment from IRCT member centres. But there are many more. Together, we must work to increase our reach in order to bring healing to the greater numbers who suffer.

*A speech by:
Mohamud Sheikh Nurein Said, President and Brita Sydloff, Secretary-General, IRCT, in marking the International Day in Support of Victims of Torture.*

In bringing about a world without torture we must work to ensure that the mechanisms are in place to prevent it from happening in future. We will take a meaningful step towards this when governments, the health and legal professions and other relevant actors are committed to ensuring that all torture survivors have access to justice.

This must include children, torture's oft-forgotten victims. While anyone can become a victim of torture, children are especially vulnerable, in particular those countless girls and boys born into poverty and conflict. In the context of war and police brutality children much too often

◀◀ a luxury that can be dispensed with, but the very essence of a society and worth defending.

ICJ Kenya and IMLU would like to reiterate its support and solidarity with survivors and victims' on this day of UN International Day in support of Torture Victims. We therefore hold that the reform measures which include enactment of new and review of old laws should prescribe appropriate penalties and definition of torture and be fast tracked. All complaints relating to torture and ill treatment by suspects should also instantly investigate, publicly denounced and appropriate redress provided in accordance with provisions of the Convention in order to secure the rights of victims and survivors of torture. ◻

Chemurgor is a Program officer with the International Commission of Jurists, Kenyan chapter and heads the Judicial Reform Program.

REHABILITATION AND DOCUMENTATION

CASE STUDY: TORTURE AND ITS' EFFECTS TO AN INDIVIDUAL

This programme involves provision of medical and psychological care to survivors and victims of torture through a network of doctors and counselors, conducting of postmortems, counseling and medical care to victims of torture and documentation of cases.

In the month of January, IMLU undertook a fact finding mission based on a case that had been

reported to our offices. Once we established the extent of the reported torture, the client was given psychological care and is now undergoing counseling sessions in a bid to rehabilitate him.

Below is an account of his story and the impact of the torture incidence to his life.

“ They pressed a very hot cigarette lighter to all parts of my body, including my private parts,” says John Makasa (not his real name), with a hollow look that mirrors the pain known only to him. John, together with others was arrested on the morning of 16th January, 2010 on the allegation that he had stolen money from a friend. He was tortured by the police while

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◀◀ find themselves violated at the cruel hands of a torturer. Today we stress that every state has an additional duty to ensure that there is someone to speak up on their behalf and to protect them from this horrendous crime.

Ladies and gentlemen,

In the past year we've seen positive steps being taken on the long road towards a world without torture. These steps must be celebrated. A few examples: In Asia, only this month Pakistan ratified the United Nations Convention Against Torture. And we've seen India, the world's second most populous country and its largest democracy, take steps to ratify the Convention.

In Europe, we've seen the British government call for an inquiry



Ms. Olatokunbo Ige making her presentation from the IRCT reading in Support of Victims of Torture that was shared world wide during 26th June 2010

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TORTURE AND ITS' EFFECTS TO AN IN DIVIDUAL

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Women and children lying down during a police operation

being transported from his place of work to the police station.

His 22-year old body bears scars that are a constant reminder of the pain inflicted on him. He has wounds caused by burns using a motor vehicle cigarette lighter, metallic blunt metal, electricity wires/whip. His testes were also squeezed by hands and he further sustained scrotal necrotizing burns. He got a laceration at the anal entry due to insertion of metallic objects in the rectum, and has whip lash marks on the back and legs.

Such is the story of John and others who undergo torture in the hands of the same people who are supposed to protect their rights. Torture, being an act of intentionally inflicting pain or suffering on a person; to punish, obtain a confession or intimidate, usually done with the consent or authority of the State or by someone acting in an official capacity. The damage suffered is physical, psychological and even, death.

It is important that the degrading act be meted by a State figure or authority for it to qualify for torture as defined in the United Nations Convention Against Torture (UNCAT). For instance, a husband beating a wife would lie under domestic violence as opposed to torture. On the other hand, a prison warden beating up an inmate will amount to torture. However, it does not include pain arising from lawful sanctions.

Torture is both physical and psychological. Torturous acts may be in form of words, physical assault and/or denial of a basic need like food, water or light. The

methods employed are as diverse and advanced as can possibly be imagined. This is due to the fact that in some countries, the torture methods to be used are developed by doctors, who would obviously know how much pain the human body can endure and the effect of such pain.

Since he was tortured, John is now a very shy person. He complains of persisting headaches and has to puff several cigarettes to get relief. He has had many sleepless nights because of nightmares. He is very uncomfortable going for swimming because of the bad scars that he bears on his body. Some of the beatings were done in front of his mother and this has made him feel unworthy. He had to change his telephone number because he used to receive threats from the police. Evidently, the effects of torture are

physical as well as psychological.

John's case and many similar ones have been documented by IMLU and he is in search of justice. During 2008, over 1,000 cases of torture were recorded most of them being rapes, assault and extra-judicial killings during the post election violence that gripped the country. The Mt. Elgon operations and fight against criminal gangs and militias were also marked with the torture of innocent civilians. It is noteworthy that the transitional justice mechanisms in place do not factor rehabilitation, medical intervention and justice for victims of torture. There are no specific provisions for compensation from the State for victims of torture.

Although Kenya does not have a law specifically dealing with torture, cruel and inhumane or degrading treatment it is worth noting that there are provisions in both the current

Torture is an issue of profound global concern to the entire international community; civil society organizations such as IMLU are dedicated to promoting efforts to eradicate the scourge of torture.

and draft constitutions. However there are many laws that touch on the issues.

The current Constitution prohibits any form of torture at Section 74. The draft Constitution at Articles 25 and 29 makes provision for freedom from torture and the security of person. Notably, various Acts of Parliament like The Police Act (Cap 84), The Criminal Procedure Code (Cap 75), The Chiefs Authority Act (Cap 128), The Children's Act of 2001 (Act No. 8, 2001), Force Standing Orders among others prohibit the use of torture and/or inhuman and degrading treatment. However, torture is not defined or what actions would amount to inhuman and degrading treatment. This leaves such definitions to courts' interpretation. No provision has been made for remedies for a person who suffers torture

From the foregoing, it can be deduced that, whilst Kenya is a signatory to international and regional instruments prohibiting torture, her legal regimes fall short of the requirements of the Convention. One of the main handicaps in the prosecuting incidents of torture and ill treatment is that these terms are not defined in the terms stipulated in the Convention as an offence under Kenyan law. Although the Evidence Act was amended to prohibit the use of confession statements or admissions of guilt as evidence in criminal proceedings, if obtained by torture of a suspect, a lot more needs to be done if Kenya is to be fully compliant with the spirit and principles of the Convention. This is of grave concern and disadvantages both victims and survivors of torture.

The Committee against Torture on reviewing Kenyan efforts to implement and domesticate the UN Convention Against Torture; made several recommendations among which included that Kenya should ensure that it incorporates the Convention into its legal framework by including a definition of in its penal legislations in full conformity with article 1 of the Convention. It further recommended that Kenya should ensure that all acts of Torture are punishable by appropriate penalties which take into account their grave nature as laid out under article 4 paragraph 2 of the Convention. It is therefore important that Kenya dully fulfils her commitment to Convention by enacting legislation to criminalise torture.

Torture is an issue of profound global concern to the entire international community; civil society organizations such as IMLU are dedicated to promoting efforts to



A victim of police shoot out

eradicate the scourge of torture. Torture destroys not just the emotional and physical wellbeing of the person but negates the inherent dignity of man. The prohibition against torture is a peremptory norm of international law. No state can justify torture under any circumstances. Torture is a violation of human rights. Torture is a crime.

As countries combat and confront the scrouge of torture and related incidences of cruel and degrading treatment, it is arguable that legitimate national security needs versus public anxiety and the desire for retribution may give rise to the temptation to sacrifice certain fundamental rights. This temptation must be vigorously resisted. The right not to be torture or mistreated is not a luxury that can be dispended with, but the very essence of a society and worth defending. □

URGENT MEDICO-LEGAL INTERVENTION AGAINST TORTURE

By the military in Mount Elgon

Fact Finding

IMLU organized a fact finding mission to Mt. Elgon. The team constituted of IMLU's network professionals including its Legal Officer, Program Officer in charge of Counseling and a few counseling psychologists for the field visit. The inclusion of psychologists in the team was necessitated by the apparent apathy of clients to pursue legal redress for fear of reprisals. On 15th and 16th July 2010, the team traveled to Mt Elgon and in particular navigating the challenging terrain to Kipsigon, Kapsokwony and Cheptais.

The visit focused on establishing contacts with key government officials to get the accurate picture of the situation on the ground that would inform further intervention including psychological support to willing torture survivors. It emanated that the Truth Justice and Reconciliation Commission had conducted a public inquiry on the Mt Elgon situations a few weeks before the field visit but the victims of torture were reluctant to speak to them for fear of reprisals especially by some who still held public offices. This means quite a number of fearful victims are unlikely to access justice.

Following the field visit, IMLU has formulated a six-month psychological support plan to rehabilitate the survivors of torture.

Mt. Elgon Stakeholders and legal re-view workshop

On 23rd July 2010, IMLU held a stakeholders and legal review workshop in Nakuru with key community based organizations that were involved in interventions in Mt Elgon cases to facilitate consultative discussions on the same. The workshop also attracted lawyers instructed by IMLU to handle clients'

cases at local and international level as well media practitioners who facilitated coverage of the public interest cases. The organizations that participated at the workshop included:

- Western Kenya Human Rights Watch
- Mwatikho Torture Survivors Organization
- Rehema for Peace
- Transparent Center for Human Rights & Democracy

Journalists from six media houses were present at the workshop.

It was recommended that there should be better co-operation among organizations handling matters related to redress for victims of torture at Mt Elgon. It was also proposed that sustained and regular flow of information relating to intervention on behalf of the torture survivors be made to reach the grass-roots level so that the locals do not feel detached from the regional and international interventions. □



Cheptais area Chief, Moses Chemoiywo, addresses IMLU's team partly including in-house psychologists, Gabriel Marini (middle) and Dinah Kituyi (right) at the chief's office during the field visit to Mt Elgon

KNOW YOUR Rights

Constitutional Provisions on Torture

It is said that knowledge is power... and one of the ways of actualizing your rights under the new constitution is by being aware of them and exercising them as a matter of right.

DO YOU KNOW that it is now easier to access justice to enforce your rights as given in the Bill of Rights?

22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by:
- (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.
- (3) The Chief Justice shall make rules providing for the court proceedings mentioned in this Article, which shall satisfy the criteria that-
- (a) the rights of standing

- provided for in clause (2) are fully facilitated;
 - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
 - (c) no fee may be charged for commencing the proceedings;
 - (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
 - (e) an organization or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.

This Article advances the actualization of your rights by making the legal process accessible. It also makes it easier for human rights organizations like IMLU to bring a case before the court as a person acting in public interest or in the interest of a group.

DO YOU KNOW that the courts have authority to uphold and enforce the Bill of Rights?

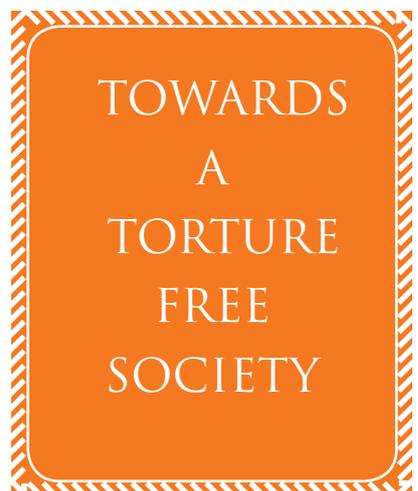
23. (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

- (2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
- (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including:
 - (a) a declaration of rights;
 - (b) an injunction;
 - (c) a conservatory order;
 - (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - (e) an order for compensation; and
 - (f) an order of judicial review.

Under this Article, the court can grant several orders enable a person whose rights have been violated seek redress and or protection.

DO YOU KNOW that there are instances when your rights and fundamental freedoms can be limited?

24. (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by





IMLU doctor goes through a counselling session with an inmate from Lang'ata Women's Prison.



Theatre group performing a skit on torture during an awareness public forum in Dandora



IMLU staff prepares to distribute some of the supplies donated. Thanks to our donors



Participants react during a public forum to create awareness on torture



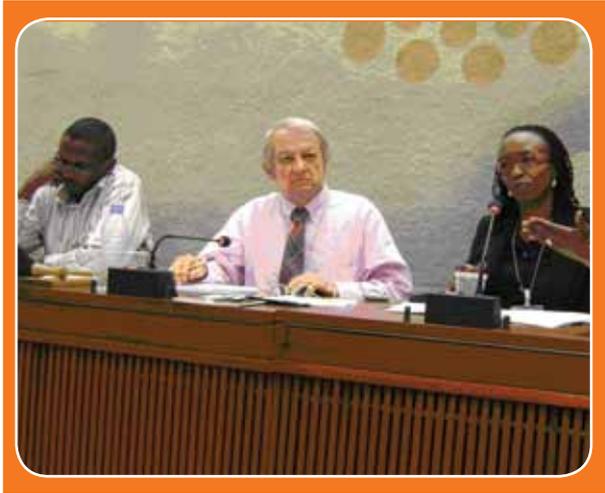
Claudia de la Fuente (left) from the office of the UN Special Rapporteur on Torture with Dr Joan, Acting Executive Director, IMLU and Vincent Kodongo, Legal Officer, IMLU after a meeting at Palais Wilson (OHCHR)



Group counselling proceedings at prison



Presentation on torture during Thika Public Forum



IMLU's Acting Executive Director, Dr Joan Nyanyuki, stresses a point during her presentation on torture by the military at Mt Elgon at the IMLU/OMCT/FIDH side event in Geneva during the UPR session in May 2010



Some of the participants of the June 26th 2010 Public Forum at the Alliance Francaise



2nd left, IMLU's Legal Redress Officer, Vincent Kodongo during the Geneva Universal Periodic Review (UPR) Session Geneva, 2010



IMLU staff and network of doctors at a field work.



A torture survivor gets dental attention from IMLU's doctor.

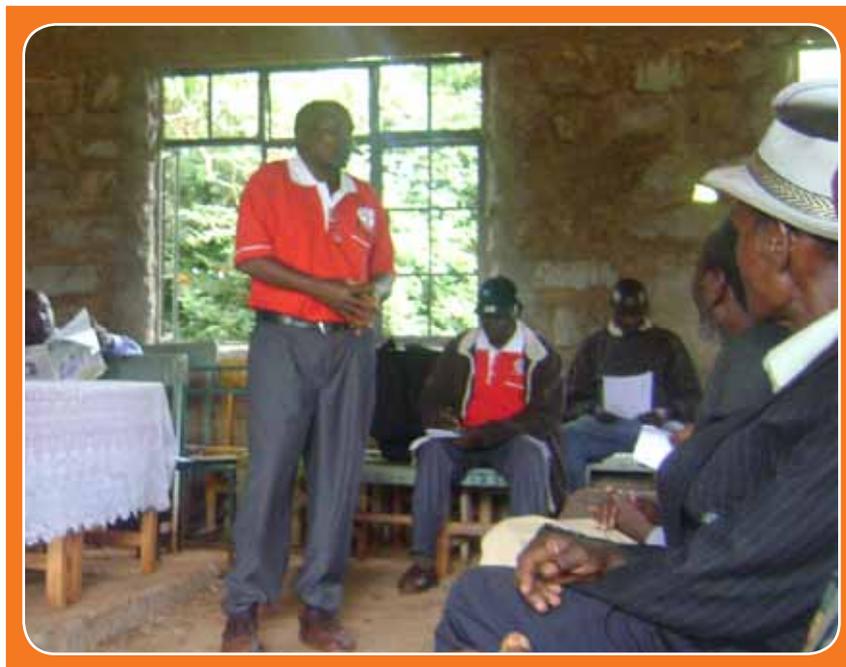
Advocacy and Communication

MLU has continued to create awareness and encourage public outcry against torture.

IMLU has facilitated public debates in various districts as one of the ways of creating awareness and educating the public on torture. These forums have been a platform for members of public to be informed of their rights, ask questions and air their concerns.

IMLU has partnered with ICJ-Kenya, with the generous support of the European Commission and have initiated a series of regional awareness forums in high prevalence areas of torture. The forums are meant to inform members of public on their rights and what actions they can undertake after an act of torture occurs. In addition, IMLU and ICJ-Kenya in partnership with other stakeholders have also initiated the drafting of the long overdue legislation against torture.

On 28th February, 2010, IMLU convened a public forum in Nguthuru Centre- Thika District on 28th February 2010 from 1.00 p.m to discuss the situation of torture and empower the members of public on their rights and best practices in ending torture. The absence of a law against torture has been one of the challenges



Nguthuru, Thika public forum on the situation of torture and empowering the members of public on their rights and best practices in ending torture.

The forums are meant to inform members of public on their rights and what actions they can undertake after an act of torture occurs.

in achieving justice where there is overwhelming evidence of torture. We believe the enactment of a law will come a long way in ensuring that cases of torture are addressed conclusively. The forum will also shared with the participants the current nature of torture and related crimes in Kenya and what we intend to achieve by the draft law on torture.

The following was accomplished:

- Public understanding on torture and state obligations in addressing torture was enhanced.
- Participants were sensitized on the need for a law against torture
- The role of civil society organizations in holding the state accountable was strengthened.
- Ways and procedures of enhancing public participation were discussed.
- Further networking of the organizing organizations with CBO's in Thika

UN International Day in Support of

Victims of Torture 26th June, 2010

This year, in line with our vision of a torture free society and theme of the day being Justice For Torture Victims In Light Of Transitional Justice Mechanisms In Kenya; marked the day with various activities. The objectives of the activities were:

- To enhance public understanding on torture and state obligations in addressing torture
- To sensitize participants were sensitized on the need for a law against torture and relevant provisions of the Kenyan Constitution
- To strengthen the role of civil society organizations in holding the state accountable
- To discuss ways and procedures of enhancing public participation to actualize civil rights. □

CASE STUDY: VOICES FROM EKONA, KISII

The events of 13th May, 2010 shall indelibly remain etched in the memories of the residents of Ekona location in Kisii district. As the sun set and the residents retired to their homes and or places of recreation, the police had an agenda for them... they set on them for a police raid, the purpose of which was and is still unknown to the residents. This is the voice of Maisha Ogwari (Not his real name).

At around 8.00pm I was at the bar in Ekona Market that belonged to the now deceased Mr. Aburi. I met a friend of mine and a local doctor. The doctor bought me a soda and we sat down to chat. Suddenly 5 men entered the bar and told us that they had come for a police raid. They ordered us to lie down. I recognized them as officers from Nyamaia and Kasari Police Posts as I had previous interactions with them in my boda boda business. I also used to see them frequently in the market. All the five policemen were in their official jungle green jackets and two of them were in the police overcoat. I knew two of the officers by name. All the officers were armed with guns and three more came in and joined us.



Injury sustained by police gunshot

The officers began beating us and ordered us to remove everything we had in our possession. I gave them my phone and Kshs. 800. One officer hit me on the head with a gun and I began bleeding.

One of the customers attempted to get up and run. He was shot. The doctor was slashed with a knife by one of the officers. People began to scream and gather near the bar. The police began to shoot in the air and remain on the ground otherwise we would be shot. They left the premises together with Mr. Aburi and said amongst themselves that they were going to the house of the lady who sells chang'aa. To the best of my knowledge, I understood this to be a reference to Lynette who lived near the bar. Two officers were left behind demanding for cash from the bar man.

On realizing that the members of the public were gathering outside the bar, they took off and we were

rescued. We were driven in a police car to Etavo and then Kenyeny. I recognized one of the officers who had beaten us because his clothes were blood stained. At Kenyeny, I informed the OCPD that I recognized the officer who had beaten me up. The OCPD said that I should first be treated then we will talk. I was later treated in Kisii and we recorded statements with the DCIO. □

One of the customers attempted to get up and run. He was shot. The doctor was slashed with a knife by one of the officers. People began to scream and gather near the bar.

**KNOW YOUR
Rights**

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law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the right or fundamental freedom;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
 - (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom.
- (a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation

specifically expresses the intention to limit that right or fundamental freedom and the nature and extent of the limitation;

- (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and
 - (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.
- (3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.
- (4) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhi's courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.
- (5) Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service.
- (a) Article 31 – Privacy;
 - (b) Article 36 – Freedom of association;
 - (c) Article 37 – Assembly, demonstration, picketing and petition;
 - (d) Article 41 – Labour relations;
 - (e) Article 43 – Economic and social rights;
 - (f) Article 49 – Rights of arrested

persons

As important as they are, a person's rights are limited to the instances outlined above.

DO YOU KNOW that the state owes you fundamental rights and freedoms that may not be limited

25. Despite any other 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;
- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and
- (d) the right to an order of habeas corpus.

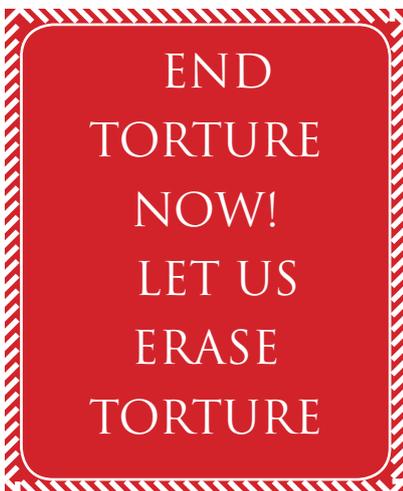
This Article protects you from being tortured and further gives you the right to make an application for a missing person's body to be produced by the police

DO YOU KNOW that the state owes you freedom and security of person?

29. Every person has the right to freedom and security of the person, which includes the right not to be-

- (a) deprived of freedom arbitrarily or without just cause;
- (b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;
- (c) subjected to any form of violence from either public or private sources;
- (d) subjected to torture in any manner, whether physical or psychological;
- (e) subjected to corporal punishment; or
- (f) treated or punished in a cruel, inhuman or degrading manner.

This freedom and security is owed to you simply because you are a human being



DO YOU KNOW that an arrested person has rights too?

49. (1) An arrested person has the right-
- (a) to be informed promptly, in language that the person understands, of-
 - (i) the reason for the arrest;
 - (ii) the right to remain silent; and
 - (iii) the consequences of not remaining silent;
 - (b) to remain silent;
 - (c) to communicate with an advocate, and other persons whose assistance is necessary;
 - (d) not to be compelled to make any confession or admission that could be used in evidence against the person;
 - (e) to be held separately from persons who are serving a sentence;
 - (f) to be brought before a court as soon as reasonably possible, but not later than-
 - (i) twenty-four hours after being arrested; or

- (ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- (g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

- (2) A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

Rights of persons detained, held in custody or imprisoned

51. (1) A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that



- the person is detained, held in custody or imprisoned.
- (2) A person who is detained or held in custody is entitled to petition for an order of habeas corpus.
- (3) Parliament shall enact legislation that-
- (a) provides for the humane treatment of persons detained, held in custody or imprisoned; and
 - (b) takes into account the relevant international human rights instruments.

The fact that someone has been arrested he does not cease to be a human being and thus, he/she should be treated with dignity during the arrest and while in custody. □

LEGAL JUSTICE FOR MT. ELGON VICTIMS OF TORTURE

In the East African Court of Justice for torture in Mt. Elgon (EACJ Reference No. 3 of 2010)

In the month of May 2010, IMLU instituted action against the State for torture and related violations committed by the military at Mt. Elgon during the operation "oko maisha".

The full citation of the case is:

Independent Medico Legal Unit (Claimant) and The Attorney General of Kenya (sued on behalf of the Republic of Kenya), The Minister for Internal Security and Provincial

Administration of the Republic of Kenya, The Chief General Staff of the Armed Forces of the Republic of Kenya (sued on behalf of the Armed Forces of the Republic of Kenya), The Police Commissioner of the Republic of Kenya (sued on behalf of the Regular Police and the Administration Police of the Republic of Kenya and; The Secretary of the East African Community. EACJ Reference No. 3 of 2010

It has been filed under the Convention Against Torture and other cruel, inhuman or degrading

treatment or punishment and the International Covenant on Civil and Political Rights as the International laws together with other national laws of Kenya.

The filing of this case is just but one of the steps IMLU has put forth to claim justice for victims of torture perpetrated by the military at a time when the state should have been protecting citizens from militia groups.

All the respondents have been served. We now await for fixing of the hearing dates. □

KAWANGWARE PUBLIC FORUM

Kennedy Kinuthia

17th march 2010

IMLU has in the recent months documented several extra-judicial killings that have taken place in Kawangware estate of Nairobi. These killings have allegedly been perpetrated by both the Kenya Police and the Administration police (AP).

The government has yet again failed to prevent such killings after constant pressure from the civil societies and international rights groups. With these killings taking place the government has been urged to conduct immediate and impartial investigations into these serious allegations and ensure that the perpetrators are prosecuted and punished with penalties appropriate to the grave nature of their acts.

Earlier this month, 7 taxi drivers who operate at Kawangware were allegedly murdered by 7 APs at around 11pm at night. This was as a result confrontations between taxi operators and boda-boda operators (motor bikes taxi) who were arguing over fare they charge for transportation to different areas. It is alleged that the taxi's charge about Kshs. 300 while boda-boda charge Kshs. 100 for similar distance.

It is alleged that the boda-boda taxis which are also alleged to be owned by the APs went to the APs and reported the issue which then resulted to the APs murdering the taxi drivers in cold blood.

With all this in mind, IMLU in partnership with Release Political Prisoners (RPP) a civil society organization, on 17th March 2010 organized a public meeting at Kawangware to sensitize the area residents on the issues of torture.



Kawangware residents and IMLU staff take to the streets to demonstrate against Police Brutality

1. Demonstration

IMLU and RPP together with Kawangware taxi drivers and the area residents held a procession from Waithaka area which is about 3km from Kawangware. The demonstration started off with about 20 taxis and 15 boda boda which had placards containing pictures of the deceased taxi drivers which had been provided for by IMLU. On one of the vehicles a land rover there was a banner containing pictures of all the 7 taxi drivers who had been murdered and a statement saying "Uaaji Wa Polisi Ukome" (Police killings should stop).

Just a few meters to the area where the meeting was being held, some people who were in the taxis alighted and joined other area residents who were walking holding placards and banners. The procession continued while people sang songs which are against police brutality.

The procession then held a mock shooting which showed how the taxi drivers had allegedly been killed by

the APs and also what the police usually do when they encounters members of the public at night or during the day.

The procession then proceeded to the area where the meeting was being held and they sang songs as they entered and went and paid respect to the deceased whose photos had been placed in middle of that area and then enacted another mocking shooting of how the deceased were shot.

Some of the people who were carrying the banner when round the meeting place showing it all the people in attendance.

2. Interdenominational prayers

These prayers were led a pastor from Presbyterian Church of East Africa (PCEA) who then welcomed three entertainers who sang a song each on the need for peace. The pastor the read a verse in the bible where it encouraged the members of the deceased family to move on and

accept what had happened.

The pastor also preached on peace and that God does not like death. He added that it's God who gives life and he is the only one who can take it away. The pastor added that he knew the taxi drivers and they were not mungiki or alleged thieves. He said that the APs said so to cover up their actions. The pastor said the government should stop the extra-judicial killings that have been taking place in the area. He added that many youths have been killed in the police who normally say that they were thieves or alleged Mungiki members who were extorting money from the members of the public or where trying to rob someone.

The pastor then prayed for the family and the country at large. He then invited a radio personality from Kameme Fm who sang a song then spoke of the need for peace in the country. She later asked everyone who was present to go down on their knees and ask for forgiveness from God and later prayed for them.

3. Speeches

The area member of parliament Hon. Beth Mugo was the first one to speak and condemned the killings of the 7 taxi drivers. She added that the 7 APs who allegedly shot the taxi drivers have been charged in a court of law on murder. Hon Beth Mugo said that the case had delayed a little bit because the post-mortems had not been carried out which are vital evidence for the case.

Hon. Beth Mugo mentioned that the government is taking the case seriously and she will make sure that the families of the deceased get justice. She added that people who commit such acts should not only be transferred to other places but should be sacked and locked up in prison.

The MP said that there are many

qualified youths who can work as policemen and the government should not retain such policemen who go against the law. She mentioned that the police are supposed to protect citizen and not subject them to such inhuman treatment.

She requested those who witnessed the shooting to come out and record the statement with the police for the case to be successful.

Saboti MP Eugene Wamalwa accused the government of not protecting its citizens. He said that every Kenyan citizen has a right to live and no one should be denied that right. He added that he will mobilize other parliamentarians in parliament to follow up on the issue.

Another local politician John Kiarie accused the area District Commissioner (D.C) of not preventing the death of the 7 deceased taxi drivers. He said the 7 APs who committed the murder were attached to the D.C. He added that they have complained on several occasions about the D.C but the government has not responded.

Also present was Nairobi P.C who

condemned the shooting and also indicated that execution was not justified.

Later on a fund raising was conducted to assist the deceased families. A total of over Kshs. 2million was raised.

Conclusion and recommendations

The meeting ended at about 3pm and the families were allowed to go prepare for burial of the deceased. The following recommendations were given:

- a. It was recommended that all the money that was raised during the meeting should be shared equally among the families of the deceased.
- b. It was also recommended that another public forum should be held in the area to sensitize the residents on issues of torture and how best to avoid torture.
- c. It was recommended that the 7 APs who murdered the 7 taxi drivers to be prosecuted and should face the law. ❑



Kawangware residents clash with police during their demonstration.

IRCT IN SUPPORT OF VICTIMS OF TORTURE

Pg 5

into complicity in torture in the so-called "War on Terror". In Africa, following the horrific post-election violence in Kenya, the International Criminal Court has announced that it will initiate an investigation and to protect witnesses. In the Americas we've seen Argentina successfully bring to justice the perpetrators of torture from the despotic regimes of the 1970s, sending out a strong message that there is nowhere for the perpetrators to hide. And last but not least, at the local level the member centres of the IRCT continue tirelessly working to help torture survivors rebuild their lives, as well as to raise awareness and seek justice.

Ladies and gentlemen,

The greatest threat to the fight against torture remains apathy: that we silently accept that torture exists. Today, as we honour the victims and survivors of torture all over the world,



Dr. Mohamud (Centre), IMLU Board member and IRCT Chairman with participants at a dissemination forum

let us promise that we will not silently accept that the crime of torture continues. Let us pledge to do all we can to prevent greater numbers joining their ranks.

Right now, we – the rehabilitation centres and programmes that are members of the IRCT – are jointly

raising our voices across the world, reading out this statement on this special day. Together, we are saying that we will not remain silent, and that we will continue working together to bring about a World Without Torture. □

THE LASHES OF THE STORM

By Vincent Kodongo

*My mind is tormented
My body writhes in pain
Life ebbs out of me
I feel the lashes of the storm.*

*The crack of the whip
The ripping of my flesh
The endless kicks and blows
Culminate on recurrent black-outs.*

*They ravaged my person
They invaded my being
They broke into my inner chambers
They desecrated the holy place.*

*Though I cry no one cares
Though I scream no one will hear
Though I explain no one understands
Though I appeal justice eludes me.*

*Bitterness is in my heart
Unforgiveness is in my mind
Vengeance is my partner
Vindication is my guardian*

*My sun has set
My doors are closed
I grope in darkness
I hope not for hope.*

HUMAN RIGHTS ARE FUNDAMENTAL

By Agnes Nzisa

*Rights are fundamental,
Rights are owed to persons
of all nations.
Signing and Ratification is
instrumental
for the State to take on its
obligation.*

*States took pens and the
Covenants did sign.
This means they can't sit
back, wine and dine.
The State has committed
itself,
it has taken on specific
obligations.
To respect, protect and fulfill
human rights.*

As water takes shape of a

*glass,
so does conflict, in the State
it lands.
And the harm the citizens
suffer,
When violation is by the
State and its agents,
is abuse of their human
rights,
and the name given is
torture,*

*We talk about rights
violations
and interventions,
and we say there is need for
conversation,
and community involvement
in planning and
implementation.*

UN INTERNATIONAL DAY IN SUPPORT OF VICTIMS OF TORTURE

26th June

The world celebrates the United Nations International Day in Support of Victims of Torture on 26th of June every year. This day is marked to remind us that torture is a crime and to provide us with an opportunity to stand united and voice our opinion against torture, a cruel violation of human rights.

This year, Independent Medico-Legal Unit (IMLU), in line with our vision of a torture free society and with the theme: Justice for Victims of Torture in light of Transitional Justice Mechanisms in Kenya. marked the day with the following activities:

1. Television feature on Family Television about two of IMLU's clients' cases
2. Television infomercial on a national television (NTV) about the public forum held on the 26th June, 2010
3. A live talk show on a national television (NTV) with one of our clients featured
4. A live radio show (Hope Fm) interview with one of our clients featured
5. An informative supplement on Torture in a local daily newspaper titled "An exposition on the State of Torture in our Society". The half-page supplement was published in the Daily Nation newspaper on Thursday 8th July 2010 on page 19. An adaptation of this article is found in this newsletter as a case study on torture and its effects to an individual.

The media campaigns were culminated with a Public Forum held at the French Cultural Centre on the morning of June 26, 2010 from 8.00am to 12.30pm. The forum drew torture survivors from Nairobi, Central, Eastern, Coast and Western regions of Kenya. Members of the public and other like-minded civil societies were also present at the forum. It was a day that we celebrated the resilience of torture survivors and stood in solidarity with them in the fight for justice. □



Members of the public keenly but sadly listening to a survivor's anguish in the hands of police during 26th June public forum



26th June 2010 poster

Independent Medico-legal Unit - IMLU

What we're about...

Our Mission

We seek to promote the human rights of torture victims and protect Kenyans from all forms of State perpetrated torture by advocating for legal and policy reforms, monitoring government adherence to human rights, rehabilitating victims of torture and building the capacity of key stakeholders.

Purpose

Rehabilitation of torture victims and survivors
Increased awareness on torture and contribute to public outcry
Training professionals on identification and documentation on torture
Raising public awareness concerning IMLU's role and purpose in democratic Kenya Legislation

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

Our Board of Directors...

Mr. Moses Njenga Chege

He is the IMLU chairperson, a leading Human Rights Defender who at one time was IMLU's Executive Director. He is currently working with Sight Savers International.

Dr. Ling Marete Kituyi

She is one of the founder members of IMLU where she worked until mid 2002. She has been a leading figure in the crusade against torture both locally and internationally. She currently works with the United Nations.

Mr. Pheroze Nowrojee

A leading Human Rights Defender and constitutional lawyer by profession. He co-founded IMLU with Dr. Ling and runs his law firm in the name of Pheroze Nowrojee and Company Advocates. He is an International Commission of Jurists award winner.

Dr. Mohamud Said

The President of the International Rehabilitation Council of Torture survivors (IRCT) and the former chairman of Kenya Medical Association Human Rights Committee. He is also a member of SUPKEM. He has been awarded a Head of State Commendation by the President for his work in prison reform.

Fr. Gabriel Dolan

The priest of Mombasa, Bangladesh parish, the initiator of human rights organization "Haki Yetu" in Bangladesh and a columnist in the Daily Nation Newspaper. He has been at the forefront advocating for human rights in Kenya.

Mr. Kakai Kissinger

A human rights lawyer by training. He served as IMLU's Executive Director from August 2004 until 2006. He was a legal assistant counsel at the Commission of Inquiry into the post election violence. Presently, he is the governance advisor to the Germany Technical Council (GTZ).



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