

STATE *of* the NATION 2021

**TORTURE, CRUEL DEGRADING TREATMENT OR
PUNISHMENT, EXTRA-JUDICIAL EXECUTIONS AND
ENFORCED DISAPPEARANCES IN KENYA.**



A Society Free From Torture and Related Violations

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Independent Medico – Legal Unit
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LIST OF ABBREVIATIONS AND ACRONYMS

IMLU	Independent Medico – Legal Unit
EJE	Extrajudicial Executions
TCIDT	Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
GBV	Gender Based Violence
SGBV	Sexual Gender Based Violence
KNCHR	Kenya national Commission on Human Rights
SME	Subject Matter Experts
OB	Occurrence Book Number

ACKNOWLEDGEMENTS

The preparation of this report and subsequent dissemination would not have been possible without the contributions and support of the IMLU team, its partners and service providers. This report benefited from the guidance of the IMLU Executive director Mr. Peter Kiama and a series of reviews and consultations with the experts at the organization.

FOREWORD

Over 30 years IMLU has continued to advocate for freedom from torture, assisting victims/ survivors of torture, and campaigning for holding those responsible accountable while centring our work along a holistic approach that includes litigation of torture survivors, medical and psychosocial rehabilitation, oversight of government compliance with human rights obligations, and advocacy of political, legal, and institutional reforms that promotes accountability, healing, and justice.

The fight against torture was made better by the 2010 Constitution of Kenya article 25(a) which recognizes freedom from torture and cruel, inhumane or degrading treatment or punishment as one of the fundamental freedoms that cannot be limited.

In a bid to ensure effective and efficient advocacy of torture and related violations, IMLU has developed a State of Human Rights 2021 report to show the rate of torture cases in Kenya and recommend possible measures to tackle torture in our Kenyan setup.

It is our sincere hope that the State of Human Rights 2021 report will inspire citizens to keep on reporting torture cases, the state to fight against torture and stakeholders to continue supporting the fight against torture and related human rights violations.

STATE OF THE NATION 2021:

TORTURE, CRUEL DEGRADING TREATMENT OR PUNISHMENT, EXTRA-JUDICIAL EXECUTIONS AND ENFORCED DISAPPEARANCES IN KENYA.

INTRODUCTION

Independent Medico-Legal Unit is a governance, health, and human rights NGO whose vision is A Society free from Torture and Related Violations. IMLU's work is fostered by a holistic approach that includes litigation, medical and psycho-social rehabilitation, socio-economic empowerment, oversight of government compliance with human rights obligations, and advocacy of political, legal, and institutional reforms that promote accountability, healing, and justice. Over the last three decades, the organization has supported more than 6,000 victims of torture, cruel, degrading, and inhumane treatments. We have a national presence of over 300 professionals; doctors, trauma counsellors, lawyers, human rights monitors, and journalists.

PREAMBLE

Police service role in the society is to prevent, control, detect and investigate crime but in practice, some of its members act recklessly while handling the members of the public. The rogue officers always operate with impunity, because they know they will get away with it.

From the streets of Mombasa via Nairobi CBD to the favelas of Kisumu, unlawful use of force by rogue state officers has ended the life of many citizens while many left injured, devastated and deprived of their rights. The violent encounters with rogue state officers especially law enforcement agencies have profound effects on health, neighbourhoods and life chances.

Scarcely a week passes without getting an alert of state brutality. "State brutality" is becoming the order of the day. There is now even more worry with the coming election in 2022.

Rogue Kenyan state officers not only adopt the doctrine of maximum force in crime control, they often kill suspects and non-suspects at the flimsiest excuse because of an institutionalized culture of impunity.

State brutality is an attack on the fundamental rights guaranteed in the 2010 constitution recognizes and affirms that the right to life is the most fundamental and basic of human rights. Indeed, the right to life is the fountain from which all the other human rights flow from. Every person is entitled to a fair investigation and trial but the rogue state officers believe whatever they say and do is the justice. Arbitrary acts of the State are in stark contravention of rule of law.

There have been important developments in Kenya which have reflected the growing interest of various stakeholders to fight the abhorrent practice of state perpetrated torture, violence and discrimination. IMLU has been part of the stakeholders working towards prevention and response of torture, violence, inhumane and degrading treatment and has documented various types of extra judicial executions, torture and enforced disappearances in 2021.

2021 STATISTICS OF STATE VIOLATIONS

For the period 1st January 2021 to December 31st, 2021, IMLU has documented and processed 210 cases of alleged torture, enforced disappearances and extra judicial killings, 175 males and 35 females.

As supported by the data from 2019 to 2021 we have seen a steady increase in cases. In 2021 there was an increase of 54.41% or 74 cases in comparison to the 136 cases received, documented and processed in 2020. This is also a staggering 187.67% or 137 cases increase as compared to 73 cases received, documented and processed in 2019 as shown in Figure 1 below. This points to a worrying trend of increased torture and related violations in Kenya.

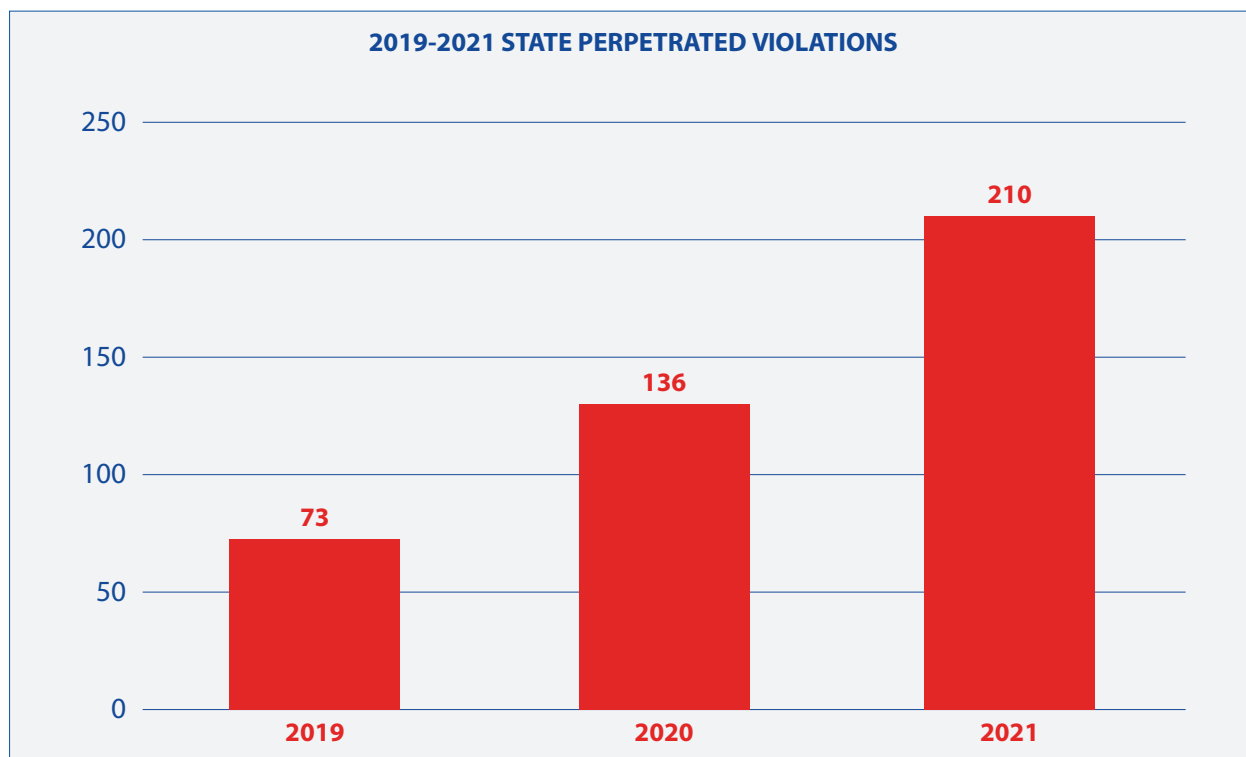


Figure 1: Number of cases recorded in 2019, 2020 and 2021: (IMLU, 2019, 2020 2021)

TYPE OF VIOLATIONS

This report focuses on several grave human rights violations IMLU documented and processed during the year 2021. These include:

- A. Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (TCIDT)** as defined under the UN Conventions against Torture (UNCAT). The main features of TCIDT are involvement of a public official, infliction of severe pain or suffering, intent, and a specific purpose.
- B. Extrajudicial, Summary or Arbitrary Executions** as defined under the mandate of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions- is the deliberate killing of individuals outside of any legal framework. Extra Judicial Executions - are a violation of the fundamental right-the right to life. Without respect for the right to life, no other human right can be upheld.¹
- C. Enforced Disappearances** as defined under the *UN International Convention for the Protection of All Persons from Enforced Disappearance* - is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

¹<https://www.ohchr.org/en/issues/executions/pages/srexcutionsindex.aspx>

Out of 210 violations 89 or 42.4% were extrajudicial, summary and arbitrary executions; 119 or 56.67% are Torture, Cruel, Inhuman or Degrading Treatment or Punishment; and 2 cases or 1% (0.95%) of enforced disappearances as shown in Figure 2 and 3 below.

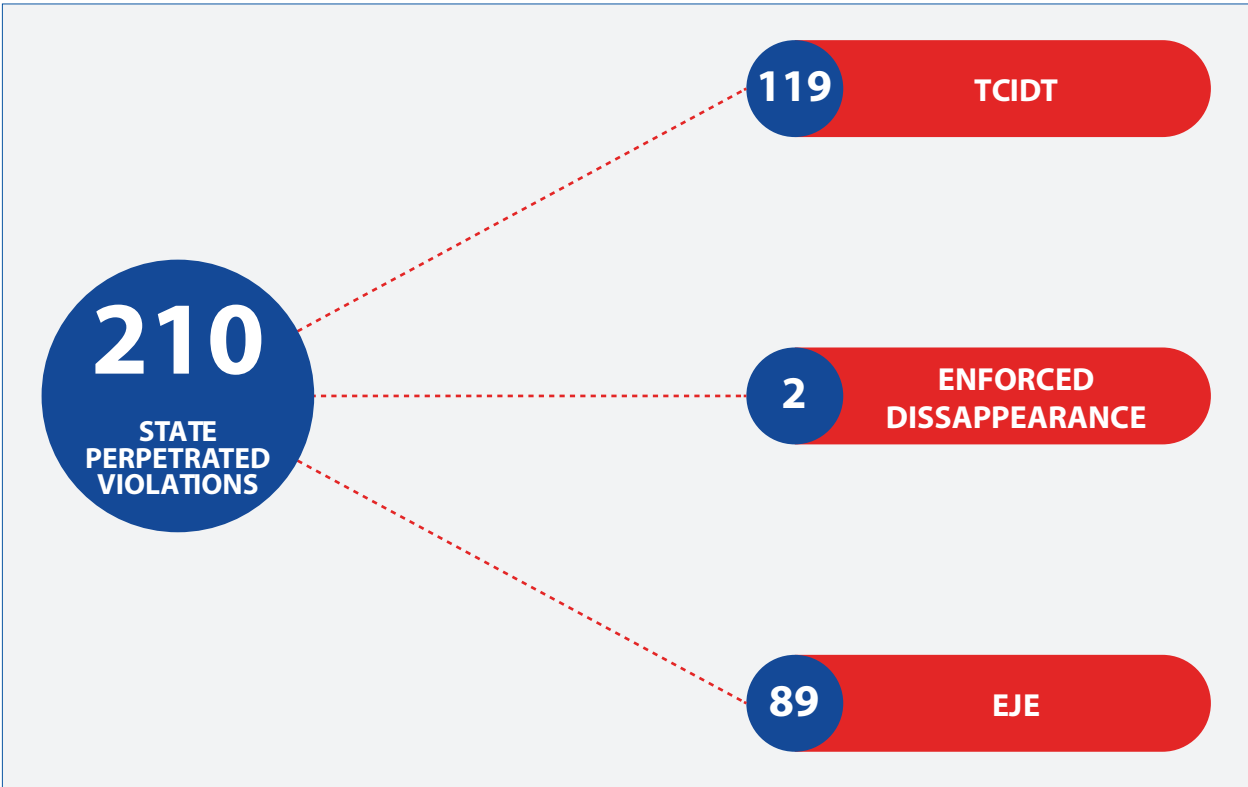


Figure 2: State perpetrated human rights violations: (IMLU, 2021)

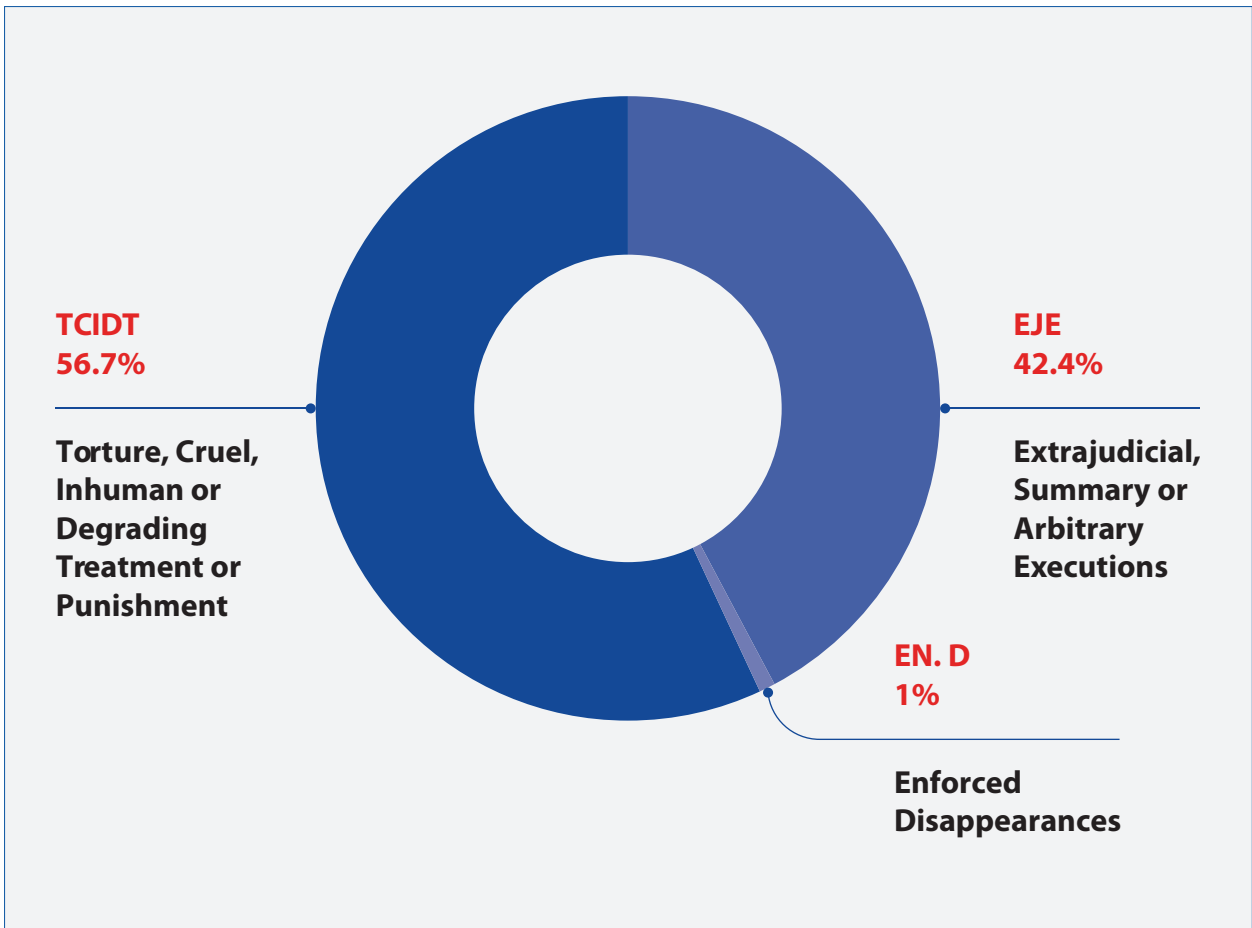


Figure 3: State perpetrated human rights violations: (IMLU, 2021)

VIOLATIONS MONTHLY DISTRIBUTION

IMLU received and processed cases every single month showing “nonstop” occurrences of state impunity, with an average of 17 cases per month. August had the highest number of violations documented at 39, with February having the lowest at 4 cases as shown in Figure 4 below.

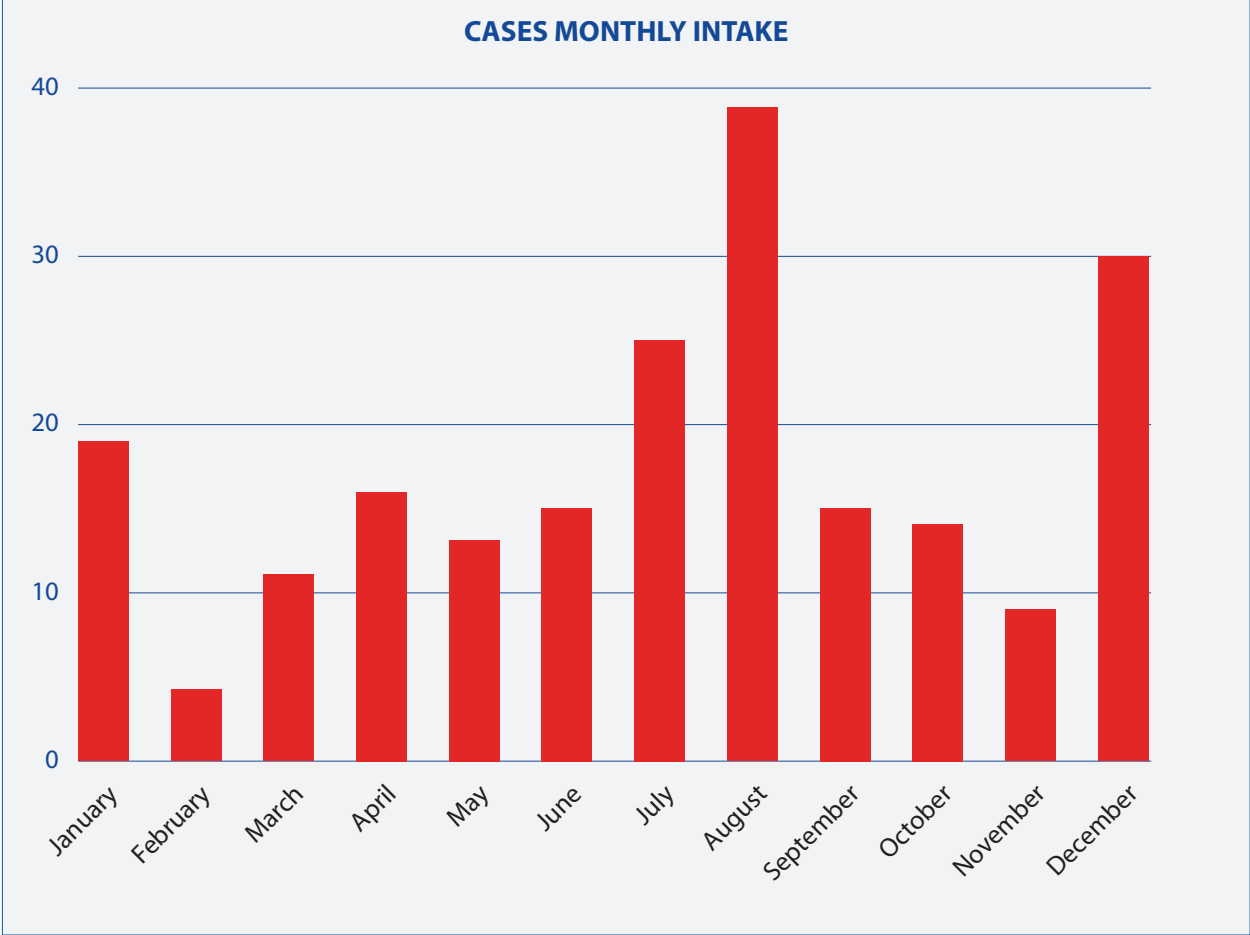


Figure 4: Monthly distribution of cases: (IMLU, 2021): Jan – 19, Feb -4, Mar – 11, April -16, May -13, June – 15, July – 25, August – 39, September – 15, October -14, November – 9, December -30

CIRCUMSTANCES UNDER WHICH THE VIOLATIONS WERE COMMITTED

It is important to contextualize the circumstances within which the violations are occurred to expound more on attitudes and behaviour of law enforcement agencies, and begin to explore solutions to these violations.

The largest number of violations occurred in the context of enforcing COVID-19 virus prevention control measures by police officers and policing of assemblies or public protests at 36 violations or 17.14%. Out of this number 14 died, 22 suffered Torture, Cruel, Inhuman or Degrading Treatment or Punishment, followed by responding to suspects of crime at 22 or 10.48%. 57 violations were in unclear circumstances accounting for 27.14% of the violations as shown in Figure 5 below.

One of the most outrageous and unfortunate incidents relating to COVID-19 happened on 1st August 2021- two brothers – Benson Njiru (22) and Emmanuel Mutura (19) – died in police custody in Embu in central Kenya. A few weeks later, John Kiiru (38) was “allegedly clobbered to death by officers” in Kayole, Nairobi. In both instances, the only crime the men seem to have committed was breaching the country’s curfew, which requires everyone (bar essential service workers) to stay indoors between 10 p.m. and 4 a.m. to help curb the spread of COVID-19. Kenyans were understandably in uproar about this tragic loss of life as reflected in local protests and social media commentary (#JusticeForKianjokomaBrothers), and statements by various civil society organisations and politicians.²

The extrajudicial, summary and arbitrary killings in the context of enforcing health protocols is a clear illustration of the attitudes and modus operadi of the police-a very punitive approach to policing that is contrary to the institutional ethos and laws guiding policing in Kenya.

² <https://www.theelephant.info/features/2021/09/03/the-thin-red-line-why-police-reform-hasnt-stopped-extrajudicial-killings/>

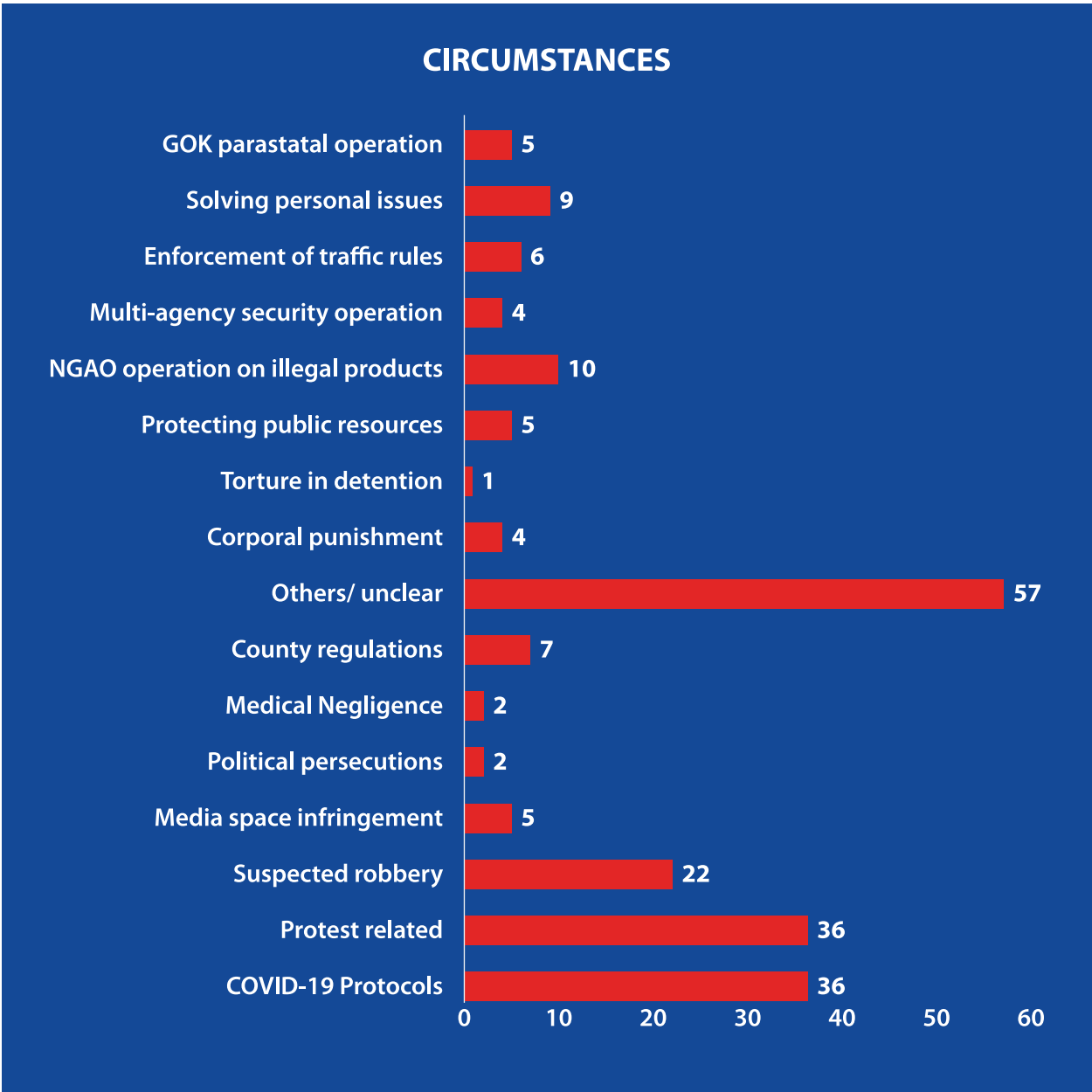


Figure 5: Circumstances under which the violation were committed: (IMLU, 2021)

SEX OF THE VICTIMS (PRIMARY)

Out of the 210 cases thirty-five (35) were female while one hundred and seventy five 175 were male victims/survivors as shown in Figure 6 below.

Men are most likely to be victims of state perpetrated human rights violations accounting for 83.33% of the Torture, cruel inhumane and degrading treatment, enforced disappearances and extrajudicial executions.

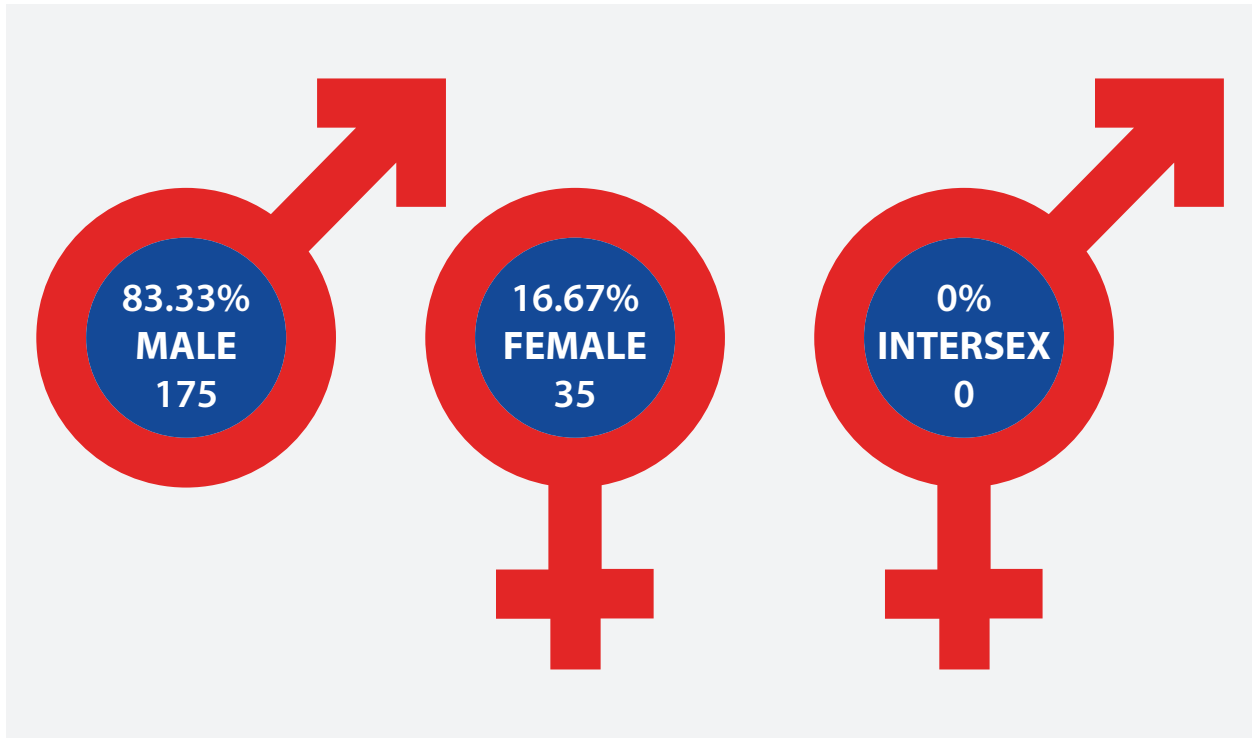


Figure 6: Sex representation: (IMLU, 2021)

AGE OF SURVIVORS/VICTIMS-2021

0-5	6-10	11-14	15-17	18-25	26-30	31-35	36-40	41-45	46-50	51-55	56-60	61-65	66-70
3	3	8	7	33	49	34	37	14	8	3	5	3	1

Table 1: Age of the victims: (IMLU, 2021)

AGE GROUP			
0 - 17	18 - 35	36 - 55	56 & Above
21	118	62	9

Table 2: Age group of the victims: (IMLU, 2021)

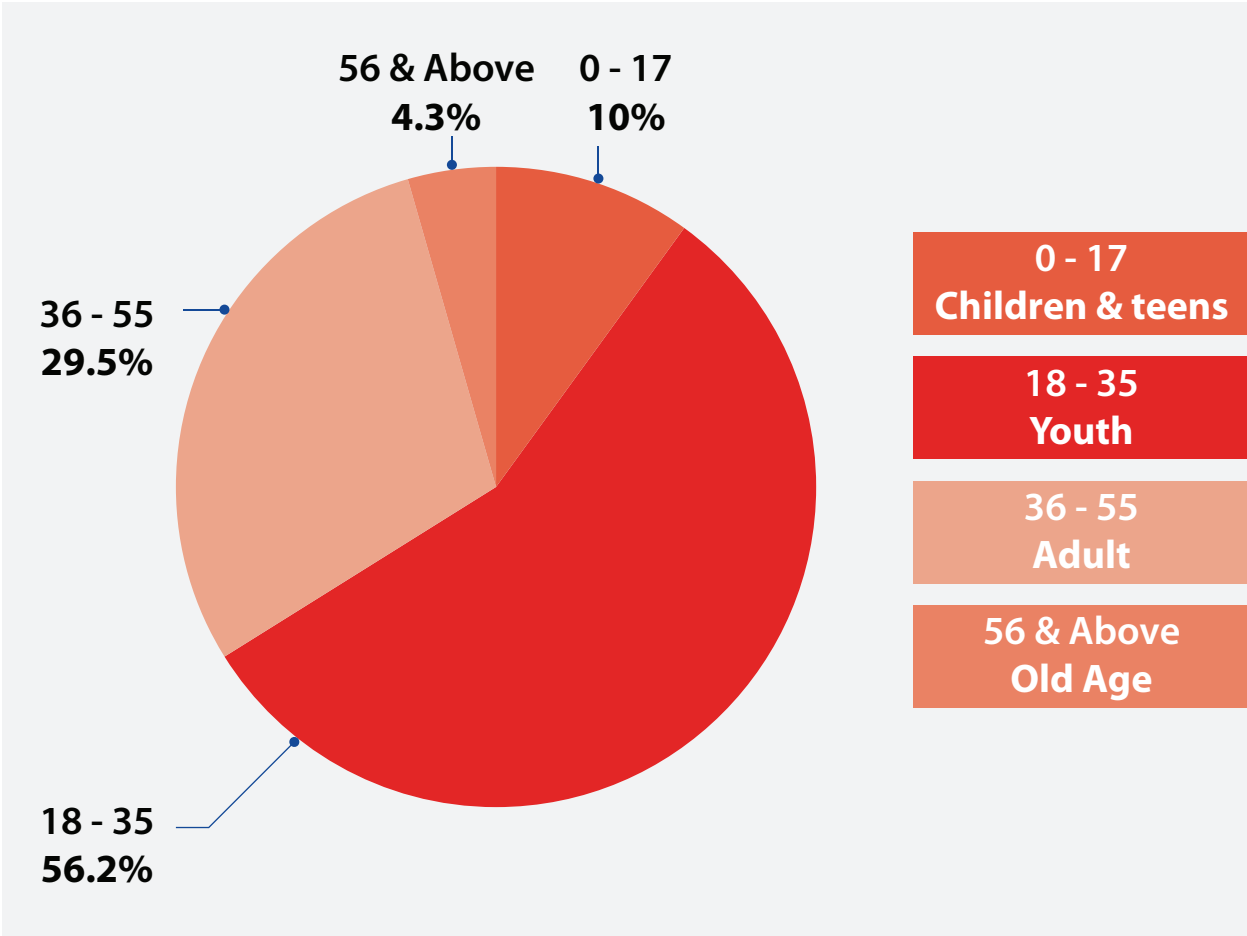


Figure 7: Age of the victims: (IMLU, 2021)

ALLEGED PERPETRATORS

Out of the 210 cases, One hundred and sixty four (164) were perpetrated by the Kenya Police (General Duty), three (3) by Chief/ assistant chief, One (1) by Kenya Wildlife Services officers and two (2) by Kenya Forest Services (KFS), three (3) by Kenya Defence force, two (2) Government Doctor, Seven(7) by County Askaris, four (4) by public school teacher, seven (7) by Anti-stock theft unit, 1 (one) by Coast guard, one by Prison Warder and one by British army. An outlier were three (3) by Ugandan police against refugees as shown in Figure 8 below.

Kenya police service (General Duty Officers) were the most notorious government perpetrators with 78.10% of the total cases received and processed in 2021.

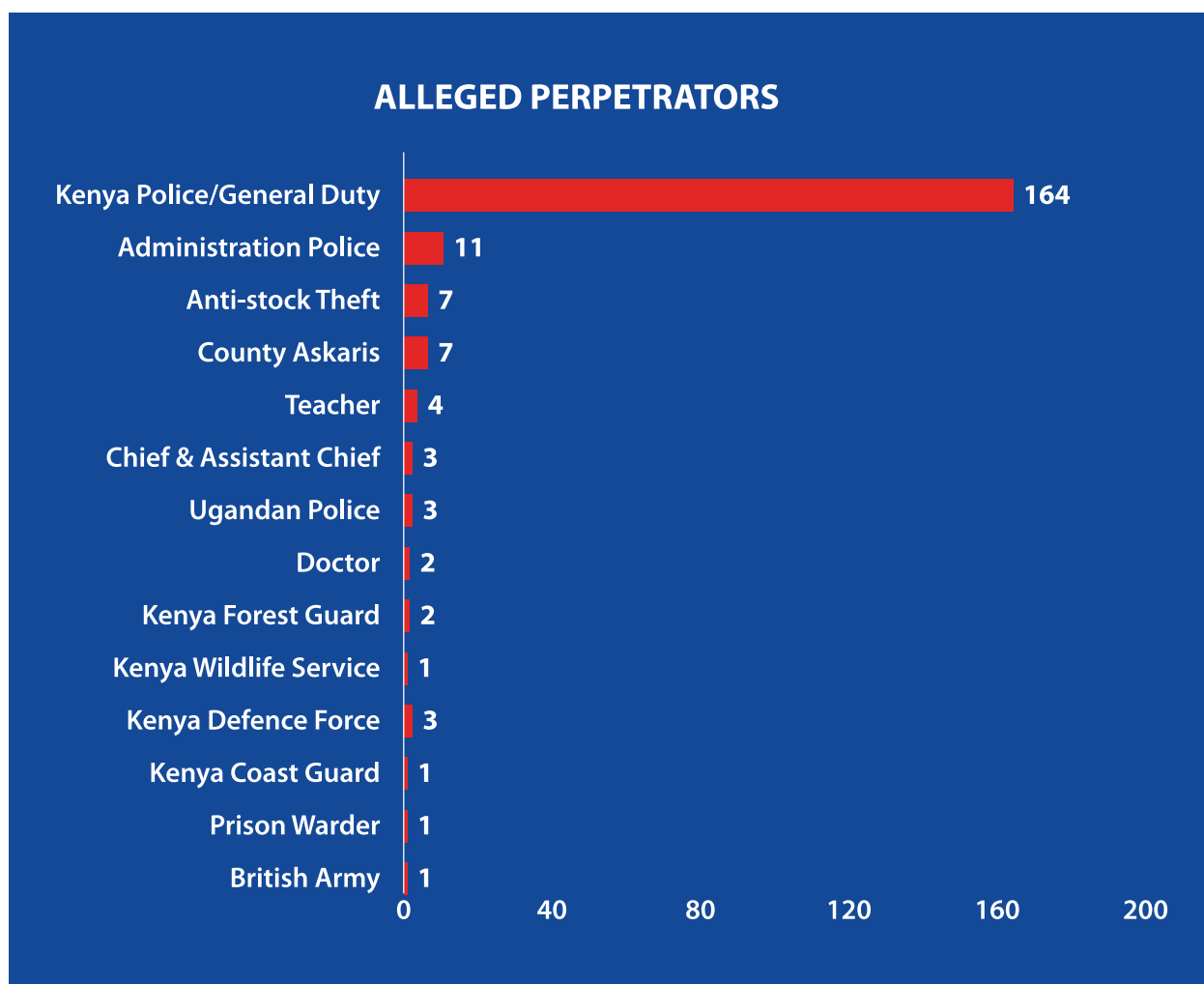


Figure 8: Alleged perpetrators: (IMLU, 2021)

These alleged perpetrators are attached to 97 police stations and other government institutions.

The most notorious police station being Manyatta Police Station from Embu County with 19 cases followed by Pangani Police Station, Nairobi County with 10 cases and at number three is Kabete Police Station from Kiambu County 9 cases as shown in Table 1 below.

No.	Police Stations	No. of Cases	Counties
1.	Lucky Summer Police Post	1	Nairobi
2.	Pangani Police Station	10	Nairobi
3.	Muthangari Police Station	8	Nairobi
4.	Likoni Police Station	1	Mombasa
5.	Mulika Police Station	3	Meru
6.	Busia Police Station	2	Busia
7.	Isiolo - GSU	1	Isiolo
8.	Marigat police Station	6	Baringo
9.	Kakamega Central Police Station	2	Kakamega
10.	Moi Air base	1	Nairobi
11.	Dabel Police Station	2	Marsabit
12.	Kamukunji police station - NRB	1	Nairobi
13.	Matuu Police Station	5	Machakos
14.	Kihumwera Police Post	2	Murang'a
15.	Kariobangi Police Station	2	Nairobi
16.	Malianya Police Station	5	Kakamega
17.	Dandora Police Station	1	Nairobi
18.	Capitol hill police station	1	Nairobi
19.	Maseno Police Station	1	Nairobi
20.	Uganda Police	3	Uganda
21.	Langas Police Station	1	Uasin Gishu
22.	Lake Nakuru National Park	1	Nakuru
23.	Kiserian Police Station	1	Kajiado
24.	Rioma Police Station	2	Kajiado
25.	Mukuru Kwa Njenga Police Post	6	Nairobi
26.	Itabua Police Post	1	Embu
27.	Malaba police station	2	Busia
28.	Turkana County Inspectorate	1	Turkana
29.	Joska Police Station	3	Machakos
30.	Athi River Police Station	1	Machakos
31.	Nairobi Central Police Station	5	Nairobi
32.	Magunga Police Station	2	Homabay
33.	Gilgil Police Station	3	Nakuru
34.	Runyenjes Police Station	1	Embu
35.	Nyangusu Police Station	1	Kisii
36.	Kegati Police Station	1	Kisii
37.	Mathare Police Station	2	Nairobi
38.	Nairobi County Inspectorate	3	Nairobi
39.	Green park terminus Police Post	1	Nairobi
40.	Mbagathi Hospital	1	Nairobi
41.	Kayole police Station	3	Nairobi
42.	Essaba Police Post	1	Vihiga

No.	Police Stations	No. of Cases	Counties
43.	Manyatta Police Station	19	Embu
44.	VIP Police	1	Meru
45.	Ngomongo Police Post	1	Nairobi
46.	Majira Police Post	1	Tharaka Nithi
47.	Kamkunji Police Station - NKS	1	Nakuru
48.	Ahero Police Station	1	Kisumu
49.	Muthaiga Police Station	1	Nairobi
50.	Kisumu County Inspectorate	3	Kisumu
51.	Wanganga Police Station	1	Taita Taveta
52.	Kileleshwa Police Station	1	Nairobi
53.	Mukuyuni police Station	1	Makuni
54.	Thiru Primary School	3	Laikipia
55.	Makengi Police Post	1	Embu
56.	Kahawa west	4	Nairobi
57.	Kasarani Police Post	3	Nairobi
58.	Nguutani police Post	1	Kitui
59.	Malindi Police Station	2	Kilifi
60.	Mitapono Police Post	1	Machakos
61.	Lake Naivasha Coast Station	1	Nakuru
62.	Njoro Police Station	2	Nakuru
63.	Lake Nakuru Coast guard Station	1	Nakuru
64.	Karatina Police Station	4	Nyeri
65.	Lamu Police Station	5	Lamu
66.	Holo police post	1	Kisumu
67.	Buriki AP Camp	1	Busia
68.	Kijiwa Police Station	3	Kilifi
69.	Pap Onditi Police Post	1	Kisumu
70.	Kitengela Prison	1	Kajiado
71.	St Augustine Boys Primary School	1	Kakamega
72.	Marangine Police Station	1	Laikipia
73.	Nyeri Town AP Camp	1	Nyeri
74.	British Army Nanyuki Barracks	1	Laikipia
75.	Kapyego Forest guard station	1	Elgeyo Marakwet
76.	Matasia Police Station	1	Kajiado
77.	Kitengela Police Station	4	Kajiado
78.	Muthaiga Police Station	1	Nairobi
79.	Lare Police Station	1	Meru
80.	Runyenjes Police Station	1	Embu
81.	Nakuru Central Police Station	1	Nakuru
82.	Nyali Police Station	1	Kilifi
83.	Mau Forest station	1	Narok
84.	Nthiga Police Station	1	Kiambu

No.	Police Stations	No. of Cases	Counties
85.	Nanyuki British Army Barack	1	Laikipia
86.	Nyatieko Police Station	1	Kisii
87.	Kondele Police Station	1	Kisumu
88.	Thika Police Station	1	Kiambu
89.	Magongo Police Station	1	Mombasa
90.	Kabete Police Station	9	Kiambu
91.	Ruai police station	1	Nairobi
92.	Medihil hospital	1	Uasin Gishu
93.	Chemelil police Post and RDU-	5	Kisumu
94.	Kisasi Police Post	1	Kitui
95.	Rabuor Police Station	1	Kisumu
96.	Moi Barracks - Eldoret	2	Uasin Gishu
97.	Kisumu Central Police Station	1	Kisumu

Table 3: Government institutions the alleged perpetrators are attached. (IMLU, 2021)

In terms of victims and families lodging formal complaints the analysis is as follows;-Out of Two hundred and ten (210) cases that we documented and processed; Family members/clients of sixty-four (64) cases had obtained OB numbers by the time we were documenting their cases.

Family members/clients of fifteen (15) cases claimed that when they visited various police stations they were denied OB numbers or the police officers constructively refused to assist them in making their formal complaint. As a result IMLU active advocates of the high court of Kenya to accompany them to obtain the OB numbers. By the time of documentation twenty seven (27) families/clients had not made formal complaints to the police officers, Upon documentation by the IMLU team fifty three (53) families/clients who reported did not have their OB numbers for various reasons. Some had been misplaced. Out of the 51 legal follow up to obtain the OB number is still ongoing.

CASES DISTRIBUTION PER COUNTY

The distribution of cases of violations in 2021 depicts a national, systemic and widespread problem, not a case of a few rogue officers or stations. IMLU has received and processed cases from 32 or 68.09% out of 47 counties.

Nairobi County accounts for the highest number of human rights violations at (27.62%) followed by Embu 12.86% and at number three is Kisumu with 8.10%. Embu County has been a great surprise county registering many violations during the reporting period, this is attributable to the increased public awareness of our organization, trained human rights monitors, more activation of professional networks, more field visit, and increased state impunity in the area.

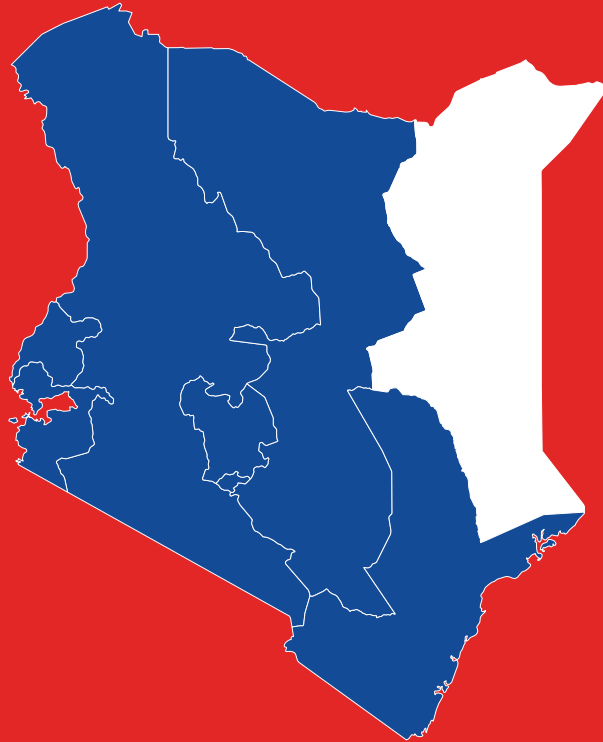
15 or 31.91% of counties registered 0 cases. However, this does not mean there were no similar violations in those counties since our scope and capacity are limited while many cases go unreported.

COUNTY	NUMBER OF CASES	COUNTY	NUMBER OF CASES
Nairobi	58	Mombasa	3
Embu	27	Kitui	2
Kisumu	17	Homabay	3
Kiambu	12	Murang'a	2
Nakuru	10	Tana River	1
Kajiado	9	Uasin Gishu	3
Kakamega	8	Makueni	1
Baringo	7	Marsarbit	1
Laikipia	5	Turkana	1
Nyeri	5	Vihiga	1
Busia	5	Taita Taveta	1
Kisii	5	Tharaka Nithi	1
Lamu	5	Narok	1
Machakos	5	Nyandarua	1
Meru	5	Isiolo	1
Kilifi	4	Elgeyo Marakwet	1

Table 4: Cases distribution per counties: (IMLU, 2021)

CASES DOCUMENTED & PROCESSED MAP

REGION RECORDS: Nairobi - 58, Eastern - 43, Nyanza - 25, Central - 20, Coast - 13, Rift Valley - 37, Western - 14 and North Eastern - 0



■ Cases documented ■ No cases documented

Map 1: Regional mapping of the received, documented and processed)

SERVICE PROVIDED BY IMLU

We provided various levels of support to all the 210 victims, survivors, witnesses and their family members. This included responding to distress calls through urgent action support, legal documentation, recording of critical evidence, autopsies, medical and psychological rehabilitation, advocacy, and legal advice/litigation and representation.

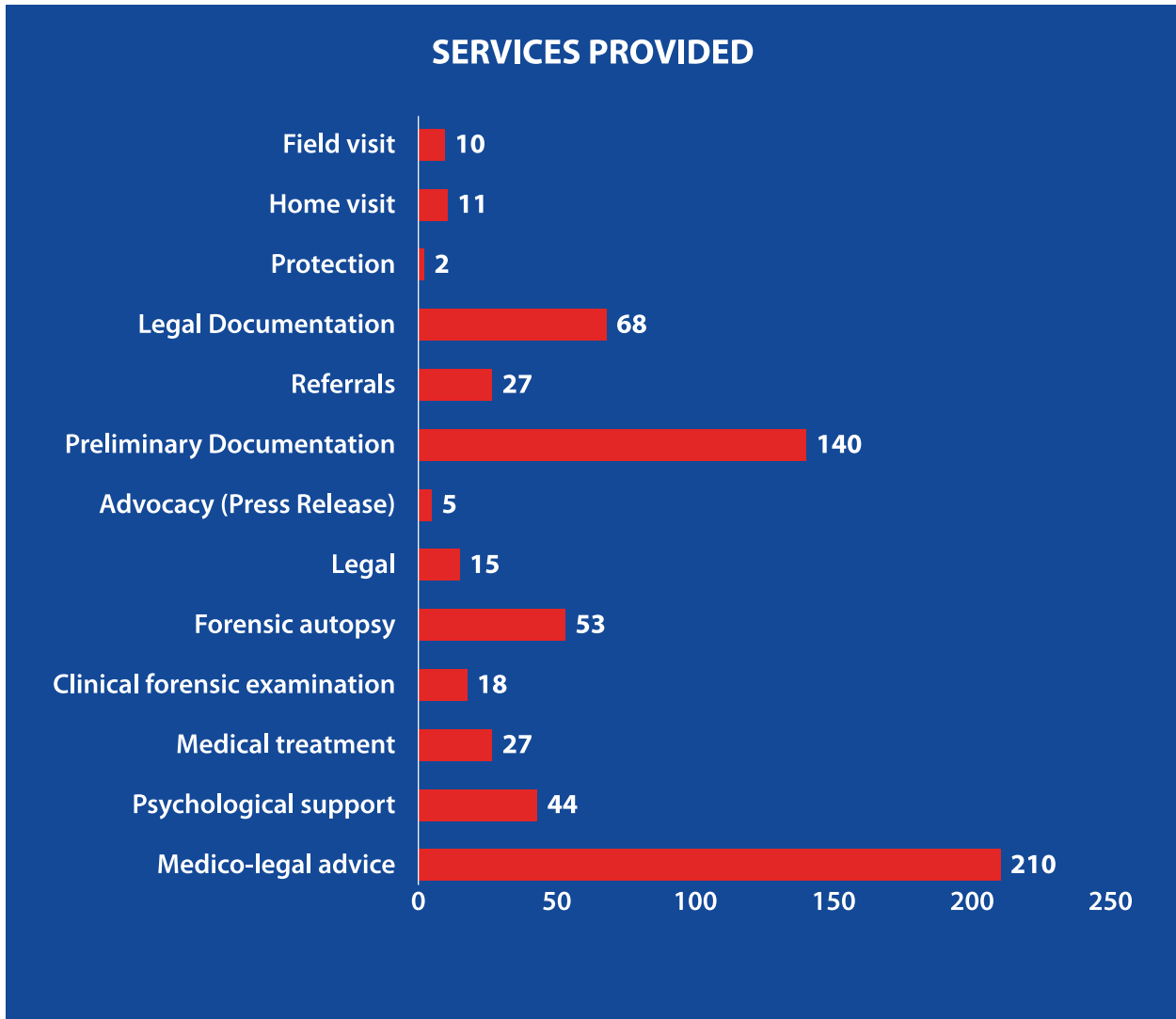


Figure 9: Services provided: (IMLU, 2021)

CONCLUSION

In this report IMLU sets out its main findings and analysis with an aim of advocating for legal, policy and policy reforms to enhance accountability

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