



## ***DOUBLE TRAGEDY***

# **REPORT ON MEDICO-LEGAL DOCUMENTATION OF TORTURE AND RELATED VIOLATIONS IN MOUNT ELGON**

## **“OPERATION OKOA MAISHA”**

**AUGUST 2008**

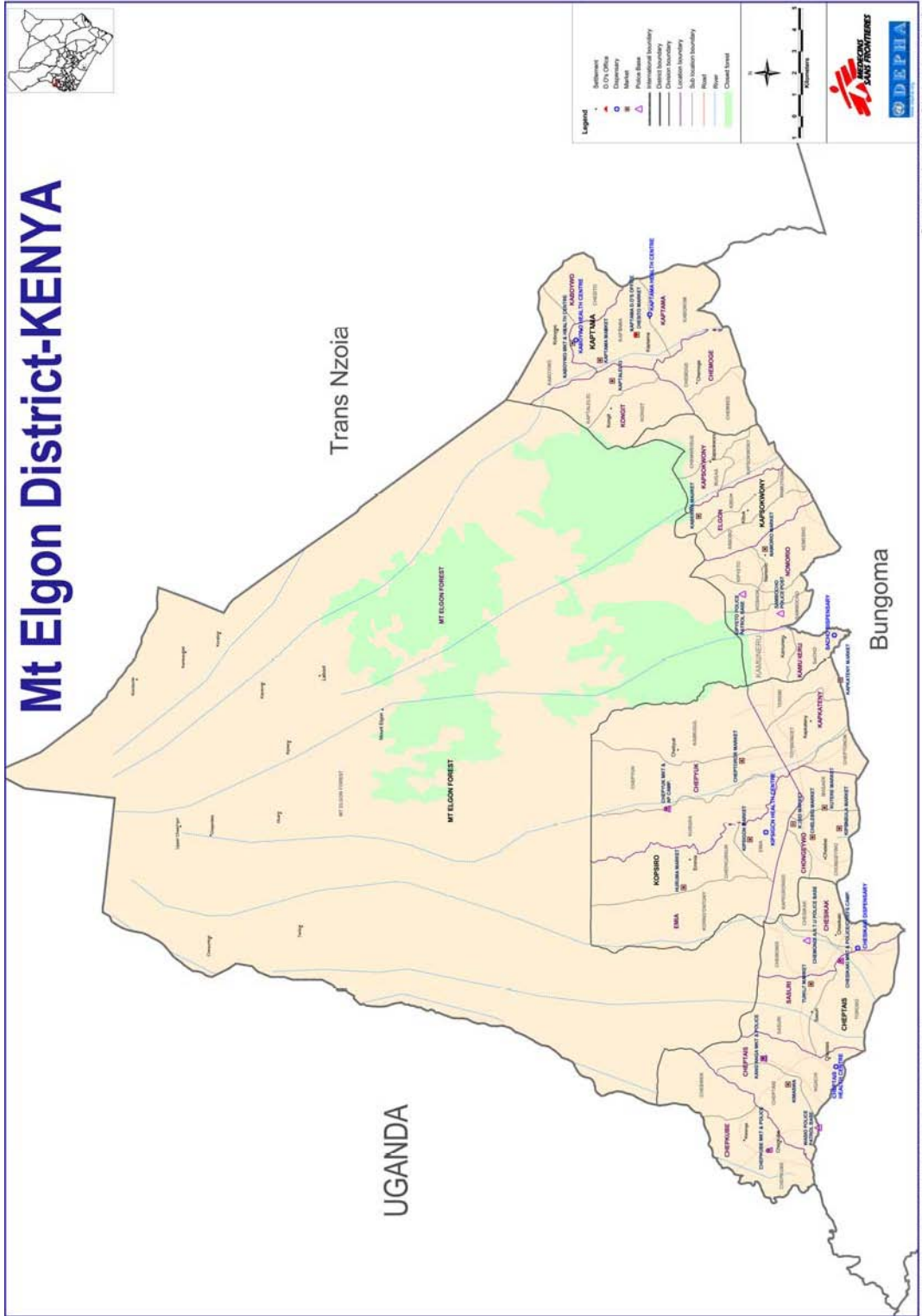
**An Investigative report by the  
Independent Medico-Legal Unit (IMLU)**

David Osieli Road, off Waiyaki Way, Westlands  
P.O. Box: 1271-0606 Nairobi, Kenya  
Tel: +254-020-4450598  
E-mail: [medico@imlu.org](mailto:medico@imlu.org)  
Website: [www.imlu.org](http://www.imlu.org)

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# MAP OF MT ELGON



## **Executive Summary**

The Mt Elgon land problem has its origins in the colonial period. However, over the last two years, the Sabot Land Defence Force (SLDF), which came into being as a protest group against the land problem, has meted out atrocities – murder, rape, destruction of property – on the people of Mt Elgon. The problem had evolved beyond the initial land issues to include ethnicity and blatant criminal actions.

The Government responded to the SLDF atrocities in March 2008 by deploying a joint Military and Police operation. The Operation, dubbed “Operation Okoa Maisha” was meant to curb the activities of the SLDF and maintain peace and security in the area. However, the joint military operation has been conducted under the veil of secrecy and has resulted in mass arrests, enforced disappearances and subsequent prosecution of almost one thousand persons. Most of the persons arraigned have raised complaints of torture and exhibited injuries that remain to be accounted for by the state while many other residents who were not charged have complained of torture, cruel in human degrading treatment or punishment.

The government has on its part termed allegations of torture as propaganda and argued that no complaints have been lodged with relevant agencies. Government reaction has three stages, starting with saying torture did not happen, continuing by saying that what happened was something else, and finally saying that what happened was justified for the protection of national security or some other purpose. Currently denial, passivity, and indifference exist. The government through the Minister of Defence has alleged that the torture was perpetrated by the local residents a clear admission of acquiesce by the state in condoning torture.

This operation has created a challenging situation to IMLU in its over ten years of existence in that the numbers of civilians alleging torture has been overwhelming far exceeding our annual caseload which averages 300. This special medical-legal documentation has been made possible by the generous support of the United Nations Voluntary Fund for victims of torture (UNVFT), the International Federation of Health and Human Rights Organizations (IFHHRO) and Amnesty International German section (AI)

This report provides details of the independent field investigation carried out, and makes public findings by a team of medical, legal and psychological professionals involved in this exercise. The report also provides evidence collected from Mt Elgon, which can contribute to holding to account relevant agencies involved and bring to book individual perpetrators of the crime.

It should be recalled that since the release of the preliminary report by IMLU on the same, a number of issues have emerged which this report equally attempts to address for example the reactionary inquiry by the minister of internal security and provincial administration/police, the inquiry by the parliamentary committee on defense and foreign relation and the reaction by the Attorney general.

Finally, the report makes recommendations demanding for proper and conclusive investigations in the interest of truth and justice following this great misfortune to our beloved country.

From the findings of the investigation, it is apparent that crime against humanity, which includes enforced disappearance, torture, cruel, inhuman and degrading treatment and punishment has been committed and continues to be committed on a civilian population that has been victim of similar atrocities by the SDLF for more than one year.

The survivors and families are yet to receive the acknowledgement that a crime has been committed upon them by both the state and the criminal militia and that justice in this instance has not only not been done but is not being seen to be done.

This report has been published taking into consideration all internationally accepted ethical and legal considerations in documenting torture and is backed by separate individualized medical examination report, photographs, witness statements and psychological assessment reports. These documents remain confidential documents and can only be used to facilitate access to justice.

These findings shall notwithstanding be availed to various relevant international bodies, be included in the alternative report to the committee against torture where Kenya's initial report shall be examined in November 2008 in Geneva.

Finally we take this opportunity to thank our development partners for the support, various courageous members of the police force and the Kenya Army who confidentially shared information with IMLU and the Kenya Prison Service that not only allowed access to investigatory teams in various prisons but allowed Human rights organizations to supplement the medical needs of individual torture survivors incarcerated.

**Samwel Mohochi**  
**Executive Director**  
**IMLU**

## 1.0 About IMLU

Independent Medico-Legal Unit (IMLU) is a registered non-governmental organization that seeks to promote the rights of torture victims and protect Kenyans from all forms of state perpetrated torture.

Over the years, IMLU has emerged as the lead agency in the fight against torture. As a key member of regional human rights network of torture organizations, East Africa and Great Lakes Network (EAGLENET) IMLU is also a member of similar regional and international human rights networks such as African Network of Torture Rehabilitation Centres, Human Rights Defenders Network (East Africa & Horn of Africa), OMCT, International Federation of Health and Human Rights Organizations (IFHHRO) and Consortium Against Torture. IMLU has also been accredited by International Rehabilitation Council for Torture Victims (IRCT) as a centre for rehabilitation of torture victims and by the Law Society of Kenya as an authorized Continuing Legal Education (CLE) provider.

### 1.1 Vision

IMLU seeks a torture-free society

### 1.2 Mission

We seek to promote the 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.

### 1.3 Programmes

1. *Rehabilitation and Documentation:* Conducts Forensic documentation and documentation in torture cases, physical and psychological rehabilitation of survivors.
2. *Legal Redress and Training:* Offers legal assistance to survivors and victims of torture, public interest litigation as well as referrals and follow-up of torture cases; involves enhancing capacity of key stakeholders through training and advocates for legal and policy reforms.
3. *Communication and Advocacy:* disseminates information on torture and other related violations to the public and advocates against torture and other human rights violations.
4. *Research and Programme Evaluation:* Carries out continuous monitoring and research into the state of torture and related human rights violations; as monitoring project implementation.

## 2.0 Background

The people of Mt Elgon have not known peace since the emergence of The Sabaot Land Defence Force (SLDF) in 2006 to resist government attempts to evict squatters in the Chepyuk area of Mt. Elgon district. The SLDF evolved into a terror gang that tortured, kidnapped, raped and killed those perceived to be their opponents. They further extorted taxes from the civilians. The activities of the SLDF lasted for over two years before any strong government intervention was mounted. The security response, initially police led, failed to contain the rapidly evolving armed group as it wrecked havoc in Mt Elgon and parts of Trans Nzoia district. Thousands of people have been displaced, more than 600 killed while others have been kidnapped, tortured and raped.

The Government finally responded to the SLDF atrocities in March 2008 by deploying a joint Military and Police operation. The Operation, dubbed “Operation Okoa Maisha” was meant to curb the activities of the SLDF and maintain peace and security in the area. Local residents initially welcomed the crackdown but were quickly alienated by the strategy pursued by the security forces. The operation is being carried out in a veil of secrecy and there have been complaints of torture from the local community by the Military and the Police in carrying out this operation.

The operation meant to bring peace and maintain security has resulted in one of the worst forms of human rights abuse. The scale of human rights violations committed by the Kenyan security forces in the course of their operations against the SLDF, in particular systematic torture, is inhuman and degrading. Evidence has shown that security forces descended on virtually all men and women in Mt Elgon, beat and tortured them asking them to identify the SLDF militia.

Anecdotal evidence available to IMLU before conducting the field documentation pointed to a situation of double tragedy – where citizens who had endured over two years of torture in the hands of SLDF were now facing another round of torture from the military. IMLU carried out the field documentation of cases of torture and human rights abuse to ascertain the claims of torture and bring to the public the scale of the problem.

## **2.1 Purpose of the field documentation**

The Independent Medico Legal Unit carried out the field documentation as a response to the anecdotal evidence and complaints of torture received by the organisation. The purpose of the documentation was to independently assess the situation in Mt Elgon and the nature and extent of human rights violations by the ‘Operation Okoa Maisha’.

The specific objectives of this documentation were to:

- Establish the credibility of claims of torture of civilians by the military and other state agencies in Mt Elgon district
- Identify the nature of torture and other human rights abuses involved in the military operation
- Document specific cases of torture
- Speak for the voiceless and make public the human rights situation in Mt Elgon district

## **2.2 Methodology of the field documentation into allegations of torture in Mt Elgon District**

The field documentation was guided by article 1 and 2 of the “Principles on the Effective Documentation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These articles are quite categorical on the state party’s obligation to investigate allegations of torture even where no complaint has been lodged with relevant authorities. The government has ignored the documentation of the torture claims so far. IMLU was therefore guided by the need to act on behalf of the citizens to promote and defend their rights in carrying out this documentation.

IMLU and its partners carried out this documentation based on the apparent disregard and or refusal by the government to investigate. The documentation adhered to international standards of investigating torture which includes obtaining consent from complainants, obtaining detailed statements, interviewing witnesses if any, conducting physical and psychological examinations in line with the Istanbul protocol on documentation of torture.

The field documentation was carried out by IMLU lawyers, psychologists and doctors with assistance from prison department, human rights monitors in Mt Elgon and health professionals in the area. This documentation was conducted in three phases: The first phase was a one-day fact finding mission carried out in Bungoma prison. Lawyers largely conducted this mission. The lawyers interviewed the officer –in-charge and his deputy about the matter. It was established that more than 400 torture survivors had been remanded at the prison in March and April 2008 after being charged at Sirisia and Bungoma Law Courts. Due to the said developments the total number of prisoners had escalated to a staggering 1380 prisoners as opposed to their normal average of 700 primarily consisting of accused persons charged with bailable offences.

The prison had just rejected 40 Accused persons from Mt Elgon related cases before the IMLU team arrived on account of lack of capacity to hold them. The Accused persons had to be taken to Webuye Police station. The mission established that the Kenya Red Cross had set up a medical camp at the prison to offer first aid exclusively to the more than 400 torture survivors from Mt Elgon remanded at the prison.

The mission interviewed torture survivors from the military operation in Mount Elgon remanded at the prison and recorded witness statements and obtained written consents for legal representation, medical treatment & documentation and media publicity.

During the first mission, IMLU also instructed a team of medical practitioners from its network to carry out forensic medical examination and documentation of the injuries sustained by the torture survivors during the subsequent week. The medical practitioners prepared reports based on their examination and forwarded the same to IMLU for analysis and further action.

The above medico-legal documentation on torture was carried out in compliance with the Istanbul Protocol on the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognized by the UN. This phase involved documentation of examination findings from 119 torture survivors.

The second phase was a more comprehensive follow up field documentation exercise conducted in May 2008. This exercise involved lawyers, doctors and psychologists. There was an urgent need to bring in psychologists given that majority of the people seen during the first investigative exercise appeared to be traumatized and as a result were fearful and sometimes not willing to disclose details of their ordeals in the hands of the perpetrators. Individuals who alleged to have been tortured from all of the four divisions in Mt Elgon were mobilized with the assistance of local human rights monitors. 166 individuals were interviewed: recorded statements with the IMLU lawyers, those with injuries were attended to by the IMLU doctors and there was a general psychological assessment to determine their mental health status.

The final phase involved two fact finding missions between the 29<sup>th</sup> July and the 8<sup>th</sup> August 2008 made deep into Mount Elgon by a team of IMLU field staff and a lawyer and a pathologist to verify claims of alleged killings of persons previously in custody by the military. This mission resulted in an institution of a legal process for preservation of human remains and a formal complaint being lodged at the Kapsokwony police division.

Some of the evidence gathered included photographs and a video of a scene 300 meters from a former military camp at Kamarang scattered with human skeletal remains.



The exercise involved the following steps:

- a) Organizing a fact finding mission involving Lawyers, psychologists and doctors.
- b) Obtaining informed consent from complainants.
- c) Recording of detailed statements from the complainants.
- d) Recording of witness statements (if any).
- e) Conducting physical medical examinations and documenting all findings.
- f) Conducting psychological evaluation of complainants and referring traumatized ones for psychological support
- g) Offering medical treatment where necessary.
- h) Preparation and certification of individual medical reports.
- i) Offering legal representation.
- j) Video and photography documentation.

### **3.0 Profile of survivors**

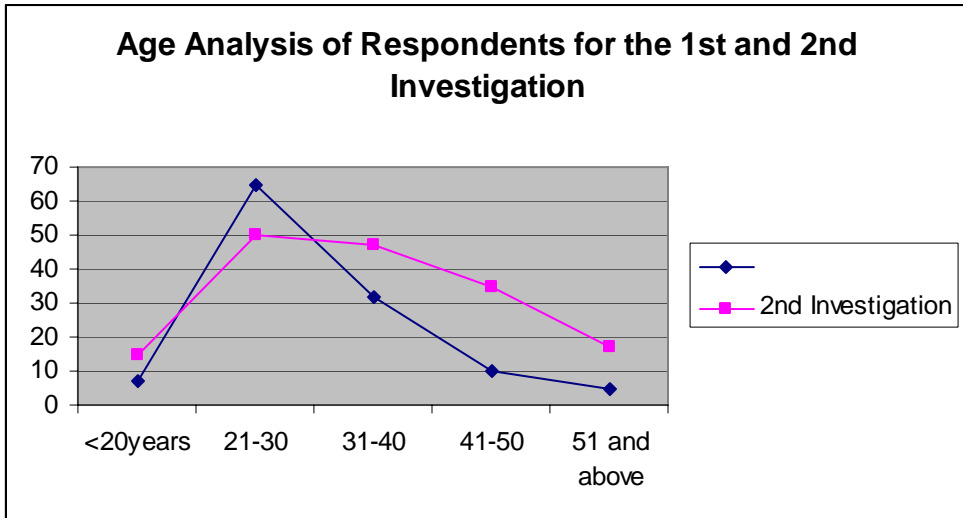
A total number of 285 respondents were interviewed during the first and second missions. The age, sex and geographical spread of the torture survivors are as follows:

#### **3.1 Biodata analysis**

All the respondents alleging torture interviewed during the first mission were male persons between the ages of 17 and 55 drawn from the Sabaot Ethnic Community save for one who claimed to be from the Bukusu community. Most of them are farmers while others consist of School going children, farmers, hoteliers, vegetable sellers, drivers, market collectors, teachers, athletes, cooks and a chief. However in the follow up study 19.8 % of the torture survivors were female and 24% were youths below the age of 20 years.

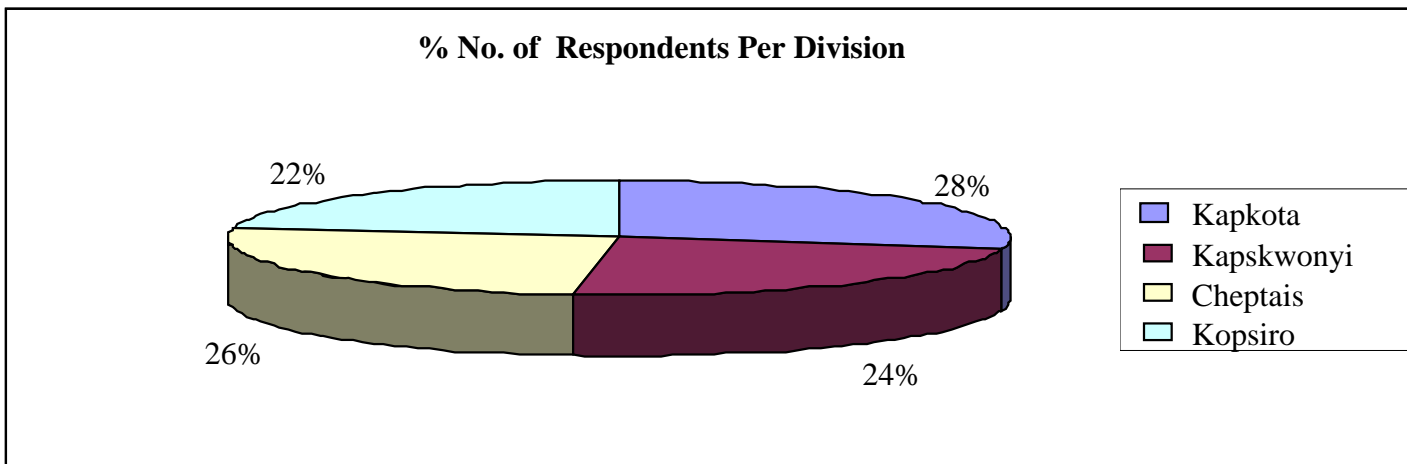
The majority of persons tortured ranged from ages 21 to 30 representing an average of 43% of the total number of respondents. This means that people targeted for torture constituted the most productive section of the population.

The age analysis is shown on the table below.



### 3.2 Geographical Spread of the Torture Survivors

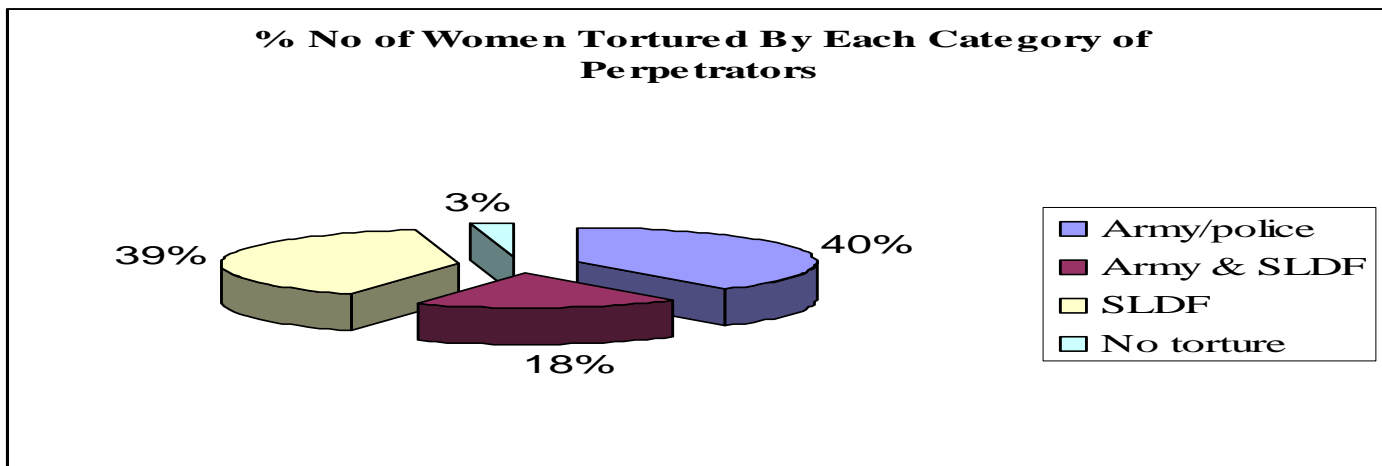
The sampling methodology for the field documentation was largely purposive. IMLU through the local human rights monitors mobilized torture survivors from the four divisions in Mt Elgon. Despite the non random sampling technique a fairly proportionate sample of torture survivors was drawn from the four divisions in Mt Elgon. Of the 285 clients interviewed 28% were from Kapkota, 24% from Kapsakwonyi, 26% from Cheptais and 22% from Kopsiro. Kapkota division generally has a higher number of people alleging to have been tortured hence seems to have been the epicenter of the military operation. Below is an illustration of the geographical spread of the respondents:



### 3.3 Violence on women

More men than women have been tortured in Mt Elgon both by the SLDF militia and the security forces. All the 119 torture survivors interviewed in Bungoma prison during the first mission were all male. However, during the second field documentation involving 166 respondents, 19.8% of them were female. Out of this figure 39.4% of the women alleged to have been tortured by the Army/Police Officers, 39.4% by the SLDF Militia and 18.2% by both the SLDF militia and the security officers.

Further 3% of the women respondents exhibited no torture at all. However, it was revealed that rape of women had been perpetrated by the SLDF with many women being raped in front of their family members or being taken into hideouts. During the military operation, women were not safe either. About 3% of the women interviewed indicated people in army uniform had sexually assaulted them. Given the difficulties in reporting and documenting rape, it is possible that many more women were raped but do not have the courage to report. The chart below illustrates the percentage of women raped by each category:



Women suffered atrocities ranging from being raped, kicked, whipped, slapped and made to walk long distances. One glaring example is where the army officers bundled a woman who had a two weeks old new born baby out of her house at night and made her to walk for close to five kilometers while beating and kicking her and only released her when one of the army men realized that she was bleeding profusely. The woman had earlier fled her home in Chepkururu to reside in Chwele after the killing of her husband by the SLDF. She narrated her ordeal:

#### **Case 1**

*"I reside in Huruma, Chepkururu but I am currently in Chwele. I left Chepkururu after the slaughtering of my husband. On the 11<sup>th</sup> of August 2007, my husband had gone to herd our cattle at around 5.00pm when the SLDF captured him. It was my small boy who had accompanied him that informed me about it.*

*At Chwele I have been staying with a man who deserted me when I got pregnant. I sell onions at Chwele and stay in a rented house. On the 11<sup>th</sup> of May, 2008 we were attacked by the police officers. They said that they were the Kenya Police. I was with two children and they were pushed under the bed.*

*They asked me where my husband was and I told them that he was dead. They took me and my new born baby and they made us walk for along distance, about three kilometres. I started bleeding as I had just given birth. One of the officers noticed that I was bleeding heavily, he then kicked me on the back and ordered me to go back home. Some of the officers were also in army uniform. I have never sought treatment.*

*I have a constant problem with my back and the bleeding keeps on coming back. That's all I have to say."*

## 4.0 Key findings

The IMLU field documentation team found out that gross human rights violations had been meted on the Mt. Elgon people by both the SLDF Militia and the Security officers.

The people of Mt. Elgon, who had been victimised by the SLDF, were again being tortured by the military that had gone there ostensibly to protect them. Key findings of the documentation are as follows:

### 4.1 Double tragedy victims

Evidence collected during the field documentation show that about 27% of the torture survivors interviewed had been arrested/rounded up by both the SLDF and the army. Most of these people had their body parts, especially ears and hands, mutilated by the SLDF and were therefore an easy target by the Military. The Military arrested and tortured these people demanding that they show them the people who had cut their body parts and their hideouts.

A teacher who had suffered in the hands of SLDF and the Military narrated his ordeal:

#### **Case 2**

*I am 44 years and I am a teacher at the Kapkurungo Primary school. I am displaced and I currently live in Kimabole. On the 3<sup>rd</sup> of October 2006 the SLDF killed my brother and took away all my household goods on top of demolishing my house.*

*The next year on the 22<sup>nd</sup> of April 18 members of SLDF came to where I was and they beat me thoroughly. They also cut my hand and hit me on my right ear. They messed up my teeth; both the top and bottom ones. One of the men urinated in my mouth and they forced me to swallow.*

*They then took me to Cheptabururu area and made me remove my shirt. They made me carry a sack of potatoes for 6kms. They even asked me if I support them. They killed two other people who were there with us. They later released me and told me not to say anything. I was not supposed to seek any medical advice too. They told me that if I disobeyed them they would find me and kill me.*

*On the 20<sup>th</sup> of June 2008, I met some army men at Chesikaki. They grabbed me and started to beat me as they stepped on me and slapped me. They took my ID and looked at it and when they saw that I was from Chwele they stopped beating me. They asked me where the militia could be found.*

*They had kicked my genitals and I doubt that I can now procreate. My ears and chest were also injured. I sought help at the Sirisia rights office and the head was not there. He has not made appearance till today. That is all.*

Another victim of double tragedy had his house torched and his ear chopped off by SLDF and tortured by the Military narrates thus:

#### **Case 3**

*I am from Masaek in Mount Elgon. On the 10<sup>th</sup> of April 2006 I was arrested by the SLDF. They took me home at 11pm. They asked me to remove my clothes and told me to untie the seven cattle that I had. They also demanded for money and my wife gave them 7000kshs and in the process they also took my TV. They cut me with a knife and forced me to carry the items up to 15kms; they then cut me on the left ear and then tied me to a tree upside down. They kept me for two days and when the police came they ran away. When I went back home I found that they had torched my house. My neighbours took me to the Bungoma General Hospital for a month. I stay at Chwele market. Some good Samaritans gave me food and clothes.*

*On the 6<sup>th</sup> march 2008 I was arrested by policemen and they told me to show them who had cut my ear. We were beaten with others and told that we had to show them the militia. I was later released and I went back to chwele. I cannot tell who tortured me and I do not think that the government should approve of this.*

## **4.2 Arbitrary arrests**

The torture survivors were arrested from as early as 6:00am to as late as 4:00pm. There were equally extreme cases where people were bundled out of their houses during the wee hours of 12am to 2am. The arrests were affected by police officers, some of whom are known to the survivors and military officers in uniform. When military officers were asked to identify themselves the officers declined to do so and turned violent. The arresting procedures laid out in law were not followed during arrests of suspects.

The arrests took the form of various degrees of physical violence but in some cases police officers deceived the survivors to accompany them to a place where they would be given a card showing that they are not members of the Sabaot Lands Defence Force, in which case they willingly complied.

Many arrests took place at houses of survivors some of which military officers violently broke into as early as 6:00am when the survivors were still asleep. Others took place while survivors were in their farms, at shopping centres, market places, schools and public service vehicles at bus stops.

The areas most affected were Cheptais, Bungosi, Kapsiku, Sansa, Burkenwo, Meriko, Chesikaki, Kamarang, Kihii Village and Mayanja areas in Mt Elgon area. Those arrested from public service vehicles were singled out on account of their tribes as implicated by their identity cards and branded as escapees from Mt Elgon region.

It is now apparent from the documented cases that while deception and ambush had been used as a tactic of arrest a number of respondents/survivors willingly surrendered to the security forces before being subjected to torture and/or enforced disappearance.

Some Survivors arrested far from Mt Elgon area were first detained at Police stations before they were transferred to Kapkota using police vehicles. All the survivors were eventually transferred to Kapkota using trucks, land rovers and canters belonging to the military or police department. Kapkota Military Camp located on a field allegedly belonging to Kapkota Primary School where they found a large number of military officers with their commanders (i.e. senior officers). Here they were all asked to strip naked before being subjected to the most severe forms of torture.

### **Case 4.**

*On 13/3/2008 at about 6 am in the morning I was with my wife and our child at our home in Cheptais, Mt Elgon. About five officers entered our house when I was just about to light my jiko. They told me that they wanted to take me to the D.O so that I could be given a document that would clear me from participation from any warlike activities by the Sabaot Lands Defense Force. They were quite polite. One of the police officers known as Njuguna and is based at Chesiro.*

*We came out with my wife and child. I saw that there were other officers doing the same to other people in the village. We proceeded with the officer to Cheptais Market About one and half km from my house. 200 police officers were involved in this. At the market we found two land rovers and the women were separated from the men. The women were released. The military officers then started beating us and they bundled us into 4 trucks belonging to the military.*

*We were taken to Kapkota Primary School. 7 helicopters came to the field at that time and dropped off military officers. The officers asked us to remove all our clothes. The officers started beating us and they told us that we*

*should shout 'Jeshi ni moja' every time they beat us. I was beaten with a whip and wire; I was lying on the ground on my stomach.*

*They beat me on my back, buttocks and legs. They told us to stand up and I was beaten on the chest again. We were beaten from about 7am-1pm. We were then taken to a vehicle that was allegedly for screening and it had a computer inside. We were asked to stand facing the window. I realized that this was a hoax because at some point the wind blew the cover of the vehicle and revealed the faces of men who identified as local residents and were supporting the government position on Mt Elgon. One of them is even nicknamed 'Monka'. We were then beaten after the screening till 6 pm. We were then taken to Kakamega police station that night and arraigned at Sirisia court on Monday 17th March 2008. we were charged with promoting war like activities. Those of us who were taken to the police station were 150. We were denied bail and remanded at Bungoma prison. About 408 of us have been charged with the same case. They are all remanded in Bungoma Prison.*

*The next hearing date is coming up on 21st April 2008. About five advocates appear in this matter representing specific client but one of them says that he is appearing for all the accused persons.*

#### **Case 5**

*On the 12th of March at 9.30 am I was cultivating my land at Kapsika area when I saw an air force plane that was accompanied by three other helicopter gunships after some time the plane landed while the helicopter continued circling. I then saw the soldiers coming in a formation they were heading towards my home and I could identify them as the military. I tried to identify myself but they rebuked me and they did not identify themselves. They then ordered me, P.M. and S.M. to stand and head towards Burukenwa market. Upon crossing the stream I was ordered to kneel down. Other people were brought and we proceeded to the market. We were then ordered to lie on our bellies and a police lorry came and we were forced to board. From there we were taken to Kapkota Military base. There I was interrogated by two senior army officers, an army major and a Lt. Colonel. They immediately framed me as being a trainer from the Sabaot Defense Land Force. The D.C.I.O Mbaruk came and I was ordered to lie down on my belly and I was being flogged by a nyahunyo by 4 soldiers. All along they wanted me to produce a firearm and this session lasted 3 hours. I had been stripped of my shirt. We were forced into different postures and forced to bend and all this time we were being beaten. We were forced to open our mouths and the officers would pour water into our mouths and at 5 pm we were given dry biscuits. We were then all blindfolded with masking tape of different colours for 30 minutes and then they started the psychological torture.*

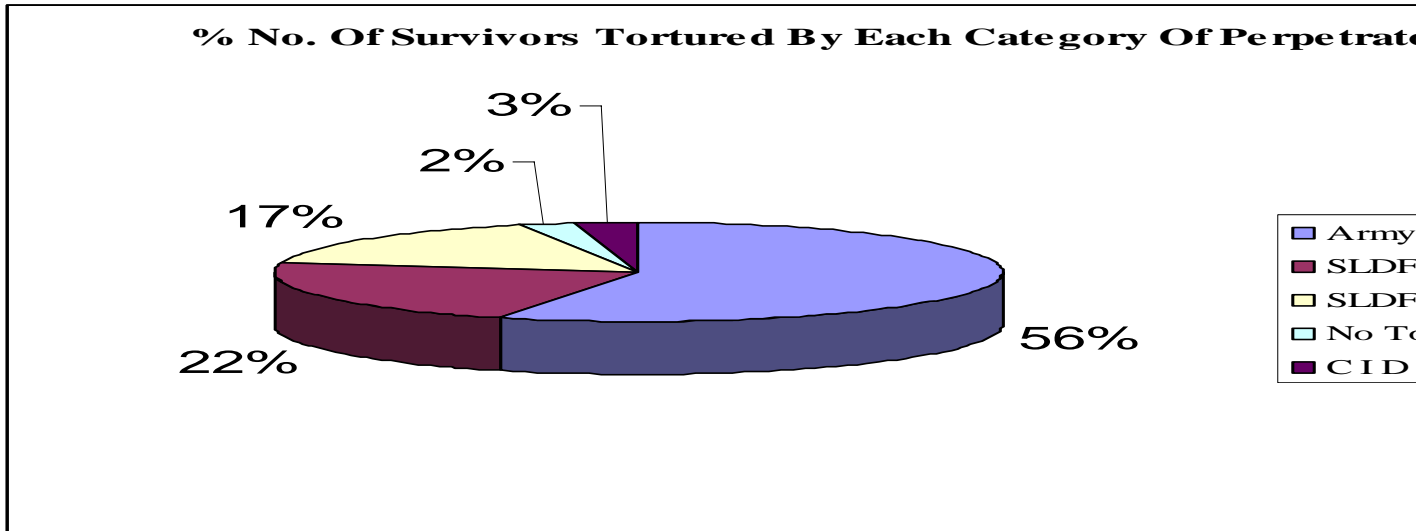
*I was transferred to Kakamega police station for 2 days and then returned to Kapkota and asked to join the red group. I was stripped of my shirt and 4 soldiers descended on me with whips. I saw a soldier who I was with in KAFTE/C Embakasi, he prevailed on his colleagues to stop torturing me. I was placed in the lorry and escorted to my office in Chepkube Coffee factory where I collected 2 files that were work related, I handed it to them and then after that I was not tortured.*

*That evening I was taken to Bungoma Police Station for a weekend before being arraigned in court the following Monday.*

### **4.3 Perpetrators of torture**

Virtually all the survivors interviewed during the first phase of IMLU documentation (119 respondents) were tortured by military officers but a few confessed to having been also tortured by police officers from the Kenya Police Service, Administration Police and General Service Unit at the point of arrest or while being transferred to police stations or law courts. In the second field documentation there were a total of 166 respondents out of which 58.4% had been tortured by the army/police officers, 22.9% by the militia (SLDF) and 17.5 % by both the militia and army/police officers. 2.4 % of the sampled population exhibited no torture while 3% had been subjected to cruel inhuman degrading treatment by security forces.

The chart below illustrates the %age number of survivors tortured by each category of perpetrators



#### 4.4 Places of torture

All the survivors interviewed during the first phase of documentation identified Kapkota Military Camp as the main place where torture took place. The survivors who reached Kapkota were first beaten indiscriminately for about 2 to 3 hours without being questioned. Their pleas of innocence were completely ignored. The entire duration of torture lasted between 2 hours and 6 hours during the day and in some cases lasted up to five days. A few of them were then released while the rest were further detained in Chesikaki, Bungoma, Kakamega and Kimilili Police stations as well as the administration Police camp near Mayanga Police Station before being charged for offences ranging from possession of illegal fire arms to engaging in war like activities.

During the second round of field documentation, it was revealed that torture activities had been intensified and the places of torture were widespread. Nevertheless, Kapkota military camp still emerged as the most notorious place of torture with 24% of the torture survivors identifying it as the place where they were tortured. However, many other places were equally identified as places of illegal detention and torture by the military. These places include the following:

- ❖ Chwele Police Station
- ❖ Chelebei
- ❖ Narondo Market
- ❖ Chebwek Market
- ❖ Chepkube
- ❖ Cheptais Market
- ❖ Emia
- ❖ Malakasi police station
- ❖ Masaek
- ❖ Cheptaburu
- ❖ Kopsiro
- ❖ Chesikaki
- ❖ Changweya and
- ❖ Kaptama

#### 4.5 Forms of torture/ Acts of Inhuman Degrading Treatment /Injuries suffered

Severe forms of torture and inhuman degrading treatment were meted on survivors by both the SLDF militia and the military/police officers. The SLDF for a period of over 18 months had been rounding up people and whipping them, chopping off their arms and ears, tying them onto a tree upside down among others. The people of Mt Elgon are not safe with the security officers either. 20% of the people alleging to have been tortured by police/army officers complained of having had their genitalia pulled, thrown into a muddy river immediately after arrest and later being made to bite each other's backs until they bled. This was besides being whipped, slapped, kicked and made to sing "Jeshi la Kenya ni moja".

#### List of forms of torture/ injuries/Acts of inhuman degrading treatment as revealed by survivors interviewed by IMLU.

MILITIA (SLDF)	SECURITY FORCES(POLICE AND ARMY OFFICERS)
<ul style="list-style-type: none"> <li>❖ Urinating into one's mouth</li> <li>❖ Carrying heavy loads over along distance</li> <li>❖ Pulling of genitals</li> <li>❖ Kicking</li> <li>❖ Slapping</li> <li>❖ Hacking with an axe</li> <li>❖ Hacking with a panga</li> <li>❖ Tying one's hands</li> <li>❖ Stabbing on the neck and around the ribs</li> <li>❖ Whipping with wires</li> <li>❖ Gun shots</li> <li>❖ Chopping off ears</li> </ul>	<ul style="list-style-type: none"> <li>❖ Beatings (slaps &amp; kicks)</li> <li>❖ Beatings with weapons such as gun butts, rungus (i.e. clubs), wires, whips and wood planks</li> <li>❖ Insertion of barrels of guns into anus</li> <li>❖ Stripping naked</li> <li>❖ Forced to move on knees for up to 2 hours</li> <li>❖ Forced postures</li> <li>❖ Survivors forced to open mouths and water poured in</li> <li>❖ Blindfolding</li> <li>❖ Survivors made to move hands as if calling the rain and rained on for more than 1 hour while sleeping on their already bruised and injured backs.</li> <li>❖ Forced to bite fellow detainee</li> <li>❖ Forced to pull each other's genital organs</li> <li>❖ Forced to suck each other's breasts</li> <li>❖ Forced to whip every other detainee in turns</li> <li>❖ Frog jumps</li> <li>❖ Forced to move on the ground using bare stomach</li> <li>❖ Forced to carry victims who succumbed to torture and died at the military camp.</li> <li>❖ Forced to sing 'jeshi ni moja' (i.e. the army is one, only the Armed Forces) and also in vernacular while being beaten</li> <li>❖ Survivors forced to lie and crawl on their bellies on barbed wire rolls while military officers stepped on them.</li> <li>❖ Denial of food</li> <li>❖ Pulling of genitals</li> </ul>

#### "Screening" Process

All the torture survivors were subjected to an alleged computer/satellite screening process where they were taken to a nearby camouflaged vehicle and asked to look up and shout their name. Unknown to most of them, which some of them later discovered, some informers had hidden in the vehicle amidst the bushes and trees to identify those they believed to be members of Sabaot Lands Defence Force or "Janjaweed". Their identity was revealed when the wind blew their cover and their faces were positively identified by some of the survivors at the camp. At this screening stage some were branded as 'red' and taken through another session of torture others branded as 'blue' were subsequently set free.

A few survivors were interrogated by questioning but majority were only tortured without regard for what they had to say. At the end of the torture session, all the survivors' photos were taken and names were taken down by the military officers before they were transferred to police stations.



The screening process, as described by the people interviewed, did not follow the legal process for collecting evidence. Torture, as a means of collecting evidence' is not admissible. The whole military operation was carried out outside existing laws and methods and processes followed from arrest to arraigning people in court.

#### **4.6 Complicity of police department in torture**

The torture survivors indicated that police officers assisted the military in arresting them and in transferring them to waiting military vehicles and Kapkota military camp where they were tortured. Police also waited and picked torture survivors from the camp and transferred them to police stations, brought them back to Kapkota for further torture or took them to court. The survivors also pointed out that police also provided their vehicles to be used in ferrying survivors from one place to another.

#### **4.7 Nature and degree of injuries**

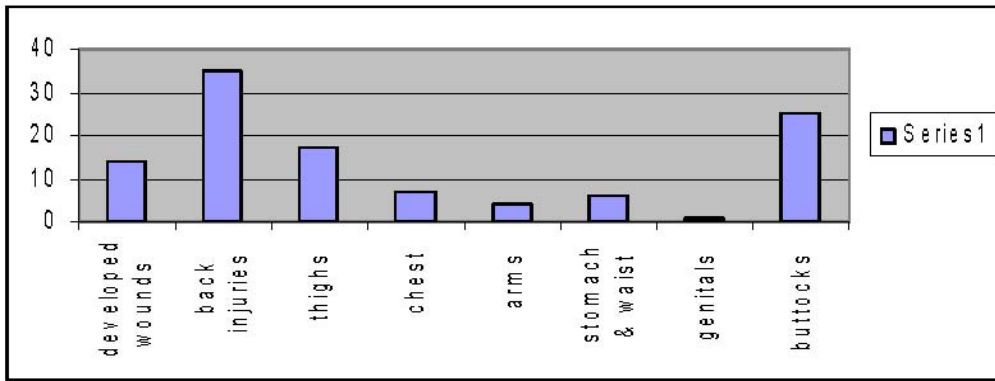
85% of torture survivors had severe soft tissue injuries with wounds, 10% had moderate severe tissue injuries and 5 % had minor soft tissue injuries emanating from the following amongst others:

- ❖ Whip marks
- ❖ Bite marks
- ❖ Sharp object cuts
- ❖ Bruises
- ❖ Gunshot wounds
- ❖ Eye injuries
- ❖ Chopped off ears

It is noteworthy that all the injuries concentrated in specific parts of the body pointing out to a systematic way of torture. Most injuries were observed on:

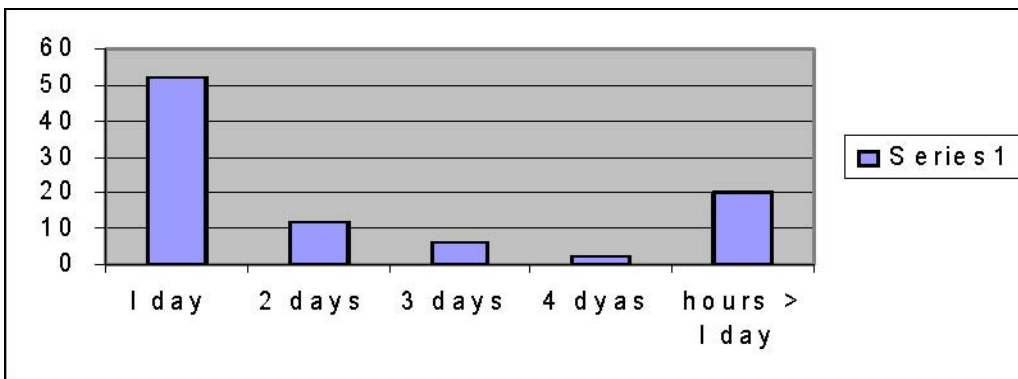
- ❖ backs,
- ❖ thighs,
- ❖ chest wounds,
- ❖ knees,
- ❖ wrists,
- ❖ swollen genitals,
- ❖ buttocks,
- ❖ elbows,
- ❖ shoulders,
- ❖ Waist and the head.

The graph below summarizes the nature of injuries suffered.



#### 4.8 Duration of torture

79% of alleged tortured persons had been tortured continuously for more than a day while 21% had been tortured continuously between 2 to 3 hours.



#### 4.9 Psychological Effects of Torture

Many survivors of torture often experience profound and long-lasting effects, including Post Traumatic Stress Disorder (PTSD), depression and anxiety. Other psychological symptoms of torture frequently include irritability, paranoia, guilt, suspiciousness, and sexual dysfunction, loss of concentration, confusion, insomnia, nightmares, impaired memory, and memory loss. Individuals who have survived torture and war trauma are often left with feelings of personal insecurity and powerlessness. Their sense of trust and connection with others may be fragmented because of their experiences. Many women who have suffered rape also have to carry the burden of shame felt by their husbands.

Survivors of torture are often unwilling to disclose information about their experiences. They may be suspicious, frightened, or anxious to forget about what has happened. These feelings may discourage them from seeking the help they need. They may be unable to trust people and, consequently, become disillusioned.

Indeed in assessing the Mt Elgon torture survivors the IMLU team of psychologists revealed that; About 74% of the torture survivors exhibited signs of Post Traumatic Stress Disorder (PTSD).

15.2% of the torture survivors showed signs of confusion, insomnia, short concentration spans and traumatic memories,

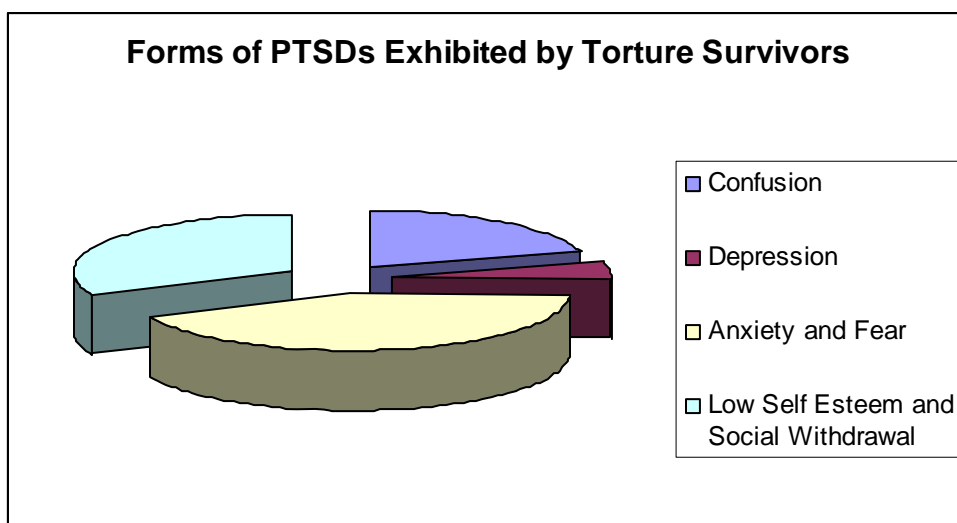
3.5% strong signs of depression,

31.7 % anxiety and fear; and

23.5% exhibited low self esteem, bitterness, loss of objectivity and social withdrawal.

The psychologists therefore recommend that there is an urgent need for psychological therapy in Mount Elgon both for the torture survivors and their families.

The chart below illustrates the various forms of PTSD as revealed by the torture survivors:



#### 4.10 Legal Circumstances and Intervention by IMLU

During the first round of documentation, IMLU's fact-finding team established that all the survivors interviewed were charged at Sirisia Law Courts with 'Promoting War-like Activities' in cases numbers **(a) 104/08 (b) 106/08 (c) 110/08 (d) 112/08 (e) 114/08 (f) 115/08 (g) 107/08 (h) 108/08 (l) 201/08 (j) 210/08** and denied bail.

There were more than 70 persons accused under each of these cases. Most of them did not understand and had not been informed of the nature of charges they were facing and had wrongly interpreted the offences by direct translation as 'Incitement to Violence'. Most were unable to raise bail if they were awarded the same by the court and could not afford to pay for legal representation. In cases number **107/08, 108/08, 201/08** and **210/08** there were 15 children/minors charged and currently remanded at the Kakamega Borstal institution.

In the criminal cases in courts Survivors of torture have raised their complaints and various courts have made appropriate orders for investigation. In all the cases the prosecutions response has been that the injuries were occasioned on the accused by the members of the public, which amounts to an admission that torture has occurred without the state taking appropriate action to bring to book the perpetrators

During the second documentation, it was established that out of the 166 people interviewed 58.5% were charged in court on offences ranging from being suspected to be members of the SLDF, being in possession of firearms, promotion of warlike activities and harboring SLDF members.

IMLU has instructed human rights lawyers to provide legal representation to torture survivors as follows:

- Criminal representation to specific torture survivors in the aforementioned 10 cases.
- IMLU lawyer has filed **Constitutional & Judicial Review Division Petition No. 383 of 2008 at the High Court in Nairobi** seeking redress in a constitutional petition, **Moses Mokoit -vs- The Defence Council & Attorney General** filed on 26<sup>th</sup> June 2008. *The case is scheduled for mention on 16<sup>th</sup> Sept 2008.*
- An IMLU lawyer on 31<sup>st</sup> July 2008 filed a **High Court Misc. Application No. 27 of 2008 (habeas corpus application) on behalf of the family of Patrick Kipteyo Sewui (Senior Asst Chief - Chepwek Location, Cheptais Division) against the Commissioner of Police, Chief of General Staff and AP Commandant.** The former assistant chief had been arrested by the military on 25<sup>th</sup> April 2008 and has since been missing. This matter is scheduled for hearing on the 27<sup>th</sup> August 2008
- Another Bungoma-based lawyer under instructions from IMLU participated in a medico-legal fact-finding mission alongside a pathologist and IMLU staff members to verify the allegations by three (3) women L.C.M, L.T.N and E.C.C. of the existence of human remains of their husbands (Sospeter Chepkwesi Cherop, Wilson Chesori and Jackson Komon) identified with evidence of the deceased persons' clothing at Kamarang Forest. Their husbands had willingly submitted to arrest by the police and military officers during the military operation. The fact-finding mission with positive preliminary results was video-taped by IMLU. On 3<sup>rd</sup> August 2008, the lawyer filed **Bungoma CMCC Misc. Application No. 18 of 2008** under certificate of urgency seeking orders to preserve the scene but in a ruling delivered the next day the court shockingly declined to grant the same pleading lack of jurisdiction and referred the matter to the High Court, which was on vacation at the time.
- IMLU has instructed a Kakamega-based lawyer to represent a human rights defender, Dr Walter Nalianya Wekesa, who the police maliciously and falsely alleged that is not qualified to practice medicine in **Kakamega Crim No. 1324 of 2008**. These charges were dismissed by the court on 18<sup>th</sup> Aug 2008. The doctor is still facing other charges in the same case of giving false information to a person employed in the public service (i.e. false medical reports to the Kenya national Commission on Human Rights).
- IMLU has submitted its preliminary report of the first medico-legal documentation on torture at Mt Elgon to the Parliamentary Committee on Defence, which is currently investigating the allegations of torture at Mt Elgon.
- IMLU and ICJ-Kenya lawyers are compiling information on a case of torture with a view to filing a suit against senior military officers, the police and the Attorney General at the East Africa Court of Justice and the International Criminal Court
- IMLU lawyers are in the process of compiling information/evidence on individual cases of

torture for submission to:

- (a) the UN Special Rapporteur on Torture
- (b) the UN Committee Against Torture
- (c) the United Nations High Commission for Human Rights
- (d) the African Union Special Rapporteur on Places of Detention
- (e) the African Commission on Human Rights

## 5.0 Nature of State Response

It is within public knowledge that the state has responded to the aforesaid claims of torture as follows:

- The state security agencies continue to deny, that acts of torture, cruel inhuman degrading treatment or punishment have been perpetrated by their officers during the 'operation okoa maisha' notwithstanding the media reports and revelations by human rights monitors and organizations in the region, while on the same limb they continue to admit that torture and related violations have been committed to the civilians of Mount Elgon by the SDLF and members of the general public, without any clear action to hold the perpetrators to account, a clear admission of the acquiescence by the state in condoning torture.
- The state and security agencies continue to intimidate and harass human rights defenders from the region documenting cases of torture and a locally based organization has been de-registered with its coordinator being arraigned in court on criminal charges while a doctor who participated in examining torture survivors faces criminal charges it is noteworthy that various human rights organizations are under investigations pursuant to numerous comments by different senior government officials including cabinet ministers with warnings of possible de-registration.
- Following allegations of torture and demands for investigation in compliance with its obligation under the Convention against Torture, the government announced that they would conduct an independent inquiry and constituted a four man team comprising of police officers. Two members of the team visited IMLU and interviewed IMLU's officials, but indicated that they were only making general inquiries and declined to receive evidence tendered.

The report of this inquiry has since been kept a closely guarded secret within the police department, the military department, Ministries of Internal Security and Ministry of Defense. What followed after this was the release to the media of a sketchy brief from the police with general comments purported to be a summary preview of the report which primarily focused criticizing reports by various human rights organization and the statutory human rights body thereby confirming that firstly, the government has failed and or refused to comply with its international obligation as contained in Article 12 of the UNCAT to investigate but gone ahead to come up with a whitewash report that absolves the security agencies and that police are determined to cover-up all allegations emanating from the aforesaid operation.

- The military and police have adopted a strategy of shifting blame with each disciplined force alleging that though there was torture it was perpetrated by officers of 'the other disciplined force. The military in particular alleges that torture survivors from the local community did not have capacity to differentiate between military uniform and police uniform(**as contained in a secret inquiry report by the Department of defense**). We now have evidence to the contrary which indicts the military as some of the survivors have been or still are members of the various disciplined services with the knowledge of identifying different uniforms issued to various security agencies.

## 6.0 Summary of findings

- There is credible evidence that 278 survivors from the Mt Elgon operation covered by this report were systematically tortured and/or subjected to cruel inhuman degrading treatment or punishment by security officers and/or the criminal militia (SDLF).
- That there are credible allegations of enforced disappearances of persons in custody of both the police and the military.
- That the state has failed in its obligations under the Convention against torture contrary to Articles 2,4,12, 14 and 16.
- The systematic nature of torture and accompanying magnitude targeting a specific communal group amounts to a crime against humanity as enshrined in the Rome statute of the International Criminal Court which Kenya has signed and ratified. All persons arrested for screening/interrogations have been subjected to torture whether subsequently charged in courts or not.
- The mass arrests, subsequent prosecution and denial of bail of suspected SDLF militias, has not only clogged the administration of criminal justice system in the region but has created congestion of historical proportion in penal facilities in Bungoma, Kakamega and Kitale as well as most of police stations in the region further aggravating the already poor conditions in detention facilities thereby amounting to cruel inhuman degrading treatment.
- “*Operation okoa maisha*” is characterized by secrecy and lack of transparency, accountability and is not intended to preserve law and order but rather systematically engage in gross human rights violation on a population hitherto terrorized by criminal gangs. The military operation must and should be subject to public scrutiny and accountable to the tax payers and the military officers are subject to civilian jurisdiction over crimes committed in the course of their duties.
- The government response so far is an insult of the intelligence of Kenyans and that Kenya as state party to the Convention against Torture (CAT) and other international instruments is obligated to ensure that torture does not occur under any circumstance even during war and any allegations are to be promptly and impartially investigated.

## 7.0 Recommendations and action points

- IMLU recommends that the Attorney General exercises his powers under section 26 of the constitution of Kenya and initiates an investigation leading to prosecution of all perpetrators of torture, cruel inhuman degrading treatment or punishment in Mount Elgon.
- IMLU demands the immediate compliance with the requirements of the law by institution of public inquests in all cases where human remains have been found.
- IMLU recommends against creation of a commission of inquiry as Kenyans are fatigued with commissions that not only guzzle tax payer’s money but amounts to talk shops.
- IMLU recommends the immediate release of and making public the Department of Defense and police inquiries on to these allegations.
- IMLU recommends that the parliamentary committees inquiring to the allegations invite

individual complaints and testimonies in camera before concluding their work.

- IMLU recommends to the Kenyan parliament to come up with a legal framework that eliminates secrecy and lack of accountability in future initiatives by joint security agencies while preserving law and order.
- IMLU intends to continue with rehabilitation of torture survivors and forensic medical documentation of torture in mount Elgon by “operation okoa maisha”
- IMLU shall where possible continue offering medical and psychological rehabilitation.
- IMLU will continue to provide free legal representation of all torture survivors facing criminal charges where necessary.
- All evidence gathered shall generously be shared with the Kenya National Commission on Human rights for purposes of affording justice to the victims and survivors.
- IMLU and its partners intend to use regional, and international mechanisms to afford justice to the victims and survivors of torture
- The IMLU reports will be shared with the office of the Special Rapporteur on Torture.
- All the reports will form a basis of the alternative report being compiled by IMLU and its partners to be submitted to the Committee against Torture.