



Independent Medico-Legal Unit
A Just World Free From Torture

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EDITOR'S NOTE

Since the 2007/2008 post-election violence in Kenya the National Police Service has come under sharp scrutiny on misuse of firearms resulting in extrajudicial, summary and arbitrary executions.

The Commission of Inquiry into Post-Election Violence (CIPEV) popularly known as the Waki commission revealed shocking police brutality, including point-blank shooting of citizens and sexual assaults on innocent women and girls. In 2009 the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, Prof. Philip Alston decried the “systematic, widespread, and clearly planned” killings by Kenya police.

It is against this background that the Constitution of Kenya (COK) promulgated in 2010 envisioned radical reforms initiatives targeting national security organs in general and the National Police Service in particular. By overwhelmingly voting for adoption of the constitution, Kenyans had hoped the envisaged police reforms would help, inter alia, to transform the law enforcement institutions, to make them transparent and accountable to the people.

There was high-end hope, in accordance with article 238 of the constitution, that national security would be ‘pursued in compliance with the law and with utmost respect for the rule of law, democracy, human rights and fundamental freedoms’.

To further strengthen accountability in policing parliament enacted the National Police Service Act of 2011 stipulating that “all officers shall undergo vetting by the commission to assess their suitability and competence”. We believe that police vetting, if successfully undertaken, will be will be a critical launch pad for an effective and people-centered policing in the country. As such, since May 2013, IMLU has held more than 20 community forums covering over 30 counties to sensitize Kenyans on overall police reforms agenda in the country how best to work with and support the commission in ensuring success police vetting processes across the country.

Sadly, In spite of the provisions of a progressive constitution, the ongoing police vetting exercise, the enactment of the Independent Policing Oversight Authority Act 2011 providing for a mechanism of holding the police accountable to the public in the performance of their functions among other relevant legislations the evils that have bedeviled the NPS for years continue unabated. Indeed extrajudicial, summary and arbitrary executions by police are becoming too more frequent despite provisions of the sixth schedule of the NPS Act on conditions and use of force and Firearms.

This report is a pointer to the brazen manifestation of a National Police Service that has assumed the roles of prosecutor, judge, jury and executioner. It puts into perspective our country’s policing and crime response strategy in ensuring respect for the rule of law and the presumption of innocence until proven guilty.

JOSEPH MUTHURI

Advocacy & Communication Officer
Independent Medico - Legal Unit

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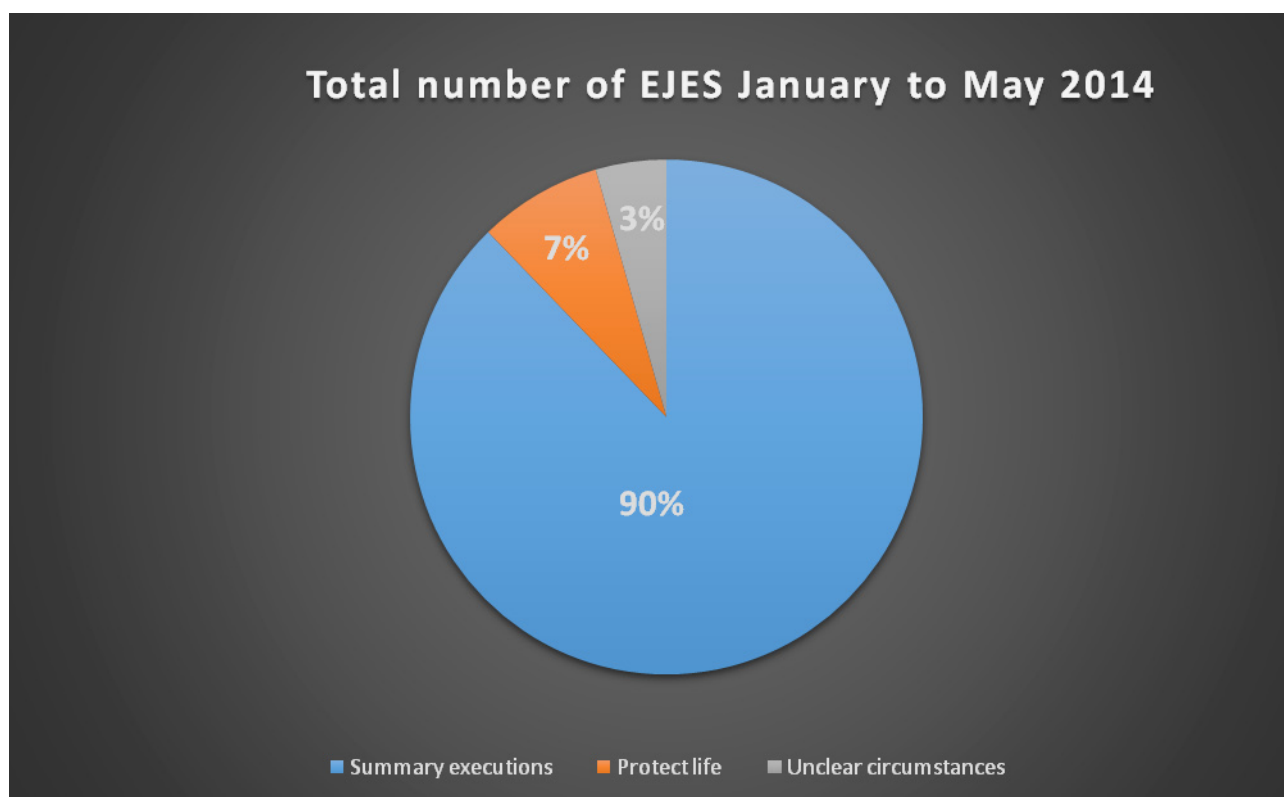
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SUMMARY ANALYSIS OF THE USE OF LETHAL FORCE BY POLICE JANUARY TO MAY 2014

The Independent Medico- Legal Unit (IMLU) has over the years been monitoring the print and electronic media on cases of use of lethal force by the National Police Service (NPS). The number of deaths resulting from police misuse of firearms have gone up day after day even as the National Assembly amends the National Police Service Act 2011 ostensibly to give police more robust powers to use lethal force in protection of property.

Our focus in this issue will be cases recorded from January 2014 to May 2014. The numbers could be higher because our analysis only took into consideration thereported cases, with many police killings often happening away from the limelight.

The total numbers of people executed by police between January 2014 and May 31st 2014 are One hundred and eighteen (118); One hundred and six (106) of who were summarily executed, eight (8) arguably shot to protect life and four (4) in unclear circumstances. This is shown in the illustration



below;

Diagram 4: Total number of extra judicial executions recorded between 1st January 2014 and May 31st 2014

In the monthly analysis, January and May recorded the highest number of police gun-related deaths with a

total of 28 each, (31%), followed by April with 27 (30%), March with 21(23%) then February had the lowest with 14(16%).

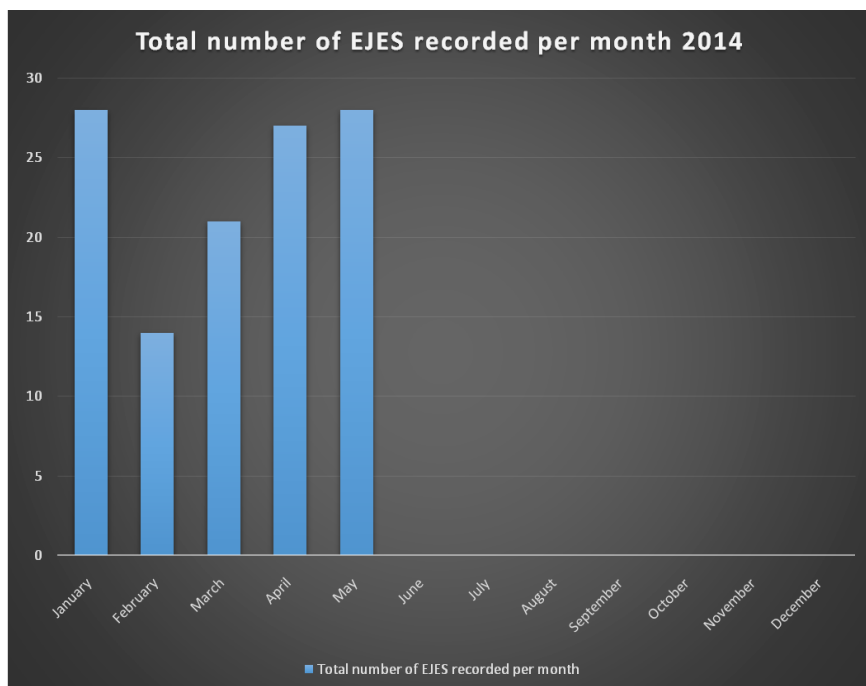
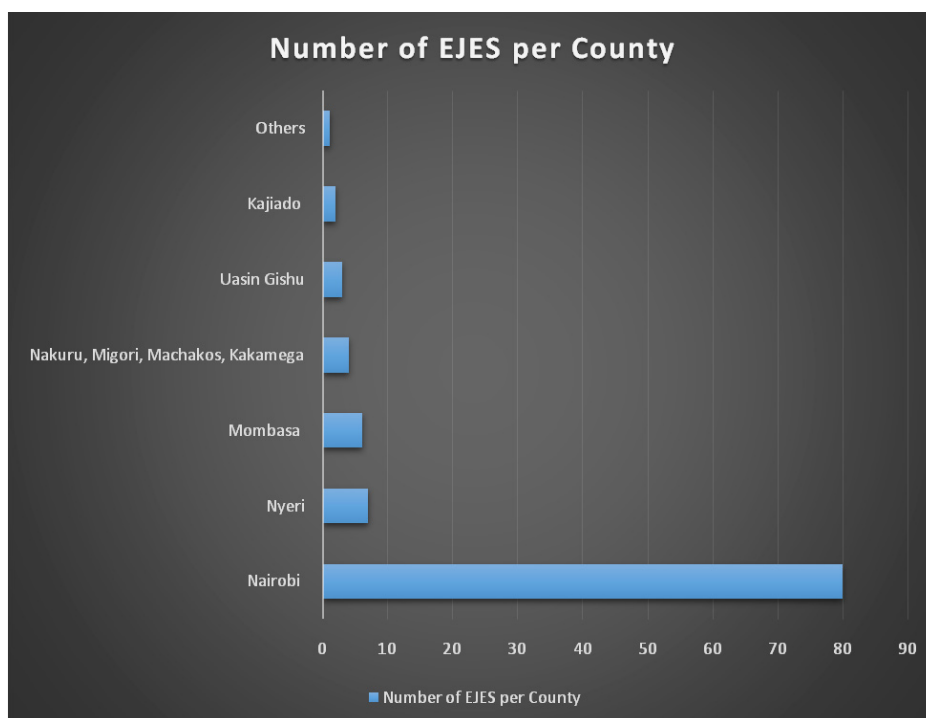


Diagram 5: Total number of extra judicial executions recorded between January 1st 2014 and April 31st May 2014 per month.
Nairobi County tops in the highest number of executions as recorded between January and May

2014 with a total number of eighty (80), Nyeri followed with seven (7), Mombasa with (6) then Migori, Kakamega, Machakos and Nakuru Counties with four each (4), Uasin Gishu county with three (3), Kajiado with two (2) and Kilifi, Kwale, Bungoma and



Nyamira Counties each recorded one (1). The analysis is shown in the representation below;

Diagram 6: Total number of extra judicial executions recorded between January 2014 and May 31st 2014 per County

The question that begs answers is whether police have been justified in use of lethal force especially in circumstances where alternatives could be suited.

EXTRA JUDICIAL EXECUTIONS CASE STUDIES

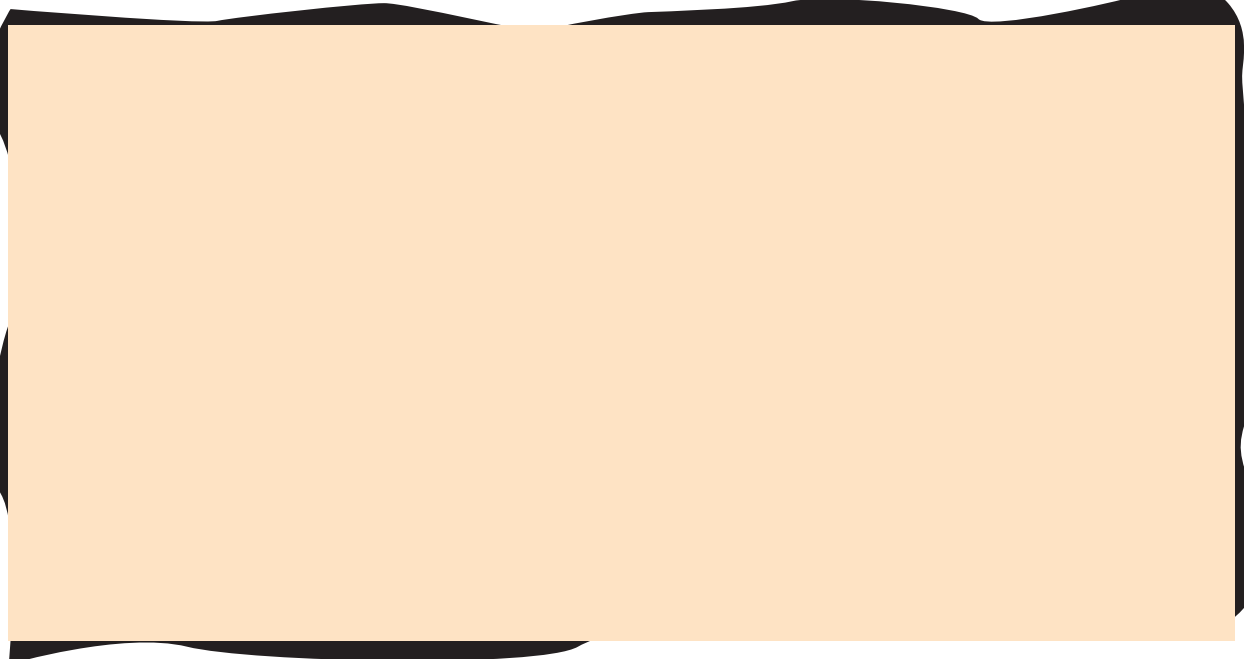
Over the years, IMLU has received and documented several cases of extra judicial executions involving police death squads, illegal use of deadly force by on-duty police, killings by police while off-duty, elimination of witnesses, extortion attempts and kidnappings.

According to our documentations, majority of the perpetrators are police officers, followed by the Kenya Defense Force and then the Kenya Forestry

guards. The Kenya Wildlife Service officers have also been perpetrators of EJES in what has been described as the process of “eliminating poachers.”

These executions are carried out in violation of human rights norms and standards that prohibit murder and forbid the arbitrary deprivation of life.

In this issue, we highlight a few cases of EJES selected from across the country. We hope that the government will re-consider a proposal it has made to amend the National Police Service Act 2011 to give authority to the police to shoot to kill to protect



NAIROBI COUNTY: 15th July 2013 at 10:00 am, 24-year old **Perris Waithera** was breastfeeding her two year old daughter in her house in Mathare Area 2 before going to her usual business place in Roysambu where she operates a clothes business. In a jiffy, she heard gunshots from outside and informed her next door neighbor Wanjiku. The second shot and third gunshots came in quick succession.

Wanjiku immediately heard Waithera cry out loudly from her house. She immediately ran to her house and found Waithera bleeding profusely, her daughter still breastfeeding. Waithera had been shot after a bullet fired by the police, cut through an iron sheet roof killing her instantly. The bullet hit the deceased on the head.

Residents who were protesting the killing said four plain clothes officers from Pangani Police Station were conducting an operation to flush out drug dealers from Mathare's "Nigeria Area." A witness said the police broke into houses and burnt down several shanties shooting aimlessly. He was hit with a rod on his ribs and stepped on his ribs with their boots.

According to autopsy report Waithera died of chest injuries due to a single gunshot from a low velocity firearm at a far range.

The case is being handled by the Independent Policing Oversight Authority (IPOA) for further investigations. IMLU is keenly following up on the investigations and a senior police officer has been charged for dishonoring IPOA summons.

NYERI COUNTY: 16th April 2014 at around 10.00 pm four young men and a woman were allegedly picked by four police officers as they left a popular bar in Ruring'u area where they had been watching a football match.

The officers took the four to Central police station in Nyeri the same night but were not recorded in the Daily Occurrence Book as the case should have been. Incidentally the five were found dead the following day deep in Tagwa Forest in Nyeri.

According to post mortem reports on the four bodies, all the four male bodies had gunshot wounds on the head. In two of these, the gunshots were at close range in nature fired from a low velocity firearm (this denotes a shooting distance of not more than 30 centimeters). One of the bodies had a loose contact gunshot wound while the other had hard contact wounds.

The female body showed that she died from asphyxia (lack of oxygen) due to hanging. The manner of her death is not clear since hanging does not necessarily denote suicide.

There were significant physical injuries to the hands and wrists in two of the bodies which suggested physical assault of the deceased before they were shot dead.

IMLU has petitioned the Director of Public Prosecutions for the investigations and opening of inquest files into the deaths.

BUT ALL IS NOT LOST...

After the promulgation of the new Constitution in 2010, the Government drafted a bill targeting wide range reforms in the security sector. The bill was enacted in 2011 to become the National Police Service Act. Its key objective is to transform the sector from a “force” into a “service”.

Further, the National Police Service Commission (NPSC) is established under Article 246 of the Constitution and its enabling legislation, the National Police Service Commission Act 2011.

In 2011, IMLU carried out a National Torture Prevalence survey whose statistics showed that 95% of the cases reported involve torture by police officers (Regular and Administration Police). The statistics revealed a need for concerted efforts in pushing for police reforms and this led to the formation of the Police Reform Working Group (PRWG-K)

Further to the PRWG continued collaborations with the public in dissemination of information and advocacy on reforms; one of its main activities in support of police reforms is enhancement of public participation in policing. This activity is informed by the Working Group’s motto: From a Police Force to a Service. The motto has four pillars namely, Quality

Service, Accountability, Public Participation and Police Welfare and Capacity.

The PRWG has been very keen on the National Police Service embracing public participation in policing, including the entire reform agenda. For this reason, IMLU has held a series of county forums, to sensitize the public, police officers and other stakeholders on the key tenets of the police reform agenda, and mobilize them to participate and support these reforms.

IMLU last year held County forums which covered twenty seven counties. The main content of the forums included constitutional and legal framework informing police reforms, the place of citizens and police officers in driving reforms, the shape of police structure at county level, police vetting and its purpose and implications, among other components.

In actualizing its mandate of advocating for law and policy reforms and monitoring of Governments adherence to human rights; IMLU has participated indirectly in the police vetting exercise by holding forums in the counties to sensitize the public in their participation in the vetting exercise. This is to ensure

that the service retains only those officers who meet the criteria of suitability and competence.

MOMBASA COUNTY: 12th April 2014, IMLU together with Muslim for Human Rights (Muhuri) and Haki Yetu held a forum in Mombasa County. Participants were drawn from Taita Taveta, Kilifi and Kwale Counties. The forum saw thirty four participants from different Civil Society Organizations, Faith Based Organizations, and religious leaders, the County Governments, Police Officers and the media sensitized on the importance of the vetting exercise and how citizens can take part in the exercise; by submitting any information on the officers to be vetted. Further participants were informed on how to engage with the NPSC.

*IMLU Board member
Dr. Ramadhan Marjaan
addressing the participants
in the Mombasa County
forum.*



Zubeid Noor, the Secretary of the Council of Imams and Preachers of Kenya, Mombasa urging participants to call upon all members of the public in their jurisdiction to submit information of the police officers to be vetted in order to weed out rouge police officers from the National Police service.

EMBU COUNTY: 16th April 2014, fifty six members from different churches, mosques, CBOs, youth groups, women groups and representatives from the County government drawn from Embu and Tharaka Nithi Counties converged in Embu County to attend a stakeholder's public forum on vetting exercise. The objective of the training was to enhance citizen participation in the police vetting exercise. Members



were informed on the importance of vetting police officers, the principles guiding the vetting process and how well to engage with the NPSC. The attendance of the Deputy County Commissioner from Tharaka Nithi served to reinforce the government's commitment to the process, and to ensuring that the citizens are involved in the vetting process.



Tharaka Nithi Deputy County Commissioner David Otieno during the Embu County stakeholder's public forum where he said that the government supports the vetting process and asked members of the public to submit accurate information on officers to be vetted.

NAKURU COUNTY: 30th May 2014 in Nakuru County, Rift Valley region; eighty participants benefited from the training on the ongoing police vetting exercise. Representatives were drawn from the County assembly, the judiciary, religious leaders representing

the view of the church on the issues of police reforms, area chiefs, women civil society members and youth leaders. Frequently Asked Questions on police vetting were addressed and members were asked to disseminate the information they had gathered in the forum with the people within their jurisdiction. Participants also identified focal points for citizens to submit information or seek assistance in filing petitions to NPSC.



David Osieli Road, Off Old Waiyaki Way, Westlands
P.O. Box 1271-00606 Sarit Centre, Nairobi Kenya.
Tel: +254 20 4450598,
Mobile: +254724256800,
Email: medico@imlu.org
Website: www.imlu.org
Twitter: [@IMLU_org](https://twitter.com/IMLU_org)
Facebook Page: Independent Medico – Legal Unit