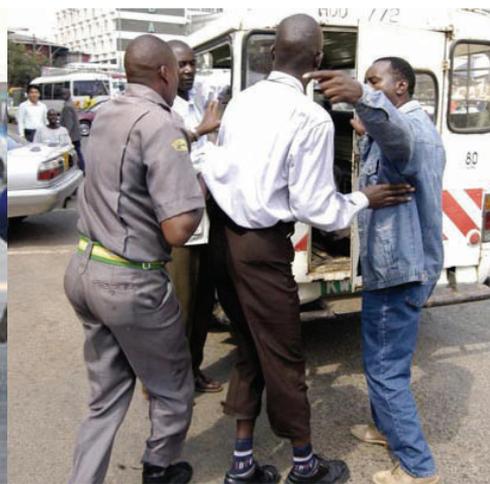


A Cry for Justice:

Torture and ill-treatment of Hawkers and Small Scale Traders in Nairobi City County



Independent Medico-legal Unit
A Just World Free From Torture

A Cry for Justice: Torture and ill-treatment of Hawkers and Small Scale Traders in Nairobi City County

First published in 2014 by:
Independent Medico-Legal Unit

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EXECUTIVE SUMMARY

There have been global concerns about the place of the informal sector in the modern economy. These concerns have led to many studies informing different aspects of this phenomenon. An important aspect of these studies is how traders in the informal sector, including hawkers and small-scale business operators, are facilitated to effectively work, and whether or not there are sufficient frameworks to cater for the development of the sector in different contexts. Governments, including the Government of Kenya, recognise not only the potential of the sector in sustaining livelihoods, but also to create jobs. However, anecdotal evidence suggests that this recognition does not reflect on formulation of policies and legal frameworks that would safeguard the rights of informal traders and enhance their contribution to the economy.

It is in this regard that the Independent Medico-Legal Unit (IMLU) commissioned this survey into the experiences of torture and Cruel, Inhuman and Degrading Treatment (CIDT) among hawkers and small-scale business operators in Nairobi City County. The survey was guided by the following 3 objectives:

- Investigating experiences of torture and CIDT among hawkers and small-scale business operators in Nairobi in the year 2013;
- Examining and documenting official and non-official response to torture and CIDT among hawkers and small-scale business operators and lessons learnt;
- and Assessing the adequacy of the legal and policy frameworks in responding to torture and CIDT involving hawkers and small-scale business operators in Nairobi.

The study used nine variables to observe practices of torture and CIDT. These were: beatings, confiscation of wares, shootings, arrests, incarceration and justice for hawkers and small-scale business persons, being bundled into trucks in an undignified manner sometimes resulting in injury, threats, coercion to give bribes, destruction and theft of wares and sexual harassment.

Both primary and secondary methods of data collection were used. These involved review of literature, which included past study reports, legal and policy documents such as Nairobi City County bylaws, and questionnaire interviews with 586 randomly selected respondents. Hawkers took a large share of the respondents at 371 (63.3%) while small-scale business operators were 215 (36.7%). The respondents were sampled in Nairobi's CBD, Ngara, Kayole, Kangemi, Kawangware and Kibera. For qualitative data, the study used key informant interviews with three officers of the Nairobi City County Government, two officials of civil society organisations that work on human rights issues regarding hawkers and small-scale business operators and officials of associations of hawkers and small-scale business operators. Finally, three Focus Group Discussions (FDG) were held with traders in the Ngara area, which also included a number of victims, traders living with disabilities in the CBD and officials of associations of hawkers and small-scale business operators.

Survey findings indicate that hawkers and small-scale traders in Nairobi are vulnerable to torture and CIDT with those operating in the CBD being most vulnerable followed closely with those operating in Ngara area. The incidence of torture and CIDT reduce as one moves away from the CBD. Findings also indicate that the main perpetrators of torture and CIDT targeting

vendors are the City *askaris* from the Nairobi City County's Inspectorate Department, though they also fall victim when the traders gang up against them.

Licensing was noted to reduce vulnerability as those who had paid up their licenses were found to be less vulnerable to torture and CIDT. In relation to regulation and governance, it was noted that conflicting regulatory frameworks especially with regard to provisions of the Constitution recognising economic and social rights and City bylaws that prohibit hawking in the CBD, considered by vendors to be the most prime area, given the number of real and potential customers.

Apart from impunity in the conduct of City *askaris*, other drivers of violence in the interaction between traders and the City authorities include lack of licenses for most of the traders especially hawkers; rent-seeking behaviour (corruption) among City County officials; demands for sexual favours by the *askaris* in exchange for protection especially for women traders. To a large extent, corruption seems to largely determine the relationship between the two groups.

The concept of justice is alien in the interaction between hawkers, small-scale business operators and City authorities. Whereas the lack of policy to protect the rights of these groups is a lacuna which needs to be filled urgently, the level of impunity enjoyed by the City *askaris* in the execution of their duties goes counter to any known requirements of due process. The level of violence meted on the traders and sometimes even passers-by points to an ingrained culture of impunity.

The survey recommends a multi-agency approach (including the National Government, Nairobi City County Government and Civil Society Organizations) to solve the conflicts that lead to the high incidence of torture and CIDT. There is also need to develop proper support systems, which can address the needs of the victims including their awareness, legal aid, insurance and medical assistance. The Nairobi City County should come up with a short and popular version of the bylaws in both Kiswahili and English languages to ensure that the "*do's and don'ts*" reflected therein are well understood by vendors.

There is need to formulate national laws to protect the rights and interests of hawkers and small-scale business operators. National laws are binding on county governments. A national law will be useful in clarifying the rights of all parties involved in informal trade. National and county specific census of hawkers and small-scale traders will enable proper planning for traders within the City environment. Allocating appropriate spaces for traders is a best practice that should be embraced by the City. Recognising the rights of vendors should lead to formulation of bylaws that are not only human rights friendly but are also in tandem with the country's Constitution.

Great potential exists for human rights organisations involved in policy advocacy. Advocacy in this case should focus both on a supportive and human rights friendly policy environment and the implementation of resultant policies and laws. The alignment of policies on different sectoral priorities with constitutional requirements is absolutely necessary if human rights provisions are to be adhered to. Direct support to victims of torture and CIDT is also a necessary undertaking which falls within the purview of human rights organisations.

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ACKNOWLEDGEMENTS

The **Independent Medico-Legal Unit (IMLU)** is a governance, health and human rights non-profit making organization, whose vision is *A Just World Free from Torture*. Our work is underpinned by a holistic approach involving litigation, medical and psychosocial rehabilitation of survivors of torture, monitoring government adherence to its human rights obligations and advocacy for policy, legal and institutional reforms. Over the last two decades we have assisted over 4,000 victims of torture, cruel, degrading and inhuman treatment through the support of our national networks of professionals: doctors, trauma counselors, lawyers, human rights monitors and journalists.

On behalf of the organization, I wish to express my sincere gratitude to representatives of the Nairobi Informal Sector Confederation (NISCOF) and their members, Nairobi City County Officials, the International Commission of Jurists—Kenya Section (ICJ-Kenya), the Rights Promotion and Protection Centre (RPP) and hawkers and small scale business operators in Nairobi's CBD, Ngara, Kangemi, Kayole, Kibera and Kawangware areas for their great contribution and participation in data collection. Without their unreserved assistance to the whole process, this survey would not have been possible.

We are greatly indebted to Hon. Peter M. Warutere, the Chairman of the Trade, Industrialization, Cooperative Development, Tourism and Wildlife Committee of the County Assembly of Nairobi City County and other Council officers for responding to research issues raised and giving account on their interaction with hawkers and small scale business operators in law enforcement.

I wish also to thank the two leading research consultants namely Morris Odhiambo (the team leader) and Dr. Romanus Opiyo who jointly translated IMLU's initial ideas and objectives into research instruments for data collection, analysed the data collected, and compiled the initial report.

Special thanks to Joseph Muthuri (IMLU Advocacy and Communications Officer) and Hadley Muchela (IMLU Programs Manager) for conceptualizing the ideas and objectives; including the research process. Additionally, Joseph edited this final report for reliability and simplicity. We highly appreciate your contribution.

We appreciate the financial support from the Royal Netherlands Embassy in Kenya that made this process possible.

To all other stakeholders who supported this survey in one way or the other, kindly accept my heartfelt gratitude.

Peter Kiama
Executive Director
Independent Medico-Legal Unit

ABBREVIATIONS AND ACRONYMS

CBD	Central Business District
CIDT	Cruel, Inhuman and Degrading Treatment
EAC	East African Community
EACC	Ethics and Anti-Corruption Commission
EACC	East African Court of Justice
FGD	Focus Group Discussion
GDP	Gross Domestic Product
GNI	Gross National Income
HRO	Human Rights Organisation
ICJ	International Commission of Jurists
ICHRP	International Council on Human Rights Policy
ILO	International Labour Organisation
IMLU	Independent Medico-Legal Unit
IPOA	Independent Policing Oversight Authority
KENASVIT	Kenya National Alliance of Street Vendors and Informal Traders
KII	Key Informant Interview
KNCHR	Kenya National Commission on Human Rights
KNH	Kenyatta National Hospital
LSK	Law Society of Kenya
MCSK	Music Copyright Society of Kenya
MSE	Micro and Small Enterprise
NASEPA	Nairobi Informal Sector Service Providers Association
NCC	Nairobi City County
NCPWD	National Council for Persons with Disabilities
NGO	Non-Governmental Organisation
NISCOF	Nairobi Informal Sector Confederation
NPS	National Police Service
PWDSSTA	People with Disabilities Small Scale Traders Association
RPP	Rights Promotion and Protection Centre
SPSS	Statistical Package for Social Sciences
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAT	United Nations Convention against Torture
UNEP	United Nations Environmental Programme

OPERATIONALISATION OF KEY CONCEPTS

This section defines some of the concepts used in the study. Both conceptual and operational definitions are given.

Torture and CIDT

The key definition of torture and CIDT is given by the United Nations Convention Against Torture (UNCAT), and Other Cruel, Inhuman and Dehumanizing Treatment (CIDT). The UNCAT defines torture as follows:

... the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (UNCAT, adopted 1984).

The UNCAT does not directly define CIDT. This has been a point of much intellectual haggling and debates (see, for example, Davis, 2005; Nowak and McArthur, 2006). However, this study does not concern itself with such debates. It however, recognizes that the torture and CIDT framework gives a wide scope in which the kind of actions recorded in literature as affecting hawkers and small-scale business persons may be classified and studied.

Operationally, torture and CIDT will be observed through actual experiences of beatings, confiscation of wares, shootings resulting in injury or death, sexual harassment, coercion to give bribes, threats, arbitrary arrests/unlawful incarceration, and individuals being bundled into trucks in an undignified manner sometimes resulting in injury.

Hawkers

From the literature reviewed, it is clear that hawkers and small business operators are referred to in many ways—implying different categories. City bylaws (2007) define the term ‘hawk’ as follows:

“whether as principal agent or employee for the purpose of carrying on trade by the sale or exchange of goods, wares, merchandise, or refreshment, to place oneself in any street or public place or unenclosed land (other than shop premises approved as such by the Council) or to go about the streets or public places or from premises to premises; or by any of the means aforesaid, to carry on trade by the sale or exchange or the offer or exposing for sale or exchange, of any goods, wares, merchandise or refreshment, but does not include seeking or taking of orders for subsequent delivery or the delivery of goods, wares, merchandise or refreshment to premises for purposes of resale” (NCC Bylaws, section 2).

Operationally, hawkers shall be defined as those who sell their wares in and out of the CBD by moving from place to place without a fixed abode carrying their wares.

Small scale business operators

Muiruri (2007) gives the common features of these small scale enterprises as follows: employs less than a certain number of persons (5—10) depending on each country's designation, operates in open spaces, is housed in a temporary or semi-permanent structure, does not operate from spaces assigned by the government, municipality or private organizers of officially recognized market places, operates from residences or backyards, and is not registered.

Operationally, this study takes small scale business operators to be those that operate in open spaces or temporary structures in and out of the CBD, and operate their businesses singly or with up to 5 employees.

CHAPTER ONE

INTRODUCTION



1.1 Background to the study

This study into the experiences of torture and Cruel, Inhuman and Degrading Treatment (CIDT) among hawkers and small-scale businesspersons was commissioned by the Independent Medico-Legal Unit (IMLU) after a notable increase in reported cases of torture and CIDT among this category of traders. The *Daily Nation*, on 4th February 2012, for instance, published the story of Jackson Mwangi, who was shot allegedly by city *askaris* in July 2010 near the Standard Chartered Bank where he was selling his wares. With a bullet lodged in his ribs, he was hospitalized since he could not afford medical fees for two months, doctors at the Kenyatta National Hospital could not remove the bullet. Another victim, Gerald Njogu, lost three front teeth around the Globe Roundabout Cinema area when a teargas canister lobbed by police officers hit him.

Human rights organizations including IMLU contend that such actions contravene the Constitution of Kenya (2010). The Bill of Rights (Chapter 4 of the Constitution) expressly prohibits torture and CIDT. Article 25 states that:

“25. Despite any other provision in this Constitution, the following rights and fundamental provisions shall not be limited

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

These actions also go against the requirements of some of the international instruments that bind Kenya including the Universal Declaration of Human Rights (UDHR), the United Nations Convention Against Torture (UNCAT) and the African Charter on Human and People’s Rights (ACHPR).

The Constitution also requires that the needs of vulnerable in society are addressed. Article 21(3) requires all state organs and all public officers “to address the needs of vulnerable groups in society including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities”. Many of those in the hawking and small-scale business fraternity especially women and persons living with disabilities, belong to these diverse groups.

It further requires the promotion of economic and social rights of Kenyans. Article 43 defines different aspects of economic and social rights, which individuals are entitled to. These rights include the right to the highest standards of health, accessible and adequate housing, freedom from hunger, social security, among others. In a situation in which almost half of citizens live below the poverty lines (46% of the population) it is important that the actions of government, at both national and county levels, reflect the need to safeguard the dignity of the most vulnerable members of society.

Many Kenyan households depend on the informal sector for their day-to-day needs. According to Mitullah (2000), the informal sector provides income for about 70% of Kenyans. This is particularly so for urban residents where there are high levels of unemployment and where levels of population continue to grow due to rural-urban migration. This underscores the importance of providing an enabling environment for hawking and small-scale business operations that provide income for a majority of Kenyans.

It is in this light in addition to IMLU's resolve on the enhancement of research to prevent and respond to torture, that this study was commissioned. It concerns itself with hawkers and small-scale business operators who are players in the informal sector, one of the most important sectors of the Kenyan economy. It also deals with issues of human rights which are emphasized by the Constitution. The study was conceptualized to investigate the experiences of torture and CIDT among hawkers and small-scale business operators in Nairobi City County. It sought to document lessons in responding to such violations, and explore the legal, policy and contextual frameworks that guide protection of the rights of these economically vulnerable groups.

1.2 Problem statement

The initial conceptualization of this study resulted from a notable increase in the number of cases of human rights abuse of hawkers and small-scale business persons. The anecdotal evidence of this increase was noted majorly in media reports and IMLU case files. A quick review of existing literature revealed that there were no current studies on the state of adherence to human rights in the informal sector upon which organizations could draw to shape their programmatic interventions. This leads to lack of data and statistical information linking hawkers and small scale business operators with the cases of torture and CIDT incidences in Nairobi. This lacuna in scientifically generated information created the initial impetus for the undertaking.

Many studies of the informal sector economy in Africa and Kenya have concentrated in describing the sector and expounding some of its main characteristics (Bangasser, 2000; Mitullah, 2000; Muiruri, 2007). However, as the World Organization Against Torture (OMCT), IMLU and International Commission of Jurists (ICJ-Kenya Chapter) demonstrated in their 2008 alternative report to the Committee Against Torture, the concern goes beyond description of the sector to human rights abuses. Later reports by ICJ and IMLU (e.g. IMLU 2012; ICJ & OSIEA, 2014) have demonstrated that abuses continue to happen. Addressing cases of torture and CIDT is paramount if the country is to successfully anchor human rights in all its endeavors as per the demands of the Constitution.

1.3 Study objectives

Broadly, this study investigated the experiences of torture, and Cruel, Inhuman and Degrading Treatment (CIDT) among hawkers and small scale business operators in Nairobi. Specifically, it sought to:

1. Investigate experiences of torture and CIDT among hawkers and small-scale business operators in Nairobi in the year 2013;
2. Examine and document official and non-official responses to violations of human rights of hawkers and small-scale business operators in Nairobi and the lessons learnt; and

3. Assess the adequacy of the legal and policy environments in responding to torture and CIDT involving hawkers and small-scale business operators in Nairobi.

1.4 Study Questions

The study sought to answer the following broad questions:

1. What were the experiences of torture and CIDT among hawkers and small-scale business operators in Nairobi in 2013?
2. What were the official and non-official responses to violations of human rights of hawkers and small-scale business operators in Nairobi?
3. What were the lessons learnt in the official and non-official responses?
4. Are the legal and policy environments adequate in responding to torture and CIDT involving hawkers and small-scale business operators in Nairobi?

1.5 Significance of the Study

This study is set broadly on a human rights perspective and approach to development. According to Wilson (2005) the human rights approach to development ‘puts human rights at the heart of human development’. Wilson further avers that the approach ‘presents a framework for the pursuit of human development with human rights standards and principles guiding that process and international human rights obligations providing the objectives of development’. Muiruri (2007) says a human rights approach to development provides “a powerful normative framework to reorient development by bringing an ethical and moral dimension that has been lacking”. Apart from prohibiting torture, the Constitution of Kenya through Article 43 emphasizes the achievement of economic and social rights of Kenyans.

The emphasis put on the human rights approach by the Constitution demands availability of baseline information to guide planning and programming. As the literature review reveals, the available literature is rather limited. This poses a challenge for both policy makers and human rights organizations. Policy makers may not have the tools needed to plan for development from a human rights perspective as required by the Constitution. On the other hand, the absence of such data denies human rights organizations an important tool for design of programmes aimed at protecting the rights of these economically vulnerable groups. Effective advocacy requires that evidence be used both for formulation of programmes and for the evaluation of those programmes once implemented. This study responds to the defined gap by documenting the experiences of torture and CIDT, documenting the official and non-official responses and assessing the adequacy or inadequacy of policy and legal frameworks in responding to torture and CIDT.

1.6 Scope and Limitations of the Study

This study was undertaken in the Nairobi City County. The purposive selection of Nairobi was guided by the fact that the City has faced challenges in managing and regulating the activities of hawkers and small-scale business operators. Though similar challenges are faced in other counties, the City was considered to be an important launch pad in promoting the understanding of such experiences because of the intensity of informal sector activities. However, the study could have benefited from comparative perspectives from other counties.

The study was conducted in the CBD, Ngara, Kayole, Kibera, Kawangware and Kangemi areas. These are some of the areas of the City where hawking and small-scale business undertakings thrive. It interviewed 586 randomly selected hawkers and small-scale business operators. Hawkers took a large share of the respondents at 371 (63.3%) while small-scale business operators were 215 (36.7%).

Within the category of small-scale business operators, the study engaged with traders in service provision and manufacturing. It also engaged with officials of the Nairobi City County as well as leaders of associations of different categories of traders. IMLU, the International Commission of Jurists (ICJ-Kenya Chapter) and the Rights Promotion and Protection Centre (RPP) were the three human rights organizations involved in the study. Due to time limitations, the study could not engage more organizations working on human rights.

1.7 Research Site

Nairobi was preselected as the study site. Nairobi City County (NCC) hosts the Capital of the country, Nairobi. It covers an area of 684 square kilometres. It hosts much of the country's economic and financial infrastructure including the country's only securities exchange. As the economic hub of the East and Central African region and the epicentre for commerce in the East African Community (EAC), its importance goes far beyond Kenya's borders. It is home to thousands of Kenyan and foreign businesses, much of the diplomatic corps and international media that serves the region and hosts the United Nations Environmental Programme (UNEP) among other agencies. Clearly, conflicts of whatever kind and magnitude in Nairobi have national, regional and international implications.

Importantly, the City hosts a large number of informal traders who operate both in and out of the CBD. Mitullah (2000), states that it contributes about 18—23% of the country's Gross Domestic Product (GDP). A large percentage of the City's population depend on informal trade for their survival in the City. Informal trade takes place in virtually all areas of the City including the CBD and makes a major contribution to both the City's and the country's GDP.

1.8 Methodology

The methodology adopted by this study is described below.

1.8.1 Research design

The research design was largely descriptive. It employed descriptive statistics such as frequencies to describe the situation of hawkers and small-scale business operators. The study involved collection of both primary and secondary data. It also employed both qualitative and quantitative means of data collection and analysis.

1.8.2 Study population

For purposes of defining the study population, this study relied on the membership of the Nairobi Informal Sector Confederation (NISCOF), which comprises about 800 individual traders and an equal number of non-members. NISCOF was therefore used as a reference point for the study since it has the highest representation of any association in the informal sector in Nairobi. Since there is no official register of all hawkers and small-scale business operators in the City largely due to the nature of their undertakings, this was considered appropriate for the study.

1.8.3 Data collection

Both primary and secondary data were collected for the study. Primary data was collected through the use of survey method, key informant interviews and Focus Group Discussions (FGDs). Secondary data was collected through review of relevant literature/documents, including published scholarly studies, the Constitution of Kenya, relevant reports from IMLU and other human rights organizations, Nairobi City County bylaws, the Convention Against Torture, and Cruel, Inhuman and Degrading Treatment (CIDT) and other relevant international human rights instruments, Nairobi City County Strategic Plan, Vision 2030, and the Micro and Small Enterprise (MSE) Act of 2012.

1.8.4 Sampling and sampling procedures

Sampling for the study was multistage. A sampling frame covering hawkers and small-scale business operators was first developed using the Nairobi Informal Sector Confederation (NISCOF) database. This was augmented by an equal number of non-members of NISCOF to avoid bias based on associational life. The non-members were drawn from areas where NISCOF is less active. These are Kibera (around Makina market), Kangemi and Kawangware. The selection of these areas was based on literature review which points out these as some of the areas where informal trade is prevalent. Gender, business type, location and disability were used as key stratification variables. The sampled areas therefore were: the CBD (which includes Muthurwa where one of the main informal markets is based), Ngara and Kayole where members of the Nairobi Informal Sector Confederation (NISCOF) are active; and Kibera (around Makina market), Kangemi and Kawangware where mostly non-members of NISCOF operate.

The survey involved a total of 586 respondents from the two main categories. Hawkers took a larger share of the slots at 371 (63.3%) while small scale business operators took a smaller share at 215 (36.7%). These figures responded roughly with the initial design which was skewed towards hawkers (60% hawkers and 40% small-scale business operators).

The study was also informed by 3 FGDs targeted at probing some of the key issues arising from the questionnaire interviews. They were thus held with leaders of hawkers and small-scale business operators, persons with disability trading in the CBD and finally with traders in the Ngara area combined with 3 victims of torture and CIDT.

Ten key informant interviews were carried out. Out of these 4 were City County officials in the departments of licensing, inspectorate and the judiciary. Two were officials of hawkers associations and one was a non-official. The remaining 3 were officials of the following human rights organisations: the International Commission of Jurists (ICJ; Kenya Chapter), the Rights Promotion and Protection Trust (RPP-Trust) and the Independent Medico-Legal Unit (IMLU).

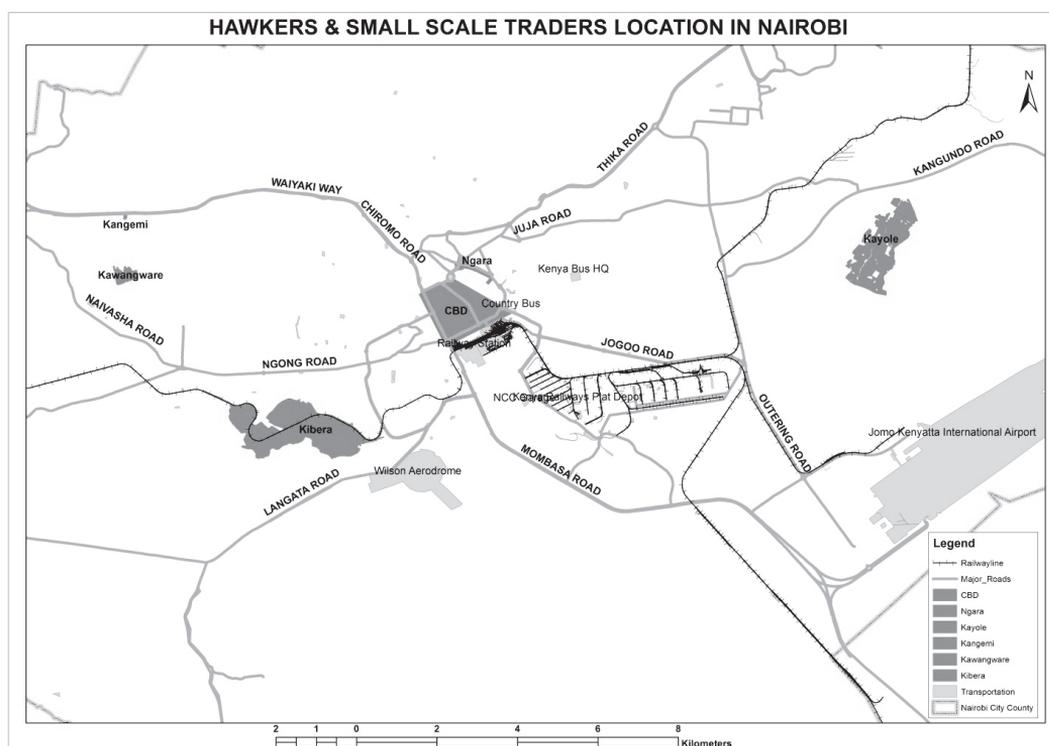
1.8.5 Sample distribution

As indicated in table 1 below, the largest sample size for the traders' interview was done in the CBD, accounting for 43.5 % of the total sample. This was based on the fact that the CBD contains the largest comparative number of hawkers in the City. The CBD has also over the years been the centre of conflict between traders and the City authorities sometimes resulting in serious injuries and even death. Other study areas accounted for more than 10% each of the total sample size of 586 as shown in the table below.

Table 1: Traders' sample distribution

Location	Frequency	Percentage	Cumulative Frequency
Nairobi CBD	255	43.5	43.5
Ngara	69	11.8	55.3
Kayole	63	10.8	66.0
Kibera	70	11.9	78.0
Kawangware	70	11.9	89.9
Kangemi	59	10.1	100.0
Total	586	100.0	

IMLU Field Survey, 2014



Map 1: Nairobi sampled areas

Source: Authors' construction

1.9 Data Analysis

Analysis of hawkers and traders questionnaires was done by use of the Statistical Package for Social Sciences (SPSS). This enabled generation of frequencies of traders' perceptions with regard to the nature and levels of torture and CIDT. The software also facilitated cross-tabulation of various socio-economic attributes e.g. location, gender, business type, education level, etc., with experiences of torture and CIDT, so as to tease possible connections and attributes of CIDT actions among traders. The findings were presented by use of pie-charts, frequency tables, and graphs for the data analyzed using SPSS.

Key informant and FGD data was analysed on the basis of the survey themes. This led to appreciation of the depth of torture and CIDT, as well as understanding of the policy and legal environments. The findings were also used to fill gaps arising from the survey and for triangulation.

CHAPTER TWO

LITERATURE REVIEW



2.1 Introduction

This Chapter reviews relevant literature on torture and CIDT. It looks at the literature broadly from a global perspective before zeroing in on Kenya. It is divided into four headings: experiences of torture and CIDT from global and Kenyan perspectives; the informal sector and development from global, African and Kenyan perspectives; the informal sector, policy and legal framework and the informal sector, human rights and development. This chapter answers one of the research questions regarding the adequacy of the legal and policy environments in the protection of hawkers and small-scale business operators from torture and CIDT.

2.2 Experiences of torture and CIDT from global and Kenyan perspectives

Torture and CIDT are key human rights concerns globally. Torture takes place in many different contexts and is rampant in situations of war and conflict. Most recent concerns about torture globally were brought to the fore with revelations that the United State of America Government was engaged in torture of prisoners in Afghanistan, the Guantanamo Bay naval base and in Iraq (Davis, 2005). This followed the September 11th 2001 attacks in which terrorists used planes to bring down the World Trade Center towers in New York.

The aftermath of the New York attacks saw the U.S. wage war against Talibans in Afghanistan and the then Iraq Baathist regime of Saddam Hussein. The American Government later defended itself against criticism by describing the methods used to obtain information from suspected terrorists as ‘enhanced interrogation techniques’ a regular part of methods used to obtain information from enemy combatants and other elements (Davis, 2005).

Amnesty International, in a 2014 report urging the American authorities to close down Guantanamo Bay, details the use of techniques like water-boarding to extract information from detainees. It explains the plight of a detainee who was subjected to water-boarding 183 times in one month. Water-boarding, according to Amnesty International, amounts to mock executions by interrupted drowning.

Amnesty International also discusses torture in other countries such as Zimbabwe and Iraq. Its 2014 report of the human rights situation in Zimbabwe reveals massive involvement of the Zimbabwean Government in torture and extra-judicial killings. The report gives details of at least 8 people who died in police custody under ‘circumstances that suggest they were tortured or summarily executed’ (<http://www.amnestyusa.org/research/reports/annual-report-zimbabwe-2013?page=3>).

Human Rights Watch, in its report of human rights abuses in China also brings out evidence of human rights abuses including torture. It details the post-Arab Spring victimization of human rights lawyers, activists and critics in the one-party country. Apart from being arbitrarily detained, evidence shows that human rights lawyers, activists and other critics of the regime

have been tortured while in detention with the intention of silencing them. These measures are in addition to heavy censorship of the media including social media (http://www.hrw.org/sites/default/files/related_material/china_2012_0.pdf). Other forms of human rights abuses in that country include detentions, assault by police and house arrest of critics of the regime.

Torture therefore continues to be a global problem and a key concern for human rights organisations and activists. Even though it is prohibited by international law and Kenya's own Constitution various international and national organisations have highlighted cases of torture and CIDT in the country. In a 2008 report, the World Organisation Against Torture concluded that the "Kenyan State is directly responsible for torture and ill-treatment against the poorest, for the economic, social and cultural policies that lead to such treatment, and for violence against the poor by non-state actors" (OMCT, 2008). The report further reveals that more than 5000 Kenyans are tortured every year while more than 10,000 are indirect victims of torture. IMLU's 2008 report "Quest for Justice" categorizes a majority of violations reported up to 2008 as torture and CIDT (33%). Of concern is that despite this sorry state of affairs, as discussed in IMLU's 2008 report "Torture and Related Violations in Kenya" there is no specifically designated authority charged with investigating allegations of torture, inhuman or degrading treatment or punishment.

The OMCT report provides evidence of how the poor are constantly harassed by police, how they are forced to pay bribes amid arbitrary arrests, among others. It links poverty to vulnerability of a large section of the population, which suffers the brunt of victimization. The poor populate prisons in the country due to unaffordability and inaccessibility of justice. In the prisons, they suffer the consequences of congestion and generally unhealthy conditions.

The OMCT report dovetails well with the perspectives of national NGOs on the fate of the poor and particularly hawkers and small-scale business operators. Indeed, hawkers and those involved in small scale business operations are prone to various forms of CIDT largely as a result of their underprivileged economic circumstances. IMLU's (2011) study on the prevalence of torture concludes that torture exists in the country with 60% of the respondents confirming its existence and 23% reporting they had been victims of torture. Furthermore, the police are cited as the key torturers by 60% of those who had experienced torture directly.

IMLU *et al* (2012) raise and discuss concerns about unlawful and arbitrary arrest by the police and the widespread corruption among police officers, which particularly affects the poor living in urban neighborhoods including hawkers and small-scale business operators. The hawkers and small scale business operators are therefore disadvantaged both as residents and workers in urban neighborhoods and general urban landscape including the CBDs such as in Nairobi where hawking is prohibited. In the case of Nairobi, section 11 of the bylaws states that, "Any person who engages in hawking with or without a permit within the Central Business District Area ... is guilty of an offence" (ICJ-K & TI-K, 2013).

ICJ-K's publication, "*Justice at City Hall*" corroborates the above findings. It observes that the majority of the cases in municipal and city courts involve the poor and the marginalized. These vulnerable individuals are those largely employed in the informal and petty trade sector. They include hawkers, porters, touts, conductors and hand cart pushers. The businesses which are in formal trade are treated differently and are rarely involved in criminal cases at the city and

municipal courts. A survey of the cases brought to court demonstrates that a majority of the respondents (95.6%) arraigned in court were not represented by advocates. Most of them (77%) could not afford legal representation. The report further notes that the informal traders are generally prone to unlawful and arbitrary arrests and other forms of CIDT due to the nature of their activities (ICJ-K & TI-K, 2013).

2.3 Official and non-official responses to torture and CIDT

In looking at the issue of official and non-official responses to torture and CIDT, it is important to review the City's bylaws particularly those that affect hawkers and small-scale business operators. The bylaws are important as they define the dos and don'ts of the City and generally what is required of residents. They also define the sanctions in case of acts that go against the bylaws. It is important to consider whether or not the bylaws have provisions that protect hawkers and small-scale business operators when their rights are violated. It is also important to look at the activities of the City Court. As the judicial institution involved in arbitrating matters regarding the activities of hawkers and small-scale business operators, it is expected that Court should be a mechanism of dispensing justice.

The City bylaws cover areas such as general nuisance, parking, solid waste management, fire brigade, hawking, matatu terminus, food shops and stores and licensing of premises and trades. The fifth bylaw is dedicated to hawking. However, it is not only this bylaw that affects hawker and small-scale business persons in Nairobi. Bylaw number eight, which is dedicated to licensing of premises and trades, affects all categories of traders. Some of the hawkers and small-scale business persons have been charged in the City Court with the offence of obstructing free passage on particular streets. This offence is in line with the first bylaw, which prohibits obstruction of free passage on City streets. The City authorities are allowed to impound any articles left in the street in contravention of the bylaw. As observed by this study, when there are confrontations between the City *Askaris* and hawkers often times the hawkers may leave their wares behind. The City *Askaris* impound such wares.

Bylaw number eight is categorical that one cannot conduct any trade without appropriate permit being given by the City. Furthermore the City has discretion on whether to issue or not to issue a permit. The bylaw does not specify the conditions under which a trader's application for a permit may be rejected. The only relevant provision regarding such rejection is the prohibition of permits for businesses being carried out in buildings where land and ground rents are owing. There is room for arbitrary application of this discretion, which may negatively affect small-scale business persons. This may be compounded by the rent-seeking behaviour that City *askaris* exhibit and which has been cited by most authors. The bylaw also provides for inspection of businesses and business premises by City authorities and the source of authorisation of such inspection.

The bylaws provide specific requirements for hawking. For instance, a person engaging in hawking is required to wear a badge at a conspicuous place where it can be seen. Bylaw number five also states that City officers have a right to inspect any goods or articles being hawked. Blocking such officer from performing their duties is an offence. Traders who engage in hawking in undesignated areas and without a valid permit risk their goods being impounded by City authorities. This is one of the bylaws that have led to confrontations between hawkers

and officers of the City Inspectorate. City residents are also forbidden from “bargaining or buying from a hawker in an undesignated area” (ICJ-K & TI-K, 2013).

A number of provisions which relate to handling of food staffs also affect the operations of hawkers and small-scale business persons in the City. Bylaw number seven relating to food shops and stores requires that any person involved in food trade possess a license or permit. Registered food shops or stores are subject to inspection and blocking an officer duly authorised from conducting an inspection is an offence. Bylaw number 14 specifically deals with sale of ice cream and requires traders to, among others, maintain cleanliness, not to employ persons suffering from infectious diseases and to produce their permits every time they are required to by inspectors.

It is as a result of these bylaws and the manner of their application that many hawkers and small-scale business operators have found themselves in the City Court. Because of its work of dispensing justice, the Court is the major institutional response to the abuses that face hawkers and small-scale business operators in the City. In a joint report on administration of justice in Nairobi City and other major urban areas in Africa, ICJ-Kenya Chapter and Transparency International (Kenya) noted that most of the persons arraigned in the City and municipal courts are informal traders (ICJ-K & TI-K, 2013).

The City Courts administer justice on the basis of Bylaws with magistrates seconded by the Judiciary. City and municipal authorities have the duty to investigate crimes committed by residents and business persons, among others, and present evidence to court. Violators of bylaws are prosecuted by City authorities under delegated authority of the Director of Public Prosecutions. The City and municipal courts operate under the supervision of the Chief Magistrates Court (ICJ-k & TI-K, 2013).

The City and municipal courts are part and parcel of the judicial system. One of the key guiding principles in the exercise of judicial authority in Kenya is the requirement that “justice shall be done to all, irrespective of status” (CoK, 2010). Justice can be defined as the exercise of authority in the maintenance of right, judgement of persons or causes by judicial process or the vindication of state-determined legal rights through an adjudicative institution that administers and enforces them (ICJ-k & TI-K, 2013). ICJ-K and TI-K conclude in their report that “despite the fact that the Bill of Rights has been expanded, and the right to a fair trial clarified, suspects arraigned in these courts rarely enjoy their constitutional guarantees” (ICJ-K & TI-K, 2013).

If justice is the vindication of legal rights through an adjudicative institution, limitations in access to justice are also limitations to enjoyment of rights. Some of the factors that facilitate access to justice are: citizens’ legal literacy, existence of fair laws in content and outcome, accessibility of laws to citizens in terms of language and form and protection and easy affirmation of rights through law and dispute resolution processes. In their study, ICJ-K and TI-K established that most City residents have never accessed bylaws and are unaware of their contents. The bylaws are also sold by the City at an unaffordable price that makes it impossible for many City residents to afford (ICJ-K & TI-K, 2013).

Further, suspects facing similar charges are usually required to plead at the same time when brought to the Court. This goes against a key requirement of justice, that each suspect brought to court should individually answer to charges against them. It was further established that the City courts exclude the public from portions of the hearings specifically,

“ ... in Nairobi, the public, including relatives and advocates for the accused persons, were excluded from the afternoon court sessions. This was essentially a plea taking session for those arrested in the morning. Most mentions and pleas were carried out in chambers away from the public. ... There was no basis for exclusion of the public in cases involving petty crime” (ICJ-K & TI-K, 2013).

These aspects are compounded by the fact that the bylaws completely lack any human rights language suggesting that the link between human rights and development encapsulated in the Constitution has not yet found its way into the thinking of the City authorities.

On the issue of non-official responses to torture and CIDT, this review found a dearth of literature. Human rights organisations have documented numerous cases and have case files on individual cases. Various vendors’ associations have also occasionally reported cases of torture and CIDT to human rights organisations but a comprehensive record of these non-formal interventions does not exist in a form that can lend itself to review.

2.4 Adequacy of the legal and policy frameworks in responding to torture and CIDT

The section above has demonstrated the inadequacy of the City Court to safeguard the rights of hawkers and small-scale business operators in the City. It also reviewed the City’s bylaws and concluded that a clear focus on responding to the challenges that face hawkers and small-scale business operators is lacking. Literature on this subject matter shows that the framework available at the national level is not replicated at the Nairobi City County. This framework is informed by the Constitution, laws such as the National Police Service Act and international conventions and treaties which Kenya has signed and ratified.

At the international level, Kenya has ratified a number of international instruments that bind it to observe international standards for human rights. The Convention Against Torture, and Other Cruel, Inhuman and Degrading Treatment (CIDT), the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR), all provide safeguards against Torture, and CIDT.

At the regional level, the African Charter on Human and People’s Rights prohibits torture. It states that, “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” The East African Community Treaty, which brings together five East African States, creates the East African Court of Justice (EACJ). One of the key principles of the Treaty is,

“ ... good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and People’s Rights.” (EACT, 1999)

Making reference to the African Charter on Human and People's Rights strengthens the mandate of the EAC and specifically the EACJ in dealing with torture and CIDT. However, the EACJ is constrained because it does not have express human rights jurisdiction. Even though hindered by this constraint the Court has made rulings regarding issues of human rights. This potential can still be harnessed to further the course of fighting the practice of torture. Finally, Article 2(6) of Kenya's Constitution states that any treaty or convention ratified by Kenya shall form part of the law of Kenya. This strengthens the jurisdiction of Kenya's courts in regard to application of international instruments.

The Constitution provides a strong bulwark against torture. The Bill of Rights (Chapter 4 of the Constitution) expressly prohibits torture and CIDT. Article 25 singles out freedom from torture and CIDT as rights that cannot be limited. It states that

"25. Despite any other provision in this Constitution, the following rights and fundamental provisions shall not be limited

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

The Constitution also requires the state to facilitate realization of Economic and Social Rights as provided under Article 43. For hawkers and small-scale business operators, Article 21(3) is very significant as it bestows on all state organs and public officers the duty to address the needs of vulnerable groups within society. Hawkers and small scale business operators can be considered as economically vulnerable groups to the extent that they are self-employed in a sector that is not catered for adequately in terms of policy and legal framework. There are also many persons with disability who only find employment in this sector. Article 21(3) puts the onus of providing for vulnerable groups by stating as follows:

All state organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.

At the level of legislation, the National Police Act (2011) fulfills the provisions of the Constitution by prohibiting and providing sanctions against police who perpetrate torture and CIDT. Section 95 states as follows,

- (1) It shall be unlawful for a police officer to subject any person to torture or other cruel, inhuman or degrading treatment.
- (2) A police officer who subjects a person to torture commits a criminal offence and shall be liable on conviction to imprisonment for a term not exceeding twenty five years.
- (3) A police officer who subjects a person to cruel, inhuman and degrading treatment commits a criminal offence and is liable on conviction to imprisonment for a term not exceeding fifteen years.

A review of the City's bylaws demonstrates that they have failed to tackle the issue of torture and CIDT. None of the City's bylaws speak directly to torture and CIDT or makes any prohibition or provide any sanctions on the actions of law enforcers. This explains the impunity enjoyed by the City askaris in undertaking law enforcement.

Policies that guide the conduct of hawkers and small scale business operators were also found to be inadequate in protecting against torture and CIDT. The most current policy framework of SMEs in Kenya is contained in the *Sessional Paper No 2 of 2005: Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction*. It is this policy that led to enactment of the MSE Act of 2012. Once enacted, the MSE Act gave direction to key issues such as the legal and regulatory environment, markets and marketing, business linkages, the tax regime, skills and technology and financial services, among others. It also recognized SME associations and umbrella organizations and specified their roles and functions. Through the Act, the MSE Authority, MSE Fund and MSE Tribunal were set up.

The overriding policy framework for Kenya's transformation to a middle-income country, the Vision 2030, emphasises that Kenya's competitive advantage lies in MSE transformation. The Vision's strategies include strengthening MSEs by increasing their productivity and innovation to become the industries of 'tomorrow'. The Vision recommends increasing the application of science, technology and innovation in the sector by increasing investment in research and development. In more specific terms, the Vision proposes the establishment of MSE Parks (KENPRO, 2010 and Wanjohi, 2009). The Vision however, fails to specifically provide guidelines on issues of torture and CIDT facing hawkers and small scale business operators.

It is clear that a human rights approach is yet to pervade the policy thinking when it comes to hawkers and small scale business operators. Literature reviewed points out that this is a pervasive problem. Mitullah (2003) points out that street vendors are hardly consulted in the development of bylaws neither do they participate in planning and management of urban development. This means they have "no influence on any policies developed for managing their operations, while the urban authorities hardly provide services nor are they accountable to vendors". Instead street vendors are subjected to expensive daily charges, poor and insecure working locations, unstable hours of business, constant harassment, confiscation and loss of goods. The lack of participation is a violation of the principle of participation entrenched in the Constitution.

2.7 Conclusion

This Chapter has reviewed literature relevant to the study under four relevant headings: experiences of torture and CIDT from global and Kenyan perspectives; official and non-official responses to torture and CIDT and adequacy of legal and policy frameworks in responding to torture and CIDT. The literature clearly demonstrates the prevalence of torture globally and in Kenya. Torture in Kenya goes on despite its prohibition by the Constitution and international human rights instruments that Kenya is party to such as the Universal Declaration of Human Rights (UDHR) and the United Nations Convention Against Torture (CAT). Even though organisations such as IMLU have presented alternative reports and recommendations to the United Nations Commission Against Torture, very little has been done to end the practice.

The Chapter demonstrates the extent of vulnerability of hawkers and small-scale business operators to torture and CIDT. This vulnerability is compounded by limited access to justice at the City Court. Many of the hawkers and small-scale business operators arraigned in the courts do not understand the requirements of the City bylaws and have limited access to legal advice. Often times, the public is excluded from important portions of the trial process in a way that goes against the requirements of fair access to justice. The exclusion of relatives and lawyers from plea taking sessions was found to be one of the practices that compromise access to justice. Overall, the chapter established the inadequacy of the legal and policy frameworks for responding to torture and CIDT involving hawkers and small-scale business operators in the City. The following two chapters present results of the findings of the study underlined by the main issues highlighted by the literature review.

CHAPTER THREE

DYNAMICS OF TORTURE AND CIDT AMONG HAWKERS AND SMALL-SCALE BUSINESS OPERATORS

3.1 Introduction

This study used nine variables to observe and quantify the dynamics of torture and CIDT among hawkers and small-scale business operators. These were: beatings, confiscation of wares, shootings, arrest, incarceration and justice for hawkers and small-scale business persons, being bundled into trucks in an undignified manner sometimes resulting in injury, threats, coercion to give a bribe, destruction and theft of wares and sexual harassment. Even though shootings may not constitute torture and CIDT in the definition, it was considered too important a variable to be left out. The press has often highlighted cases of shootings. The results show that shootings are mostly committed by police under the National Police Service (NPS). This happens when they are called in to reinforce the City *askaris* during confrontations with hawkers and small-scale business operators.

Two variables—threats and coercion to give a bribe—were added to the list of variables after the pre-test phase. Threats were deemed important in the context of psychological torture. Many times they are also a precursor to beatings, shootings and other abusive acts. Coercion to give a bribe was considered to be related to other forms of torture. The pre-test phase revealed that giving of bribes has been perfected by both hawkers and small-scale business operators and the City *askaris*. The City *askaris* extracted bribes in exchange for allowing the traders to operate especially in undesignated areas or when they do not possess permits. On the other hand, the traders were found to give bribes for protection. This chapter looks at the socioeconomic profile of the traders before presenting the findings.

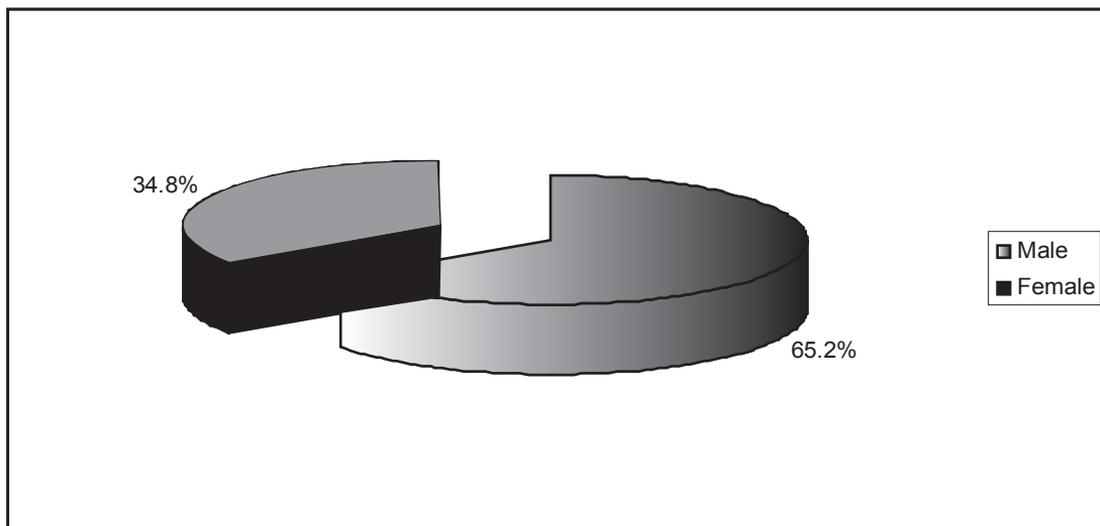
3.2 Socio-Economic Profile of the Traders

This sub-section explains the socio-economic profile of the traders engaged in the study. It highlights the sample in terms of gender, disability, age, education and marital status. It also looks at the profile of the businesses that were surveyed.

3.0.1 Gender

More male traders (65.2%) than female traders (34.8%) were interviewed out of a total of 586 traders. Past studies have shown there are more male traders than female traders in informal trade. The ILO (2002) report on women and men in the informal economy, for instance, noted that women account for 37% of those working in the informal sector as compared to men at 63%. Chart 1 below shows the gender distribution of the sample.

Chart 1: Gender distribution of the respondents

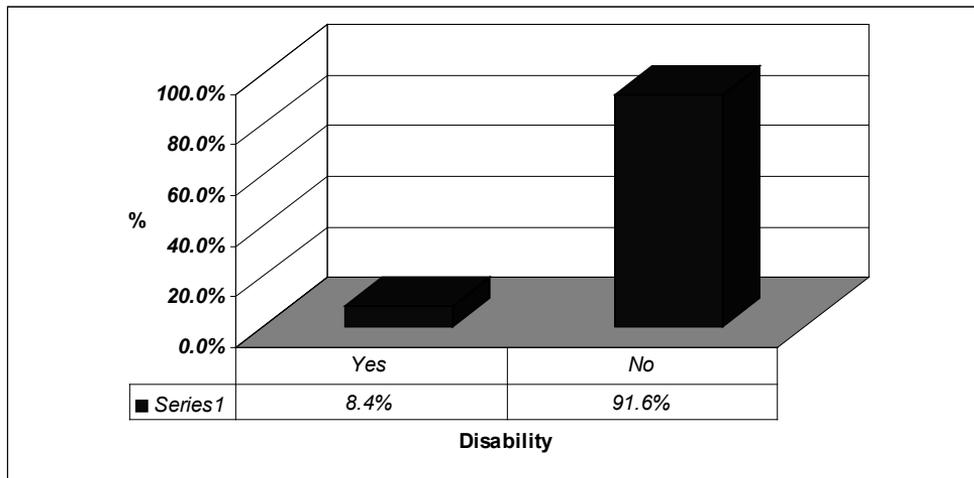


IMLU Field Survey, 2014

3.0.2 Disability

Among the traders interviewed, 49 or 8.4% were persons living with disabilities. The nature of disability was mainly physical with over 95% of them living with motor deficiency commonly known as mobility impairment with regard to their limbs (hands and legs). Slightly less than 3% had sensory disability (visual and hearing impairment). There were a few cases of persons living with dwarfism and having a hunch back. This distribution is shown in the Chart below.

Chart 2: Disability



IMLU Field Survey, 2014

3.0.3 Age

Table 2 shows that more than half of the respondents (66.6%) were in the 18 to 35 age bracket. This means the informal sector attracts mostly youthful traders.

Table 2: Age distribution

Age	Frequency	Percentage	Cumulative Frequency
18-25	115	19.6	19.6
26-35	275	46.9	66.6
36-45	125	21.3	87.9
46-60	52	8.9	96.8
Above 60	13	2.2	99.0
No Response	6	1.0	100.0
Total	586	100.0	

IMLU Field Survey, 2014

3.0.4 Education

Most of the traders interviewed had attained some level of formal education, with only (3.2%) noted not to have any form of formal education. 2% had gone up to university and beyond. This is shown in the table below.

Table 3: Levels of education of traders

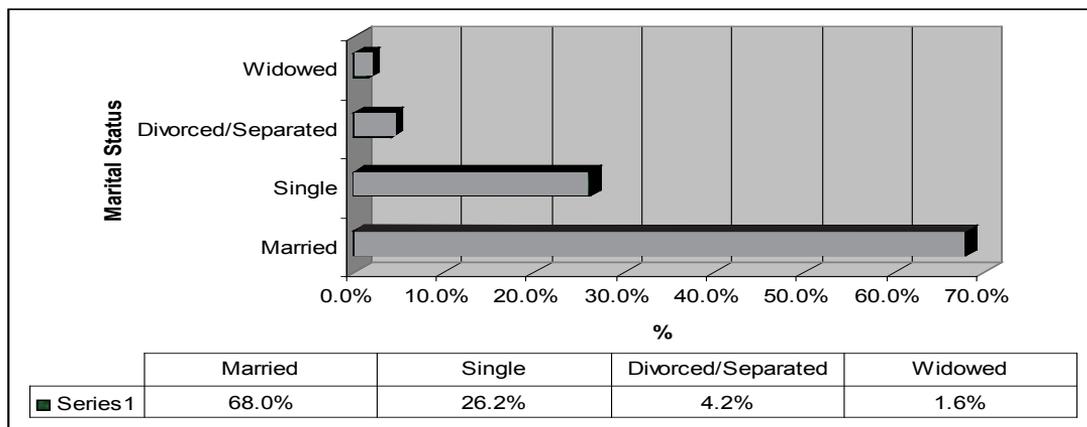
Education Level	Frequency	Percentage	Cumulative Frequency
No formal education	19	3.2	3.2
Some Primary Education	63	10.8	14.0
Primary Completed	146	24.9	38.9
Some Secondary Education	112	19.1	58.0
Secondary Completed	182	31.1	89.1
Some Tertiary/College education	17	2.9	92.0
Tertiary college completed	30	5.1	97.1
Some University Education	2	0.3	97.4
University degree and beyond	12	2.0	99.5
No Response	3	0.5	100.0
Total	586	100.0	

IMLU Field Survey, 2014

3.0.5 Marital status of traders

Majority of those interviewed (68%) were married a clear indication of the importance of the sector in sustaining families. This is shown in chart 3.

Chart 3: Marital Status



IMLU Field Survey, 2014

3.0.6 Enterprise Profile

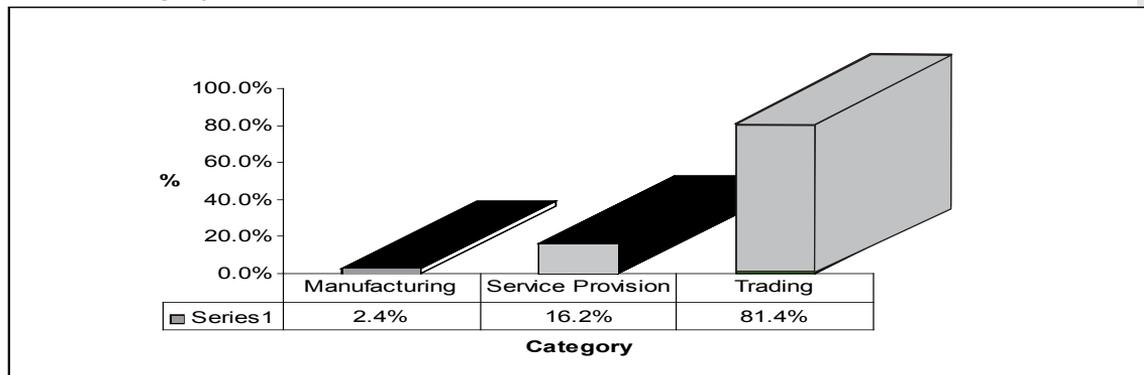
3.2.6.1 Nature of business ownership

Many respondents were found to be single owners (88.4%). Joint ownership only accounted for (11.6%). Most of the businesses were found not to have employed an extra employee (86.9%) hence were managed by the operating owners only. A few businesses 73 (12.5%) had employed between one to five employees.

3.2.6.2 Category of business

A majority of the respondents (81.4%) were traders. This corroborates the situation of the informal sector nationally as portrayed in the 2012 Economic Survey, which noted that the trade category of the informal sector absorbs majority of workers at 60.3 per cent. This is attributed to the ease of entry and exit from this category as a result of minimal skills’ requirement (GoK, 2012). Manufacturing on the other hand requires licensing, capital, skills and established premises. The category of business is demonstrated below.

Chart 4: Category of Businesses



IMLU Field Survey, 2014

The popular types of goods and services provided by the traders interviewed varied, but generally included foodstuffs and groceries, grooming—such as barbers and hairdressing, entertainment, transportation and car garages, carpentry and metal fabrication, general shops, newspaper vending, watch repairing, shoe-shining and shoe repairing.

Most traders were found to operate in open spaces without structures (56%); 35.3% operated in temporary structures while only 8.7% were found to operate in permanent structures. This state of affairs is related with the characteristics of the informal sector as captured in the literature review.

3.2.6.3 Duration in business

The businesses were found to have been operating at their current site for a period of 6 months to 40 years, with a modal duration of 2 years accounting for (19.8%) and mean years of operation of 5.4 years. It was also noted that (90.3%) of the businesses have been in operation on the same location between 1 year and 10 years.

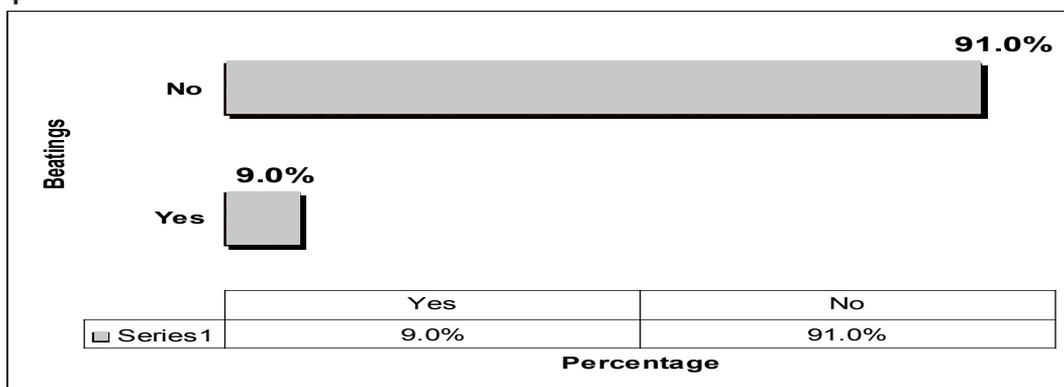
3.3 General dynamics of torture and CIDT

This section presents the findings in regard to the variables of study as specified in the introduction. Each individual variable is covered separately.

3.3.1 Beatings

Respondents were asked whether they had experienced beatings during the period of study. 9% of the respondents confirmed they had been beaten. Chart 5 below demonstrates this. Key informants interviews and Focus Group Discussions revealed that beatings were rampant when vendors were reluctant to part with bribes. Given that most beatings were reported in the CBD and Ngara areas, most of the vendors operating in these areas are experienced and fairly known to the arresting agents. These areas also reported a high level of coercion to give bribes.

Chart 5: Prevalence of beatings experienced by hawkers and small-scale business operators in Nairobi in 2013

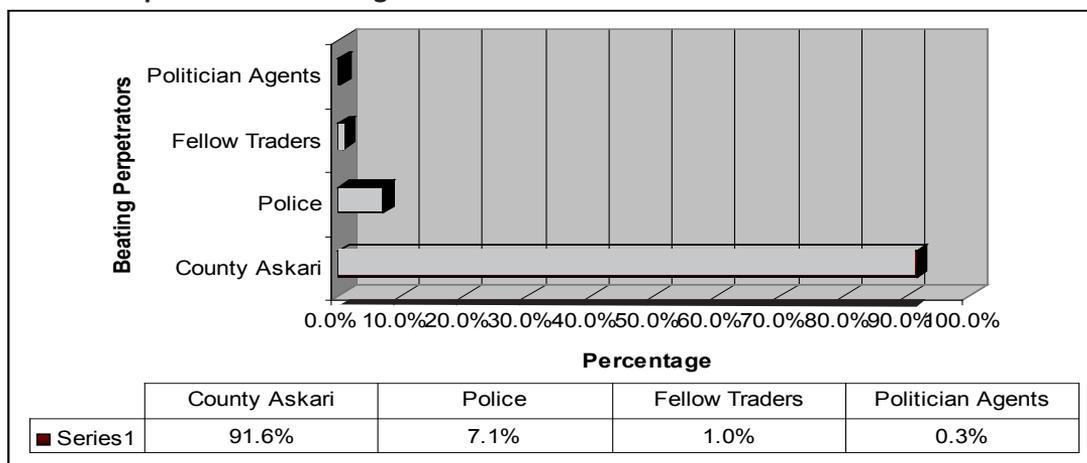


Even though the percentages of actual beatings were minimal, it means that the abuse of the rights of the target group is still on. This is still a significant percentage given that more and more urban dwellers are turning to hawking and small-scale businesses to secure their livelihoods.

When asked whether they know of any trader who had experienced beatings in their areas of operation, the number went up substantively to 52.1%. This suggests that the traders were more willing to talk about the experiences of their colleagues and not themselves when it comes to beatings. This may also result from a situation in which continued reporting of such incidents does not result in any tangible intervention.

The leading perpetrators of beatings were found to be City askaris followed by police. Key informants revealed that the askaris are not allowed to carry guns. However, they often get police back-up during operations. 91.6% said askaris were the leading perpetrators. There is an element of interference by politicians in the businesses as well as business rivalry. The business rivals and the politicians act to reinforce their own interests or the interests of those who pay them. The following Chart shows these figures.

Chart 6: Perpetrators of beatings



IMLU Field Survey, 2014

These findings were largely corroborated by key informants and participants in FGDs. The City askaris were found to be armed with crude weapons such as broken bottles, knives and stones. Indeed, a representative of the City Inspectorate pointed out that when askaris go for operations it is usually a ‘war’.

City askaris have also been victims of violence. This was attributed to (i) retaliatory attacks by traders; (ii) existence of criminal gangs within the trading fraternity and (iii) generally high levels of crime in the City. It was found that some sections of the City such as Muthurwa harbor criminals associated with some City politicians. Ultimately, this finding reflects the inability of the police to control crime in the City.

A cross-tabulation of this variable with location reveals that the most affected area by beatings is the CBD followed by Ngara area. The table below shows the scores distribution in relation to the incidence of beatings.

Table 4: Cross-tabulation of beatings experienced with location in 2013

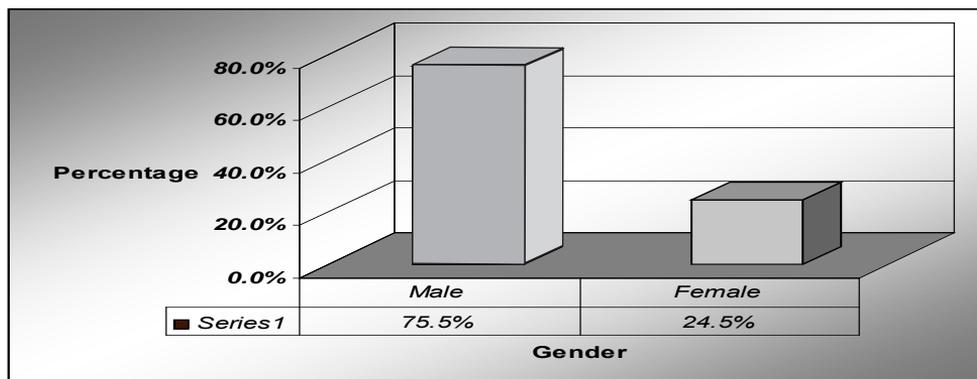
Location	Count	Percent within location	Percent of total
CBD	18	7.1	3.1
Ngara	8	11.6	1.4
Kayole	4	6.3	0.7
Kibera	1	1.4	0.2
Kawangware	0	0	0
Kangemi	4	6.8	0.7

IMLU Field Survey, 2014

The reasons for the comparatively high experiences of beatings in the CBD include the fact that hawking is prohibited in some parts of the CBD. This fact was revealed by key informants working in the licensing department. Secondly, the CBD is the most lucrative area of trade since most clients are found there. Third, because there are many businesses in the CBD there are always clashes between licensed and unlicensed, big and small, businesses. The proximity of the CBD to City Hall, particularly the Inspectorate, and some of the main police stations in the City also contributes to this. Participants in Focus Group Discussions and Key Informant Interviews pointed to the fact that there is pressure on the City authorities to clear hawkers and small-scale business persons from the streets. The reason often used by the better capitalized and established businesses is that the hawkers and small-scale business operators litter the City.

The data also reveals other important patterns after cross-tabulation. For instance, persons living with disabilities recorded a higher proportion of beatings than able bodied persons. Out of 49 interviewed, 7 had experienced beatings, representing 14.3% against 8.6% for the able bodied. Hawking in the CBD also expose persons with disabilities to beatings. Section 8 of the bylaws forbids hawking in the CDB.

More men (6.6%) recorded experiences of beatings compared to women (4.4%). Further analysis of the variable confirmed a higher prevalence of beatings on men as indicated in Chart 7 below.

Chart 7: Gender-Prevalence of beatings experienced by hawkers and small-scale business operators in 2013

IMLU Field Survey, 2014

According to key informants, victims of beatings suffer deep cuts where bottles and knives are used, while some are maimed. Sometimes the beatings take place inside the Inspectorate vans after arrests. This happens particularly after serious confrontations. If a City askari has been hurt in the process, they would corner a hawker or small-scale business operator, bundle them into their van and beat them up as a form of revenge.

Persons in the senior (above 60) age category experienced more beatings than other categories as shown in the table below. An inverse relationship was established between age and severity of injury. Young traders suffer more severe beatings as compared to old vendors. The explanation given by participants in the Focus Group Discussions, apart from the deeper familiarity between the old traders and the law enforcers, was that the young vendors sometimes fight back. This creates enmity between the law enforcers and the younger traders and exposes them to “revenge” attacks.

Table 5: Comparative experiences of beatings across age groups.

Age category	Percentage
18—25	6.1
26—35	5.1
36—45	6.4
46—60	3.8
Above 60	15.4

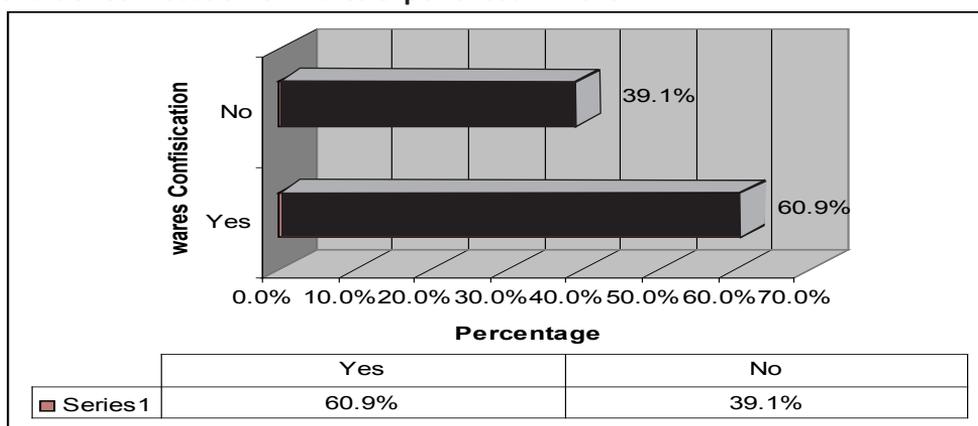
IMLU Field Survey, 2014

Finally, hawkers experienced 8 times more beatings (12.1%) than small-scale business operators (3.7%). The difference is largely as a result of the fact that most small-scale business operators are licensed making their businesses legal as opposed to hawkers who are unlicensed. Small-scale business persons also operate in structures and within buildings as opposed to hawkers who occupy walkways and other contested spaces. Charges like obstruction are more likely to be leveled on hawkers as opposed to small-scale business operators.

3.3.2 Confiscation of wares

Traders were asked whether they had experienced confiscation of their wares. City bylaws allow County officials to impound goods from hawkers when they operate in non-designated areas. This happens in a situation where the granting of permits is at the discretion of City County officials and very often those denied permits are not allowed any avenues to appeal the decisions. The impounding of goods, according to key informants was also found to have a relationship with the issue of bribery. Even if one does not have a permit a bribe will enable them to sell their wares without hindrance. It is this arbitrariness that raises concern and qualifies this as a form of CIDT. The number of those who had their wares confiscated recorded a prevalence of 39.1% in 2013 as shown in the chart below.

Chart 8: Confiscation of Wares experienced in 2013



IMLU Field Survey, 2014

Cross tabulation of the variable with location demonstrates that the CBD and Ngara are the places where wares are most likely to be confiscated while it is least in Kibera. The table below is a comparison between the study locations and frequency of confiscation of wares.

Table 6: Cross-tabulation of confiscation of wares experienced with location in 2013

Location	Count	Percent within location	Percent of total
CBD	130	51	22.2
Ngara	35	50.7	6.0
Kayole	14	22.2	2.4
Kibera	11	15.7	1.9
Kawangware	18	25.7	3.1
Kangemi	21	35.6	3.6

IMLU Field Survey, 2014

These findings are consistent with earlier findings on experiences of beatings. Apart from the prominence of the CBD and Ngara as the areas most prone to confiscation of wares, they also demonstrate that victimization reduces as one moves away from the CBD into the estates.

Of the City's outlying areas, Kangemi recorded a higher proportion of those who lost their wares.

A higher percentage of persons with disabilities (51%) had their wares confiscated compared to the able bodied (38%). This is also consistent with the finding on beatings. Persons with disabilities are less likely to escape from askaris. The fact that they are issued with a card as an affirmative action measure by the National Council for Persons With Disabilities (NCPWD) did not have a positive effect on this variable.

Table 7: Comparison of experiences of confiscation of wares between persons living with disabilities and able-bodied persons

Category	Year	Count	Percent within variable	Percent of total
Persons living with disabilities	2013	25	51.0	4.3
Able-bodied persons	2013	204	38.0	34.8

IMLU Field Survey, 2014

Slightly more men (40.3%) than women (36.8%) had their wares confiscated.

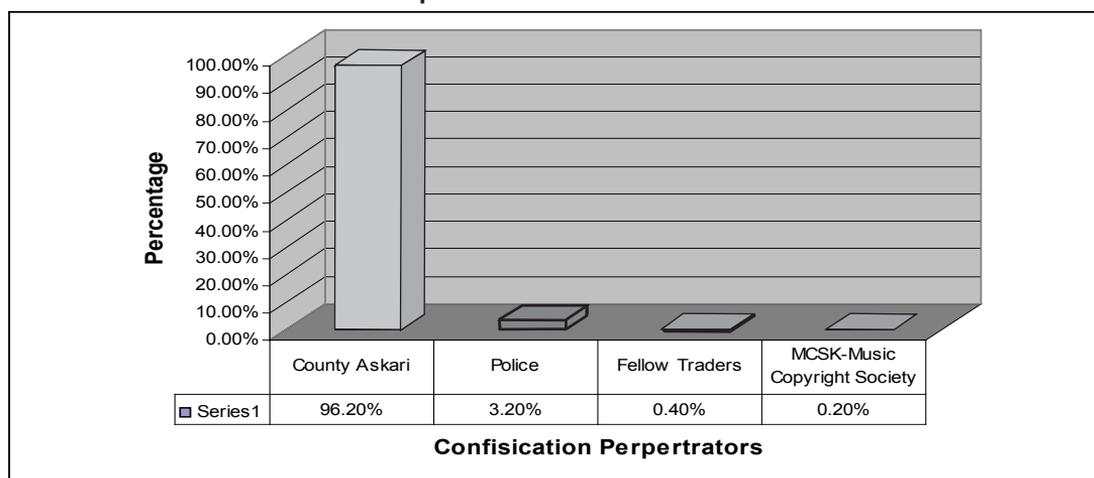
Younger traders experienced higher levels of confiscation of wares. This may be attributed to their numbers and inexperience as compared to older traders. The only slight negation of this trend was recorded in the 18–25 age category which is explained by little stock they have since they are still new in trade. The table below shows this comparison.

Table 8: Comparative experiences of confiscation of wares across age groups

Age category	Percent
18–25	19.2
26–35	48.0
36–45	21.8
46–60	5.2
Above 60	3.9
No response	1.7
Total	100.0

IMLU Field Survey, 2014

The leading perpetrators of confiscation of wares were found to be City askaris. This is shown in chart 9 below.

Chart 9: Confiscation of Wares Perpetrators

IMLU Field Survey, 2014

Key informants interviewed put the range of cost of goods confiscated at between Kshs. 2,000 to Kshs. 5,000 in most cases depending on what one is selling at the moment of confiscation. However, in isolated cases this can even go up to Kshs.10,000. Most vendors especially hawkers do not carry all their stock with them to avoid huge losses when their wares are confiscated. According to City officials, confiscated goods especially toys and foodstuffs are taken to Dagoretti Children's home. This is however, disputed by the hawkers who claim the *askaris* and other officials of the County are the beneficiaries.

3.3.3 Shootings

Respondents were asked if they had experienced shooting themselves or if they knew of other traders who had experienced shooting. Of the respondents engaged in this study, 2.0% had experienced shootings directly.

Shootings are probably the worst experience for hawkers and small-scale business operators. Shooting incidents often result in death or serious injuries. In the course of this study, the researchers were able to interact and interview at least one victim of police shooting and a widow whose husband was shot dead by police in 2012. Both victims were shot at the Globe roundabout area.

A cross-tabulation with gender shows that a bigger proportion of male traders experienced shootings. The proportion of female traders was 1.5% while that of male traders was 2.4% as shown in the table below.

Table 9: Comparative experiences by male and female traders of shootings

Gender	Victims of Shooting
Male	2.4
Female	1.5

IMLU Field Survey, 2014

Male traders had more experiences of shootings than female traders. It was noted that there is reduction of cases of shootings in electioneering years when hawkers are given more freedom to trade in the CBD. This happens because of the political strategies of political candidates especially those associated with the incumbency. In this case, hawkers and small-scale business operators are seen as an important constituency. A respondent in one of the FGDs admitted that during election times they are 'used' by politicians seeking political support. However, after the polls they are bound to lose out since they are expendable.

On age, the data presented mixed results. The highest proportion of those who had experienced shootings was recorded by those above 60 years of age at 7.7%. The 36 to 45 age group was second with a lower proportion at 4.0%. The lowest proportions were reported by the 18–25 age group at 1.7%; the 26–35 age group at 1.1% and the 46–60 age group at 1.9%. However, the actual victims of police shootings whom the researchers interacted with were younger traders.

Interviewer's Narration

In one instance, according to respondents interviewed at Globe roundabout area, a hawker was shot and seriously wounded on the knee by police. The shooting took place at Globe roundabout. Instead of taking him to hospital for treatment, they instead handed him over to City askaris who bundled him into their van and proceeded to drive the van around the CBD. All the time, the wounded hawker was bleeding. They finally brought him back to Globe roundabout and dumped him there. This incident led to one of the many anti-torture protests hawkers have staged at the Globe roundabout area.

This means the older traders could have been recalling previous experiences of shootings and not the ones recorded during the period under review.

Disability did not come out as a significant factor in experiences of shootings as both groups had a prevalence rate of 2.0%.

Slight differences were recorded in terms of the location most likely to be affected by shooting. The CBD and Kayole were the most affected as the tables below show.

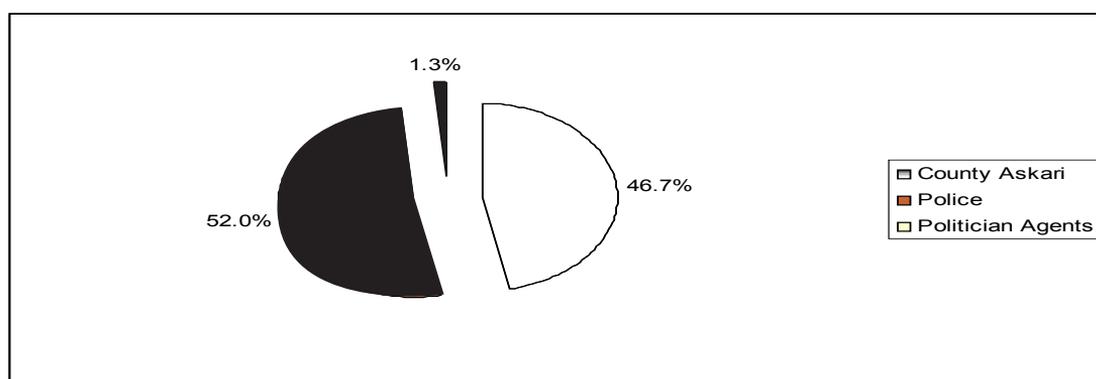
Table 10: Comparison of locations where shooting was witnessed in 2013

Location	Count	Percent within location	Percent of total
CBD	6	2.4	1.0
Ngara	1	1.4	0.2
Kayole	3	4.8	0.5
Kibera	1	1.4	0.2
Kawangware	1	1.4	0.2
Kangemi	0	0	0

The data shows that hawkers were 11 times more likely to experience shootings compared to small-scale business persons. The vulnerability of hawkers to shooting can be explained first by the fact that most confrontations in the City between askaris and business persons happen with hawkers. Secondly, those who operate in the CBD do not have permits since hawking is prohibited. Thirdly, moving from place to place makes them more vulnerable. They are the ones who sometimes occupy spaces like walkways where City residents are supposed to pass. Small-scale business persons are more likely to operate in designated spaces and have structures.

Shootings were found to be perpetrated mostly by police (52.0%) followed by askaris (46.7%). The chart below demonstrates this finding.

Chart 10: Perpetrators of shooting



IMLU Field Survey, 2014

3.3.4 Arrest of hawkers and small-scale business persons

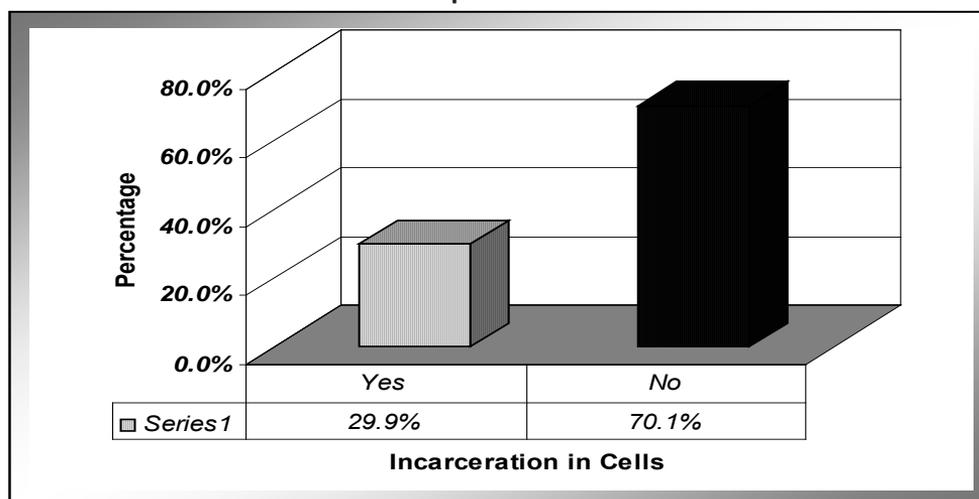
Hawkers and small-scale business operators were asked whether they had been arrested and incarcerated. Law enforcement officers are mandated by law to apprehend persons who go against bylaws. Ordinarily, after arrest the law should take its course, which is to say, the person should be arraigned in court and charged. However, the rent-seeking relationship between traders and City askaris established by this study complicates this situation. The FGDs and key informant interviews revealed that the askaris are usually heavy-handed in the manner in which they handle traders after arrest. From the word go, the intention is not to exact justice by arraigning suspects in court. On the contrary, the main intention is to punish the traders but not through legal channels. The traders will be taken round the City in trucks and those who are able to pay bribes will be let off. It is only those who are unable to comply with this requirement who are charged.

The rent-seeking behavior does not end at this point. Unlike what happens to ordinary citizens, hawkers once sent to court will often be lined up and charges read to a large number of them. They are required to plead collectively to all the charges. This goes against a key requirement of access to justice, that is, that each suspect brought to court should individually answer to charges against them.

Traders rarely deny charges against them. In fact, there is a good reason for the traders to admit to the charges and pay a fine so that they resume their trade. One of the key informants in the City government called the fines ‘rent’ that the traders pay to the City to keep their businesses going. Saying no to the charges often lands one in incarceration in one of the prison facilities in Nairobi: Industrial Area prison for men and Lang’ata Women’s prison for women. Like other prison facilities in the country, these two face challenges such as congestion and prevalence of human rights abuses (see, for instance, ICJ, 2014).

One third of all traders (29.9%) experienced incarceration. This is shown below.

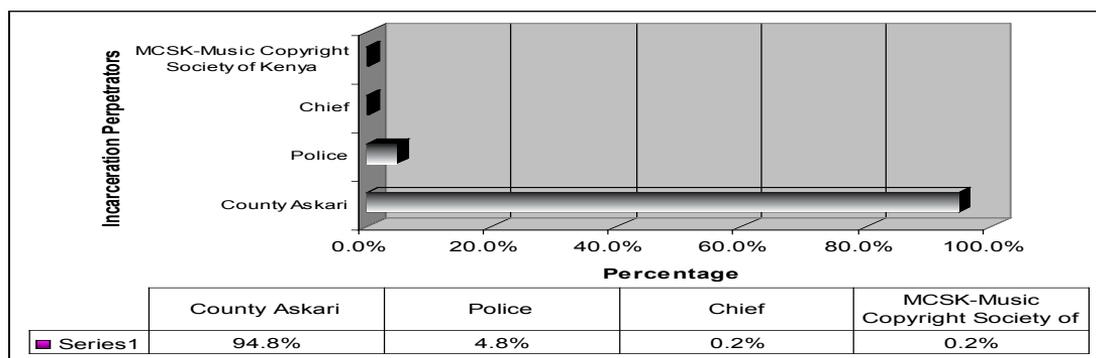
Chart 11: Arrest and incarceration in police cells



IMLU Field Survey, 2014

There is a subtle understanding that being charged in the City court is only a ritual meant to extract rents for the City just as being arrested on the streets is meant, in the first instance, to extract bribes for the arresting officers. Key informants aver that a trader who insists on being put on trial offsets this arrangement with the possibility of future victimization. Put simply, in a majority of cases, neither the arresting party nor the arrested want trials to take place. The question of the rights of traders or the need to follow due process does not even arise.

Most arrests are carried out by City askaris since it is their work to enforce City bylaws. 94.8% confirmed that most arrests are done by askaris as shown in chart 12. Key informants revealed that even though they are not officials of the County Governments, chiefs are involved in allocating space for traders especially in estates outside the CBD. The role of MCSK is to minimize trade in pirated music, which some hawkers and small-scale business persons are involved in. The Chart below demonstrates this finding.

Chart 12: Arrest and incarceration of hawkers and small-scale business operators

IMLU Field Survey, 2014

A cross-tabulation of this variable with location reveals that the CBD and Ngara are the areas where traders are most likely to be arrested. This is demonstrated below.

Chart 13: Cross-tabulation of arrests and incarceration in police cells experienced with location in 2013

Location	Count	Percent within location	Percent of total
CBD	101	39.6	17.2
Ngara	24	34.8	4.1
Kayole	10	15.9	1.7
Kibera	6	8.6	1.0
Kawangware	17	24.3	2.9
Kangemi	17	28.8	2.9

IMLU Field Survey, 2014

The CBD scored highly (39.6%) followed by Ngara (34.8%) with Kangemi coming third (28.8%). This translates to one in every five traders. Hawkers (35%) were more likely to face arrest and incarceration than small-scale business persons (20.9%). More than a third of hawkers faced arrest and incarceration in 2013.

Gender analysis indicates that 33.2% of male were victims of incarceration as compared to 23.5% of female. This variable confirms the vulnerability of male traders to torture and CIDT as compared to female traders.

Persons with disabilities were less vulnerable to incarceration with 22.4% experiencing incarceration against 30.5% of the able bodied.

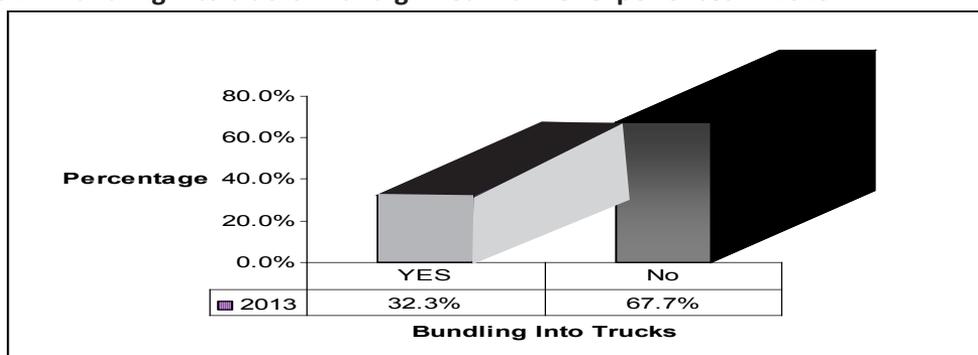
3.3.5 Bundling into trucks in undignified manner sometimes resulting in injury

One of the ways in which hawkers and small-scale business operators experience torture and CIDT is being bundled into City Inspectorate trucks in an undignified manner when arrested. This patently cruel action sometimes ends up in serious injuries since the victims are thrown

into trucks that have in them other victims, their wheelchairs and other mobility aids in case of persons with physical disability and confiscated wares, among others. It is one of the demonstrations of complete disregard for human rights and the right to dignity, a key requirement of the Constitution.

Respondents were therefore asked whether they had been bundled into trucks and whether the action had resulted into injury. Chart 14 below shows the prevalence of this form of torture.

Chart 14: Bundling into trucks in undignified manner experiences in 2013



IMLU Field Survey, 2014

Some of the most affected by this action are persons living with physical disabilities. 34.7% of all the persons with disabilities interviewed experienced being bundled into trucks in an undignified manner. This means in 2013 almost half of all traders living with disabilities experienced this indignity. The able-bodied traders had a prevalence rate of 30.9%.

Male traders (35.1%) proved to be more prone to this action than female traders (27%). At 42.70% traders in the CBD area were found to be more vulnerable to being bundled into trucks in an undignified manner. On this variable, Kangemi took the lead in terms of the outlying area of Nairobi with 32.2%. The table below presents a comparison of the proportion of those bundled into trucks in an undignified manner in the six locations of study.

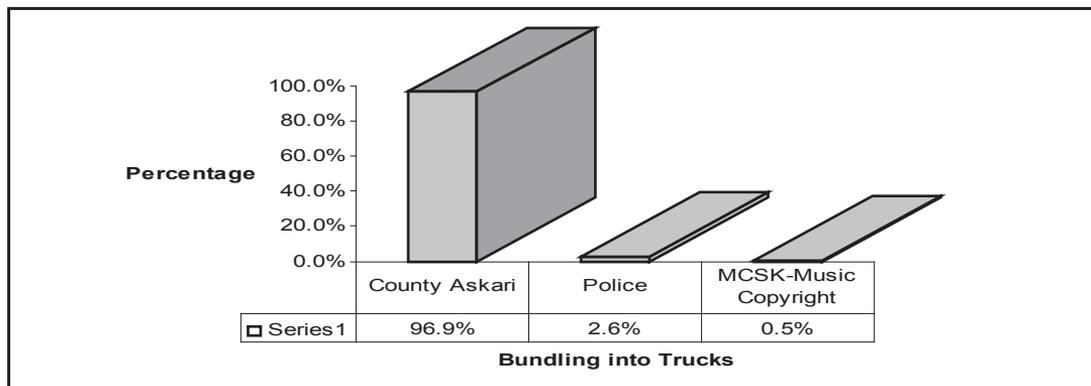
Table 11: Locational comparative experiences of bundling into trucks in an undignified manner

Location	Year 2013
CBD	42.7
Ngara	37.7
Kayole	17.5
Kibera	14.3
Kawangware	20
Kangemi	32.2

IMLU Field Survey, 2014

The key perpetrators involved in bundling traders in trucks were found to be City askaris as shown in the figure below.

Chart 15: Bundling into trucks in an undignified manner sometimes resulting in injury



IMLU Field Survey, 2014

The police and officers of the Music Copyright Society of Kenya were minimally involved in bundling of hawkers and small-scale business operators into trucks.

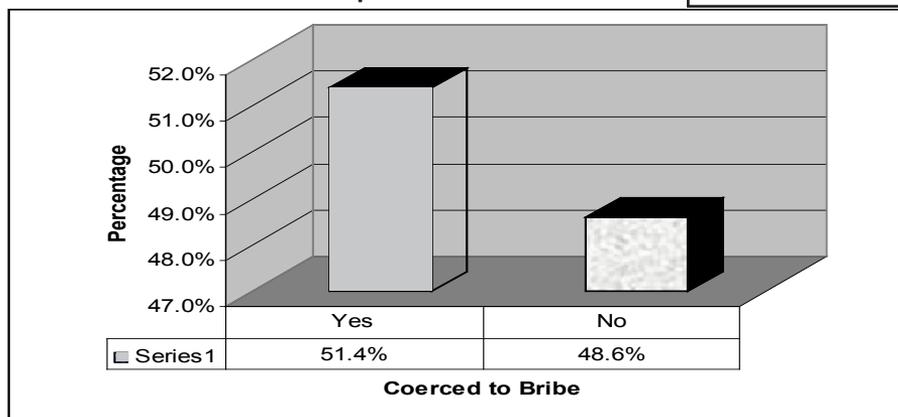
3.3.6 Coercion to pay bribes

The issue of bribery is central to understanding the dilemma that faces hawkers and small-scale business persons as they relate to Nairobi City authorities. Bribing City askaris has become so normalized that many of the traders are not aware that what they pay to the askaris are not formal charges. In 2013, 48.6% of respondents paid bribes.

Interviewer’s Narration

Olwenda, a shoe shiner along Muranga road said the City authorities are not willing to give them trading permits. Last year (2013), they were given permits but these were taken away after a few months only to be re-issued in February this year (2014). Though they are in possession of the permits they do not know how long they would have them since the askaris have already threatened to take them away. The permits deny the askaris opportunity to extort bribes. An annual trading permit costs him Kshs. 2500.

Chart 16: Coerced to bribe experiences in 2013



IMLU Field Survey, 2014

From discussions with key informant interviews, it is clear that the issue of bribery is related to almost all other forms of torture and CIDT. Being arrested or not may depend on how an individual trader had handled requests for bribes in the past and whether they have established relationships with individual City askaris for protection. The City truck used to ferry those arrested to City Hall is also a centre of processing bribes. As a practice, those arrested are driven around the City and asked to secure their release by paying bribes.

Equally, having one's wares confiscated may depend on whether or not one has fulfilled this rent-seeking requirement. Cases of beatings are equally associated with rent-seeking. If one has managed to develop a relationship with a City *askari* to provide protection, the longevity of the relationship is determined by the ability to sustain bribes. Bribery therefore, contributes to other forms of torture and CIDT among hawkers and small-scale business operators in the City.

Traders in the CBD and Ngara proved to be more vulnerable to being coerced to pay bribes. Of the remaining locations, Kibera also recorded a slightly high incidence of coercion to pay bribes. The table below shows the results.

Table 12: Comparative experiences of being coerced to pay bribes in 2013

Location	Year 2013
CBD	61.6
Ngara	60.9
Kayole	31.7
Kibera	34.3
Kawangware	32.9
Kangemi	32.2

IMLU Field Survey, 2014

The prevalence of bribery in the CBD and Ngara area is due to proximity to City Hall and also due to the lucrative nature of operating in those areas, since they are the busiest trading spots in the City. They record high returns compared to locations such as Kibera, Kawangware and Kayole. It also shows that the incidence of coercion to pay bribes decreases as one leaves the City Centre.

Slightly more men (50.0%) than women (46.1%) were coerced to pay bribes. Failure to give bribes had its consequences such as losing one's wares and being arrested as confirmed by various key informants. It was also revealed by key informants that for women traders sometimes it is a choice of whether to give bribes or to accede to the sexual advances of male askaris.

Traders living with disabilities (55.1%) were more likely to be coerced to give a bribe than their able-bodied counterparts (48%).

Hawkers continued to show more vulnerability with regards to coercion to pay bribes as opposed to small-scale business operators. As shown in the table below, slightly more than

half (53.4%) of hawkers experienced coercion to pay bribes.

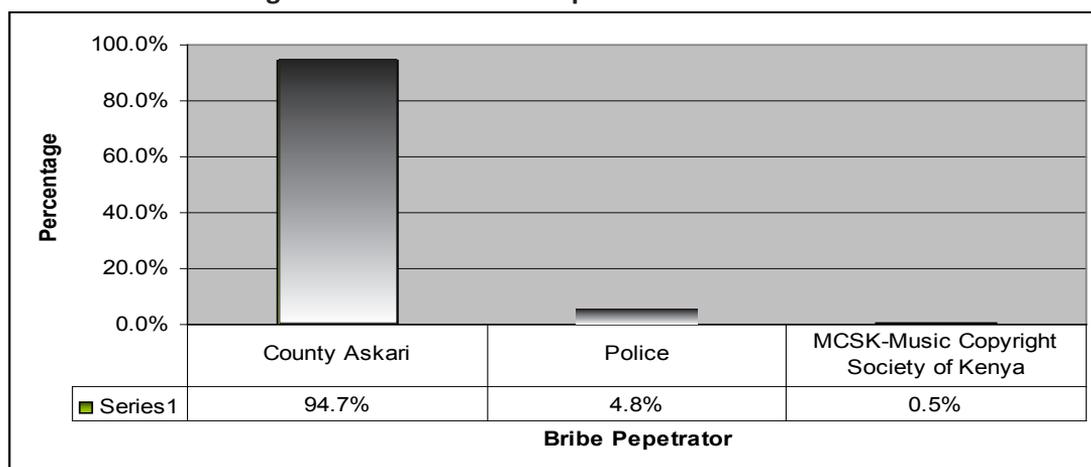
Table 13: Comparison of the extent to which hawkers and small-scale business operators are likely to be coerced to pay bribes

Type of business	Year 2013	
	Count	Percent
Hawking	198	53.4
Small-scale business	87	40.5

IMLU Field Survey, 2014

The key perpetrators of coercion to pay bribes were City askaris as shown in the Chart below. The police took part in 4.8% of the cases while the Music Copyright Society of Kenya (MCSK) recorded a slight level of involvement.

Chart 17: Coercion to give bribe to askaris and police



IMLU Field Survey, 2014

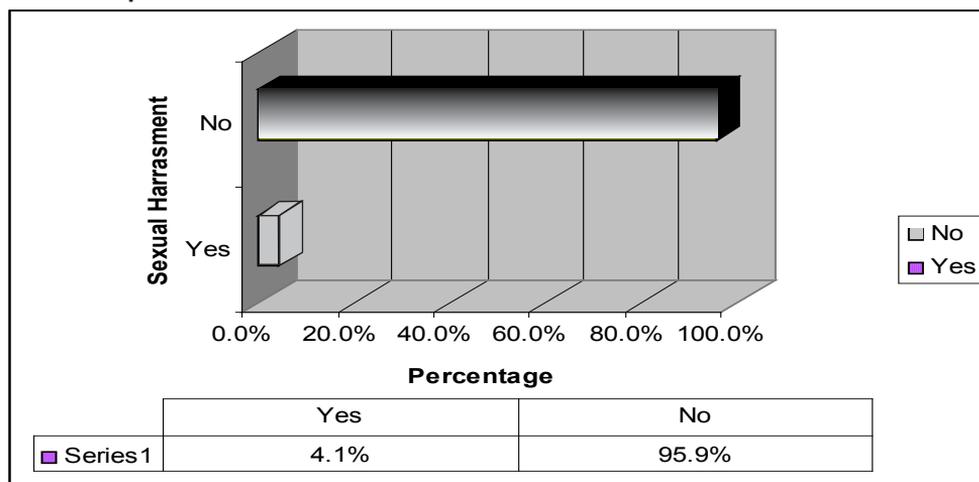
3.3.7 Sexual harassment

Respondents were asked whether they had suffered sexual harassment. Sexual harassment features among actions that are degrading to traders. This activity constitutes a form of exchange between mostly male askaris and female traders for protection. As explained by one key informant, accepting sexual advances from male askaris is treated as a form of bribery. The women who give in may be made exempt from some of the harsh treatment meted out on other traders. The askaris see it as an act of benevolence through which they 'allow' female traders to carry on with their businesses uninterrupted.

One key informant narrated how they had tried to assist a female colleague who was being harassed only to later on discover the lady and her assumed tormentor were already enjoying a sexual relationship even as they gave her financial assistance supposedly because she could not trade.

Sexual harassment does not just happen between female and male traders; a few of the male traders also reported being harassed. The Chart below presents the findings on this form of abuse.

Chart 18: Prevalence of Sexual harassment experienced by hawkers and small-scale business operators in Nairobi 2013

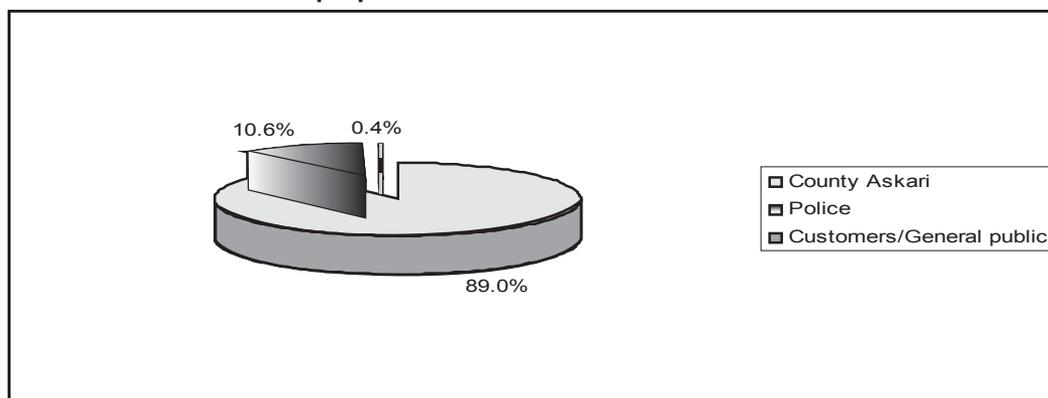


IMLU Field Survey, 2014

About four out of 100 traders reported being sexually harassed in 2013. Most of the cases of sexual harassment were reported in the CBD and Ngara. Kawangware recorded 5.7% cases while Kangemi recorded 5.1%.

The study found that the main perpetrators of sexual harassment were City askaris. A few cases were reported from the police. A few cases of clients and the ‘general public’ being involved in sexual harassment were also reported. Harassment involving clients and the general public can be explained from the point of view of a patriarchal society in which especially men treat women as sexual objects. Lone female traders would therefore be vulnerable to either attempts at seduction or attacks depending on their location.

Chart 19: Sexual harassment perpetrators



IMLU Field Survey, 2014

3.3.8 Threats

The traders were asked whether they had been threatened. During the year under review, 38.7% of respondents experienced threats. Key informants revealed that traders are often threatened with arrest, confiscation of their wares, banishment from the City, beatings or even death. They also revealed that some of the traders who got killed after confrontation with the police had prior warning before these acts took place. This view was opposed by a key informant from the City Inspectorate who said most of those killed by police were involved in crime. Threats were also found to result from business rivalry.

The CBD and Ngara recorded high scores compared to the other areas that are far from the City Centre meaning that cases of threats reduce as one moves away from the City Centre. The table below shows the comparison in terms of threats in the different locations of the City.

Chart 20: Comparison of cases of threats in different locations of trade

Location	Year 2013	
	Count	Percent
CBD	119	46.7
Ngara	28	40.6
Kayole	21	33.3
Kibera	24	34.3
Kawangware	14	20.0
Kangemi	21	35.6

IMLU Field Survey, 2014

Key informants interviewed indicated that threats are a common tool used to extort bribes from traders. Threats may also be used against women who refuse to grant sexual favours to interested male officers.

The study indicates that hawkers are more vulnerable to threats than small-scale business operators. A higher percentage (42.0%) of hawkers reported threats in 2013 compared to 33.0% of small-scale business operators.

Cases of threats are slightly high for male as compared to female traders as shown below.

Table 14: Comparison of cases of threats among male and female traders

Gender	Year 2013	
	Count	Percent
Male	141	62.1
Female	86	37.9

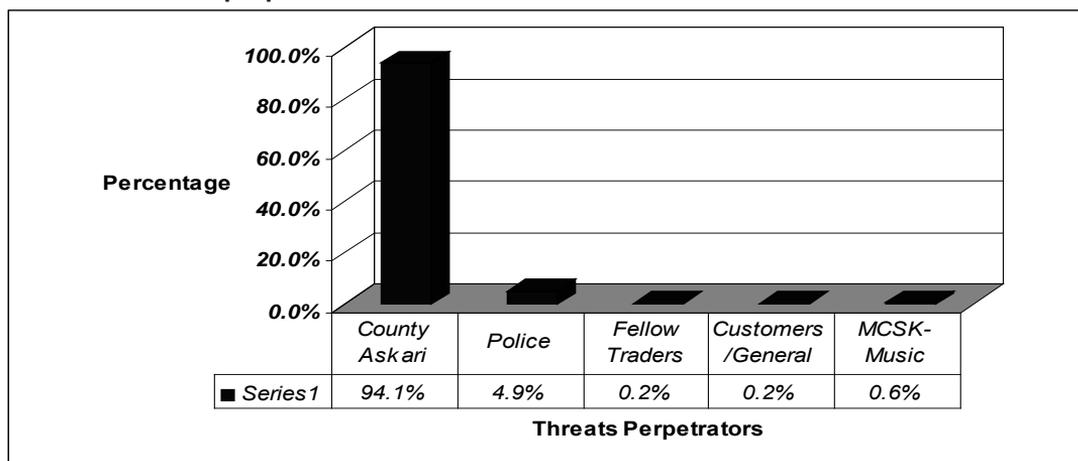
IMLU Field Survey, 2014

A slightly higher number of traders living with disabilities experienced threats in the period of study. In 2013, traders with disabilities recorded 38.8% compared to the able-bodied who

recorded 38.7%. The most important perpetrators of threats were City *askaris* with 94.1% of the cases. The Chart below demonstrates this finding.

The Chart below shows the differences in levels of perpetration of threats.

Chart 21: Threats perpetrators



IMLU Field Survey, 2014

3.3.9 Destruction and theft of wares

Apart from confiscation, traders lose their wares through destruction. This happens when there are confrontations between the traders and City authorities. Many times, the City *askaris* give chase to traders especially hawkers in attempts to arrest them. During these confrontations some of the traders throw away their wares so as to avoid being arrested. When this happens the *askaris* take the wares and it is upon the trader to follow them so as to recover their wares. Destruction of wares also happens when the *askaris* snatch goods from fleeing traders. Such goods are then thrown into the City trucks. 5.1% of the respondents interviewed said their goods were destroyed.

City bylaws allow law enforcers to impound goods when hawkers are found to trade in non-designated areas and have the goods sold through a public auction (ICJ-K & TI-K, 2013). Procedures allow traders to recover their goods. However, it was found that these procedures are largely ignored. A key informant in the City's Inspectorate explained that the traders do not make follow ups to recover their goods but prefer to restock. Many of the traders revealed that it was rather difficult to recover goods once confiscated. Many also expressed the view that the arrests were often prompted by the need by *askaris* to secure bribes and not necessarily because they are interested in implementing the relevant bylaws.

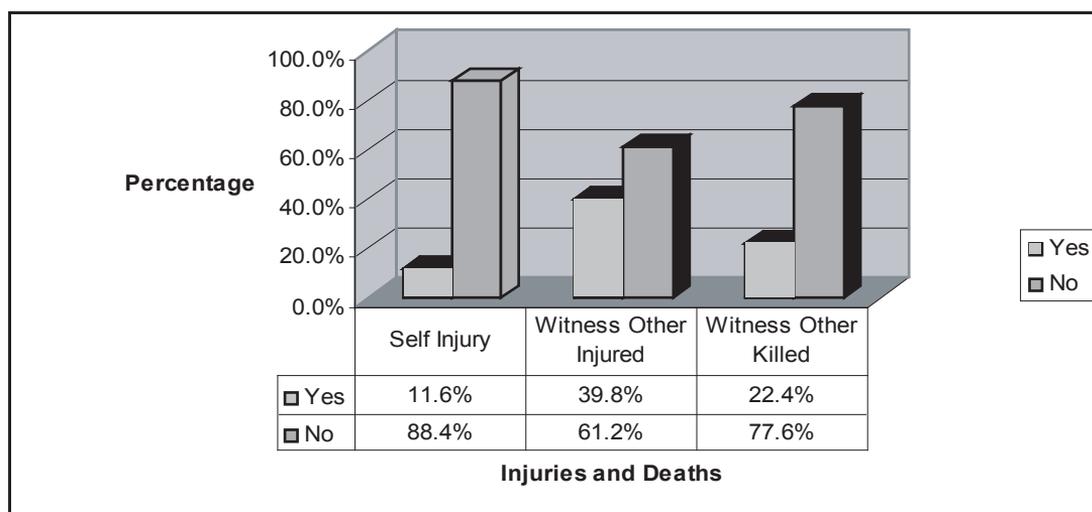
Theft of goods was more prevalent in Kangemi than in the CBD and Ngara. The area recorded 10.1% of all the cases reported compared to 5.9% and 5.8% for the CBD and Ngara respectively. This means almost twice as many cases of theft of goods happened in Kangemi as in the CBD and Ngara.

3.3 Injuries and deaths as a result of torture and CIDT

Traders were asked if they had sustained injuries in confrontations with *askaris* and whether they knew other persons who had been injured. Further, those who had experienced injuries were asked to describe the kind of injuries they had suffered.

It was found that 11.6% of the traders had sustained injuries. The nature of injuries sustained was listed as body, head, broken limbs, loss of teeth/tooth, internal injuries and deep wounds as a result of stabbing and cuttings by knives or broken bottles. A significant number of traders (233) said they knew other traders who have been injured. Other traders had suffered gunshot wounds, broken limbs, loss of teeth, hearing and visual impairments and miscarriages among women. The survey also found that 131 or (22.4%) of the traders knew of a trader who has been killed. Injuries are caused by crude weapons such as broken bottles, iron bars, *rungus* (clubs) and stones. Most of the killings of traders were attributed to police even though there was a marginal difference with those associated with City *askaris*.

Chart 22: Injuries and deaths experienced and witnessed by traders



IMLU Field Survey, 2014

The respondents who reported suffering injuries in confrontations with *askaris* and police were 11.6% while those who witnessed others being injured were 39.8%. The proportion of those who had witnessed the death of other traders was 22.4% signifying that killings are a regular occurrence. This high proportion of traders witnessing the death of their colleagues also signifies the high levels of psychological torture that hawkers and small-scale business operators go through on a day-to-day basis.

3.4 Victimization Timings

When asked about the periodic nature of victimization, traders noted that the frequency of such actions varied, with a sizeable proportion giving the frequency as either weekly or daily, accounting for (34.5%) and (34%) respectively. A number of traders (9.6%) were also found to have never witnessed any form of torture and CIDT in their locations of operation. In cross-

tabulating this frequency of victimization and location, it was found that those who had not witnessed any form of CIDT were operating in Kibera, Kayole, Kawangware and Kangemi, otherwise all traders in Ngara and CBD had been victimised. This signifies that victimization reduces as one leaves areas close to the CBD.

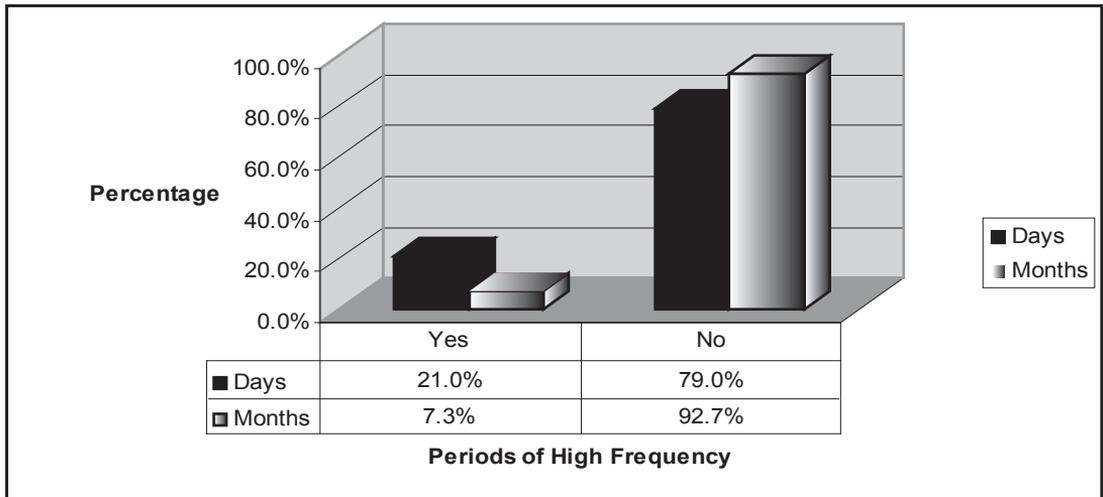
Table 15: Frequency of victimization in their area of operation

Action Frequency	Frequencies	Percentage
Daily	199	34.0
Weekly	202	34.5
Monthly	53	9.0
Every Three Months	30	5.1
Twice Per Year	16	2.7
Once A year	26	4.4
Never Witnessed	56	9.6
Random	4	0.7
Total	586	100.0

IMLU Field Survey, 2014

The study found out that the incidence of torture and CIDT among hawkers was varied in terms of days and months. A sizeable portion of traders (21%) noted that these actions vary in terms of days while a lower percentage (7.3%) noted that it varied in months. Mondays, Fridays, end-month and weekends were given as days when the incidence of torture and CIDT is high. This difference was attributed to inspection of payment receipts, days when there are more transactions than others ('booming market'), days when there are fewer traders operating hence becoming more prone to torture and CIDT, among others. The months of January and December were identified as notorious months in as far as cases of torture and CIDT targeting hawkers are concerned. December witnesses increased volume of trade due to holidays. January is associated with license renewal inspection particularly among small-scale business operators. The Chart below shows this finding.

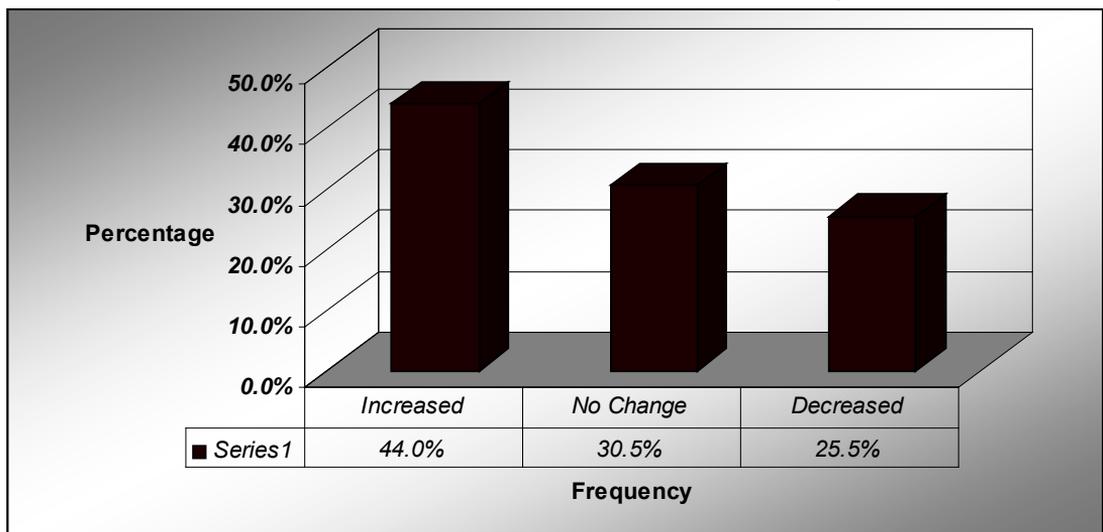
Chart 23: Periodic nature of Torture and CIDT



IMLU Field Survey, 2014

When asked whether cases of torture and CIDT were increasing or decreasing, (44%) said they were increasing, (30.5%) observed that there was no change in the incidence while 25.5% reported a decrease.

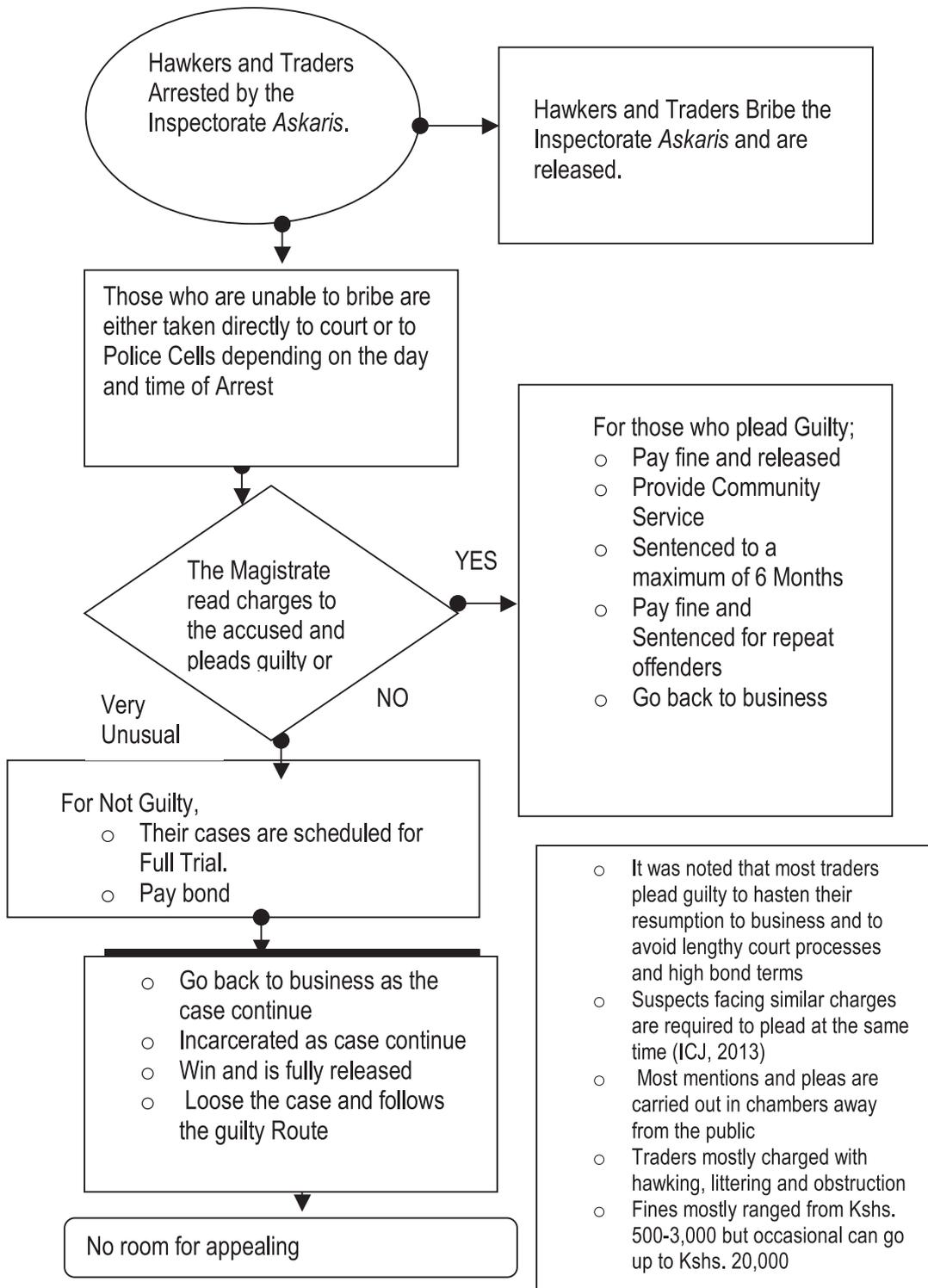
Chart 24: General trend of Torture and CIDT Actions between 2011 up to 2013



IMLU Field Survey, 2014

3.5 Hawkers and Traders Justice System

Figure 1: Hawkers and Traders Justice Flow chart



3.6 Conclusion

In conclusion, confiscation of wares (60.9%) ranked the highest in terms of prevalence, followed by coercion to bribe (51.4%) while the incidence of shootings and sexual harassment accounted for 2% and 4.1% respectively.

The key perpetrators of torture and CIDT are the City *askaris* who work in the Inspectorate Department of the City Government. City *askaris* took a lead in all the variables except for 'shootings' in which the police (members of the National Police Service) took the lead.

Overall, persons living with disabilities were found to experience more violations across variables.

The study also established that hawkers were more likely to be victims of torture and CIDT than small-scale business operators.

Traders operating in the CBD and Ngara area were found to be more vulnerable. The level of vulnerability was found to decrease as one leaves the City Centre.

Finally, the older traders and persons living with disabilities were found to experience a higher level of vulnerability. The following chapter presents findings on reporting and response, coping mechanisms and support systems.

CHAPTER FOUR

REPORTING AND RESPONSE, COPING MECHANISMS AND SUPPORT SYSTEMS

4.1 Introduction

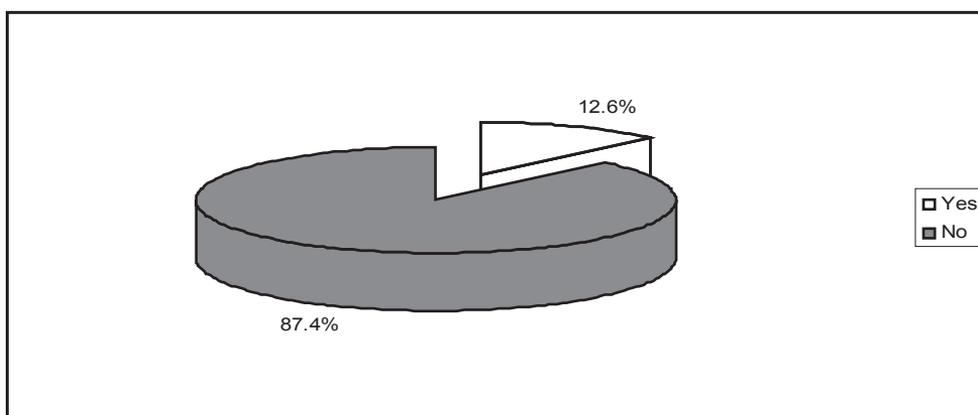
This chapter presents the findings in regard to reporting, response, coping mechanisms and support systems. As chapter three has demonstrated, hawkers and small-scale business operators have been victims of different aspects of torture and CIDT. These have led to injuries and even deaths.

4.2 Reporting and Response to torture and CIDT

Traders were asked whether they had reported when victimised. Those who had reported were asked where they reported. Those who had not were asked to give reasons for not reporting.

Reporting of cases of torture and CIDT was found to be very low as only 78 traders (12.6%) were found to have reported as shown in Chart 25. Various reasons were given for not reporting with the following being most outstanding: traders do not know where to report (24.6%), fear of repeat victimization (22.5%), no need to report as it is a waste of time since nothing will change (21%), settle with the perpetrators informally (8.2%), one cannot report 'government to government' (7.2%), and, lastly, lack of business permits (4.5%). The accounts provided show the police and *askaris* do not exercise any duty of care when confrontations lead to injuries among traders. Injured traders are left to their own devices.

Chart 25: Reporting of Torture and CIDT



IMLU Survey, 2014

The fact that a majority of the respondents stated that they did not know where to report cases of torture and CIDT is important. It suggests that if they know where to report such hawkers and small-scale business operators will report incidents of torture and CIDT. A better focus on the rights of hawkers and small-scale operators by the National Government, the Nairobi City County and human rights organisations should result in better reporting. The proportion of

those who said they did not report because nothing would change is also significant, implying that even if there are reporting centres, there are those who will not see a need to report.

The circumstances that hawkers and small-scale business operators face, coupled by the lack of focus on justice at the City court has made many of them to be sceptical about making reports to the authorities when they are tortured. The high number of those who do not know where to report is therefore moderated by an almost similar number of those who have given up for the reason that nothing would be done even if they reported.

However, it is also known among many traders especially hawkers that lack of business documents (permits, etc) means they may not have recourse when arrested. The importance of this response was underscored by one of the key informants associated with a human rights organisation who pointed out that the victimization of traders in Nairobi cannot stop unless they are given better leeway to trade. The respondent insisted that criminalizing hawking and other forms of small-scale businesses is the same as criminalizing citizen's attempts to earn a living.

The participants in the FGD carried out with persons with disabilities confirmed the reasons given for not reporting torture and CIDT. They noted that the difficulty of reporting to police arises from the fact that some of them may be working with the *askaris* to extort bribes from the traders. Because of this the police are never willing to pursue cases involving *askaris* even when they receive reports. Furthermore, a trader who dares to report an *askari* must contend with further victimisation. This is one of the reasons why formal mechanisms of reporting are failing.

Nonetheless, a small proportion of victims still reported to different authorities. As shown in the table below, the highest number of reporting was made to the police (47.4%), followed by City County offices (21.7%) and the local administration (chief; at 16.7%) of the reported cases. Other avenues of reporting mentioned are Market Committee, traders association, district officer's office and the Ethics and Anti-Corruption Commission (EACC) offices.

Table 16: Where torture and CIDT report was made

Reported to	Frequency	Percentage
Market Committee	6	7.7%
Chief	13	16.7%
City Council Offices	17	21.7%
Police Station	37	47.4%
The Traders Association	2	2.6%
D.O's Office	2	2.6%
Anti-Corruption Offices	1	1.3%
Total	78	100.0%

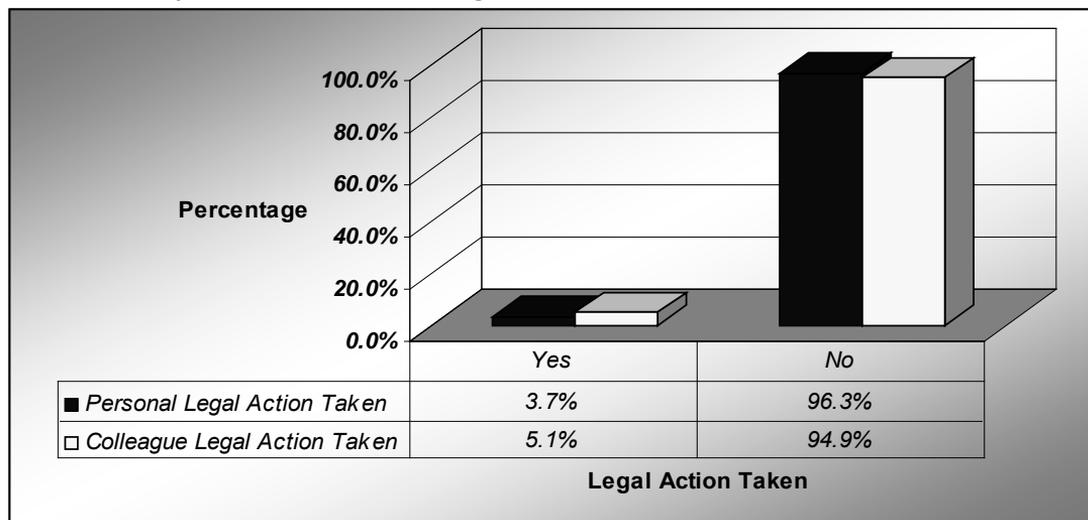
IMLU Survey, 2014

It was noted by a significant proportion of respondents (21.6%) that action was taken after reporting as compared to a majority (78.4%) whose reporting did not attract any action. In the few instances where action was taken, these included warning the officers involved (32.3%), stopping the officers involved from harassing traders (29%), returning confiscated goods and cancellation of cases filed in the City court. These two latter actions accounted for 6.5%

each. There was however, a high level of dissatisfaction with actions taken with only a small proportion (11.4%) of the traders being satisfied with the actions taken.

Respondents were also asked if they had taken legal action after being victimised. The findings show that very few traders (3.7%) took legal action. A slightly higher proportion (5.1%) indicated legal action being taken on their behalf by colleagues. This is shown in chart26.

Chart 26: Comparative effort to take legal Action



IMLU Survey, 2014

Reasons for limited recourse to legal action include unaffordability of legal fees, lack of legal aid schemes, lack of awareness of legal recourse as an avenue for resolution, fear of antagonizing the City authorities, and lack of alternative employment.

Some respondents reported that associations (4.1%) had intervened when their members reported victimisation. The kind of interventions were listed as raising money to pay fines and bail out members, offering legal assistance, organizing protests and demonstrations, giving alerts to members when operations are underway, negotiating informally with the perpetrators on behalf of the traders and creating awareness among traders about their rights and responsibilities.

4.3 Coping Mechanisms and Support Systems

Traders were asked what they did after being victimised and whether there are any support mechanisms for victims. Apart from a sizeable portion (35.7%) who said they do nothing when they experience torture and CIDT, the vendors reported various response mechanisms including payment of bribes so that they continue to operate (21.9%); restocking and continuing with business after losing one's wares (10.5%); hiding or escaping until one feels it is safe to return to their business (8%); paying the required fees to avoid trouble with the perpetrators (6.9%) and give in to the demands (paying bribes, satisfying demands for sexual relationships, etc) of the perpetrators (3%). From the Focus Group Discussions it was also noted that most vendors especially hawkers keep most of their stock far from the trading spots to avoid losing their entire capital when the enforcement officers confiscate their wares.

A significant proportion of traders go to hospital when injured (42.7%) but they avoid some public facilities associated with the City due to fear of repeat victimisation. A few (2.8%) treat their injuries at home. Findings also indicate that 41.9% do nothing when their colleagues are injured, though a sizeable proportion (37.1%) raises money to settle medical bills incurred by their injured colleagues and in a few cases (1.3%) gang up against the perpetrators.

It is noteworthy that only 2% of the traders acknowledged existence of institutions that provide support when they are injured. This corroborates the finding that when injured, the victims have very little expectation of external help. The fact that there is little faith in securing justice and resolution at the City Court further compounds the feeling of helplessness. The respondents mentioned the following as institutions that ought to take a leading role in addressing torture among traders; the National Government, the County Government of Nairobi, the Law Society of Kenya (LSK), Kituo Cha Sheria, the Independent Medico-Legal Unit (IMLU), Kenya National Commission on Human Rights (KNCHR), NISCOF, trade unions, traders associations, department of social services and the National Police Service (NPS).

In order to reduce conflict and injuries involving traders and perceived perpetrators, it was noted that the County *askaris* should respect human rights and develop good working relationships with the traders (17%); that the National Government should play a proactive role in resolving the differences emerging between the traders and perpetrators (9%), that hawking should be legalised in the CBD (6.5%); that *askaris* should stop abuse of their powers (5.6%) and that charges should be reduced to improve compliance (3.8%).

4.4 Conclusion

Various traders have adopted various ways of coping with torture and CIDT, but most of the adopted mechanisms are inclined towards informality as very few (3.7%) of them take any legal action against perpetrators. Government institutions are not the most favoured avenues for seeking resolution in the event of abuse of rights. Another formal coping mechanism is by use of vendors associations to intercede and negotiate for mercy and protection on behalf of the vendors.

The most popular informal coping mechanism is paying bribes to the enforcement officers who are usually the perpetrator of these acts. This is, in essence, a way of buying protection. Other traders run away and relocate their businesses, while some restock. To avoid heavy losses, some traders keep away part of their wares whenever they venture into the streets. Occasionally, the traders regroup and violently repulse the enforcement officers.

In terms of support systems, it can be concluded that there is a fairly good attempt to give support to victims by fellow traders e.g. paying for bail and hospital bills but the system is not institutionalized, hence still operating haphazardly. There is lack of legal aid, which is most needed to sort out the torture and CIDT violations targeting vendors. From the nature of the problem, a proper support system should aim at improving awareness, as well as taking care of the legal and medical needs of the vendors. There is evidence of knowledge of existence of different institutions, but their role in assisting vendors overcome challenges related to torture and CIDT is still vague and haphazard.

CHAPTER FIVE



SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This study sought to establish a baseline on the experiences of torture and CIDT among hawkers and small-scale business operators in Nairobi City County. It was guided by the following three objectives:

- Investigating experiences of torture and CIDT among hawkers and small scale business operators in Nairobi covering the year 2013
- Examining and documenting official and non-official response to torture and CIDT among hawkers and small-scale business operators and lessons learnt, and
- Assessing the adequacy of the legal and policy frameworks in responding to torture and CIDT involving hawkers and small-scale business operators in Nairobi.

The study applied nine variables to quantify the cases of torture and CIDT and applied mixed methods approach. Qualitative and quantitative methods were applied both in data collection and analysis. This chapter gives a summary of the main findings, presents the conclusions and makes recommendations.

5.2 Summary of main findings

This section presents a summary of the findings based on the objectives as outlined in the introduction section.

5.2.1 Experiences of torture and CIDT among hawkers and small-scale business operators

- Broadly, the study established the vulnerability of hawkers and small-scale traders to torture and CIDT and the absence of support mechanisms for victims;
- Causes of vulnerability include traders operating without permits contrary to City bylaws, City bylaws that restrict hawkers and small-scale business persons from trading within the CBD, rivalry among traders, lack of standards to regulate the conduct of law enforcers and corruption among City *askaris*;
- City *askaris* were found to be main perpetrators of torture and CIDT. However, the main perpetrators of shootings were found to be officers of the National Police Service;
- There was a notable rising trend among most of the variables investigated. Overall, 44% of the respondents stated that cases of torture and CIDT were on the rise;
- Persons living with disabilities were found to experience more violations across variables
- The study established a positive relationship between bribery of City *askaris* and the incidence of torture and CIDT. In 2013, almost half of the hawkers and small-scale business operators experienced coercion to give bribes; and
- Contrary to perceptions that hawkers are persons of no fixed abode, the respondents engaged more than three quarters (68%) of the respondents engaged in this study were married while only 26.2% were single. This is an indication that the sector is important in providing livelihood for households.

5.2.2 Official and non-official response to torture and CIDT among hawkers and small-scale business operators and lessons learnt

- The operations of the City Court were found to be wanting in administering justice for hawkers and small-scale business operators. The practice of requiring suspects facing similar charges to plead at the same time when brought to the Court goes against requirements of justice;
- The study established that only 12.6% of victims of torture and CIDT reported to authorities. Reasons for not reporting were: traders do not know where to report (24.6%), fear of repeat victimization (22.5%), no need to report as it is a waste of time since nothing will change (21%), settle with the perpetrators informally by (8.2%), one cannot report 'government to government' (7.2%), and lastly they lack proper business documentation (permits, licenses) (4.5%);
- It was found that City *askaris* and police do not care when confrontations lead to injuries among traders including gunshot wounds. Injured traders are left to their own devices
- Reporting did not attract any action from the authorities for a majority of respondents (78.4%); some action was reportedly taken in a minority of cases (21.6%);
- In the few instances where action was taken, these included warning of the officers (32.3%), stopping of the county officers from harassing traders (29%), returning of goods and cancellation of cases filed in the City court (6% in both cases); and
- Only a small proportion (11.4%) of the traders reported being satisfied with the actions taken after experiencing a violation.

5.2.3 The adequacy of the legal and policy frameworks in responding to torture and CIDT involving hawkers and small-scale business operators in Nairobi

- Primary and secondary sources revealed that existing legal and policy frameworks do not respond sufficiently to cases of torture and CIDT. The City court, which is supposed to ensure justice for victims of torture, was found to operate in a manner that does not guarantee justice for victims;
- City bylaws were found not to address issues of rights of hawkers and small-scale business operators. The Small and Medium Enterprises Act was also found to lack any meaningful references to the rights of hawkers and small-scale business operators;
- The finding that 24.6% of the traders did not know where to report cases of torture and CIDT demonstrated, among others, the inadequacy of the legal and policy frameworks to protect hawkers and small scale business operators; and
- Institutions such as the Kenya National Commission on Human Rights (KNCHR), Independent Policing Oversight Authority (IPOA) and the Internal Affairs Unit of the National Police Service (NPS) were wrongly not mentioned as avenues of reporting violations.

5.3 Conclusions

This study concludes that there is rampant abuse of the rights of hawkers and small-scale business operators in the City. The main causes of these abuses are: traders operating without permits contrary to City bylaws, City bylaws that restrict hawkers and small-scale business

persons from trading within the CBD, rivalry among traders, lack of standards to regulate the conduct of law enforcers and corruption among City *askaris*.

The link between corruption and abuse of human rights was evident. It was also clear that licensing or issuance of permits to hawkers reduces vulnerability. The fact that City *askaris* were identified as the main perpetrators indicates official sanction of abuses. This was compounded by the apparent lack of guidelines on enforcement of bylaws. However, it is important to note that City *askaris* also face vulnerability and indeed members have suffered injuries during confrontations with the traders.

Cases of abuse reduce across variables as one moves away from the CBD. In most variables, the CBD came first in terms of prevalence followed by Ngara area. Age and disability proved to be important factors in the prevalence of abuses. On gender, despite their numerical superiority, men suffered more than women.

Hawkers recorded more cases of abuse compared to small-scale business operators across variables. It was noted that more small-scale business persons who are largely involved in service provision, are licensed. This is in contrast with the fact that majority of hawkers are not licensed hence supporting the conclusion that licensing reduces vulnerability.

Finally, the cases of abuse of rights of hawkers were exacerbated by the fact that *askaris* usually carry crude weapons in operations. These include broken bottles, *rungus* and stones. There was no evidence of guidelines for the *askaris* on the use of force. There was also no evidence of a unit where victims could report.

5.4 Recommendations

This study makes the following recommendations to key stakeholder groups:

5.4.1 National Government

- (i) Work with the City Government to investigate claims about illegal guns in possession of City *askaris* and clarify to stakeholders what weapons the *askaris* are entitled to carry;
- (ii) Formulate a national law making it illegal for *askaris* to carry crude weapons such as stones and knives during operations;
- (iii) Work with the Senate to formulate a national law criminalising torture and CIDT as conducted by county law enforcers; and
- (iv) Work with County Governments to formulate national guidelines and standards on enforcement of bylaws to guide the work of County law enforcers.

5.4.2 County Government of Nairobi

- (i) Scrutinise City bylaws with a view of revision to make them protect the rights and interests of small-scale traders. Two bylaws can be pointed out in this regard:
 - a. Bylaw number 8 forbids traders from operating without permits in the City. However, it does not provide any complaint or appeal mechanism in case one feels they have been denied a permit without good reason, and
 - b. Section 11 of the City bylaws states that any person who engages in hawking with or without a permit within the Central Business District (CBD) as defined

... shall be guilty of an offence. This denies traders access to most of their customers. The bylaw needs to be reviewed while at the same time the City should designate areas in the CBD where hawking can be undertaken on specific days of the week;

- (ii) Work together with the National Government on strategies to minimise or eliminate crime from the hawking fraternity;
- (iii) Prepare a template for a catalogue of goods seized from traders during operations to make it easy for the traders to recover their goods after being impounded;
- (iv) Establish centres where goods seized from hawkers will be kept with a clear time lines and widely publicise guidelines on how traders can access their goods and happens when traders fail to pick their goods;
- (v) Recognise the cards issued by the National Council for Persons With Disabilities (NCPWD) as affirmative action measure for persons with disabilities and eliminate permit requirements for this group;
- (vi) Educate the City population on bylaws to make the work of regulation as manageable as possible;
- (vii) Establish a complaints unit at City Hall vested with powers to investigate the conduct of *askaris* when complaints arise;
- (viii) Create an office and procedures of handling complaints from hawkers and small-scale business operators who fail to secure permits;
- (ix) Revamp, recreate and reorient the City Inspectorate. More specifically, there is need to train *askaris* on human rights in collaboration with human rights organisations and the Kenya National Commission on Human Rights (KNCHR); and
- (x) Work together with the judiciary to review the *modus operandi* of the City Court to ensure the court serves the ends of justice. One of the practices that need to be reviewed is that requiring suspects facing similar charges to plead at the same time when brought to the Court.

5.4.3 Human Rights Organisations (HROs)

- (i) Carry out advocacy on policy and legal frameworks that are enabling to traders and that protect their rights;
- (ii) Work with the City County Government to educate citizens on bylaws;
- (iii) Work with the City County Government to undertake human rights training for City *askaris*;
- (iv) Work with the National and City of Nairobi Governments to formulate national guidelines and standards on enforcement of bylaws to guide the work of County law enforcers;
- (v) Establish programmes to provide medical and legal aid to hawkers who are hurt during operations; and
- (vi) Advocate for national laws that protect the rights and interests of hawkers and small-scale business operators with affirmative action measures for the most vulnerable.

REFERENCES

Bangasser, P.E. (2000). *The ILO and the Informal Sector: An Institutional History*. Geneva: International Labour Organization.

Davis, M. (2005). "The Moral Justifiability of Torture and other Cruel, Inhuman and Degrading Treatment (CIDT)." *International Journal of Applied Philosophy*. 19.2. Illinois: Illinois Institute of Technology.

EAC (2009). Consolidated Regional Report on Study on the Promotion of Small and Medium Enterprises (SME) in the East Africa.

EAC (1999). East African Community Treaty. (<http://www.eac.int/treaty/>) accessed 02/07/2014

GoK (2010). Constitution of Kenya, Nairobi: Government Printers.

GoK (2009). Economic Survey. Nairobi: Government Printers.

GoK (2010). Kenya's Population and Housing Census, Volume 1A. Nairobi: Kenya National Bureau of Statistics (KNBS).

Government of Kenya (GoK) (2011A). National Police Service Act Cap No. 11A. Nairobi: Government Printer.

Government of Kenya (GoK) (2011B). National Police Service Commission Act Cap No. 30 of 2011. Nairobi: Government Printer.

Government of Kenya (GoK) (2011C). The Independent Policing Oversight Act Cap No. 35 of 2011. Nairobi: Government Printer.

ICJ & OSIEA. (2014). *The Impact of County Bylaws on Prisons and Pre-Trial Remand Facilities in Nairobi and Nakuru Counties, 2014*.

ICJ-K & TI-K. (2013). *Justice at City Hall*. Strengthening Judicial Reforms Series XIV.

IMLU (2013). *Torture and Related Violations in Kenya: Alternative Report to the United Nations Committee Against Torture. Presented at the 50th Session (5th to 31st May 2013)*. Nairobi: IMLU.

IMLU (2011). *Up Scaling Torture Prevention and Response in Kenya: National Torture Prevalence Survey 2011*. Nairobi: IMLU.

IMLU (2011). *Strategic Plan 2011-2016*. Nairobi: IMLU.

IMLU (2008). *Torture and Related Violations in Kenya: Alternative Report to the United Nations Committee Against Torture. Presented at the 41st Session (3rd to 21st November 2008)*. Nairobi: IMLU.

Mitullah, W. (2003). "Street Trade in Kenya: The Contribution of Research in Policy Dialogue and Response". *Paper Prepared for Urban Research Symposium on Urban Development for Economic Growth and Poverty Reduction*. Washington, DC.

Muiruri, P.W (2007): *Finding Sustainable Policy Options for Informal Street Traders in Nairobi, Kenya: A Human-Right Based Approach*. Proceedings from the Small Grants Programme on Poverty Eradication: Building National Capacities for Research and Policy Analysis. International Meeting: Results and Findings held on 27 February-2 March 2007 at Calouste Gulbenkian Foundation, Lisbon Portugal.

Nowak and McArthur. (2006). *The Distinction between Torture and Cruel, Inhuman and Degrading Treatment (CIDT)*. (<http://www.ncbi.nlm.nih.gov/pubmed/17251647>) accessed 23/08/2014

OMCT., IMLU., & ICJ. (2008). "An Alternative Report to the Committee Against Torture". November 2008.

Wanjohi, A. M. (2009). "SME Policy in Kenya: Issues and Efforts in Progress". Kenya Projects Organization Papers Portal (<http://www.kenpro.org/sme-policy-in-kenya-issues-and-efforts-in-progress/>) accessed 23/07/2014.

APPENDIX

ANNEX ONE: TRADERS' QUESTIONNAIRE

Dear Respondent,

We are a group of researchers carrying out a study on the experiences of Torture, and Cruel, Inhuman, and Degrading Treatment among hawkers and small-scale business persons. The study is being carried out on behalf of the Independent Medico-Legal Unit (IMLU), a human rights organization based in Nairobi. It will avail information to be used to design programmes to intervene in instances of human rights abuse. We would like to ask you a few questions regarding your own experiences. But first, please tell me, how long have you been in this business?

Name of the Enumerator: _____ Date of Interview: _____

Name of the Trader (optional): _____

SECTION A. BUSINESS GENERAL DETAILS	
1. Location: 1. CBD <input type="checkbox"/> 2. Ngara <input type="checkbox"/> 3. Kayole <input type="checkbox"/> 4. Kibera <input type="checkbox"/> 5. Kawangware <input type="checkbox"/>	
6. Kangemi <input type="checkbox"/> (Tick appropriately)	
2. Physical location of the trading activities e.g. street/market name etc? _____	
3. Duration in business at the location _____	
3. Member of Any Vending/Trading organization or association in Nairobi? 1. Yes <input type="checkbox"/> 2. No <input type="checkbox"/>	
4. Name of the Association/Organization Membership?	
1. NISCOF <input type="checkbox"/> 2. KENHAHA <input type="checkbox"/> 3. Others Specify _____	
4. Not Applicable-Don't belong to any Association	
SECTION B: DEMOGRAPHIC ATTRIBUTES	
1. Gender of the trader	1. Male <input type="checkbox"/> 2. Female <input type="checkbox"/>
2. Age in Years 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> 46-60 <input type="checkbox"/> >60 <input type="checkbox"/>	
3. Marital Status	1. Single <input type="checkbox"/> 2. Married <input type="checkbox"/> 3. Divorced/Separated <input type="checkbox"/> 4. Widowed <input type="checkbox"/>

<p>4a) Is the respondent a person living with a disability?</p> <p>1. Yes <input type="checkbox"/> 2. No <input type="checkbox"/></p> <p>4b) Specify the Nature of disability _____</p> <p>5. Level of education</p> <p>1. No formal education</p> <p>2. Some primary education</p> <p>3. Primary completed</p>	<p>4. Some secondary education</p> <p>5. Secondary completed</p> <p>6. Some tertiary college education</p> <p>7. Tertiary college completed</p> <p>8. Some university education</p> <p>9. University degree and beyond</p>
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C. ENTERPRISE PROFILE

<p>1. Number of Business Owners:</p> <p>1. Single ownership</p> <p>2. Joint Ownership (Specify number of Owners _____)</p> <p>2. How many people are employed by your business? _____</p> <p>3. Type of business</p> <p>1. Hawking</p> <p>2. Small-scale business</p>	<p>6. Business main category</p> <p>1. Manufacturing e.g. tailoring, fabrication etc</p> <p>2. Service provision e.g. shoe shining</p> <p>3. Trading e.g. shopkeeping etc</p> <p>4. Others Specify _____</p> <p>7. What type of goods and services do you engage in regularly? _____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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<p>4. Do you pay any fee to do your business?</p> <p>1. Yes <input type="checkbox"/> 2. No <input type="checkbox"/></p> <p>5. What is the purpose of payment?</p> <p>1. For a license 2. Daily charge</p>	<p>8. Type of Business Structure</p> <p>1. None</p> <p>2. Temporary</p> <p>3. Permanent</p>
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D: TORTURE AND ITS DYNAMICS

1. Thinking about the period 2011 & 2013, have you experienced any of the following actions: (if no, skip to q 2)

Action	2011		2012		2013		Frequency (How Many Times)		
	Yes	No	Yes	No	Yes	No	2011	2012	2013
Beatings									
Confiscation of wares									
Shooting									
Arrest/incarceration in City/Police cells									

Being bundled into trucks in an undignified manner sometimes resulting in injury									
Coercion to give a bribe									
Sexual harassment									
Threats									
Other specify									

2. Do you know any other person who has been a victim of these actions?

Action	Yes	No
Beatings		
Confiscation of wares		
Shootings resulting in injury or death		
Arrest/incarceration in City/Police cells		
Being bundled into trucks in an undignified manner sometimes resulting in injury		
Coercion to give a bribe		
Sexual Harassment		
Threats		
Others (Specify)		

3. In your view, who among the following is the most important perpetrator of these actions?

Action	County Askari	Police	Fellow Traders	Others Specify
Beatings				
Confiscation of wares				
Shootings				
Arrest/incarceration in City/Police cells				
being bundled into trucks in an undignified manner sometimes resulting in injury				
Coercion to give a bribe				
Sexual Harassment				
Threats				
Others (Specify)				
4. Have you yourself ever been injured after being subjected to the actions enumerated? If no, skip to q 6	1. Yes <input type="checkbox"/>		2. No <input type="checkbox"/>	
5. If yes to the above, please describe the type of injury(ies) you sustained				
6. Do you know any other small-scale trader/vendor/hawker who has been injured as a result of these actions?	1. Yes <input type="checkbox"/>		2. No <input type="checkbox"/>	
7. What type of injury did they sustain?				
8. Do you know any small-scale trader/vendor/hawker who has been killed as a result of these actions?	1. Yes <input type="checkbox"/>		2. No <input type="checkbox"/>	

9. When was the last time you were a victim of such actions yourself?	1. 2011 2. 2012 3. 2013 4. Other Specify _____
10. How often do you witness cases of such actions in this area?	1. Daily 2. Weekly 3. Monthly 4. Every Three Months 5. Twice Per Year 6. Once a year
11. Are there days when these actions happen more than other days?	1. Yes <input type="checkbox"/> 2. No <input type="checkbox"/>
12. If yes, which are these days?	
13. Why are there more of these actions during the day(s) you have mentioned?	
14. Are there months when these actions happen more than other months?	1. Yes <input type="checkbox"/> 2. No <input type="checkbox"/>
15. If yes, which months of the year are those?	
16. Why are there more of these actions during the month(s) you have mentioned?	
17. Would you say the frequency of these actions between 2011 up to 2013, have ...	1. Increased 2. No Change 3. Decreased

E. REPORTING AND RESPONSE

1. Have you or any of your colleagues reported when these actions have happened? 1. Yes 2. No
2. If no, why didn't you report?
3. If yes, where did you report? (Multiple answers allowed)
4. Was any action taken after you reported? 1. Yes 2. No
5. If yes, what action was taken?
6. Were you satisfied with the action taken? 1. Yes 2. No
7. Have you ever taken legal action against the persons involved? 1. Yes 2. No
8. Have any of your colleagues ever taken legal action against the persons involved? 1. Yes 2. No
9. Is your or any association/confederation doing anything in addressing these actions among small-scale trader/vendor/hawker? 1. Yes 2. No
10. If yes, what exactly are they doing?

F. COPING MECHANISMS AND SUPPORT SYSTEMS

1. What do you do when you experience these actions?
2. What do you do when you are injured?
3. What do you do when your colleagues are injured?
4. Is there any governmental or non-governmental institution that supports you when you are injured? 1. Yes 2. No

5. Which institution has been most supportive?

6. Which institution should take a leading role in addressing torture among traders

7. What else can you tell us about this subject matter?

8. Would you like to be contacted further about this study? 1. Yes 2. No

9 If yes give your contact

ANNEX TWO: INTERVIEW GUIDE FOR ASSOCIATIONS

Introduction: in the last few years, we have seen various reports of harassment, beatings and even shootings of some of your members. We are interested in investigating how the policies and laws of the City protect these vulnerable groups and what remedies you and your members have when their rights are abused. I will pose some questions to enable us to discuss this phenomenon. Your answers and perspectives will be kept in strict confidence.

1. Media reports and reports by NGOs suggest that there is rampant abuse of the rights of hawkers and small business operators. What is your take on this matter?
2. Probe on the different manifestations such as beatings, shootings, etc
3. Discuss with KII the reasons why these actions are rampant. What are the motives of the perpetrators?
4. Are the hawkers and small-scale business operators guilty of any legal offences? How should this be dealt with? Why is due process not followed?
5. What remedies are available to these groups when such actions are taken against them?
6. Do you think the remedies are sufficient?
7. Would you say the City's policies and laws are sufficient to safeguard the rights of these groups? (Probe for specific policies and laws)
8. Discuss gaps in the laws and policies and how the gaps may be remedied
9. Do we have any institutions that safeguard the interests of these groups? (Probe for existence of such institutions whether governmental or non-governmental)
10. What does your association do to aid members who are abused?
11. Do you consider your own remedies to be sufficient?
12. Some of the actions have resulted in injuries and even deaths. In your view, have any actions been taken against the perpetrators? What do you do in such unfortunate circumstances?
13. What in your view should be done to eliminate these actions?

ANNEX THREE: INTERVIEW GUIDE FOR TRADERS ASSOCIATIONS

Introduction: in the last few years, we have seen various reports of harassment, beatings and even shootings of some of your members. We are interested in investigating how the policies and laws of the City protect these vulnerable groups and what remedies you and your members have when their rights are abused. I will pose some questions to enable us to discuss this phenomenon. Your answers and perspectives will be kept in strict confidence.

1. Media reports and reports by NGOs suggest that there is rampant abuse of the rights of hawkers and small business operators. What is your take on this matter?
2. Probe on the different manifestations such as beatings, shootings, etc
3. Discuss with KII & FGD discussants the reasons why these actions are rampant. What are the motives of the perpetrators?
4. Are the hawkers and small-scale business operators guilty of any legal offences? How should this be dealt with? Why is due process not followed?
5. What remedies are available to these groups when such actions are taken against them?
6. Do you think the remedies are sufficient?
7. Would you say the City's policies and laws are sufficient to safeguard the rights of these groups? (Probe for specific policies and laws)
8. Discuss gaps in the laws and policies and how the gaps may be remedied
9. Do we have any institutions that safeguard the interests of these groups? (Probe for existence of such institutions whether governmental or non-governmental)
10. What does your association do to aid members who are abused?
11. Do you consider your own remedies to be sufficient?
12. Some of the actions have resulted in injuries and even deaths. In your view, have any actions been taken against the perpetrators? What do you do in such unfortunate circumstances?
13. What in your view should be done to eliminate these actions?

Torture and CIDT Variables ranking in 2013

Variable	Percentage	Prevalence Rank
Shooting	2.0%	10
Sexual Harassment	4.1%	9
Destruction & Theft of Wares	5.1%	8
Beatings	9.0%	7
Injuries	11.6%	6
Incarceration in Cells	29.9%	5
Bundling into Trucks in Undignified manner	32.3%	4
Threats	38.7%	3
Coerced to bribe	51.4%	2
Confiscation of Wares	60.9%	1

ANNEX FOUR: INTERVIEW GUIDE FOR HUMAN RIGHTS ORGANISATIONS

Introduction: in the last few years, we have seen various reports of harassment, beatings and even shootings of hawkers and small-scale business operators in Nairobi. We are interested in investigating the nature and frequency of these abuses and the remedies that are available to the target groups. We will therefore pose some questions to enable us discuss this phenomenon. Your answers and perspectives will be treated with utmost confidentiality.

1. Media reports and reports by NGOs suggest that there is rampant abuse of the rights of hawkers and small business operators. What is your take on this matter?
2. Please explain how T&CIDT manifest from the reports you receive. Do we have cases of:
 - a. Beatings
 - b. Confiscation of wares
 - c. Shootings
 - d. Arrest/incarceration in City/Police cells
 - e. Being bundled into trucks in an undignified manner sometimes resulting in injury
 - f. Coercion to give a bribe
 - g. Threats
 - h. Sexual harassment
3. From the reports you receive, how rampant would you say these cases are?
4. Which one(s) of these actions are the most common?
5. What are your explanations for these occurrences? (explore the motives of the perpetrators)
6. From a human rights perspective would you say they constitute T& CIDT?
7. From the City's perspective, hawkers operate illegally. What do you say to this vis a vis the issue of T& CIDT?
8. Have you received any reports of retaliatory attacks on City *askaris*? What is your comment on the fact that City *askaris* also suffer in the hands of hawkers and there are areas that are no-go zones for them?
9. What remedies are available to these groups when their rights are abused?
10. What remedies do human rights organisations provide? Do you know of any programmes in this area?
11. Are these remedies sufficient?
12. What would you recommend for the following (so as to overcome the issue of T&CIDT):
 - a. City authorities
 - b. National government
 - c. Human rights organisations
 - d. Hawkers, small-scale business operators and their associations
13. Please avail any reports that could enrich our study. We are grateful for your time.

ANNEX FIVE: INTERVIEW GUIDE FOR FGDS AND KIIS

Introduction: in the last few years, we have seen various reports of harassment, beatings and even shootings of some of your members. We are interested in investigating how the policies and laws of the City protect these vulnerable groups and what remedies you and your members have when their rights are abused. I will pose some questions to enable us to discuss this phenomenon. Your answers and perspectives will be kept in strict confidence.

1. Media reports and reports by NGOs suggest that there is rampant abuse of the rights of hawkers and small business operators. What is your take on this matter?
2. Probe on the different manifestations such as beatings, shootings, etc
3. Discuss with KII & FGD discussants the reasons why these actions are rampant. What are the motives of the perpetrators?
4. Are the hawkers and small-scale business operators guilty of any legal offences? How should this be dealt with? Why is due process not followed?
5. What remedies are available to these groups when such actions are taken against them?
6. Do you think the remedies are sufficient?
7. Would you say the City's policies and laws are sufficient to safeguard the rights of these groups? (Probe for specific policies and laws)
8. Discuss gaps in the laws and policies and how the gaps may be remedied
9. Do we have any institutions that safeguard the interests of these groups? (Probe for existence of such institutions whether governmental or non-governmental)
10. What does your association do to aid members who are abused?
11. Do you consider your own remedies to be sufficient?
12. Some of the actions have resulted in injuries and even deaths. In your view, have any actions been taken against the perpetrators? What do you do in such unfortunate circumstances?
13. What in your view should be done to eliminate these actions?



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This research study, including the publication of this report was funded by the
ROYAL NETHERLANDS EMBASSY, Nairobi