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**SUBMISSION TO THE COMMITTEE AGAINST TORTURE**

**PRIOR TO THE ADOPTION OF THE LIST OF ISSUES FOR**

**KENYA’S THIRD PERIODIC REPORT**

**TO THE COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT**

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**INTRODUCTION**

1. This is an Alternative Report Prior to the Adoption of the List of Issues for Kenya’s Third Periodic Report to the Committee Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Committee).
2. IMLU is a human rights organisation that began working in Kenya in 1992. Its mission is: promoting the rights of torture victims and protecting Kenyans from all forms of State-perpetrated torture by advocating for legal and policy reforms, monitoring adherence to human rights, rehabilitating victims of torture and building the capacity of key stakeholders.
3. Insights for this report have been gained by IMLU as it has continued to undertake its programmes within Kenya for over twenty years. The report has also been developed in collaboration with DIGNITY and the University of Edinburgh
4. The issues set out below are by no means exhaustive, but highlight particular issues around impunity and access to justice.This Alternative Report builds on specific Concluding Observations of the Second Periodic Report of Kenya, adopted by the Committee at its fiftieth session (6 to 31 May 2013)(CAT/C/KEN/CO/2). In particular, it builds onpara. 6 on the enactment of the Prevention of Torture Bill, para. 11 and 22 on the effective investigation of all allegations of torture and ill-treatment, para. 16 on the harassment and arbitrary arrest of vulnerable people, para.21 on witness protection, para. 23 on compensation, and para. 25 on legal aid.
5. The Report is divided into four sections: this introduction, Kenya’s overall constitutional and political context, Key issues, and suggested questions which IMLU hopes the Committee will consider while preparing its List of Issues for the State.

**PRESENT KENYAN CONTEXT**

1. The 2010 Constitution revised Kenya’s governance by redefining and reallocating power amongst different institutions both horizontally and vertically. The country’s revitalised institutional arrangements included:the National Police Service, the National Police Service Commission, and the Independent Police Oversight Authority.
2. Protection against torture or ill-treatment is one of onlyfour unlimited rights in the Constitution (Article 25).
3. While the Constitution focuses on the specific prohibition of torture, it also prohibits other acts that fall under a broader definition of torture and cruel, inhuman and degrading treatment or punishment. Article 29 of the Constitution includes the rights not to be: subjected to any form of violence from either public or private sources; or subjected to corporal punishment.

**KEY ISSUES**

1. The Prevention of Torture Bill was prepared collaboratively by a coalition human rights organizations and the country’s national human rights institution. If passed in its present form, the Bill would offer many appropriate protections against torture.However, since its draftingin 2011, despite pledges by the government, the passage of the Bill has not received prioritization, and it has not entered into law.
2. While the Constitution provides that the prohibition of torture is an absolute right, the absence of a comprehensive law against torture creates a number of possible gaps and loopholes.It is for instance possible that an intelligence officer who perpetrates an act of torture might use the defence in Section 73 of the National Intelligence Service Act which provides that: ‘Proceedings shall not lie against the Director-General or any member of the Service in respect of anything done or omitted to be done in good faith in the performance of the functions of the Service or the exercise of the powers of the Service under this Act.’
3. Irrespective of Constitutional provisions, torture and ill-treatment remains widespread in Kenya. Between January 2011 and November 2014, IMLU has documented 562 cases involving 278 beatings, 123 fatal shooting, 76 shooting, 33 arbitrary arrests, 11 cases of psychological torture, 8 burnings, 8 sexual violations i.e. rape, sodomy, indecent assault, 8 deaths as a result of beating, 6 cuttings and stabbings, 5 enforced disappearances, 2 suffocations, 2 deaths in custody, 1 drowning and 1 sleep deprivation. Most of the documented cases occurred in Nairobi, Mombasa, Kiambu and Nakuru Counties and perpetrators were police (472), Forest Rangers (10), prison officers (51), chiefs (13), Kenya Wildlife Service Officers (15) and teacher in a public school (1).
4. IMLU’s case work shows that the reasons for torture and ill-treatment are mainly to:- 1) procure confession or admissions of crime; 2) to intimidate the victim; 3)extort bribes from suspected criminals 4) get information from criminal suspects 5) to punish persons who enquire the reasons for arrest and 6) to find contraband during searches in penal institutions.
5. The poor remain particularly vulnerable to torture and ill-treatment by the police and other public officials. In 2014, IMLU carried out a field survey amongst 586 randomly selected respondents hawkers and small business operators in Nairobi.[[1]](#footnote-1) 9% of the respondents reported that they had been beaten by public officials. 52.1% reported that they knew of another trader who had experienced beatings. The survey also found that 131 or (22.4%) of the respondents reported that they knew of a trader who has been killed. The injuries reported included injuries sustained to the body, head, broken limbs, loss of teeth, internal injuries and deep wounds as a result of stabbing. Injuries were reportedly caused by weapons such as broken bottles, iron bars, *rungus* (clubs) and stones. The leading perpetrators of beatings were found to be City *askaris* (municipal guards) followed by police. 91.6% said *askaris* were the leading perpetrators.
6. Drivers of violence in the interactionbetween traders and public authorities include harassment over trading licensing, rent-seeking behaviour from City County officials, and demandsfor sexual favours in exchange for protection. Threats and requests for bribes are often precursor to beatings, shootings and other abusive acts. City *askaris*, in particular, extracted bribes in exchange for allowing the traders to operate especially in undesignated areas or when they do not possess permits. 38.7% of respondents reported that they had experienced threats from public officials in the previous year. Traders are often threatened with arrest, confiscation of their wares, banishment from the City, beatings or even death.48.6% of respondents reported that they had paidbribes.
7. In 2014 IMLU conducted a survey on the use of firearms in Kenya `GUNS: OUR SECURITY, OUR DILEMA. From the report, it emerged that 65% of the gun-related deaths were perpetrated by law enforcement officers. However there is no mechanism to hold the officers concerned accountable for their actions. The issue is aggravated by the fact Kenya lacks a forensic documentation and independent death investigation system.[[2]](#footnote-2)
8. In 2015 IMLU, in conjunction with the University of Edinburgh and DIGNITY, carried out a household survey in three slum areas of Nairobi, surveying a total of 500 respondents. Provisional analysis shows that18.6% of respondents reported a member of their household had been subjected to violence by the police in the last year.
9. Accountability for state and public officers is one of the key pillars enshrined in Article 10(2) (b) of the Constitution of Kenya. The establishment of the Independent Policing Oversight Authority (IPOA) in 2011 was a key step to enhance accountability p for abuses perpetrated by members of the National Police Service. However, prosecution of police officers involved in acts of torture and ill-treatment are still scarce and far between. IPOA remains heavily underfunded, reporting that it had only 19 investigators for the whole country in 2014. For the latest period in which figures are available (January - June 2014) IPOA reports that 610 complaints were received.[[3]](#footnote-3)In this period, 281 cases were at different stages of investigations; 64% cases of cases received were awaiting investigation; and out of the 26 completed investigations, 2 had been forwarded to Office of the Director of Public Prosecutions.
10. Complaints to the police by survivors of torture and ill-treatment are rarely acted upon. In the survey report by IMLU on Torture, Cruel, Inhuman and Degrading among Hawkers and Small Scale Business Operators in Nairobi County, 78.4% of the respondents indicated that no action was taken when they complained about abuses by the police and county council law enforcement officers.
11. Taking civil cases is prohibitively expensive. Constitutional requirements guaranteeing access to justice by all are non-equivocal. Article 48 of the Constitution provides that: ‘The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and it shall not impede access to justice.’ In practice, even where court fees are waived, this has not empowered individuals to seek legal redress since in practice lawyers’ fees comprise the bulk of litigation costs; and most litigants cannot really mount effective cases without professional help, and the entitlement to legal counsel at State expense is executed in extremely limited situations.
12. In instances where the families of victims and survivors of torture have been awarded damages by the Courts, little is done by the office of the Attorney General to execute the decisions of the court. In June 2014 the Cabinet Secretary in Charge of Interior Security acknowledged that the court had awarded about Kshs 250,000,000.00 (approximately 2.238.000 EUR) in damages for cases of torture and extra judicial killings however the recipients would have to wait as there was no budget to pay the compensation awards.
13. The survey amongst hawkers found that very few traders (3.7%) report having taken legal action following torture or ill-treatment. The following reasons were given for not reporting torture and ill-treatment: 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%), settled with the perpetrators informally (8.2%), one cannot report ‘government to government’ (7.2%), and, lastly, lack of business permits (4.5%).
14. The 2015 IMLU survey of three slums showed that only 38% of those who experienced any incidents of violence reported it to the police. Of those that reported to the police, 43% reported that their report came to some kind of resolution; and 26% thought justice was served following their report to the police. When asked why they did not report to the police, 10% of respondents reported that the police ‘do not investigate well’, 14.5% reported that there ’is no justice for the poor’, 8% reported that ‘it can cause problems in the community’, and 25% that ‘nothing will ever happen if you report’.
15. Survivors of ill-treatment can be very reluctant to report their experiences. Given delays in the legal system, the time and expense involved in court cases can be too much. More significantly, survivors are also often scared, fearing that their life might be jeopardized if they dared to report police violence. Levels of intimidation can be very high, and witness protection programs are practically non-existent.

**SUGGESTED ISSUES**

**Article 2**

1. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, para. 16), what concrete steps are being taken to prevent and investigate the harassment, ill-treatment and torture of the poor and vulnerable by the public officials, and in particular City *askaris* and the police force?
2. What active steps are being taken by the state to proactively identify cases of torture an ill-treatment, both in places of detention and without?
3. With reference to the Committee’s previous concluding observations (CAT/C/KEN/CO/2/11) what steps are being taken to ensure that the National Coroner’s Bill is enacted into law?

**Article 4**

1. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, 6), what steps are being taken to ensure that the Prevention of Torture Bill is enacted into law?

**Articles 5 and 12**

1. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, para. 11), what steps are being taken to ensure that all allegations of acts of torture or ill-treatment by police officers and other security agencies such as the City *askaris* are promptly, effectively and impartially investigated, and if convicted, punished appropriately?
2. Please provide details of the number and results of any investigations into allegations of torture or ill-treatment since the adoption of the previous concluding observations, the number of prosecutions and the number of convictions.

**Article 13**

1. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, para. 22), please provide details of the steps taken to establish an independent and effective complaint and investigation mechanism.
2. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, para. 11.a), please provide details of the resources and staffing levels provided to the Independent Police Oversight Authority (IPOA)?
3. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, para. 21), Please provide details of the measures taken to ensure that complainants are protected in practice against any intimidation or reprisals as a consequence of their complaints.
4. Please provide details of the number of complaints made concerning allegations of torture and ill-treatment by public officials, prison staff, and persons acting with the acquiescence or consent of State officials.
5. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, para. 25), please provide a timetable for the enactment and effective implementation of the Legal Aid Bill (2012).

**Article 14**

1. With reference to the Committee’s previous Concluding Observations (CAT/C/KEN/CO/2, para. 23), What steps are being taken to ensure that all those awarded compensation are provided with access to the compensation?

1. IMLU. 2014. A Cry for Justice: Torture and ill-treatment of Hawkers and Small Scale Traders in

   Nairobi City County. Available at: <http://www.imlu.org/2011-06-30-23-44-4/reports.html> [↑](#footnote-ref-1)
2. Guns: Our Security Our Dilema: Law enforcement, Firearm deaths and Community perceptions of Violence by the Independent Medico- Legal Unit 2015 . available on ***www.imlu.org*** [↑](#footnote-ref-2)
3. Independent Police Oversight Authority. 2014. Performance Report, January 2014-June 2014. Available at: <http://www.ipoa.go.ke/images/downloads/IPOAPerformanceReportJan-June2014.singles.pdf> [↑](#footnote-ref-3)